

Week 3 & 4: The Historical Development of the Constitution

1. The Political Structure before 1946

The British had created 3 separate entities: FMS, UFMS & SS.

1. Federated Malay States (FMS) : Perak, Selangor, Negeri Sembilan, Pahang [A federation of 4 protected states established by the British in 1895]

In FMS, the Ruler must act on the advice of the British “Resident”, except on matters in relation to Islam and Malay custom (Indirect rule).

- ▶ **The 1st Resident General was Sir Frank Swettenham.**
- ▶ **Kuala Lumpur, which was then part of Selangor, was the capital of the Federation.**
- **The establishment of FMS mark the beginning of the era of “indirect rule” by British Residents who in the guise of advising the Malay Rulers began to control the affairs of the Malay states.**

**2. Unfederated Malay States (UFMS) :
Kelantan, Kedah, Terengganu, Perlis,
Johore (5 states)**

In contrast with FMS, despite the appointment of British “Advisor” in each state, the Sultans enjoyed greater autonomy. Legally, the Sultans were not obliged to follow the advice of the Advisor though in most circumstances they do.

**3. Straits Settlement : Malacca, Penang,
Singapore. [directly governed by the British]**

2. Malayan Union 1946

- ▶ **Dec, 1941— Aug,1945: Japan occupation.**
- ▶ **Sept, 1945 : British resumed control and immediately proclaimed Military Administration.**
- ▶ **Under British Military Administration, the British assumed full judicial, legislative, executive and administrative powers and responsibilities and conclusive jurisdiction over all persons and property throughout Malaya which at that time included Singapore.**

- ▶ **The British Military Administration met active resistance from the Malayan Communist Party (MCP). Malay nationalists also campaigned for independence.**

- ▶ **Mac, 1946: British proposed to establish MU comprising the FMS, UFMS and SS [except Singapore]) to be administered & governed together under a Governor. Singapore was to be made a separate Crown Colony.**
- ▶ **Under MU, citizenship is to be extended to all persons born in the MU and Singapore, regardless of their race/religion - jus soli principle (right of the soil) i.e. birthright citizenship.**

- ▶ **MU encountered strong Malay opposition led by UMNO [United Malays National Organisation] (established in March 1946 & led by Dato' Onn) and the Malay Rulers because:**
 - 1. MU deprived the Malay Rulers of their sovereignty.**
 - 2. Fear of non-Malay domination (politically & economically) as a result of the proposed new citizenship. [Note: In 1941, Chinese population in Malaya & Singapore=43%]**
 - 3. Fear of abandonment of the pre-war policy of recognising Malaya as a Malay country.**

- **25 July 1946, 1946 – A Working Committee of 12 (consisting of 6 British officers, 4 Ruler representatives & 2 UMNO representatives) was set up to draft a fresh constitutional arrangements:**
 1. **Acceptable to the Malays; and**
 2. **Which would preserve the fundamental objectives of the British Government.**

■ Objectives of British Government

1. To establish a strong central government with control over all matters of importance to the progress and welfare of the country as a whole;
2. To create a common citizenship which will be open to all those who regard Malaya as their real home and as the object of their loyalty. (to integrate the indigenous Malay and immigrant non-Malay population & thus pave the way for eventual self-rule).

3. Federation of Malaya 1948

1. With effect from 1/2/1948, the 1948 Federation of Malaya Agreement replaced the controversial 1946 MU.
2. The MU (11 states excluding Singapore) was converted into the Federation of Malaya with a strong central government & a constitution of its own - The government of the Federation of Malaya was headed by a British High Commissioner with executive powers, assisted and advised by the Federation of Malaya Executive Council and the Federation of Malaya Legislative Council.

3. Malay automatically became Federal citizens while the other communities could acquire Federal citizenship by application if they fulfilled certain residential requirements.

(i.e. Those born in the Federation & resident there for 8 years could acquire Federal citizenship by application, while residents who had been born outside the Federation needed to fulfil a residential requirements of 15 years.)

- 4. Malays enjoy certain privileges in business, jobs, education and in the reservation of land in order to improve their economic position.**

■ **The Federation of Malaya Agreement satisfied both British & Malay requirements.**

(i) It met the British objective of a strong central government and common citizenship;

(ii) It safe-guarded Malay sovereignty & the special position of Malays & provided for a restricted form of citizenship.

- **However, the Federation of Malaya was opposed by the Chinese and other non-Malays. They were unable to accept the stringent citizenship clauses & the lack of equal rights for Malay and non-Malays.**
- **But they failed to change the mind of the British.**

- ▶ **The Preamble to the 1948 Federation of Malaya Agreement had expressed the desire of the British and the Rulers that progress should be made towards eventual self-government.**
- ▶ **Accordingly, elections for the Federal Legislative Council were held in 1955.**

▶ **4. The Election of the Federal Legislative Council in 1955**

- ▶ **In July 1955, the first Federal Legislative Council election was held (out of 98 seats, 52 seats were to be elected).**
- **The Alliance (UMNO, MCA & MIC) won 51 out of 52 seats.**
- **After the election, a constitutional conference was held in London from 18th Jan 1956 to 6th February 1956.**

- The conference proposed the appointment of an independent commission to draft independent Malaya's first constitution.
- A Constitutional Commission headed by Lord Reid was appointed.

Lord Reid Commission



Lord **Reid** (UK)



Sir Ivor Jennings (UK)



Sir William McKell (Aust)



B. Malik (India)



Justice Abdul Hamid
(Pakistan)

Terms of Reference

- To make recommendations for:
 1. A federal constitution;
 2. A Westminster style of parliamentary democracy;
 3. A bicameral legislature;
 4. A strong central government;
 5. Safeguards for the position of the Rulers;
 6. A constitutional Head of State (YDPA) to be chosen from among the Rulers;
 7. Common nationality; and
 8. Safeguards for the special position of the Malays & the legitimate interests of other communities.

- **The Alliance drew up a 20-page Memorandum (“communal bargain”) for the Reid Commission.**
- **In drafting the memorandum, the Alliance parties had little difficulty in reaching agreement relating to:**
 - the structure & function of the government;**
 - the powers of the Federal government & the states; and**
 - the position of the Rulers & the judiciary.**

- However, on the communal issues, the Alliance debates were protracted and complex and the final memorandum contained several significant disagreements between the parties on, eg. Language and citizenship.
- Language: MCA & MIC wanted a provision allowing the use of Chinese & Tamil in the legislative councils for a minimum of 10 years. UMNO not in favour of this proposal.
- Citizenship: MCA & MIC did not agree with the UMNO proposal that those born in Malaya of alien parents on/after independence would cease to be nationals on reaching the age of 21 unless they made a declaration of the retention of their nationality within a year of reaching that age.

- **The Reid Commission held 118 public & private hearings between June and October 1956. It finally submitted a Report (draft constitution) on 20 Feb 1957.**
- ▶ **Contents of the Report includes:**
 - **1. A supreme Constitution;**
 - **2. An independent judiciary with powers of judicial review;**

- 3. A federal system of government;**
- 4. A Westminster style of parliamentary democracy;**
- 5. A constitutional monarchy at both state and federal level;**
- 6. A chapter on fundamental rights.**

▶ **However, a number of proposals in the Report of the Reid Commission has caused tremendous consternation amongst various ethnic group and the Malay Rulers. These include:**

- 1. The Malay Special position shall be reviewed 15 years after Merdeka.**
- 2. Islam was not made the state religion.**
- 3. Chinese and Tamil language could be used in the Legislative assembly for a period of 10 years after Merdeka.**

- **2 days later, a tripartite Working Party (British 4, Malay Rulers 4, Alliance 4) was appointed to examine the Report.**
- **[The 4 representatives from the Alliance were Tunku Abdul Rahman, Dato Abdul Razak, Ong Yoke Lin and V T Sambanthan]**
- **The tripartite Working Party held 23 meetings between 23 February and 27 April 1957 & made significant amendments to the Reid Commission Report.**

Examples

- 1. The 15-year time limit on Malay privileges was removed (i.e. No time limit).**
- 2. Provisions were added that existing non-Malay rights will not be extinguished in order to create quota for Malays.**
- 3. Islam was adopted as the religion of the Federation.**
- 4. There would be full freedom for other communities to practice their own religion in peace and harmony.**

- 5. The role of the Conference of Rulers was enhanced. In addition to electing the King, the Conference would have such powers as advising the King on important appointments under the Constitution. It has the right to be consulted on matters of national importance, territorial changes affecting the States and amendment adversely affected the prerogatives of the Rulers.**

- 6. The permission to use Chinese & Tamil in the legislatures was removed.**
- 7. New provision: Chinese & Tamil could be used for non-official purposes and that their teaching & learning would be allowed.**