THE FEDERATION OF MALAYA CONSTITUTION. By L. A. Sheridan, LL.B., PH.D. [1961. Published by the University of Malaya Law Review, Singapore, in association with Oceana Publications, Inc., New York. pp. 180 inc. index. $M.20.]

This annotated commentary on the new Malayan federal constitution is an up-to-date revision of a number of articles by the same author (who is Dean of the Faculty of Law in the University of Malaya) which have already appeared in the Law Review of that University. A conscientious reviewer might have compared the two versions meticulously to see what changes the author has decided to make; but I do not suffer from a conscience of that kind and I can see little advantage in such a process. What is important to me is that the new commentary is a more than adequate *vade mecum;* teachers and students of federal constitution law in any community which is saddled with that particular form of government have every reason to be grateful to Professor Sheridan for the promptness with which he has prepared his commentary on one of the latest recruits to the ranks of federally organised communities — and for his penetrating analysis of the provisions of the Malayan Constitution and the clarity of his observations. In the course of teaching Australian Constitutional Law for more than thirty years I have usually found that students (or at least those who aspire to something better than a mediocre pass degree) are interested in analogies and comparisons with other federal constitutions — or at least those which are written or are available in English. Some indication, for example, of the way in which the inter-state commerce power has been developed and enlarged by judicial fiat in the United States not only highlights for the Australian student the restricted development of the corresponding power in his own country but enables him to appreciate in some measure the differing approach of the highest tribunals in two countries which appear on the surface to have many constitutional provisions in common. Already I have had occasion to bring to the notice of my students such matters as section 63 of the Malayan Constitution — which purports to exclude judicial examination of parliamentary procedure; no doubt as time goes on and not only do I become more familiar with that Constitution but the courts have interpreted particular provisions of it, there will be increasing opportunities to use it for comparative purposes.

This new federation is unique in that all the constituent States are organised on a nominally monarchical basis and their rulers have the sole right to elect one of their number as the Supreme Head of the Federation and a second as Deputy Supreme Head. This does not, however, indicate a real departure from the basically democratic concepts of this Constitution because the Supreme Head (or his Deputy where the latter has to take over the functions of the Supreme Head) is expressly directed to exercise the vast majority of his powers on ministerial advice. While temporarily holding the office of Supreme Head he is to be maintained solely at the cost of the Federation since he is debarred from receiving the payments normally made to him by his own State as its nominal ruler; nor can he hold any other office of profit. His position is therefore very similar to that of the Governor-General of Canada or of Australia, while his fellow rulers in their respective States appear to have much the same decorative but largely useless functions as the Governor of an Australian State. However, the prestige of the rulers appears to be deliberately fostered by the creation of a Conference of Rulers; but it is shadow rather than substance. It has the responsibility of electing the Supreme Head and has a few other functions to perform which to an outside observer do not seem to be of fundamental significance. What is important is that though it can deliberate on "questions of national policy", when it does so each ruler must be accompanied by his Prime Minister (in the case of the Supreme Head) or by his Chief Minister (in the case of the remainder). The real responsibility for government lies on the shoulders of Cabinet (this word is actually used, for example in section 43, in apparent preference to Privy or Executive Council); and what is largely left to the

conventions of the Constitution (as in the United Kingdom, Australia, Canada, and most other Commonwealth countries) is carefully prescribed by the same section. The office of Prime Minister can only be held by that member of the House of Representatives who in the opinion of the Supreme Head is likely to have the support of the majority of the members; other ministers can be members of either House, but all are made collectively responsible to Parliament — not even nominally to the Supreme Head. If the Prime Minister loses the support of the majority of the House he is required to recommend a dissolution or to resign; but there appears to be no machinery to compel him to do either.

The legislature under the name of Parliament is bicameral, with a partly elected and partly nominated Senate of 38 and an entirely elected House of Representatives of 104. The nominated Senators are appointed (on ministerial advice) by the Supreme Head from the various classes of persons described in section 45, they presumably being persons unlikely to find their way into the Senate by the ordinary process of election by the State (unicameral) legislatures. All Senators, whether elected or nominated, hold office for six years, though provision is made for one half of the first Senators to sit for three years only so that the principle of rotation similar to that used in the Australian Commonwealth can be introduced. None of these provisions are "entrenched" in any way; it is Parliament and Parliament alone which can, for the Senate, substitute popular election for choice by the State legislatures and can reduce or abolish altogether the nominee places. In like vein the size of the House of Representatives is alterable by Parliament, at least after the first census; and it would appear that the allocation of seats to the constituent States is also left to the unfettered discretion of that Parliament. Relations between the two federal Houses are governed by section 67 which in effect reproduces the scheme of the (United Kingdom) Parliament Acts of 1911 and 1949.

In the distribution of legislative power the federal Parliament undoubtedly takes the lion's share; more than five pages are required to describe the matters entrusted exclusively to it, less than two pages to describe the "State lists." Although section 77 entrusts to the States legislative power in all matters not specifically mentioned in either the federal or State list, the description of powers is so detailed that, as the author remarks, there is virtually no residue of power left for the States to exercise. The federal Parliament can even enter the State sphere in the circumstances set out in section 76; given the superiority of federal over State law assured by section 75, the conclusion is irresistible that this Constitution in effect provides for a very highly centralised and nearly all-powerful federal legislature and executive, and relegates the constituent States to a very minor and subordinate position. It is in a sense a thankless task to comment upon a constitution that has yet to run the gauntlet of judicial interpretation; Professor Sheridan has undertaken the task with considerable courage and great care; he would indeed be a bold man who would join issue with the author in his assessment of the meaning and probable operation of those occasional obscurities which seem to be inseparable from a federal constitution. Occasionally — and I must confess to having enjoyed the occasions — the author descends from his lofty pedestal of impartial commentator to indulge in cynicism or even an apt colloquialism. As an example of the former, when referring to the unusually privileged position given to Irishmen by most Commonwealth citizenship laws, he asks pertinently enough, "Why is the Republic of Ireland allowed to get away with it?" The second is illustrated by his reference to the order of precedence of the various rulers on formal occasions when he surmises that "other people" (may take their places) "in accordance with the bright ideas of the organisers." Some may regard this as flippancy and think it out of place in a learned discussion of a federal constitution; I do not agree — I find these actual departures from the academic norm an additional stimulus to go on reading with undiminished interest a book which I enjoyed and which I am quite sure will be most helpful to students of comparative federal constitutional law.

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