

A STUDY OF COMPARATIVE CONSTITUTIONAL
SYSTEMS WITH PARTICULAR REFERENCE TO
THE DOCTRINE OF SEPARATION OF POWERS
UNDER THE MALAYSIAN FEDERAL CONSTITUTION

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PREFACE

For the constitution to be a symbol and epitome of our democracy, crystallization of the dominant sentiments of the nation should be made. A constitution to be effective, must indeed be based on reality, not on theory; on existing conditions, not hypothesis; on the lessons of human experience, not mere book of knowledge. It must represent a cross-section of views, projecting the image of the people, with their longing and aspiration, as well as their customs and tradition. It must be a faithful embodiment of their will.

Herein lies the value of this study of Comparative Constitutional System in which its Table of Content will set forth the general outline. It will direct the reader to a special topic in which he may be interested.

In the preceding chapters, the writer will highlight the significance of the Parliamentary system. The opinions expounded therein cannot but provoke thought and hence, foster a better grasp of the issues concerning the constitution in need of the faith of the people in order ~~in order~~ for a country to have a responsive government. The constitution is important; but it is just like one of the four wheels of a car. You may have one wheel that is strong and time-tested but if the other three wheels are wood, how can it work? The constitution is a law but if there is no balance of power in society, it will not work.

It is the writer's hope that this study, representing as it does the hopes and aspirations of concerned minds, will be read by others equally concerned so that when a constitution is actually promulgated, it will embody all the dreams and ideals of the people.

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For the defects that remain, and the view here expressed, I must, of course accept full responsibility.

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B. MALAYSIAN CONSTITUTIONAL HISTORY - AN OVERVIEW

Malaysia with a population of nearly 15 millions is a Federation of thirteen states, headed by His Majesty, the Yang Di Pertuan Agong (hereinafter called the King). The Federation has 14 legislatures and 14 governments, i.e; one for the Federation and one for each of the thirteen states. Each of the nine Malay States (which were formerly British protectorates) is headed by a hereditary Sultan and each of the four states (formerly British Colony) by a Governor appointed by the King.

The Federation first came into existence in 1896 and in 1946 it was enlarged to embrace all the states (including the two colonies of Malacca and Penang) on the Malay Peninsula, and named the Malayan Union. In 1948 it was renamed the Federation of Malaya with a new constitution. On August 31st, 1957, it was granted independence by the British. In 1963 the Federation was further enlarged³ and renamed Malaysia.

Malayan Union in 1946 was a landmark in the history of Malay Politics because that year was the birth of concerted Malay Nationalism which established the United Malay National Organisation (UMNO)⁴. The consequence of this resistance deepened the "unrevealed" conflict between the two dominant races, viz; the Malays and the Chinese.

3 When Singapore, Sabah and Serawak joined; but Singapore seek to establish its own country's independence in 1957 and thus separated from Malaysia.

4 The Malayan Union proposal sought to withdraw Malay rights; initially Malay Nationalism was largely influenced by the Muslim Reformist Movement in Arabia, Indonesian Nationalism and Japanese expansion - Tan Sri Dato Haji Mohd. Salleh bin Abbas; Constitutional law and Judiciary, 1984.

As a recourse, the British government introduced a new federal system comprising the Malay states and the settlement of Penang and Malacca. This proposed dual government set up, would secure the twin objectives, i.e; a sufficiently big state and the integrity of the individual states and their rulers⁵.

Although this federation was to survive until 1963 and as an independent nation after 1957, it was not free from internal oppositions. Four attempts were launched to abolish this present system.

In 1948 to 1949, Penang was disenchanted by the dismantling of the Straits Settlement. The Chinese Majority status would be lost if it be united with the Malay states. Not only they were 'economically' deprived but the strait born Chinese did not see such opportunity for political equality with the Malays and would be in no comparison to the Singapore Chinese, who were advancing in political participation and maturity.

Again in 1953 to 1957, Penang tried to secede. This time it was directed against Malay domination in the Federal Government and motivated by the Chinese lack of political eminence and power in the new set up. UMNO⁶ in dealing with Malay extremist demand in one hand at that time and meeting with this Chinese grievance in the other, agreed that the 'franchise' policy regarding the strait born Chinese be relaxed and 'jus soli' was accorded.⁷

5 ibid

6 United Malay National Organisation headed by the then President, Tunku Abdul Rahman Putra Al Haj.

7 Tan Sri Dato Haji Mohd. Saleh bin Abbas - Constitutional law and Judiciary 1984 P.10