

BOOK REVIEWS

AN INTRODUCTION TO THE CONSTITUTION OF MALAYSIA. By Tan Sri Mohamed Suffian Bin Hashim, Judge of the Federal Court, Malaysia. [Di-chetak di-jabatan cetak Kerajaan, oleh Mohd. Daud bin Abdul Rahman, Penchetak Kerajaan, Kuala Lumpur. 1972 xxv + 332 pp. \$4.00 net (Malaysia), \$4.50 net (Singapore). Hard-cover edition \$5.00 net (Malaysia)].

This reviewer necessarily confronts his present task with some trepidation; for first, this review ought not to have appeared in a *law* journal at all, as the book about which it is written is addressed to the layman and citizen to help him to understand the Malaysian Constitution, whose text is, as the eminent author aptly puts it, "fearfully long and elaborate" and in "legalese". Second, this reviewer is not qualified to evaluate this book except on its scholarly or academic legal merits, which the author expressly declines to claim (see Preface) and must bow to the author's just claim instead to being "one who had been closely connected with the framing of the Constitution", which certainly the reviewer is not. Finally, nothing this reviewer can say, whether good or ill, can alter the fact that this book is already living up to its expectations and enjoying a rare success amongst books of utility published locally for the common man, and has undoubtedly already contributed in no small measure to the academic honours the author has recently reaped both in his own country, Malaysia, as well as in neighbouring Singapore. It is understood that he has now been persuaded to produce a smaller edition for school civics courses.

Nothing yet written on the Constitution of Malaysia has flowed from the pen of anyone more knowledgeable about the workings of the Constitution. The eminent author has had an intimacy with matters constitutional in myriad ways over more than two decades: as Legal Adviser to two State governments; as a member of the Attorney-General's Chambers (including the post of Solicitor-General); as a member of a team led by Neil Lawson, Q.C. (now a Judge of the Q.B.D. in London) to make submissions on behalf of the Conference of Rulers to the Reid Constitutional Commission in 1956 (which was to work out an appropriate Constitution for the proposed new Federation of Malaya of 1957); translating that same Constitution into Malay for the Government; and advising the Sultan on drafting Brunei's first written Constitution in 1959. Since his elevation to the Bench, he has also chaired a Royal Commission on Public Servants' Remuneration and sat in judgment on more than his fair share of constitutional cases.

Intended to be a "straightforward account" of the Constitution, and not a scholarly tome, it is nevertheless more than just a "modest volume", as the author proffers it to be. An academic lawyer would be well advised to read the well-known existing commentaries on the Constitution by Professors Sheridan and Groves (L.A. Sheridan and H.E. Groves: *The Constitution of Malaysia*, Oceana, 1967; H.E. Groves: *The Constitution of Malaysia*, Malaysia Publications Ltd., 1964) or refer to the one source book, S. Jayakumar: *Constitutional Law Cases From Malaysia and Singapore* (Malayan Law Journal, 1971). Nevertheless he would still find this book an excellent introduction. In style and in content, it is unpretentious, but yet uniquely comprehensive, as it singles out no particular areas of study for special treatment, to the detriment of others in which an author might have somewhat less academic interest. There is not only a break-down and explanation of the constitutional provisions, but also a wealth of detail and practical information. The entire legal system, machinery of government, and even the administrative network at times, come alive to the reader, and in this sense it is of especial value to the administrative officer in the public service or to the

budding politician, who will make no fatal blunders if he reads about the "elementals" which he is expected to know but is never taught. (There is a hint at this in Chapter 11 where the author points out the particular importance to ministers and civil servants of being "aware of the respective powers and duties of the respective governments" and it is to them in particular that this chapter seems addressed). Indeed, this book could alternatively have aptly been entitled "Know your Government" and although this book was not commissioned by the Government, every civil servant who needs to know about the machinery of government should have cause to be grateful for this book.

A chapter by chapter appraisal of this book would be inappropriate, as this book covers almost everything in the Constitution, in varying degree. However, certain subjects appear to stand out as providing useful information (as to the workings of the Constitution) that is interesting to the lay reader, but which the academic works may lack: a fascinating study of the unusual features of the rules of election of the Yang-di-Pertuan Agong, the Supreme Head of the Federation, with a short history of how the rules have operated over five elections since the inception of the process in 1957, appears in chapter 2 at pp. 21-27; the election process and the work of the Election Commission, in Chapter 7; a valuable discussion on the office of public servant and the various service commissions, in Chapter 9; land and national development in Chapter 11, and Financial Provisions, in Chapter 12, receive the proper homage and place they deserve in the machinery of government; the effects of the May 13 tragedy and its significance in the constitutional framework between that date and the re-convening of Parliament in February 1971, in Chapter 14, in the context of "Emergency Powers and Subversion"; a detailed account of Citizenship, in all its legal aspects in Chapter 16, which appears to have been largely drawn from the same author's booklet on "Malaysian Citizenship" published in February 1970, which was itself written to answer the problems of persons "anxious about their status"; an important examination in Chapter 17 of the role of the indigenous "Malays and Natives of Borneo", including the definition of "a Malay" (pp. 247-249) and the study of their position in the public service, the economic field and in education, all suitably illustrated with several tables; a helpful discussion of the role of the National Language in Chapter 18; a short note on the Federal Capital, the Kuala Lumpur Municipality, its status, and its administration as a distinct unit; a valuable summary in Chapter 20 of the various ways of amending the Constitution; finally, at p. 321, there appears (as Appendix VI) a note on "The Constitution of Singapore" by Professor Ahmad bin Mohamed Ibrahim, Dean of the Faculty of Law, University of Malaya. This is a thoughtful addition, and completes the picture.

However, Chapter 13, on "Fundamental Liberties" is disappointing. All the constitutional articles on these liberties are dismissed in just over eight pages, and except for article 5 (liberty of the person), the discussion consists of little more than a paraphrase of the articles themselves. Yet this is precisely an area which should prove particularly interesting to the citizen, if only more were given. However, as the author's approach is intensely practical, this could explain his treatment. Perhaps this subject is too academic, considering the many restrictions that may lawfully be placed upon these liberties? Perhaps this is why the very next chapter, Chapter 14, on "Emergency Powers and Subversion" merits greater discussion in the book? Alternatively, the author may be unwilling here to commit himself in advance on matters which have been as yet untested in the courts. At any rate, the author might perhaps have considered briefly some of the laws which do limit these liberties: for instance, under Article 10, with reference to the freedom of speech, a brief summary of the existing provisions of the Sedition Act 1948 (as amended by the Emergency (Essential Powers) Ordinance No. 45/1970) would have been apt. A reference to *P.P. v. Ooi Kee Saik* [1971] 2 M.L.J. 108 could also have been made, as it was the first case decided under the amendment of 1970, and there was no appeal on the sedition point. Again, under Article 9, the provisions of the Immigration Act 1963 relating to entry into Sarawak and Sabah could have been discussed. Such Acts, surely, are of considerably more than passing interest to the average citizen?

Throughout the book, much interesting and sometimes surprising information is revealed, quite apart from the judicious use of tables or figures to prove or illustrate some points made. These certainly lighten the tedium for the layman. Some of these are: how often and for how long the Conference of Rulers meets, how its meetings are conducted, and how the Rulers vote (pp. 41-42); how much was approved as expenses for Federal and State elections in 1964 and 1965 (p. 68);

how many High Court and Federal judges were appointed from the Legal Service and how many from the Bar, and why (pp. 86-87); how Penghulu's Courts are virtually obsolete and that penghulus settle more disputes outside the courtroom (p. 89); how many court interpreters are employed in Malaysia (p. 99); how many public servants are employed in all (p. 101); the comparative wealth of the States (p. 121); what standards of Malay an applicant for citizenship is expected by the Language Board to have for the purposes of Articles 16, 16A and 19 respectively (p. 221); the exposure of the popular myth that Malays outnumber others four-to-one in the Federal public service (and the statistics prove it) at p. 251 et seq; what kinds of government business are conducted in English, what in the National Language, and what in both.

The author considers it undesirable for a judge like himself to express his views too forcefully on matters yet undecided, reserving the right to change his views in the future, if he has expressed any in the book. This will be regretted by most readers but is of course entirely proper and understandable. Yet the author's views do creep in on occasion in an otherwise perfectly dispassionate account. For instance, at p. 20, in relation to the limits of Article 32 which states that the Yang di-Pertuan Agong "shall not be liable to any proceedings whatsoever in any court", he expresses the opinion that it is arguable that H.M. *may* be liable under the law—for instance, if he voluntarily submitted to the Court's jurisdiction. At p. 96 he submits that the High Court case of *Ghazali v. P.P.* [1964] M.L.J. 156 was wrongly decided. At pp. 232 et seq., his analysis of the purpose and implications of Article 30 on the issue of certificates of citizenship to persons "with respect to whose citizenship a doubt exists" represents his personal views entirely. The interpretation to be placed on Article 30 has never yet been judicially determined, although it is pertinent to point out that the Deputy Prime Minister did release a special paper to clarify the position from the administrative point of view and to allay fear in some quarters of the populace by stating that the administrative exercise of re-calling and re-examining the issued certificates did not deprive one of one's citizenship if one was qualified to obtain a certificate under some other (the proper) article of the Constitution. At p. 298-299, in conclusion, the author is also at pains to point out that members of the community should remember that "our Constitution is the result of give and take and compromises on the part of every community and that it represents a very delicate balancing of conflicting interests" and that the citizen and government should make every effort to ensure that "every community has a slice of the national cake". He also submits that "parliamentary democracy has important advantages to the man in the street".

The reviewer is constrained, at this juncture, to consider some shortcomings (if they can be so considered) of the book. In the Introduction (Chapter 1), one is carried rather hastily from the Federation of Malaya in 1957 to the formation of Malaysia in 1963. No doubt the author did not wish to burden the book with history, but a reference to the Inter-Governmental Committee (I.G.C.), the London Agreement, and Singapore's negotiations together with its referendum would have been apt. Most glaring is the total omission to mention that Brunei did actually participate in the negotiations until a very late stage (June 1963), and the reasons for its eleventh-hour rejection of the terms offered it for entry before the Malaysia Agreement was signed. Further (p. 15) it is simply stated that Singapore "separated" from Malaysia, without any hint at how and why it was effected. There is another bland statement at p. 99 that a bill introduced by the Government to abolish appeals to the Judicial Committee of the Privy Council in criminal and constitutional matters "lapsed and never became law". A short explanation of the controversy that caused this bill to be shelved to appease the Bar would have proved instructive. More recently, since publication of the book, the Attorney-General has acknowledged the value of continuing such appeals, until and unless some Commonwealth court of appeal should emerge in the future.

The lay reader might have been grateful to the author if he had been enlightened on the division of functions between the National Consultative Council and the National Unity Council (the latter a more recent creature). At p. 196, all the author has to say of the N.U.C. is that it is "a forum...where delicate questions may be debated and threshed out in a cool and calm atmosphere". This presumably refers to the "sensitive" issues which are now beyond the pale of public questioning since the Constitution (Amendment) Act 1971 (Act A30) and the Sedition Act 1948 (as amended by Ordinance No. 45/70). One is on the other hand told of the N.C.C.'s discussion of the causes of the May 13 riots and their conclusions, one

outcome of which was the Constitution (Amendment) Act of 1971. One specific recommendation that comes to light is that the Government should amend the Constitution to allow it to direct institutions of higher learning to admit more indigenous people. (This has been done by the same Act). However, what is or was the constitutional status of the N.C.C.? The physiognomy and physiology of this new constitutional animal merit investigation. The Director of Operations now the Prime Minister, Tun Haji Abdul Razak, in his preface to the Report of the National Operations Council ("The May 13 Tragedy", K.L., October 1969) had said there: "It is intended after publication of this Report, to invite representatives of various groups in the country—political, religious, economic and others—to serve on a Consultative Council, *where issues affecting our national unity will be discussed fully and frankly*". This surely makes the confusion between the bodies' functions apparent. One can only assume that the N.U.C. is the post-Emergency successor to the N.C.C.

Other difficult questions arise. It is now seditious to question the rights or privileges contained in the "entrenched" provisions of the Constitution (the whole of Part III, and Articles 152, 153 and 181), but not to question the "implementation" of the same. The author says as much (see, e.g. pp. 59 and 195) but offers no explanation of "implementation". As the line between sedition and free speech is a fine one in this context, some explanation should have been offered, for the average citizen is otherwise apt to loosen his tongue beyond the bounds of propriety. Some explanation of this may be found in the speech of the Prime Minister (formerly the Director of Operations) at the opening of the debate on the Amendment Bill of 1971, as to the sensitive provisions: "It is right that the way they are carried out should be open for discussion and comment, that is, in so far as the Government or Authority concerned has abused or exceeded its powers in carrying out these provisions of the Constitution". He went on to say: "It is proposed to specify by the law the aspects of implementation which could be open to question or discussion". This reviewer is unaware of any such promised law to date, and it is hoped that some further legislation on this will indeed be forthcoming. A further problem is to what extent members of Parliament may legitimately discuss these provisions in the light of the removal of their privilege in Parliament (in Article 63(2)) by the addition of clause (4) to Article 63. It would appear that no member of Parliament may any longer perform his normal functions by proposing an *amendment* to any of these provisions because he would be guilty of sedition, and his proposed bill may well be deemed a "seditious publication", every copy of which could be ordered to be delivered into the custody of the police! Section 3(2) of the Sedition Act 1948 as amended by Ordinance No. 45/70 would not seem to provide him with any defence either. The only possibilities are, that if it is a widely supported Bill, the public prosecutor may be prevailed upon not to grant the necessary consent for a prosecution (under s.4); or that Article 63(4) may be amended or deleted by a two thirds majority in Parliament and the consent of the Conference of Rulers: See Constitution (Amendment) Act 1971, s. 7(2) and Article 159(5). Part III, Articles 152, and 153 now all require under s. 7(2) a two-thirds majority and the consent of the Conference of Rulers for amendment, but is this requirement superfluous if these provisions may not be "questioned" even by members of Parliament? If it is not, and if those provisions may be amended without an offence being committed, then it would seem that only one constitutional provision may be said to be truly "entrenched", in that it cannot be questioned, and thus cannot be amended. This is Article 181 which provides savings for the Rulers' sovereignty, prerogatives, powers and jurisdiction, for it is not expressly included in Article 159 as amended.

The author's "straightforward" approach, as one citizen addressing another, occasionally tends to lead him into over-simplification of some constitutional provisions, and therefore, error. At page 54, an "office of profit" is dismissed tersely as "any whole time office in any of the public services, such as the army". This is erroneous. Article 160, combined with Article 132, give the result that such an office is any whole time office in any of the public services (enumerated in Article 132(1)) as well as the offices of High Court or Federal Judges, of the Auditor-General, of members of the Election Commission or any Service Commission or its State equivalent or any other office (not specified in Article 132(3)) that may be declared by Act of Parliament to be an office of profit.

Further, at page 289, the author thinks that "a Borneo State" in Article 161E(1) "can only mean Brunei". With respect, it is submitted that the author is in error, and there is no cause for a departure from the normal use of the term "a Borneo State" as meaning Sabah or Sarawak. The nearest thing to a

definition of the term appears in Article 1(b): “the Borneo States, namely, Sabah and Sarawak”, for it is not defined in the interpretation Article, Article 160.

Furthermore, Article 161E(1) reads (relevant part): “As from the passing of the Malaysia Act no amendment to the Constitution made in connection with the admission to the Federation of a Borneo State shall be excepted from Clause (3) of Article 159 by Clause (4) (bb) of that Article.”

Article 159(3) requires a two-thirds majority in each House of Parliament for amendment, an exception being provided by Clause (4) (bb): “*Subject to Article 161E* any amendment made for or in connection with the admission of any State to the Federation or its association with the States thereof, or any modification made as to the application of this Constitution to a State previously so admitted or associated.”

The words in italics were added to the original Federation of Malaya Constitution of 1957 by the Malaysia Act 1963 (No. 26), s.70. Article 161E was also added to the Constitution by the Malaysia Act, which came into force on “Malaysia Day”, namely 16th September 1963. (“Malaysia Day” was originally intended to be 31st August 1963). However, the Act received the Royal Assent on 26th August, 1963. It is a general rule of construction that an Act is “passed” on the date it receives the Royal Assent. Thus, in Article 161E, “As from the passing of the Malaysia Act” points to 26th August 1963. At that date, Sabah and Sarawak were not yet part of Malaysia. Perhaps the author reached the conclusion that “Borneo State” could only mean Brunei if he was misled into thinking that Sabah and Sarawak were already admitted on the “passing” of the Act, construing “passing” to mean “date of coming into force”, so that an amendment in connection with their “admission” to the Federation might not make sense if they were already in Malaysia. Finally, “Borneo State” which was consistently used even in the Cobbold Report and the Inter-Governmental Committee Report of 1962 to mean Sabah or Sarawak could not have been intended to have a geographical significance. It may seem slightly absurd for Sabah and Sarawak to need to be “protected” from too easy an admission of Brunei, but not, say, from the admission of Indonesian Borneo. Yet if the term is to have a geographical significance, Indonesian Borneo is surely also a “Borneo State”, although there is nothing in any of the Malaysian Constitutional documents to suggest that Indonesian Borneo had ever even been contemplated as a potential partner.

A more concrete error arises at page 95. The author states that the Federal Court “has thrice sat in a panel of five”, citing these three instances as being in *Government of Malaysia v. Government of Kelantan* [1968] 1 M.L.J. 129; *Karam Singh's case* [1969] 2 M.L.J. 129; and *Fan Yew Teng v. P.P.* (then unreported but now reported at [1971] 2 M.L.J. 271). In fact, however, the Federal Court had, at the time of publication, sat as a panel of five in a fourth case as well, namely *Assa Singh v. Mentri Besar, Johore* [1969] 2 M.L.J. 30. This omission is a curious one and must have been somehow overlooked, for the learned author himself was one of the eminent judges who graced the Bench in the hearing of that case.

The format of the book is as “straightforward” as the text itself, with a commendably ample number of sub-headings throughout the book, a few tables of statistics, a few photographs, and the minimum of footnotes, all of which aid the average reader. However, although there is a list of cases, there is no index, no list of statutes related to the Constitution, and no table of constitutional provisions. To find a reference to any particular constitutional provision or to any statute becomes correspondingly difficult. It is thus to some extent essential for the reader to have a copy of the text of the Government Printer’s “Federal Constitution” (K.L. 1970, with amendments) by his side, to refer to the index there, look up the table of provisions, and find the relevant provision itself. Statutes and Ordinances, however, are harder to find, and there is no short cut for the reader who wishes to follow up anything in his reading of this book — he must plough through the primary source materials or one of the so-called “academic” works mentioned earlier. Finally, the printers have included a list of “Corrigenda”, for as always, there must be printing errors. Unfortunately, the list is incomplete. At least seven more errors appear, two on page 58 (line 4: for “bills” read “a bill”; line 15: for “committee” read “committees”); one on page 73 (line 12: for “on” read “no”); one on page 102 (line 15: for “7A” read “2A”); one on page 279 (line: 5: for “priviledge” read “privilege”); one on page 285 (line 29: for “sence” read “sense”); and one at page 299 (line 14: for “developes” read “develops”).

These minor shortcomings however, should not detract from the signal contribution that can be made to the understanding of anyone—from beginner student of constitutional law to “visitor from Mars”—who wishes to have a perspicuous outline of the Constitution, if he will only make the modest monetary contribution that an investment in this common sensical book demands. It can reveal to a plain thinking man many truths that are too often disdained by, or beyond the ken of, an academic ostrich.

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