

## FEDERATION OF MALAYA CONSTITUTION

### PARTS TWO AND THREE

This article is the second of a series designed, when completed, to form as a whole an annotated version of the Federation of Malaya constitution. The first part appeared in the *University of Malaya Law Review*, vol. 1, pp. 137-144.

#### PART II

#### FUNDAMENTAL LIBERTIES

5. (1) No person shall be deprived of his life or personal liberty save in accordance with law.<sup>1</sup>

(2) Where complaint is made to the Supreme Court<sup>2</sup> or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.<sup>3</sup>

(3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.<sup>4</sup>

(4) Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrate's authority.<sup>5</sup>

(5) Clauses (3) and (4) do not apply to an enemy alien.<sup>6</sup>

#### *Notes*

1. "...save in accordance with law" in clause (1) means "save lawfully." It does not mean "...without due process of law" as that expression is used in the fifth amendment and in section 1 of the fourteenth amendment of the U.S.A. constitution.

By article 160(2) of the Malayan constitution, " 'Law' includes written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof."

Article 5(1) thus does not limit legislative powers: it serves as a preamble to clause (2). In this it is similar to article 21 of the Indian constitution: "No person shall be deprived of his life or personal liberty except according to procedure established by law." See Basu, *Commentary on the Constitution of India*, 3rd ed., pp. 270-280.

2. The Supreme Court is governed by Part IX of the Constitution and by the Courts Ordinance, 1948, as amended by the Courts (Amendment) Ordinances, 1951, 1953 and 1959.

3. Clause (2) writes habeas corpus into the constitution. But see article 149(1).

4. The extent of the limitations imposed by clause (3) on the powers of the legislatures was the first question raised under this constitution in litigation. See general note A, below.

As to any duty imposed on the legal profession, or to provide free legal aid, see general note B, below.

Clause (3) is qualified by articles 149(1) and 163.

5. Clause (4) is qualified by articles 149(1) and 163.

6. Presumably this exception is to allow for prisoners of war.

*General note A: occasions of right to counsel.* In *Chia Khin Sze v. Mentri Besar, State of Selangor* (1958) 24 M.L.J. 105, it was held that there was no right to counsel where the arrest was not on a criminal charge; or where, though a hearing had been ordered by the Mentri Besar, there was no right to a hearing, at least, in the latter case, where the arrest was under legislation passed before Merdeka Day (31st August 1957).

The decision has been criticised already in a note in the *Malayan Law Journal* (vol. 24, pp. xli-xlii). Unlike the sixth amendment to the constitution of the U.S.A., article 5 (3) of the Malayan constitution is not in terms confined to criminal cases. As to the second ground: Chia Khin Sze was arrested under the (Selangor) Restricted Residence Enactment, which leaves to the Mentri Besar the question of whether there should be a hearing. However, since article 5(5) of the constitution excepts enemy aliens from the benefits of clause (3), it might be concluded that no other exceptions are intended. This is reinforced by comparison with article 22(3) of the Indian constitution, which makes the rights accorded to an arrested person similar to those in clauses (3) and (4) of the Malayan article 5 inapplicable: “(a) to any person who for the time being is an enemy alien;” and “(b) to any person who is arrested or detained under any law providing for preventive detention.” Sutherland J.’s reference to the fact that the Enactment was passed before Merdeka Day is because of the provisions of article 4(1), providing that “...any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.” (See p. 140, *ante*). Article 162 continues “existing laws” (defined in article 160 (2)), but gives the Yang di-Pertuan Agong or, in default, the court applying the law in question, power to modify them to bring them into accord with the constitution.

It would appear that, with the sole exception mentioned in clause (5), clauses (3) and (4) apply to any person arrested.

See, further, Rackow, "The Right to Counsel — Time for Recognition under the Due Process Clause" (1959) 10 *Western Reserve L.R.* 216.

*General note B: nature of right to counsel.* Article 5(3) entitles an arrested person to choose his lawyer. The sixth amendment to the constitution of the U.S.A. says nothing about choice, but article 22(1) of the Indian constitution is as the Malayan provision in this respect. If, as is quite possible, many arrested persons concentrate their desires upon one or two newspaper-famous defence lawyers, the only escape from a constitutional obligation to overwork would seem to lie in overcharging. It is submitted that "shall be allowed to consult" means "shall not be prevented from consulting" and not "shall be helped to consult." That is to say, there is no obligation to take positive steps. In any case, a constitutional obligation imposed upon private individuals would be strange.

Nor is it certain that article 5(3) alone compels the government to run a legal aid scheme. However, taking this clause together with article 8(1) (equality before the law and equal protection of the law), there probably is a constitutional obligation so to do. This is considered further in the notes to article 8.

6. (1) No person shall be held in slavery.<sup>1</sup>

(2) All forms of forced labour<sup>2</sup> are prohibited, but Parliament may by law provide for compulsory service<sup>3</sup> for national purposes.<sup>4</sup>

(3) Work incidental to the serving of a sentence of imprisonment imposed by a court of law shall not be taken to be forced labour within the meaning of this Article.<sup>5</sup>

#### Notes

1. "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." (Thirteenth amendment). "Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law." (Indian constitution, article 23(1)).

2. "Forced labour" presumably means work (other than that specified in article 6(3)) which a person is compelled otherwise than by contract to do. Possibly an additional element of comparatively detrimental terms of service is involved (see note 3, below).

3. Compulsory service for national purposes is constitutional, but it is not clear whether that is because it is not a form of forced labour or because it is a permitted form of forced labour. Certainly Parliament may provide for conscription to the armed forces, but it may be regarded as doubtful whether the Act could validly give national servicemen

inferior remuneration or other terms of service compared with volunteers of like rank.

4. The scope of “national purposes” is probably wider than merely military purposes. Article 23(2) of the Indian constitution provides: “Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.” In *The State v. Jorawar*, A.I.R. 1953 H.P. 18, 19, Chowdhry J.C. said: “That Article prohibits ‘begar’ and other similar forms of forced labour, except for compulsory service for public purposes. Conscription for the defence of the country, or for social services, are possible instances of imposition of compulsory service for public purposes. That cannot however be said of imposition of compulsory service for the purpose of carrying a load of Government property by the Tahsildar or any Government servant in normal times.”

5. Clause (3) permits prisoners being made to work, and presumably allows them to be so compelled without payment.

7.(1) No person shall be punished for an act or omission which was not punishable by law, when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.<sup>1</sup>

(2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted.<sup>2</sup>

### Notes

1. Clause (1) is a constitutional prohibition on retroactive penal legislation, not on judicial precedent holding an offence to exist where previously it was doubtful or where there was believed to be none.

2. Clause (2) is a constitutional entrenchment of the pleas of *autrefois acquit* and *autrefois convict*. In the Federation, appellate criminal courts, including the Court of Appeal (which hears appeals from Assizes), have power under existing law to order a new trial.

8.(1) All persons are equal before the law<sup>1</sup> and entitled to the equal protection of the law.<sup>2</sup>

(2) Except as expressly authorised by this Constitution,<sup>3</sup> there shall be no discrimination against citizens<sup>4</sup> on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority<sup>5</sup> or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.<sup>6</sup>

(3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.<sup>7</sup>

(4) No public authority<sup>5</sup> shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.<sup>8</sup>

(5) This Article does not invalidate or prohibit — (a) any provision regulating personal law; <sup>9</sup> (b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion; (c) any provision for the protection, wellbeing or advancement of the aboriginal peoples<sup>10</sup> of the Federation (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;<sup>11</sup> (d) any provision prescribing residence in a State or part of a State as a qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election; (e) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day; (f) any provision restricting enlistment in the Malay Regiment to Malays.

### Notes

1. Equality before the law is discussed in the general note below.
2. Equal protection of the law is discussed in the general note below.
3. Exceptions authorised by this constitution are: (i) those contained in clause (5) of this article; (ii) article 43(7) — citizen by naturalisation or by registration under article 17 not to be prime minister; (iii) article 89 — Malay land reservations; (iv) article 90 — restrictions on alienation of customary land in Malacca and Negri Sembilan, and special provisions for Malay holdings in Trengganu; (v) article 153 — reservation of quotas for Malays in respect of positions in the public service, permits, licences, scholarships, etc.
4. Clause (2) is apparently designed to give federal citizens (see article 160(2) ) protection additional to that given by clause (1) to all persons. See also article 12, below.
5. By article 160(2), “‘Public authority’ means the Yang di-Pertuan Agong, the Ruler or Governor of a State, the Federal Government, the Government of a State, a local authority, a statutory authority exercising powers vested in it by federal or State law, any court or tribunal other than the Supreme Court, or any officer or authority appointed by or acting on behalf of any of those persons, courts, tribunals or authorities.”
6. Clause (2) will not invalidate discrimination against citizens in the areas specified unless it is solely on one or more of the grounds enumerated. Any discrimination on some other ground (not infringing some other provision of the constitution such as clause (1) of this article) will be valid even though it may have the incidental effect of discriminating also on one of the grounds listed in clause (2). Cf. *Pillai v. Mundanayake* [1953] A.C. 514. Unlike article 15(1) of the Indian constitution, clause (2) omits a prohibition on sex discrimination.

7. "Ruler" is defined in article 160(2). Cf. clause (5)(e) of this article.
8. Cf. clause (5)(d), (e), of this article.
9. Personal law, i.e., law applying in a case by virtue of the connection of the parties with a particular race, religion, or locality, is most important in the fields of domestic relations (including succession) and property. Many varieties of personal law operate in Malaya, of which the three commonest examples are Malay custom, Chinese custom, and Hindu custom. Legislation on Malay personal law is a State matter: see article 74(2) and 9th sch., List II, para. 1; article 160(2), definition of "Malay."
10. "Aboriginal peoples" — the three main groups are Negrito, Sakai, and Jakun. See P.P. Buss-Tjen, "Malay Law" (1958) 7 *American Journal of Comparative Law* 248, 250-252, and works there referred to.
11. "Reasonable proportion of suitable positions" is a short phrase with two words of blatant value judgment. What is reasonable or suitable is a matter ultimately for the court to decide. Article 153(2), on the other hand, gives the Yang di-Pertuan Agong power to reserve for Malays "such proportion as he may deem reasonable of positions in the public service..."

*General note: equality before the law; equal protection of the law.* Equality before the law is guaranteed by some constitutions; by section 1 of the fourteenth amendment to the constitution of the U.S.A., "No State shall...deny to any person within its jurisdiction the equal protection of the laws." Malaya has both equality before and equal protection of, following article 14 of the Indian constitution: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Despite the efforts of Basu (*Commentary on the Constitution of India*, 3rd ed., vol. 1, pp. 88, 90), it does not appear that there is any distinction between the two expressions. Both constitute restrictions on the legislature, and both seem to be aimed against arbitrary discrimination. Clause (1) does not proclaim that all persons must be treated alike, but that persons in like circumstances must be treated alike. What constitutes a circumstance entitling the legislature to discriminate and what constitutes discrimination are questions of political values, to be decided by the court. That these values may change from time to time is well illustrated by *Plessy v. Ferguson* (1896) 163 U.S. 537; *Brown v. Board of Education of Topeka* (1954) 98 L.Ed. 873; and *Aaron v. Cooper* (1958) 3 L. Ed. 2d 1.

Some probable examples are as follows:—

- (i) An Act of Parliament provides that only persons who hold certain degrees may practise as dentists. This is valid discrimination, designed to protect the public from unqualified people.

(ii) An Act of Parliament provides that only citizens may practise as dentists. This is invalid, as nationality is irrelevant to dentistry.

(iii) An Act of Parliament provides for a sliding scale of income tax, with higher rates the higher the income. This is valid discrimination, designed to get most from those who can afford most.

(iv) An Act of Parliament provides that women shall pay higher rates of income tax than men. This is invalid, as sex is irrelevant to capacity to pay.

(v) An Act of Parliament provides for tax relief for persons with dependants. This is valid, for the reason stated in (iii) above, and is not rendered invalid by proof that only men benefit from the reduction.

It seems reasonably certain that the combined effect of article 8(1) and article 5(3) is a constitutional obligation on the Federation to ensure that any person not in a position to find the fee is provided with counsel at public expense in cases of serious crime.

9.(1) No citizen shall be banished or excluded from the Federation.

(2) Subject to any restriction imposed by any law relating to the security of the Federation, public order, public health, or the punishment of offenders, every citizen has the right to move freely throughout the Federation and to reside in any part thereof.<sup>1</sup>

### *Note*

1. By article 4(2)(a), “The validity of any law shall not be questioned on the ground that...it imposes restrictions on the right mentioned in article 9(2) but does not relate to the matters mentioned therein...”

The result is that, so far as Parliament is concerned, article 9(2) is an expression of what the founders of the constitution thought Parliament ought not to do—restrict movement or residence except in the stated interests. It is not a limitation on Parliament’s legal range of enactment, and, so far as concerns the courts, article 9(2) might (without changing its effect) read: “Subject to any law, every citizen has the right...” (etc.). In which case the article, at most, gives some remedy against executive interference without statutory authority; at least, it has no legal effect at all. The latter seems more probable, for the executive can, without express constitutional provisions, always be restrained from acting without statutory authority. So it would seem that the inclusion of article 9(2) was as political guidance to Parliament.

10.(1) Subject to Clause (2)—(a) every citizen<sup>1</sup> has the right to freedom of speech and expression;<sup>2</sup> (b) all citizens<sup>1</sup> have the right to assemble peaceably and without arms;<sup>3</sup> (c) all citizens<sup>1</sup> have the right to form associations.<sup>4</sup>

(2) Parliament may by law impose — (a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;<sup>5</sup> (b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or public order;<sup>5</sup> (c) on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation, public order or morality.<sup>5</sup>

### Notes

1. These rights are all confined to citizens (as in article 19(1) of the Indian constitution, but unlike the U.S.A. “Bill of Rights”). It would therefore be constitutional for Parliament to prohibit, by ordinary Act, publications, attendance at public meetings, or membership of trade unions by aliens, Commonwealth citizens (other than federal citizens) or citizens of the Republic of Ireland.
2. Cf. clause (2)(a), below.
3. Cf. clause (2)(b), below.
4. Cf. clause (2)(c), below.
5. By article 4(2)(b), “The validity of any law shall not be questioned on the ground that...it imposes such restrictions as are mentioned in Article 10(2) but those restrictions were not deemed necessary or expedient by Parliament for the purposes mentioned in that Article.”

Thus the courts cannot inquire into whether Parliament deems or does not deem anything. A law restricting any right stated in clause (1) cannot be challenged if it furthers one of the interests stated in clause (2). But the better view is that such a law can be challenged if it does not relate to one of those interests. Despite clause (2) coupled with article 4(2)(b), clause (1) does on that view impose restrictions on the legislative power of Parliament.

Example 1: Parliament passes an Act creating the capital offence of saying or writing anything calculated to prejudice friendly relations between the Federation and any other country. This Act is valid, even if it could be proved that it was neither necessary nor expedient in the interest of friendly relations with other countries nor so deemed by Parliament.

Example 2: Parliament passes an Act creating the offence of saying or writing anything calculated to prejudice the return at the next general election of a particular political party. This Act is invalid, as it does not impose “such restrictions as are mentioned in Article 10(2)...”

It is arguable, however, that the words “such restrictions” in article 4(2)(6) refer to restrictions on the rights mentioned in article 10(1), and not restrictions imposed thereon in any particular interest. If that is the true interpretation, then nothing in article 10 restricts the power of Parliament. The article would rank with the preceding one as simply political guidance to that legislature.

11.(1) Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.<sup>1</sup>

(2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.<sup>2</sup>

(3) Every religious group has the right— (a) to manage its own religious affairs; (b) to establish and maintain institutions for religious or charitable purposes; and (c) to acquire and own property and hold and administer it in accordance with law.<sup>3</sup>

(4) State law may control or restrict the propagation of any religious doctrine or belief among persons professing the Muslim religion.<sup>4</sup>

(5) This Article does not authorise any act contrary to any general law<sup>5</sup> relating to public order, public health or morality.<sup>6</sup>

### Notes

1. Cf. article 3(1), p. 140, *ante*. See also article 12, below. There seems to be no constitutional protection for anti-religious propaganda beyond such as is accorded to citizens by article 10, above. Unlike the constitutions of the U.S.A. (first amendment) and Australia (section 116), that of the Federation does not restrict or prohibit the establishment of any religion.

2. Clause (2) does not restrain payments out of the consolidated fund for religious purposes, for such a payment is not a special allocation of the proceeds of a tax. The clause prohibits the levying on any person of a tax where the proceeds of that tax are wholly or partly earmarked for the purposes of a religion other than his own. A person who is a Christian cannot refuse to pay income tax on the ground that the proceeds are paid into the consolidated fund and that subsidies for building mosques are paid out of that fund. But a Christian has a constitutional right to refuse to pay Zakat, Fitrah, or Bait-ul-Mal, as the proceeds of these taxes are specially allocated for Muslim purposes.

In article 27 of the Indian constitution there is no such narrowing of the protection as is contained in the words “other than his own” at the end of article 11(2) of the Federation constitution.

3. “...in accordance with law” — Clause (3)(c) does not impose restrictions on legislation. See note 1 to article 5, above. However, non-discrimination is provided for by article 8, above.

4. Clause 11 (4) does not, of course, control or restrict anything — it merely renders it constitutional for State law to do so.

5. “...general law” — this apparently includes existing law on Merdeka Day and legislation passed after that date.

6. “...morality” — This word also occurs in article 10(2)(a), (c), and what it means is anybody’s guess.

12.(1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizens on the grounds only of religion, race, descent or place of birth — (a) in the administration of any educational institution maintained by a public authority,<sup>1</sup> and, in particular, the admission of pupils or students or the payment of fees; or (b) in providing out of the funds of a public authority<sup>1</sup> financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).<sup>2</sup>

(2) Every religious group has the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but federal law may provide for special financial aid for the establishment or maintenance of Muslim institutions or the instruction in the Muslim religion of persons professing that religion.

(3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.

(4) For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

### Notes

1. “Public authority” is defined in article 160(2). See note 5 to article 8, *ante*.

2. Clause (1) of this article is not made subject, as is article 8(1)-(4), to the exceptions listed in article 8(5), above.

13.(1) No person shall be deprived<sup>1</sup> of property<sup>1</sup> save in accordance with law.<sup>2</sup>

(2) No law shall provide for the compulsory acquisition<sup>1</sup> or use<sup>1</sup> of property<sup>1</sup> without adequate<sup>3</sup> compensation.<sup>4</sup>

### Notes

1. As to the meaning of “deprived,” “acquisition,” “use,” and “property,” see the general note below.

2. “...save in accordance with law” — clause (1) is no restriction on legislation. See note 1 to article 5, above.

3. Adequacy of compensation is a matter for the court. It presumably means an approximation to the market value the property would have had but for the threat of compulsory acquisition or use.

4. Whether clause (2) will lead to voidness of a law or not is doubtful. If an Act of Parliament provides for compulsory acquisition of property,

and contains no provisions for compensation, two results are possible. First, the compulsory acquisition may be upheld and the expropriated owner held entitled to adequate compensation (i.e., clause (2) creates a constitutional obligation on the government to pay adequate compensation in cases of compulsory acquisition or use). Secondly, the compulsory acquisition may be held void (i.e., clause (2) invalidates any compulsory acquisition or use in the absence of provision by federal law for compensation in the circumstances). The former seems the more natural result of the words used.

*General note: definition of terms.* “Deprived,” “property,” “acquisition,” and “use” are all awkwardly plural in meaning. In the event of a socialist government, the precise meaning of article 13 (2) could become very important indeed. Much litigation has been provoked by similar provisions in other constitutions.

By the fifth amendment to the constitution of the U.S.A., “No person shall be...deprived of...property, without due process of law; nor shall private property be taken for public use, without just compensation.” Additional terms there used include “private,” “taken,” and “just.” The fourteenth amendment extends to the States the prohibition on deprivation of property without due process of law. By article 31(2) of the Indian constitution another formula is employed: “No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which and the manner in which, the compensation is to be determined and given.” Then certain qualifications, exceptions and additions are made by the remainder of article 31 and by articles 31A and 31B (added by the first amendment).

“Property” clearly includes estates in land, chattels, choses in action, money, and equitable interests in all these. It is debatable whether it includes *spes successionis*, rights of action or defences to actions, privileges to do things which are not crimes, or any non-marketable position. For example, with regard to *spes successionis*, would an alteration in the law of succession be an alteration of rights of “property”? With regard to actions and defences, would an alteration in the law of tort, at least with respect to accrued actions, be an alteration of rights of “property”? With regard to privileges, would a law prohibiting the carrying on of a hitherto lawful trade be an alteration of rights of “property”? Similar questions apply to laws increasing fines or providing for confiscation of property on conviction of criminal offences, and would apply to taxation were it not that the taxing power of the Federation is placed beyond doubt by article 96. Most of these questions

have been thrashed out (though in terms of deprivation and taking) in United States cases.

“Deprive” seems to relate to the loss of someone expropriated, but its exact meaning is unimportant since clause (1) does not restrict Parliament. “Take” (the word used in the American fifth amendment) has a similar slant. “Acquisition” and “use” seem more connected with an acquirer or user than with a loser. In other words, it would appear quite normal to speak of one person being deprived without another being enriched (e.g., where property is destroyed), but there can be no acquisition without an acquirer. It would result that an Act of Parliament could provide for deprivation of property without compensation provided no acquisition or use by some other person was involved. A law compelling the destruction of all motor-cars without compensation would be valid. The corollary suggestion arising out of the emphasis on the acquisition or use rather than on the deprivation is that there must be adequate compensation where acquisition or use is compelled without any deprivation. For example, an Act of Parliament compelling all riders of motor-cycles to acquire and use crash helmets seems to provide for the compulsory acquisition and use of property, though no one is deprived of anything for the acquisition will be at market prices. Do the motor-cyclists then have to be compensated for loss of their freedom to refrain from acquiring or using crash helmets?

Besides the American cases, attention should be paid to recent Northern Ireland litigation in connection with the prohibition on Parliament taking any property without compensation (Government of Ireland Act, 1920, section 5). A most interesting problem arose in *Ulster Transport Authority v. James Brown and Sons, Ltd.* [1953] N.I. 79, where a Northern Ireland statute had transferred to the Authority all physical assets of road haulage undertakings in the Province, upon payment of adequate compensation, and had prohibited anyone but the Authority from operating as road hauliers, but had not provided for compensation for loss of future profits. See, in addition to that case and authorities cited therein, Sheridan, “Nationalisation and Section 5: Meaning of “...Take any Property without Compensation” (1954) 10 *Northern Ireland Legal Quarterly* 183 and works there referred to; 17 *Modern Law Review* 249 (1954); Montrose, “Taking Property without Compensation” (1956) 11 *Northern Ireland Legal Quarterly* 278. See also Nichols on *Eminent Domain*.

Early this year, the Northern Ireland Court of Appeal again had before them section 5, in *O. D. Cars Ltd. v. Belfast Corp.* (eventually to be reported). Lord MacDermott, with whom Black L.J. concurred, held that the prohibition on taking property without compensation related to the taking of property for public use, and did not extend to all such taking, as that would abridge the power of legislating to an unthinkable degree. The Lord Chief Justice thought that a

regulatory taking without compensation would be valid if the legislation were “directed, in its substance, to furthering the public interest,” and its restrictions were “reasonable and proper for that purpose.” See also Newark, “The *O. D. Cars Case*” (1959) 13 *Northern Ireland Legal Quarterly* 125.

*Note: Fundamental Liberties and Emergencies  
Part II, Part XI and Part XIII*

By articles 149, 150, and 151, Parliament has power to legislate contrary to articles 5, 9, or 10, *inter alia*.

By article 163, the emergency legislation enacted to deal with the jungle war is continued for the time being.

These articles will be considered in detail in due course.

*Canadian Fundamental Liberties*

See the draft Canadian Bill of Rights, which had its first reading in the Dominion Parliament on 5th September 1958, reproduced in (1959) 37 *Canadian Bar Rev.* 1. That issue of the review also contains the following articles: W. R. Lederman, “The Nature and Problems of a Bill of Rights” (p. 4); Edward McWhinney, “The Supreme Court and the Bill of Rights — The Lessons of Comparative Jurisprudence” (p. 16); W. R. Bowker, “Basic Rights and Freedoms: What Are They?” (p. 43); Louis-Philippe Pigeon, “The Bill of Rights and the British North America Act” (p. 66); Bora Laskin, “An Inquiry into the Diefenbaker Bill of Rights” (p. 77); F. R. Scott, “The Bill of Rights and Quebec Law” (p. 135); Albert S. Abel, “The Bill of Rights in the United States — What has it Accomplished?” (p. 147); and A. G. Donaldson, “Fundamental Rights in the Constitution of Northern Ireland” (p. 189).

PART III

CITIZENSHIP

*Chapter 1 — Acquisition of Citizenship*

14.(1) Subject to Clause (2), the following persons are citizens by operation of law, that is to say: (a) every person who, immediately before Merdeka Day,<sup>1</sup> was a citizen of the Federation by virtue of any of the provisions of the Federation of Malaya Agreement, 1948, whether by operation of law or otherwise;<sup>2</sup> (b) every person born within the Federation on or after Merdeka Day;<sup>1</sup> (c) every person born outside the Federation on or after Merdeka Day<sup>1</sup> whose father<sup>3</sup> is a citizen at the time of the birth and either was born within the Federation or is at the time of the birth in service under the Government of the Federation or of a State; (d) every person born outside the Federation on or after Merdeka Day<sup>2</sup> whose father<sup>3</sup> is a citizen at the time of the birth, if the birth is registered at a Malayan Consulate<sup>4</sup> within one year of its occurrence, or within such longer period<sup>5</sup> as the Federal Government<sup>6</sup> may in any particular case allow.

(2) A person is not a citizen by virtue of paragraph (b) of Clause (1) if, at the time of his birth, his father<sup>3</sup> not being a citizen of the Federation, possesses such immunity from suit and legal process as is accorded to an envoy of a sovereign power accredited to the Yang di-Pertuan Agong, or if his father<sup>3</sup> is then an enemy alien and the birth occurs in a place under occupation by the enemy.

### *Notes*

1. Merdeka Day was 31st August 1957.

2. Citizenship was dealt with in Part XII of the Federation of Malaya Agreement, 1948. There was provision for citizenship by operation of law (article 125), by registration (articles 126-130), and by naturalisation (article 131). Articles 132-133A made provision for loss of citizenship by operation of law, by renunciation, and by deprivation. Interpretation and supplementary provisions are to be found in articles 124, 133B-133F.

This constitution, by article 170 (see pp. 202-3, below), makes temporary provisions for persons qualified for registration, but not registered, as citizens under article 126 of the Federation of Malaya Agreement, 1948.

3. "...father" — provision for illegitimate children and orphans.

By article 31 and the second schedule, section 17: "In relation to a person who is illegitimate, Articles 14 and 15 shall have effect as if for references to his father there were substituted references to his mother and as if section 19 of this Schedule were omitted; and references in Article 15 and this Schedule to his parent shall be construed accordingly."

By article 31 and the second schedule, section 19: "Any reference in Part III to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred before and the birth occurs on or after Merdeka Day, the status or description which would have been applicable to the father had he died after Merdeka Day shall be deemed to be the status or description applicable to him at the time of his death."

4. "...Malayan Consulate" — by article 31 and the second schedule, section 21: "For the purposes of Part III 'Malayan consulate' includes any office exercising consular functions on behalf of the Federation."

5. By article 31 and the second schedule, section 7: "The power of the Federal Government under paragraph (d) of Clause (1) of Article 14 to allow a longer period for the registration of a birth may be exercised either before or after the registration has been effected."

6. "...Federal Government" — by article 31 and the second schedule, sections 1 and 2: "1. The functions of the Federal Government under

Part III shall be exercised by such Minister of that Government as the Yang di-Pertuan Agong may from time to time direct, and references in this Schedule to the Minister shall be construed accordingly. 2. A decision of the Federal Government under Part III shall not be subject to appeal or review in any court.” The minister at present directed by the Yang di-Pertuan Agong is the Minister of the Interior and Justice.

*General note: jus soli.* There is no omnibus provision for citizenship by operation of law for those born within the Federation before Merdeka Day.

15. (1) Subject to Article 18,<sup>1</sup> any woman who is married to a citizen is entitled, upon making application to the registration authority,<sup>2</sup> to be registered as a citizen.

(2) Subject to Article 18,<sup>1</sup> any person under the age of twenty-one years whose father<sup>3</sup> is a citizen or, if deceased, was a citizen at the time of his death, is entitled, upon application made to the registration authority<sup>2</sup> by his parent<sup>3</sup> or guardian, to be registered as a citizen if that authority is satisfied<sup>4</sup> that he is ordinarily resident<sup>5</sup> in the Federation and is of good character.<sup>6</sup>

(3) The reference in this Article to a woman who is married is a reference to a woman whose marriage has been registered in accordance with any written law in force in the Federation, including any such law in force before Merdeka Day.

### Notes

1. As to Article 18, see below.

2. “...registration authority” — by article 31 and the second schedule, sections 3-5: “3. For the purposes of Part III and this Schedule the Election Commission shall be the registration authority. 4. The registration authority may delegate to any of its officers, or, with the consent of the Yang di-Pertuan Agong or of the Ruler or Governor of any State, to any officer of the Federal Government or of the Government of that State, any of its functions under Part III or this Schedule; but any person aggrieved by the decision of a person to whom functions of the authority are so delegated may appeal to the authority. 5. Any person aggrieved by a decision of the registration authority may appeal to the Supreme Court on a point of law, but except as aforesaid a decision of the registration authority under Part III shall not be subject to appeal or review in any court.” See also article 26(4).

The Election Commission is constituted by articles 113 and 114.

3. “...father...,” “...parent...” — (i) see note 3 to article 14; (ii) by article 31 and the second schedule, section 18: “In relation to an adopted child whose adoption has been registered under any written law in force in the Federation, including any such law in force before Merdeka Day, Article 15 shall have effect as if for the reference to his father there were substituted a reference to the adopter, and references in that Article and this Schedule to his parent shall be construed accordingly.”

4. "...if that authority is satisfied" — what amounts to being satisfied is a question of law, and so can be reviewed in the Supreme Court — see note 2, above. But there is no review on questions of fact. As to interpretation of words of this kind, see *R. v. Halliday* [1917] A.C. 260; *R. (O'Hanlon) v. Governor of Belfast Prison* (1922) 56 I.L.T.R. 170; *Liversidge v. Anderson* [1942] A.C. 206; *Nakkuda Ali v. Jayaratne* [1951] A.C. 66; *Subramaniam v. Minister of Local Government and Cultural Affairs* (1957) 59 N.L.R. 254.

5. "...ordinarily resident" — this is an expression which is not defined in the constitution, and whose meaning therefore depends on the interpretation given by the registration authority, subject only to the power of the Supreme Court to rule whether or not the words are capable of bearing the meaning given.

These words are vague, and would probably be rejected for vagueness if they appeared as part of a condition subsequent annexed to a proprietary disposition: *cf. Sifton v. Sifton* [1938] A.C. 656; *Re Gape* [1952] Ch. 743.

To make confusion worse, residence is contrasted with *absence*, not with *non-residence*. By article 31 and the second schedule, section 20: "In calculating for the purposes of Part III a period of residence in the Federation — (a) a period of absence from the Federation of less than six months; (b) a period of absence from the Federation for the purposes of education of such kind, in such country and for such time, as may from time to time be either generally or specially approved by the Minister; and (c) a period of absence from the Federation for reasons of health or any other cause prescribed generally or specially by the Minister, shall be treated as residence in the Federation; and for the purposes of Part III a person shall be deemed to be resident in the Federation on a particular day if he had been resident in the Federation before that day and that day is included in any period of absence as aforesaid." This seems to imply that but for this section all absence would be non-residence, and all types of absence not covered by the section are non-residence. Hence, for example, a man who went on a round-the-world holiday cruise or business trip or study leave of more than six months duration would not be resident. Or would he?

6. "...good character" — see article 18(4), below.

16. Subject to Article 18, any person of or over the age of eighteen years who was born in the Federation before Merdeka Day<sup>1</sup> is entitled, upon making application to the registration authority,<sup>2</sup> to be registered as a citizen if he satisfies<sup>3</sup> that authority — (a) that he has resided<sup>4</sup> in the Federation, during the seven years immediately preceding the date of the application, for periods amounting in the aggregate to not less than five years; (b) that he intends to reside<sup>4</sup> permanently therein; (c) that he is of good character;<sup>5</sup> and (d) *except where the application is made within one year after Merdeka Day*,<sup>6</sup> that he has an elementary knowledge of the Malay language.<sup>7</sup>

*Notes*

1. Merdeka Day was 31st August 1957.
2. See note 2 to article 15.
3. See note 4 to article 15.
4. See note 5 to article 15.
5. "...good character" — see article 18(4), below.
6. The words in italics are spent. They were designed to make the criteria for initial registration lenient.
7. "...elementary knowledge of the Malay language" — this is somewhat vague, and the comments in the first paragraph of note 5 to article 15 are applicable. Presumably elementary knowledge is less than adequate knowledge (article 19(*d*)).

17. Subject to Article 18, any person of or over the age of eighteen years who was resident<sup>1</sup> in the Federation on Merdeka Day<sup>2</sup> is eligible,<sup>3</sup> subject to the provisions of the Second Schedule,<sup>4</sup> to be registered as a citizen upon making application to the registration authority<sup>5</sup> if he satisfies<sup>6</sup> that authority — (a) that he has resided<sup>1</sup> in the Federation, during the twelve years immediately preceding the date of the application, for periods amounting in the aggregate to not less than eight years; (b) that he intends to reside<sup>1</sup> permanently therein; (c) that he is of good character;<sup>7</sup> and (d) *except where the application is made within one year after Merdeka Day and the applicant has attained the age of forty-five years at the date of the application,*<sup>8</sup> that he has an elementary knowledge of the Malay language.<sup>9</sup>

*Notes*

1. See note 5 to article 15.
2. Merdeka Day was 31st August 1957.
3. "...eligible" — the use of this word makes article 17 different from articles 15 and 16, where the expression is "entitled." As to the effect, see note 4, below.
4. The only provision of the second schedule specifically in point is section 15: "Where the registration authority is satisfied of all matters required by Article 17 for the purposes of an application for registration under that Article, they shall give notice to that effect to the Minister; and unless within such period as may be prescribed by rules made by the Minister for the purposes of this section the Minister otherwise directs, the authority shall register the applicant accordingly."

Assuming the minister does not otherwise direct, section 15 places a duty on the authority to register. Yet it would appear not to be a duty owed to the applicant (i.e. enforceable by him by mandamus), else article 17 would have said: "...entitled, subject to the provisions of the Second Schedule..." Presumably the statement in section 15 is directory.

5. See note 2 to article 15.
6. See note 4 to article 15.
7. “...good character” — see article 18(4), below.
8. The words in italics are spent. They were designed to make the criteria for initial registration lenient.
9. See note 7 to article 16.

*General note: acquisition of citizenship.* Apart from citizenship by operation of law, by marriage, and the special case of infants under article 15(2), there are three methods provided by this constitution for civilians acquiring citizenship: (i) for those born in the Federation, registration under article 16, (ii) for those not born in the Federation but resident there on Merdeka Day registration under article 17; (iii) for those not born in the Federation who first come to live there after Merdeka Day, naturalisation under article 19.

18.(1) No person of or over the age of eighteen years shall be registered as a citizen under Article 15, 16 or 17 until he has taken the oath set out in the First Schedule.<sup>1</sup>

(2) Except with the approval of the Federal Government,<sup>2</sup> no person who has renounced<sup>3</sup> or has been deprived<sup>4</sup> of citizenship under this Constitution, or who has renounced<sup>5</sup> or has been deprived<sup>6</sup> of federal citizenship or citizenship of the Federation before Merdeka Day<sup>7</sup> under the Federation of Malaya Agreement, 1948, shall be registered as a citizen under any of the said Articles.

(3) A person registered as a citizen under any of the said Articles shall be a citizen by registration from the day on which he is so registered.

(4) For the purpose of any application for registration under any of the said Articles, a person shall be deemed to be of good character unless, within the period of three years immediately preceding the date of the application— (a) he has been convicted by a competent<sup>8</sup> court in any country of a criminal offence for which he was sentenced to death; or (b) he has been detained under a sentence of imprisonment of twelve months or more imposed on him on his conviction of a criminal offence (whether during or before the said period) by such<sup>8</sup> a court, and in either case has not received a free pardon in respect of the offence.<sup>9</sup>

### Notes

1. The oath set out in the first schedule runs: “I...of...hereby declare on oath that I absolutely and entirely renounce and abjure all loyalty to any country or State outside the Federation, and I do swear that I will be a true, loyal and faithful citizen of the Federation, and will give due obedience to all lawfully constituted authorities in the Federation.”
2. See note 6 to article 14.
3. See article 23, below.
4. See articles 24-28, below.

5. See the Federation of Malaya Agreement, 1948, article 132A.
6. See the Federation of Malaya Agreement, 1948, article 133.
7. Merdeka Day was 31st August 1957.
8. This word “competent” seems to have been inserted *ex abundanti cautela*. Cf. articles 25(1)(c) and 119(3)(b).
9. While a person who has not suffered either of the indignities mentioned in clause (4) is of good character, it does not follow that a person who has is not. A person so sentenced and not pardoned may still satisfy the authority that he is of good character. This may apply especially to a person convicted in another country of a pro-Malayan political offence.

19. Subject to Article 21, the Federal Government<sup>1</sup> may,<sup>2</sup> upon application made by any person of or over the age of twenty-one years, grant a certificate of naturalisation<sup>3</sup> to that person if satisfied<sup>4</sup> — (a) that he has resided<sup>5</sup> in the Federation, during the twelve years preceding<sup>6</sup> the date of the application, for periods amounting in the aggregate to not less than ten years; (b) that he intends, if the certificate is granted, to reside<sup>5</sup> permanently therein; (c) that he is of good character;<sup>7</sup> and (d) that he has an adequate knowledge of the Malay language.<sup>8</sup>

### *Notes*

1. See note 6 to article 14.
2. The matter is entirely within the discretion of the minister, even if he is satisfied of the four things specified, to refuse naturalisation. There is no directory provision, such as that applicable to article 17 (see note 3 thereto), let alone a duty to the applicant as under articles 15 and 16. Redress is available against the minister only through Parliament.
3. By article 31 and the second schedule, section 8: “Where a certificate of naturalisation is granted under Article 19 or Article 20, the Minister shall transmit a copy of the certificate to the registration authority.”
4. See section 2 of the second schedule, set out in note 6 to article 14.
5. See note 5 to article 15; but here the minister decides, without appeal.
6. Not “immediately preceding” as in articles 16 and 17. It seems to make no difference.
7. It is not clear what is meant by “good character,” and even the guidance of article 18(4) is not available, applying, as it does, only to registration. It is up to the unfettered discretion of the minister.
8. “...adequate knowledge of the Malay language” — another matter within the complete discretion of the minister. Presumably adequate knowledge is greater than elementary knowledge (see articles 16(d) 17(d)).

20.(1) Subject to Article 21, the Federal Government<sup>1</sup> shall,<sup>2</sup> upon application made by any person in accordance with Clause (2), grant a certificate of naturalisation<sup>3</sup> to that person if satisfied<sup>4</sup>— (a) that he has served satisfactorily<sup>5</sup> for a period of not less than three years in full-time service, or for a period of not less than four years in part-time service, in such of the armed forces of the Federation as may be prescribed<sup>6</sup> by the Federal Government<sup>1</sup> for the purposes of this Article; and (b) that he intends, if the certificate is granted, to reside<sup>7</sup> permanently in the Federation.

(2) An application under this Article may be made either while the applicant is serving in such service as aforesaid or within the period of five years, or such longer period as the Federal Government<sup>1</sup> may in any particular case allow, after his discharge.

(3) References in this Article to service in the armed forces of the Federation include references to service before Merdeka Day; and in calculating for the purposes of this Article the period of full-time service in such forces of a person who has served both in full-time and in part-time service therein, any two months of part-time service shall be treated as one month of full-time service.

### Notes

1. See note 6 to article 14.
2. This “shall” appears not to impose a duty to the applicant enforceable by mandamus, but to be merely a directory provision. See section 2 of the second schedule (set out in note 6 to article 14). On the other hand, it may be answered that disobedience to the obligation to grant a certificate of naturalisation if satisfied of the necessary qualifications is not “a decision of the Federal Government under Part III,” but a decision ultra vires Part III. In any event, should the minister wish to deny naturalisation he could decline to be satisfied as to the applicant’s qualifications.
3. See note 3 to article 19.
4. See section 2 of the second schedule (set out in note 6 to article 14).
5. What is satisfactory is up to the federal government. The minister must be satisfied that he is satisfied.
6. No armed forces have yet been prescribed for the purposes of this Article.
7. See note 5 to article 15. Article 15 uses the expression “ordinarily resident;” in articles 16, 17 and 19, “reside,” “resided” and “resident” appear; now we get “reside permanently.” The federal government is the judge.

21.(1) A certificate of naturalisation shall not be granted to any person under Article 19 or 20 until he has taken the oath set out in the First Schedule.<sup>2</sup>

(2) A person to whom a certificate of naturalisation is granted under either of the said Articles shall be a citizen by naturalisation from the date on which the certificate is so granted.

*Note*

1. See note 1 to article 18.

22. If any new territory is admitted to the Federation in pursuance of Article 2,<sup>1</sup> Parliament may by law determine what persons are to be citizens by reason of their connection with that territory<sup>2</sup> and the date or dates from which such persons are to be citizens.

*Notes*

1. For article 2, see p. 137, *ante*.

2. Presumably this is a transitional provision, relating to the connection these persons had with that territory before its admission to the Federation. Thereafter, the matter is presumably governed by article 8(1) — see p. 178, *ante* — and the non-transitional provisions of Chapter 1 of Part III.

*Chapter 2 — Termination of Citizenship*

23.(1) Any citizen of or over the age of twenty-one years and of sound mind who is also a citizen of another country may renounce his citizenship of the Federation by declaration registered by the registration authority,<sup>1</sup> and shall thereupon cease to be a citizen.

(2) A declaration made under this Article during any war in which the Federation is engaged shall not be registered except with the approval of the Federal Government,<sup>2</sup> but except as aforesaid the registration authority<sup>1</sup> shall register<sup>3</sup> any declaration duly made thereunder.<sup>4</sup>

(3) This Article applies to a woman under the age of twenty-one years who has been married as it applies to a person of or over that age.

*Notes*

1. See note 2 to article 15.

2. See note 6 to article 14.

3. Enforcement of the obligation to register is by mandamus.

4. There seems to be no criterion of what declarations are “duly made” except for what appears in this article itself.

24.(1) If the Federal Government<sup>1</sup> is satisfied<sup>2</sup> that any citizen has at any time after Merdeka Day<sup>3</sup> acquired by registration, naturalisation or other voluntary and formal act<sup>4</sup> (other than marriage<sup>5</sup>) the citizenship of any country<sup>6</sup> outside the Federation, the Federal Government<sup>1</sup> may by order deprive that person of his citizenship.<sup>7</sup>

(2) If the Federal Government<sup>1</sup> is satisfied<sup>2</sup> that any citizen has at any time after Merdeka Day<sup>3</sup> voluntarily claimed and exercised in a foreign country<sup>8</sup> any rights available to him under the law of that country, being rights accorded exclusively to its citizens,<sup>9</sup> the Federal Government<sup>1</sup> may by order deprive that person of his citizenship.<sup>7</sup>

(3) Where provision is in force under the law of any Commonwealth country<sup>10</sup> for conferring on citizens of that country rights not available to other Commonwealth citizens,<sup>11</sup> Clause (2) shall apply, in relation to those rights, as if that country were a foreign country.<sup>12</sup>

(4) If the Federal Government<sup>1</sup> is satisfied<sup>2</sup> that any woman who is a citizen by registration under Clause (1) of Article 15 has acquired the citizenship of any country<sup>6</sup> outside the Federation by virtue of her marriage to a person who is not a citizen, the Federal Government<sup>1</sup> may by order deprive her of her citizenship.<sup>7</sup>

### *Notes*

1. See note 6 to article 14.
2. See section 2 of the second schedule (set out in note 6 to article 14).
3. Merdeka Day was 31st August 1957.
4. I.e., not by operation of law. But see section 2 of the second schedule (set out in note 6 to article 14).
5. But see clause (4) of this article.
6. "...any country outside the Federation" — this includes other countries in the Commonwealth.
7. As to procedure on deprivation, see article 27.
8. By article 160 (2), " 'Foreign country' does not include any part of the Commonwealth or the Republic of Ireland." But see clause (3) of this article.
9. Apparently clause (2) does not apply to rights accorded by the foreign country to its citizens and others even where the rights are not accorded to all persons or to all Commonwealth citizens.
10. Why is the Republic of Ireland allowed to get away with it?
11. "...Commonwealth citizen..." — see article 29.
12. Most Commonwealth countries, including Singapore, come into this category. For example, only Singapore citizens can exercise the franchise. The United Kingdom does not come into this category.

25.(1) Subject to Clause (3), the Federal Government<sup>1</sup> may by order deprive of his citizenship<sup>2</sup> any person who is a citizen by registration under Article 17 or a citizen by naturalisation<sup>3</sup> if satisfied<sup>4</sup> — (a) that he has shown himself by act or speech to be disloyal or disaffected towards the Federation; (b) that he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or (c) that he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand dollars or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced.

(2) Subject to Clause (3), the Federal Government<sup>1</sup> may by order deprive of his citizenship<sup>2</sup> any person who is a citizen by registration under Article 17 or a citizen by naturalisation<sup>3</sup> if satisfied<sup>4</sup> that he has been ordinarily resident in foreign countries<sup>5</sup> for a continuous period of seven years and during that period has neither — (a) been at any time in the service of the Federation or of an international organisation of which the Federal Government<sup>6</sup> was a member; nor (b) registered annually at a Malayan Consulate his intention to retain his citizenship.

(3) No person shall be deprived of citizenship under this Article unless the Federal Government<sup>1</sup> is satisfied<sup>2</sup> that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under Clause (1) if, as the result of the deprivation, he would not be a citizen of any country outside the Federation.

### Notes

1. See note 6 to article 14.
2. As to procedure on deprivation, see article 27.
3. As to naturalisation, see articles 19-21.
4. See section 2 of the second schedule (set out in note 6 to article 14).
5. See note 8 to article 24. But see section 2 of the second schedule (set out in note 6 to article 14).
6. Presumably “Federal Government” here means “Federation of Malaya.”

26.(1) Subject to Clause (3), the Federal Government<sup>1</sup> may by order deprive of his citizenship<sup>2</sup> any citizen by registration<sup>3</sup> or by naturalisation<sup>4</sup> if satisfied<sup>5</sup> that the registration or certificate of naturalisation— (a) was obtained by means of fraud, false representation or the concealment of any material facts; or (b) was effected or granted by mistake.

(2) Subject to Clause (3), the Federal Government<sup>1</sup> may by order deprive of her citizenship<sup>2</sup> any woman who is a citizen by registration under Clause (1) of Article 15 if satisfied<sup>5</sup> that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage.

(3) No person shall be deprived of citizenship under this Article unless the Federal Government<sup>1</sup> is satisfied<sup>5</sup> that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under paragraph (b) of Clause (1) unless the notice required by Article 27 is given within the period of twelve months beginning with the date of the registration or of the grant of the certificate, as the case may be.

(4) Except as provided by this Article, the registration<sup>3</sup> of a person as a citizen or the grant of a certificate of naturalisation<sup>4</sup> to any person shall not be called in question on the ground of mistake.

### Notes

1. See note 6 to article 14.
2. As to procedure on deprivation, see article 27.

3. As to registration, see articles 15-18.
4. As to naturalisation, see articles 19-21.
5. See section 2 of the second schedule (set out in note 6 to article 14).

27.(1) Before making an order under Article 24, 25 or 26, the Federal Government<sup>1</sup> shall<sup>2</sup> give to the person against whom the order is proposed to be made notice in writing<sup>3</sup> informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article.

(2) If any person to whom such notice is given applies to have the case referred as aforesaid the Federal Government<sup>1</sup> shall,<sup>2</sup> and in any other case the Federal Government<sup>1</sup> may, refer the case to a committee of inquiry<sup>4</sup> consisting of a chairman (being a person possessing judicial experience) and two other members appointed by that Government<sup>1</sup> for the purpose.

(3) In the case of any such reference, the committee shall hold an inquiry in such manner as the Federal Government<sup>1</sup> may direct, and submit its report to that Government;<sup>1</sup> and the Federal Government<sup>1</sup> shall<sup>2</sup> have regard to the report in determining whether to make the order.

### Notes

1. See note 6 to article 14.
2. These provisions are directory, not mandatory: see section 2 of the second schedule (set out in note 6 to article 14).
3. By article 31 and the second schedule, section 9: "Any notice to be given by the Minister to any person under Article 27 may be sent to that person at his last known address, or, in the case of a person under the age of twenty-one years (not being a married woman), to his parent or guardian at the last known address of the parent or guardian; and if an address at which notice may be sent to any person under this section is not known and cannot after reasonable inquiry be ascertained, the notice may be given by publication in the *Gazette*."
4. This committee is not a judicial body — not governed by rules of natural justice nor amenable to control by prohibition or certiorari — having regard to the terms of clause (3).

28.(1) For the purposes of the foregoing provisions of this Chapter<sup>1</sup>— (a) any person who before Merdeka Day<sup>2</sup> became a federal citizen or a citizen of the Federation by registration as a citizen or in consequence of his registration as the subject of a Ruler,<sup>3</sup> or by the grant of a certificate of citizenship, under any provision of the Federation of Malaya Agreement, 1948, or of any State law<sup>3</sup> shall be treated as a citizen by registration<sup>4</sup> and, if he was not born within the Federation, as a citizen by registration under Article 17;<sup>5</sup> (b) a woman who before that day<sup>1</sup> became a federal citizen or a citizen of the Federation by registration as a citizen, or in consequence of her registration as the subject of a Ruler,<sup>3</sup> under any provision of the said Agreement or of any State law<sup>3</sup> authorising the registration of women married to citizens of the Federation or to subjects of the Ruler shall be treated as a citizen by

registration under Clause (1) of Article 15;<sup>6</sup> (c) any person who before that day<sup>1</sup> was naturalised as a federal citizen or a citizen of the Federation under the said Agreement or became a federal citizen or a citizen of the Federation in consequence of his naturalisation as the subject of a Ruler<sup>3</sup> under any State law<sup>3</sup> shall (subject to Clause (2) ) be treated as a citizen by naturalisation,<sup>7</sup> and references in those provisions to the registration or naturalisation of a citizen shall be construed accordingly.

(2) No person born within the Federation shall be liable by virtue of this Article to be deprived of citizenship under Article 25.<sup>8</sup>

### *Notes*

1. Articles 23-27.
2. Merdeka Day was 31st August 1957.
3. The rulers are the Heads of State of the States of the Federation. State nationality was governed by State law before 31st August 1957.
4. The effect of this provision is to render citizens by operation of law under article 14(1) (a), who were born in the Federation but who acquired citizenship originally by registration otherwise than in right of marriage, liable to deprivation of citizenship under article 26(1).
5. The effect of this provision is to render citizens by operation of law under article 14(1) (a), who were not born in the Federation, and who acquired citizenship originally by registration otherwise than in right of marriage, liable to deprivation of citizenship under article 25(1), 25(2) or article 26(1).
6. The effect of this provision is to render citizens by operation of law under article 14(1) (a), whether born within the Federation or not, who acquired citizenship originally in right of marriage to a federal citizen, liable to deprivation of citizenship under article 26(1) or 26(2).
7. The effect of this provision, taken with clause (2), is to render citizens by operation of law under article 14(1) (a), not born within the Federation, who acquired citizenship originally by naturalisation, liable to deprivation of citizenship under article 25(1), 25(2), or 26(1). If born within the Federation, such citizens are made liable by this provision only to deprivation under article 26(1).
8. The effect of clause (2) seems to be limited to imposing on clause (1)(c) the qualification described in note 7, and which is built into clause (1)(a).

### *Chapter 3 — Supplemental*

29.(1) In accordance with the position of the Federation within the Commonwealth,<sup>1</sup> every person who is a citizen of the Federation enjoys by virtue of that citizenship the status of a Commonwealth citizen<sup>2</sup> in common with the citizens of other Commonwealth countries.<sup>3</sup>

(2) Any existing law<sup>4</sup> shall, except so far as Parliament otherwise provides, apply in relation to a citizen of the Republic of Ireland who is not also a Commonwealth citizen as it applies in relation to a Commonwealth citizen.

### *Notes*

1. The position of the Federation in the Commonwealth is similar to that of India and Pakistan. Queen Elizabeth II is recognised as Head of the Commonwealth, but the Yang di-Pertuan Agong is the Head of State of the Federation of Malaya.

2. The status of a Commonwealth citizen in any given country depends on the law of that country. By the British Nationality Act, 1948, section 1(1): "Every person who under this Act is a citizen of the United Kingdom and Colonies or who under any enactment for the time being in force in any country mentioned in sub-section (3) of this section is a citizen of that country shall by virtue of that citizenship have the status of a British subject." By virtue of the Federation of Malaya Independence Act, 1957, section 2 and first schedule, the Federation of Malaya is one of the countries mentioned in the British Nationality Act, 1948, section 1(3). By section 1(2) of the 1948 Act: "Any person having the status aforesaid [i.e. status of British subject] may be known either as a British subject or as a Commonwealth citizen; and accordingly in this Act and in any other enactment or instrument whatever, whether passed or made before or after the commencement of this Act, the expression 'British subject' and the expression 'Commonwealth citizen' shall have the same meaning." Under United Kingdom law, no distinction has yet been drawn between one class of Commonwealth citizen and another. Thus, for example, for the purposes of franchise or candidature for the United Kingdom House of Commons citizens of the United Kingdom and Colonies and citizens of the Federation of Malaya stand on the same footing.

An interesting question is whether the rule that anyone born in the Federation of Malaya after 30th August 1957 is a British subject (articles 14(1)(b) and 29(2) ) results in the Malay States becoming British territory on 31st August 1957 for other purposes, e.g., to defeat a plea of act of state by way of defence to an action in tort against a servant of the Queen of the United Kingdom.

3. The constitution of the Federation of Malaya gives no special status to Commonwealth citizens who are not citizens of the Federation.

4. By article 160 (2), " 'Existing law' means any law in operation in the Federation or any part thereof immediately before Merdeka Day..."

30.(1) The registration authority<sup>1</sup> may, on the application of any person with respect to whose citizenship a doubt exists, whether of fact or of law, certify that that person is a citizen.

(2) A certificate issued under this Article<sup>2</sup> shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that the person to whom it relates was a citizen on the date of the certificate, but without prejudice to any evidence that he was a citizen at an earlier date.

*Notes*

1. See note 2 to article 15.
2. What is conclusive evidence of citizenship on the stated date is “a certificate issued under this Article.” Presumably a certificate which purports to have been issued under this Article can be challenged (a) on the ground of fraud, misrepresentation, or concealment by the applicant or (b) on the ground that it was not issued under this article. Examples of the latter would be: (i) that no doubt existed as to the applicant’s citizenship at the time of the application, though the registration authority’s mistaken belief that there was such a doubt was not due to the applicant’s misrepresentation or concealment; (ii) that the officer who issued the certificate was not duly authorised to do so in accordance with section 4 of the second schedule.

31. Until Parliament otherwise provides,<sup>1</sup> the supplementary provisions contained in the Second Schedule<sup>2</sup> shall have effect for the purposes of this Part.

*Notes*

1. Parliament has not yet otherwise provided.
2. The provisions contained in the second schedule are as follows.

SECOND SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO CITIZENSHIP

*The Minister*

1. [See note 6 to article 14.]
2. [See note 6 to article 14.]

*The registration authority*

3. [See note 2 to article 15.]
4. [See note 2 to article 15.]
5. [See note 2 to article 15.]

*Functions of Minister and registration authority*

6. Subject to federal law, the Minister and the registration authority may make rules and prescribe forms for the purpose of the exercise of their respective functions under Part III and this Schedule.
7. [See note 5 to article 14.]
8. [See note 3 to article 19.]
9. [See note 3 to article 27.]

10. It shall be the duty of the registration authority to compile and maintain— (a) a register of citizens by registration; (b) a register of citizens by naturalisation; and (c) a register of persons who have renounced or been deprived of citizenship under any provision of Part III; and for the purposes of this section “citizen by registration” includes a citizen to whom paragraph (a) or paragraph (b) of Article 28 applies and a citizen by registration under Article 170, and “citizen by naturalisation” includes a citizen to whom paragraph (c) of Article 28 applies.

11. If the registration authority has reason to believe that an error appears in any register compiled under section 10, it shall, after giving notice to the person concerned and after considering such representations from him as he may choose to make, make such alteration on the register as appears to the authority to be necessary to correct the error.

12. Subject to section 11, the said register shall be conclusive evidence of the matters therein contained.

13. For the purpose of determining any question of fact proof of which is needed for a claim by any person to be a citizen by operation of law, or for registration as a citizen, the registration authority shall be entitled to put such questions to that person, or any other person, as it may consider necessary; and unless the authority has reason to doubt the correctness of the answer to any such question, the answer shall be accepted as correct.

14. Without prejudice to section 13, where any person states that he has attained a specified age, that statement shall, unless the registration authority or the Minister, as the case may be, has reason to doubt its correctness, be accepted as correct notwithstanding that that person cannot specify the date of his birth; and any person who claims to be of legitimate birth shall be treated as of such birth unless the registration authority or the Minister, as the case may be, has reason to suppose that he is of illegitimate birth.

15. [See note 4 to article 17.]

#### *Offences*

16. It shall be an offence punishable with imprisonment for two years or a fine of one thousand dollars or both for any person knowingly to make any false statement with a view to inducing the registration authority or the Minister to grant or refuse any application under Part III including any application to determine whether the applicant is a citizen by operation of law.

#### *Interpretation*

17. [See note 3 to article 14.]

18. [See note 3 to article 15.]

19. [See note 3 to article 14.]

20. [See note 5 to article 15.]

21. [See note 4 to article 14.]

### *Note: Temporary Provisions on Citizenship*

#### PART XIII

170.(1) Subject to the provisions of this Article, any person who, immediately before Merdeka Day,<sup>1</sup> was qualified to make application for registration as a citizen of the Federation under Clause 126 of the Federation of Malaya Agreement, 1948, shall be entitled,<sup>2</sup> upon making application to the registration authority<sup>3</sup> within the period of one year beginning with that day,<sup>1</sup> to be registered as a citizen.

(2) A person who has absented himself from the Federation for a continuous period of five years within the ten years immediately preceding his application under this Article shall not be entitled to be registered thereunder unless it is certified by the Federal Government<sup>4</sup> that he has maintained substantial connection with the Federation<sup>5</sup> during that period.<sup>6</sup>

(3) This Article shall be construed as one with Part III; and Articles 18 and 26 shall apply in relation to registration under this Article, and to persons registered as citizens thereunder, as they apply in relation to registration under Article 16 and to persons registered under that Article.

*Notes*

1. Merdeka Day was 31st August 1957.
2. Registration can be enforced by mandamus.
3. See note 2 to article 15.
4. See note 6 to article 14.
5. As to what constitutes “substantial connection with the Federation,” see section 2 of the second schedule (set out in note 6 to article 14).
6. Registration can be enforced by mandamus once the minister’s certificate has been obtained.

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