THE INFLUENCE OF THE CHINESE UPON LEGISLATIVE HISTORY IN MALAYSIA AND SINGAPORE

I

"No account of the Straits Settlements could be complete which ignored the great part that the Chinese have played in their development," wrote Mills in 1924. "It is no exaggeration to say that the prosperity of British Malaya is based upon the labour of the Chinese."[1] A little later in his narrative, Mills observes that "[t]he extension of British power over the Malay States after 1874 was at once followed by a great increase in the number of Chinese there, until they were to be found in every part of the Peninsula. The passing years did not diminish their importance: they became more numerous, more indispensable, and more influential than ever."

Mills saw British Malaya as "in the main the product of British initiative and Chinese labour", a view that overlooks the great contributions made by the Malays and other communities: nevertheless, the point is made if we consider the nature of the British initiative, and the manner in which that initiative was exercised through the instrumentality of law. The Malay peoples, like the British, had a concept of law that was different from that of the Chinese, for whom "the law played a limited role in society, mainly because the law, essentially a penal code, included very few provisions on family, marriage, adoption, inheritance, property and debts."[2] In Malaya the Chinese met a group of administrators who saw no such limited role for law, and used it with confidence and skill: for they knew the magic of authority, as spelled out in legal commands, and the limits within which that authority could be exercised.

In the course of this essay I propose briefly to consider the extent to which the Chinese in Malaysia and Singapore influenced the development of the legal system there: for, in reading a chronological list of legislation dating from the earliest days of British administration in the States that now comprise West Malaysia, the vigilant observer will notice that laws apparently relating exclusively to the Chinese mysteriously appear, and then as mysteriously disappear. Regulations on Chinese labour, the desertion of Chinese contract coolies, tickets for Chinese coolies, the prohibition of lion dancing, Chinese secret societies, Chinese stamp duties, indentured Chinese labour and so on, are promulgated, seem to have a fairly brief life, and then vanish into that especial oblivion reserved for repealed statutes.

[1] *British Malaya 1824-67;* reprinted in J.M.B.R.A.S. Vol. XXXIII, Part 3, 1960 (No. 191), p. 235.
[2] Ch'u Tung-Tsu, *Law and Society in Traditional China* (1955), p. 284.

Yet the influence that the Chinese community has exercised over the legislative development of Malaysia has been considerable, persists, and merits serious and thorough research. In the course of this essay the writer can do no more than sketch the general pattern of that development and, in doing so, seek to extract a few basic lessons therefrom: lessons that may be of significance, even today. For the impact of the Chinese community on the development of law in the area remains, although it is now exercised in more subtle, and perhaps more potent a fashion. Most statutes tend to be restrictive of liberty being, in the modern jargon, pieces of social engineering: measures designed to shape society to the ends foreseen as desirable. Before seeking to draw these lessons, however, let us first survey, very briefly, the history of the matter.

II

When, on 11 August 1786, Captain Francis Light formally took possession of the island of Penang "in the name of his Britannic Majesty, and for the use of the Honourable the East India Company"[3] there were no Chinese on the island and, for that matter, few Malays. Within less than a year, however, Light could report[4] that "[t]he shops in the bazaar, which is now pretty extensive, are principally kept by Chinese; at present there are sixty families and many more are expected to settle on the island soon." A few years later[5] Raffles was writing of Singapore in similar vein to the Duchess of Somerset: "(m)y new Colony thrives most rapidly. We have not been established four months, and it has received an accession of population exceeding 5,000 — principally Chinese, and their number is daily increasing."

It was not as simple as all that, however, for a Chinese to leave China. Under a law of the Ching dynasty,"[6] "[a]ll... private citizens, who clandestinely proceed to sea to trade, or who remove to foreign islands for the purpose of inhabiting and cultivating the same, shall... suffer death by being beheaded." This principle was eroded in the 1860's onwards, as a result of treaties, but was not officially repealed for some years; and until 1911 the family and associates of an accused person were also held responsible for the crime in the accusation.

Nevertheless, the native vigour of the Chinese of Kwangtung, Fukien and Kwangsi was not to be frustrated by legislative decree and, as Purcell notes,[7] "the superior enterprise of the Cantonese and Hokkiens, rather than mere pressure of over-population (in China), has decided that they shall predominate overseas" — as they certainly have done, in Southeast Asia. By 1842, Chinese comprised nearly a quarter of Penang's population of around 40,000: about a hundred years later (1941) they numbered 166,000 out of a total of 247,000. In Singapore, Raffles' optimism was justified: about thirty years *ab urbe condita* the Chinese numbered 28,000 out of 53,000: by 1941, some 600,000 out of 769,000. The pattern of contemporary Penang and Singapore had been established.

3 Clodd, *Malaya's First British Pioneer: The Life of Francis Light* (1948), p. 51.
4 *Ibid*., at p. 55.
5 June, 1819.
6 *Ta Tsing Leu Lee* (Staunton's translation) Sec. CCXXV.
7 Purcell, *The Chinese in Malaya* (1948), p. 8.

The British administrators were, in consequence, at an early date faced with the problem of dealing with a large and ever-growing group of immigrant Chinese. At first, the policy was one of non-interference, of self-administration. Hooker notes[8] that "it was a consistent feature of colonial policy that the internal affairs of the Chinese community be interfered with as little as possible; to this end it was common for the administration of each community to be given to an appointed headman or 'Captain' who acted as a link between government and community and administered the laws and regulations of each community. In addition, and commonly connected to the institution of Captain China, there were secret societies which had their own systems of internal regulations."[8] We will return to the matter of secret societies: in the meantime, let us look a little further into the institution of "Capitan": an institution modelled on the practice of earlier colonial powers.

No code of laws reached the hapless Light nor Penang for some twenty years. "I have appointed Checka, the most respectable member of the Chinese," he wrote in May 1787,[9] "to be their Captain, to settle their disputes and to superintend their conduct." Five years later, he had appointed "Capitans" to the three major racial groups of Penang, the Chinese, the Indians (in fact, mainly Tamils) and the Malays. Each Capitan could constitute a kind of native, domestic court exercising a jurisdiction based on no code of law, but solely, it seems, on personal law as interpreted by the Capitan: and there was an appeal to the Superintendent.

Such was the policy of Light. The establishment of a Recorder's Court in Penang in 1807 did away with the "indirect rule" of the native Capitans, but the law they administered to some degree remained, while the authority of the Capitan China (as he was known) persisted: indeed, in 1897 the Judicial Commissioner could observe (in a Selangor case)[10] that "[i]t was said that we cannot tell what the law of China on this subject (distribution of an estate on intestacy) is as the Capitan China, who gave evidence on this point, is not an expert. I, however, think he must be considered one. It is true he is not a Chinese lawyer, but he has for many years been a gentleman of the greatest influence in his own community and of necessity conversant with its opinions and traditions."

In the light of history, we can divide British policy towards the Chinese community in Malaysia into three phases, therefore: one of no rule — a period in which little or no attempt could be, or was in fact made, to regulate the affairs of an almost exclusively male, immigrant community; the second, a phase of indirect rule through the use of such leaders of the community as might have influence over that community — a phase marked by the adoption and emergence of the institution of Capitan China; and finally, a phase of direct rule — taking us into the contemporary period, in which the affairs of the community merge with those of society generally, and sufficient administrative competence exists to enforce the basic principles of a law

[8] *The Personal Laws of Malaysia* (1976), p. 124. "This tradition is still not dead," he (correctly, I think) notes, *ibid.*

[9] Cited in Tregonning, *The British in Malaysia* (1965), p. 46.

[10] *Ong Cheng Neo* v. *Yap Kwan Seng* (1897) Supp. No. 1 to S.S.L.R. 1.

common to all. Purcell sums up the matter, when he observes,[11] "[t]he history of the government of the Chinese by the British in Malaya may be described as a transition from indirect rule to direct rule. This is made clear in the legal history of the Straits Settlements. The process was from rule by Chinese custom administered by Chinese headmen, to rule by English criminal law side by side with Chinese custom administered by British judges, then as the law was interpreted, to rule by the law of England, taking account of Chinese custom. The interpretation of the law meant progressive restriction on the operation of the custom of the Chinese. At the same time a body of statute law was growing up in the Colony itself which was further to restrict this custom."

It is in the evolution of statute law, then, that the effects on a colonial system of a growing immigrant community can most readily be observed. In many respects, statute law consists of a kind of reaction against social pressures; the written word is used to communicate a principle or rule seen by those in authority as necessary for the regulation of society and the achievement of what are viewed as desirable objectives; and at least in the early stages of the development of bureaucratic government, the emphasis must be on consensus, rather than coercion.

That the British, Chinese and other communities shared a basic common objective there can, I suggest, be little doubt. The attainment of individual prosperity was seen in the advancement of trade: and it is to that end that all other issues were subordinate. We can observe in, for example, contemporary Singapore, a similar situation: full employment, regular meals, due schooling of children, the provision of basic health and welfare services: these are the priorities of society, which is prepared in their attainment to sacrifice a few civil liberties in the process. The main thrust of modern society is, for good or ill, in the direction of economic advance.

So it was in Malaya. Light had noted, in Penang, that were the Chinese and other communities of Penang subjected to the strict rules of British military law, they would soon leave. No future lay that way. "The Chinese," he observed,[12] "constitute the most valuable part of our inhabitants.... They are a valuable acquisition, but speaking a language which no other people understand they are able to form parties and combinations in the most secret manner against any regulations of Government which they disapprove, and were they as brave as intelligent they would be dangerous subjects, but their want of courage will make them bear many impositions before they rebel. They are indefatigable in the pursuit of money...." It is a pursuit shared by many, and not only the Chinese.

Swettenham, too, had seen in Selangor and Perak that the Chinese interest "enormously outweighed every other."[13] The British, then, had to reconcile their own objectives with those of the energetic and ambitious Chinese, at the same time having regard to the interests of the Malays, and adapting the principles of the old Malay rule to

[11] *Op. cit.*, p. 143.
[12] Clodd, *op. cit.*, p. 99.
[13] Swettenham, *British Malaya* (1948), p 216.

a system of common law. In this respect, the British were (and many continue to be) convinced of the supreme merits of their own system over that of any other, and a fine self-righteousness tends to pervade their thinking on this issue. Raffles took the view that "the old and irrational in the societies with which he dealt must be rooted out that they might be replaced by the universal and natural law of nature, the outstanding embodiment of which was undoubtedly the British Common Law."[14] The sentiment is echoed by Winstedt: "in no sphere", he wrote,[15] "was British influence more beneficial than in the sphere of law."

Such, then, was the philosophical foundation for the rule of law: and (I write as an Englishman, not an unbiased observer) Raffles may well have been right. Whatever the merits of the policy, the principles of English law were adopted as a major instrument of policy. Communication was all: simple regulatory commands, accepted by the majority as desirable, create a basic framework of society in which the refinement of administration may develop. In 1876 the Governor of Singapore addressed the Residents in the Malay States, and outlined the basic principles of what has come to be called the "residential system": although as Swettenham ironically noticed,[16] "nothing with any pretentions to a system had ever been formulated." The Governor's instruction[17] directed the Residents "not to interfere more frequently or to a greater extent than is necessary in the minor details of government; but," he added, now tapping the milk in this particular coconut, "their special objects should be, the maintenance of peace and order, the initiation of a sound system of taxation, with the consequent development of the resources of the country, and the supervision of the collection of the revenue …."

These were the priorities of the times: the maintenance of law and order, the creation of a sound system of taxation, the development of natural resources: all of them, objectives supported by the immigrants who came into the country, attracted by conditions in which those objectives could be married with the hope of personal advantage. The "pioneer industry" legislation[18] of a later day was based upon a similar philosophy.

III

For many years, there was no control over Chinese immigration into Malaya: cheap labour was required, and China supplied it. In 1823 Raffles had, it is true, in paternalistic fashion issued an Ordinance designed to control the engagement of *sinkhehs* (new arrivals from China) under promises to pay off their passage debts: but this law was never enforced, probably because (like Raffles' land laws) it was thought to be *ultra vires.* The lawyers, the bane of early administrators, took the view that the only purpose for which the government of the Straits Settlements could legislate was for the purpose of im-

[14] Quoted in Winstedt, *Malaya and its History* (1948), p. 97.
[15] *Ibid*., p. 96.
[16] *Op.cit.,* p. 217.
[17] Cited in Swettenham, *op. cit.,* p. 216.
[18] *E.g.,* the Pioneer Industries (Relief from Income Tax) Ordinance, 1958 (31 of 1958).

posing taxes — a nice, healthy approach to the function of statute law, no doubt, but one not likely to be favoured by the 'social engineer' or, for that matter, the practical administrator.

There was, after all, little or no incentive to discourage immigration. The immigrant brought energy and ambition to the exploitation of natural resources. Some of us, and I am one, have an intense admiration for the little colonies of squatters to be found in, say, Johore or Sarawak, of old: families of Chinese, thousands of miles from their homeland, who cleared the jungle, planted vegetable and fruit and pepper gardens and so on, built their schools, educated their children, lived, worked and died in an environment alien to them: yet who, by their industry, built the modern state of Malaysia. They deserve better than an abusive footnote in the history books, the contumely of the administrator, the neglect of the scholar. These men and women lived, worked and died in a single-minded pursuit of the necessities of life, and merit our regard, our study and our respect.

Still and all, nothing succeeds like success. After 1867, when the Straits Settlements were separated from the Indian administration, when the Suez Canal was about to open, there was a new surge of confidence in the future of Malaya; and the Chinese secret societies, still legal in the Straits Settlements, exploited the traffic in *sinkhehs:* an exploitation to continue for some time. The door to Singapore was the door to Malaya, and it was wide open. In 1873 a Singapore law had sought to control immigration, but it was not brought into force "because of opposition from business interests."[19] Coolie traffic was big business, and it was some time before Chinese immigration became "a matter of official concern."[20]

The "open door" policy had meant little or nothing in the way of control: it was abuse of the human merchandise of the labour market which occasioned legislative concern. In 1877 the Singapore lawmakers devised the Chinese Immigrants Ordinance, which provided for the appointment of a Protector of Chinese Immigrants, the establishment of depots for immigrant labourers, and written engagements between employers and labourers. A primitive form of immigration control was introduced, immigrants being landed only at specified places, all immigrant ships being reported to and checked by the Protector. To carry out the law, a Chinese Protectorate was established, under the famous Pickering as Protector, with an Assistant Protector in Penang. The lawmakers were even more vigilant: a Crimping Ordinance was enacted in the same year, in order to prevent the kidnapping of coolies for work in the settlements of the Dutch East Indies. Where cheap labour is involved, you can trust no one.

Although such measures as this Ordinance and the Perak Immigration Regulations of 1886 had created a form of control, it was not until the 1920's that the open door really began to close: and in the Legislative Council of the Straits Settlements the Government did not have its own way without difficulty — indeed, a government with a nominal absolute authority (as, say, the government of con-

[19] Jackson, *Immigrant Labour in Malaya* (1961), p. 71.
[20] *Ibid., p.* 70.

temporary Hong Kong) must be exceptionally sensitive to popular opinion, if it is to survive. In the debate on the Immigration Restriction Bill, "[w]e are... told", said Mr. S.J. Chan in the Legislative Council in Singapore,[21] "that unrestricted immigration has. in recent years, attained to such proportions that great concern has been caused to Government with regard to the problem of unemployment and shortage of house accommodation.... I am not convinced," he added, voicing (it seems) the general opinion of the Chinese Chamber of Commerce in Singapore, "that [the Bill] is at present required ... reading this Bill, together with the portion of Your Excellency's Address to this Council in October last, which deals with Chinese immigration, it becomes clear that the object of the Bill is to keep out all undesirable Chinese immigrants." This was not really acceptable. "The feeling among the Chinese," he explained, "is that the proper remedy... is not a restrictive immigration law but a strong police force."

Some months earlier, on 10 October 1927, the Governor had related a tale of woe to the Legislative Council. "Of late," he had explained, "the disturbed state of things prevailing in the Southern Provinces of China has tended artificially to stimulate the tide of immigration, and has simultaneously operated to check, in some degree, the periodical return to their native country, in which many Chinese have habitually indulged. It has also had the effect of changing to some extent the character of a proportion of the Chinese immigrants to Malaya, a certain number of those who reach these shores being, not honest labourers genuinely in search of work, for whom we have at all times a welcome, but men of a criminal type, whom recent events in their own country have inured to violence and have enamoured of disorder." The Governor had a picturesque style. "One of the results of this," he said, "has been the recent outbreak of serious crime in Singapore, of which Chinese immigrants from Southern China have been at once the perpetrators and the victims.... Today," he explained, borrowing an unhappy metaphor from his acting Attorney-General, "Singapore is acting in some degree as a filter for the Malay States, retaining the dregs and absorbing or releasing for elsewhere the more desirable elements...." In consequence of which, it was necessary to limit and, if necessary, prohibit immigration, a conclusion prompting His Excellency to conclude with a pious sentiment: "It is my earnest hope that it will not become necessary to make use of these powers .... *The Chinese form today a majority of the indigenous inhabitants of British Malaya*,[22] and they are perhaps the most enterprising, energetic, provident and frugal of its sons."

Welcome or not, it was clear that the restriction was unpalatable to a commercial community benefiting from cheap labour: and indeed, even in China itself (no doubt prompted by complaints from the merchants of Singapore) there were misgivings. In a letter of 19 May 1928. addressed to H.B.M. Consul General in Shanghai, the Commissioner for Foreign Affairs, Chin Wen-Suu, considered that the Immigration Restriction Bill was "bound to cause the greatest inconvenience to Chinese nationals": a mild criticism, but one distressing to the Foreign Office, it seems, especially as the *Objects and Reasons*

[21] Straits Settlements Legislative Council Proceedings 1928 (Singapore, 1929).
[22] My italics. An official use of the word *indigenous* in 1927 is significant.

attached to the published Bill were expressed in rather less diplomatic terms than those of the Governor's address. For the Bill when first published had, like all colonial Bills, a memorandum of its *Objects and Reasons.* These, signed by G. Seth, the acting Attorney-General of the Straits Settlements, were dated 19 September 1927, and have a somewhat defensive quality; beginning with the proposition that it is "the inherent right of every Sovereign State to take measures to prohibit or regulate the immigration of labour from abroad", they refer to "a rapidly increasing influx of unskilled labourers with the Colony," and the "grave concern" caused by "the tide of unrestricted immigration." "Under favourable conditions," Mr. Seth wrote, "the vast majority of immigrants find a ready market for their labour in the Malay States under British protection. But when trade is stagnant and the local industries (tin and rubber) are depressed, large numbers of unemployed labourers stream into Singapore and abide there in the hope of obtaining employment. The resultant economic distress and overcrowding in insanitary conditions is a grave menace to Singapore, which, from its geographical situation, is not merely a conduit pipe, but is forced to play the role of a filter bed to intercept and retain very undesirable elements." This glimpse of reality was, like most other glimpses of the truth, unpalatable to the Foreign Office.

Objections or not, the Bill was duly passed on 7 May 1928,[24] and due notice thereof was despatched to H.B.M. Consuls at Shanghai, Canton, Swatow, Amoy and Foochow. The powers vested in the Governor under the Ordinance were subject to two restrictions: first, the Executive Council had to be satisfied that the conditions of labour prevailing in the Colony or any Malay State under British protection were such that the influx of immigrant labourers was likely to cause unemployment; second, the Governor could only act with the approval of the Secretary of State for the Colonies — an unusual explicit restriction, designed to reassure those concerned that the wider issues involved in the exercise of the powers conferred by the law would not be overlooked. In June 1929 it was estimated[25] that in Perak alone there were some 10,000 unemployed Chinese mining coolies, and similar measures to prohibit the immigration of "adult male Chinese labourers" ("adult" being defined as "of 14 years or more in age") were introduced. Arrivals of adult male Chinese in Singapore fell from 136,000 in 1928 to 133,000 in 1929 and 131,000 in 1930, and before long a monthly quota was fixed (for the filter, Singapore) of 6016 adult males. "So," said the Secretary for Chinese Affairs,[26] "the sex ratio of Chinese immigrants, which in 1929 was as low as 22.6 per cent, may be to some extent improved." A more balanced society was in the making, and it seemed (according to the same authority) that "the actual machinery for the restriction of immigrant labourers" was "working smoothly." Complementary legislation[27] in the Malay States tied up the loose ends; and although at first the ban was limited to quarterly doses of three months, these were after a time overtaken by fresh legislation.

[23] Published in the Straits Settlements *Government Gazette* of 20 January 1928.
[24] Becoming Ordinance No. 11 of 1928.
[25] According to a statement of the Secretary for Chinese Affairs to the Straits Settlements Legislative Council, on 25 August 1930.
[26] *Ibid.*
[27] In the F.M.S., the Immigration Restriction Enactment 1930 (24 of 1930).

In this fashion we can, then, briefly trace the origin of the existing legislation on immigration to the need to check the flow of "adult male Chinese labourers": a flow not checked until economic necessity alone dictated a legislative curb. The Immigration Restriction Ordinance was not repealed until 1934, when it was replaced by the Aliens Immigration (Restriction) Enactment:[28] and by that time the matter of getting rid of undesirable immigrants (rather than encouraging their admission) entertained the minds of authority. In 1899 a Banishment Enactment[29] appeared in the State of Perak: and we can take that State as reasonably reflecting what was going on elsewhere in the region. Under that Enactment banishment on various grounds was possible: and any banishee who unlawfully returned to the State could, if he was "of Chinese nationality", be prosecuted by or with the authority of the Secretary for Chinese Affairs, an officer who had sprung from the ground fully armed, as it were, only the year before.[30]

The definition of a person "of Chinese nationality" had not, it seems, occasioned any especial difficulty: although in our own day, it could cause many a headache. The Secretary for Chinese Affairs Enactment defined "a person of Chinese nationality" as "any person bearing a Chinese surname, commonly called a *Seh* or *Sing*, who is a Chinese subject owing natural allegiance to the Emperor of China, or who has his domicile in the Empire of China or its dependencies." The concept of "natural" allegiance takes us, pretty closely, to the concept of the *jus sanguinis* that shaped the subsequent Chinese law; and the notion of domicile imports a realistic concept into the definition. Even more startling, perhaps, is the principle that "Christian Chinese shall not be deemed to be of Chinese nationality":[31] a principle unlikely to have been acceptable to at least one Malaysian judge.[32] Finally, the Enactment ruled that when "it is shown that [a person] has habitually used the Chinese dress or language or followed Chinese customs", he would be presumed to be of Chinese nationality. Name, language and custom: these are interesting tests indeed.

But let us not linger in this orchard, fruitful though it be, else we shall be distracted from the object of our journey.

IV

With the influx of male Chinese into the Straits Settlements and the Malay States there came, inevitably, new ideas. And while the genius of the Chinese people is manifest in many forms, and the catalogue of their achievements is a considerable one: nevertheless, we have to look some distance down that catalogue, before we enter the realm of government. For the free, emigrant spirit of a people

[28] Enactment 18 of 1934, later Chapter 115 of the 1935 Edition of the Laws of the Federated Malay States. This law purported to restrict all aliens, but in practice most affected the Chinese; and it continued a quota system — often evaded. This legislation was in turn overtaken by the Immigration Ordinance of 1952.

[29] Re-enacted the following year, as the Banishment Enactment, 1900 (Enactment No. 8 of 1900).

30 Perak, Secretary for Chinese Affairs Enactment 1899 (Enactment No. 7 of 1899).

[31] *Ibid*., s. 40(iii).

[32] See *Re Loh Toh Met deed.* [1961] M.L.J. 234.

"indefatigable in the pursuit of money" (to repeat Light's phrase) and the culture that money creates, does not take kindly to the trammels of any government, especially an alien one: and in the form of their own societies the Chinese imported a brutally simplistic type of government, still, and in spite of everything, much in existence today.

The overthrow of the Ming by the Manchus, in 1644, had (so the stories tell us, and we believe they are true) led to the foundation by militant Buddhist monks of Shao Lin monastery, in the Foochow prefecture of Fukien Province, of a Triad Society dedicated to "overthrow the Ch'ing, restore the Ming." Imperial edict banned all secret organisations in China: but of what avail are Imperial edicts, when the hearts and minds of men run contrary thereto? By 1799, it is said, secret societies were active in Penang, as they were in Kwangtung and Kwangsi, the triads having arrived with the indefatigable Cantonese. In the Royal Asiatic Society's Journal for 1827 Dr. Milne remarked on the existence of these societies: societies incorporating objects to some extent charitable and benevolent, but accomplishing these objects through sometimes brutal and vicious means. But then, the exercise of power is in the end a brutal business.

As Light, again, had noted, the Chinese, "speaking a language which no other people understand … are able to form parties and combinations in the most secret manner against any regulations of Government which they disapprove." We can assume from this comment that Light knew something of Chinese secret societies and subsequent events in the Straits Settlements brought their existence forcibly home to government. Between 1851 and 1854 several hundred Chinese were killed in riots in Singapore involving secret societies. In 1866 Schlegel's classic, *The Hung League* (still a standard authority on secret societies) was published in Batavia, in English. And in 1867 a Bill designed to control secret societies was introduced in Singapore, but had to be abandoned as (although there were by then some 70,000 Chinese in the Colony) not a single British official there spoke any Chinese. In consequence, the technique of such men as Colonel Cavanagh (Governor of the Straits Settlements from 1859 to 1867) was to swear in the Lodge Masters of the secret societies as special constables, and send them out on patrol: a more effective antidote to rioting and disorder than any legislation, but not quite the solution the enlightened administrator might seek. Poachers do not always make the best gamekeepers.

Of course, some enlightened administrators placed little faith in law, anyway. Addressing the Straits Branch of the Royal Asiatic Society in 1879, Pickering, that first Protector of Chinese for the Straits Settlements, had said that "[i]n my opinion it would be impossible to rule China by British law; much more so the three or four hundred thousand Chinese in our Colony who, (except a small proportion) the scum of the Empire and coming from different Provinces, Prefectures and Districts of their native land, speak dialects and subdialects unintelligible to each other; while all are ignorant of the language and motives of the governing nation." The forthright Pickering was not the stuff of which governors of colonies were made. "The Chinese," he continued, "is accustomed from infancy to lean upon or to dread some superior and ever present power, either in the shape of his Government, his clan or the village elders. I do not

think any persons will say that they find anything of the sort in our complicated and, to the Chinaman (who comes here at a mature age with his prejudices confirmed) inexplicable course of Law." We can fault Pickering for many things, but an inability to see the truth is not one of them. "I can see no other way of ruling Chinese than by recognising the Secret Societies and by immediately commencing the training of a competent staff of officials, conversant with the Chinese language and mode of thought, to supervise and control them."[33]

That the Chinese seem to prefer a strong, decisive and authoritarian form of government appears to be the case: at least, if the evidence of contemporary government in China, Taiwan, Hong Kong and Singapore is to be believed. The secret society offered such a form of government, albeit in a limited sphere: and events have proved (alright, the point can be argued, it is my own) that the societies cannot move out of their traditional areas of influence. In consequence, in the ever-widening circles of governmental interference the secret societies have played an increasingly less important role.

One of the principal causes of the so-called "forward movement" of the British into the Malay States was, indeed, the guerilla warfare between the Chinese and the Malays there. The Treaty of Pangkor of 1874 refers, in its preamble, to the existence of "a state of anarchy" in the Kingdom of Perak; to the large numbers of Chinese employed there, and to the "large sums of money invested in Tin mining by British subjects and others"; and to the existence of piracy, murder and arson. The modern Marxist historian can no doubt make much of all this, the historian in search of the truth, something else: but we can safely assert that there is, in a case of conflict, something to be said for a reasonably independent third party acting as arbitrator. Moving into the Malay States, the few British administrators of the day abolished the principle of taxing every article that moved in and out of the States, and raised revenue initially by import duties on opium, spirits, gaming houses and pawnshops: all activities primarily related to the Chinese community and its limpet secret societies: for land revenue came a little later. Even here, then, in the priming of the financial pump, law and the Chinese shaped the opening up of the country.

Like Light and Colonel Cavanagh, the Malay Rulers (who also had to be pragmatic, to survive) had dealt with the Chinese through their headmen; and we are told that the first State Council of Perak included in its membership two Capitans China, Ah Kwee and Ah Yam, said to be members of secret societies. Indeed, if they were not such members, they could scarcely have been deemed to be representatives of their community, for in 1884 Powell, the acting Protector of Chinese, had written that "the headmen in Larut and Selangor are appointed by the Societies in Penang, Malacca and Singapore": and, about the same time, the Superintendent of Police in Selangor had noted that "nearly all the Chinese in Selangor belong to Societies in the Straits Settlements. These men join the Societies before coming to Selangor." Pickering's Annual Report for the year 1880[34] had noted a change, but it was one a long time coming. "The

[33] Quoted by Jackson, *op. cit.,* p. 49, a work to which I am here much indebted.
[34] Presented to the Straits Settlements Legislative Council, 1881.

old chiefs of Secret Societies," he reported, "who have been brought up under the traditions and influence of the Thien-Ti-Hui when it was really powerful, are rapidly passing away, and during the year several influential Headmen have died in Singapore; the most remarkable, CHOAH-MO-CHHUN, was well-known to old residents, and closed a long career of intrigue in January; he was much feared by the Chinese, but for some years had found it his best policy to be on the side of the Government; on several occasions, indeed, he was of great use in keeping peace, not only amongst the members of his own Hoey, but also between the other societies and the Clans."

Secret societies constituted a kind of illegal government. Mills paints a concise picture of their activities.[35] "Members were forbidden under severe penalties to submit their disputes to a court of justice: all quarrels were to be decided by the headmen of the lodge. Chinese who were not members but who had a dispute with a 'brother' were also compelled to resort to the same tribunal. The statutes of the lodges contained elaborate provisions designed to defeat the ends of justice. When a member had committed a crime all other members were required to co-operate in his defence. Witnesses against him were bribed not to appear, and if necessary murdered; if the criminal had to fly the country, his escape was provided for, while if he were fined, the amount was paid by the Society. Members were also forbidden to give any assistance whatever to the police, and were required to take part wherever a riot was determined on. The penalties for breaking these and the other laws were merciless floggings, mutilation and death."[36]

Pickering's prescription of recognising the secret societies and ruling through them may have been realistic, but it was certainly not one commending itself to those in authority. From 1786 to 1868, it is true, there was the customary period of *laissez-faire*. Then, in 1869, came the ambitiously-entitled Suppression of Dangerous Societies Ordinance:[37] a piece of legislation which not only failed to suppress dangerous societies, but in fact provided the machinery for their registration — which was duly accomplished. Then followed several years of unrestricted registration, at a time when the numbers of immigrant Chinese were increasing by leaps and bounds. Not until 1889, with the enactment of the Societies Ordinance of that year,[38] were Chinese secret societies made illegal; although even then, there was a loophole in the law, in relation to societies formed for the purpose of "recreation, charity, religion and literature". The consequence of the Ordinance was, then, to drive the Chinese secret societies underground: where they remain to this day, although their influence on the statute book is much in evidence. For example, in the Societies Act of Singapore[39] we find that "[e]very society, whether it is registered or not, which uses a triad ritual shall be deemed to be an unlawful society": and

[35] *Op. cit*., p. 243.

[36] I do not know the present position, but suspect that it is little different today from what it was in the 1950's when (writing out of personal experience as a prosecutor in Johore) the position seemed to approximate very closely with that drawn by Mills.

[37] Ordinance XIX of 1869.

[38] Ordinance I of 1889. Legislation in the Malay States followed a similar pattern, with such laws as the Perak Chinese Secret Societies Enactment (19 of 1899).

[39] Cap. 262, Singapore Statutes, Rev. Ed. 1970, s. 23.

the term "triad ritual" is, significantly, not defined, being now well-understood.

Two other Singapore measures, each bearing the disarming words "Temporary Provisions" in their short titles, also bear significant evidence of the contemporary existence of secret societies. The Criminal Law (Temporary Provisions) Act[40] was enacted in 1955 in order, according to its long title, "to make temporary provisions *[sic]* for the maintenance of public order, the control of supplies by sea to Malaysia, and the prevention of strikes and lock-outs in essential services." Exactly why such admirable objectives were regarded as meriting provisions of a temporary nature is not easy to assess: and in fact the measure has been extended from time to time, and is now due to expire at the end of "a period of twenty-four years from" 21 October 1955:[41] a nice piece of drafting, that. By this Act, the Minister is empowered to order the detention for up to a year, "in the interests of public safety, peace and good order," of any person, "whether such person is at large or in custody," if the Minister is satisfied "that such person has been associated with activities of a criminal nature." Any order made by the Minister is, within four weeks, referred to an advisory committee, which submits a report to the President, who can cancel, confirm or vary the order.

The other measure consists of the Criminal Justice (Temporary Provisions) Act,[42] which to date (1978) has continued in force from year to year, since its enactment in 1955. Under this law,[43] where a person aged sixteen or over is convicted of an offence such as extortion, robbery, kidnapping, rioting, causing hurt or being a member of an unlawful assembly, the Court may pass a sentence of "corrective training" of from three to seven years or (when the offender is thirty or over) five to fourteen years. For the purpose of this provision[44] a certificate from the Registrar of Societies or a senior police officer, "that a person was or is a member of or connected with an unlawful society" is *prima facie* evidence of such membership or correction. The monks of Shao Lin monastery continue to haunt the statute book of modern Singapore.

V

For Omar Khayyam, there was a happy order of priorities —

> *Here with a Loaf of Bread beneath the Bough,*
> *A Flask of Wine, a Book of Verse — and Thou*
> *Beside me ....*[45]

Food, drink, poetry and sex.... It is said that for some unfortunate folk the true priority is simply one of food, drink and sex: a point of view lending colour to such statements as those suggesting, for example, that present-day Singapore is (in a now hackneyed phrase) a cultural desert. Certainly, however, food, drink and sex are the driving themes

40 *Ibid*., Cap. 112.
41 See Act No. 15 of 1974.
42 Cap. lll, Singapore Statutes, Rev. Ed. 1970.
43 *Ibid*., s. 3.
44 *Ibid*., s.7.
45 *The Rubaiyat of Omar Khayyam,* trans. FitzGerald, Stanza 11.

of early legislation in the Malay States and Straits Settlements: and if I select, as it were arbitrarily or capriciously, a law from one place or the other to illustrate the theme of this essay, then let me affirm that the lawmakers, too, had their eyes firmly fixed on essentials. Food and drink are essential to labour, and after labour comes rest and recreation, before the cycle begins again, each day.

It has no doubt been obvious, from the foregoing observations, that the vast majority of Chinese immigrants into the Straits Settlements and the Malay States, "the scum of the Empire" in Pickering's tactful phrase, were male. Over the decade 1870 to 1880 there were in Penang some four to five Chinese males for every Chinese female: while in Perak there were, as late as 1891, seventeen Chinese males to one Chinese female. It is natural to find, therefore (following old Omar's law of priorities) that food and drink — reflected in the labour laws — came first, with sex not far behind.

A major step, albeit a transitional one, towards resolving the administrative problems posed by the Chinese was taken with the enactment of a Secretary for Chinese Affairs Enactment in each of the Federated Malay States, in 1899.[46] This law enabled the Resident-General or a Resident to direct the Secretary for Chinese Affairs of the Federated Malay States "to enquire and report as to any public matter relating to persons of Chinese nationality,"[47] and effectually gave the Secretary for Chinese Affairs jurisdiction over persons of Chinese nationality. This was a remarkable piece of legislation, especially when it is linked (as it must be) with the Perak Recognition of Chinese Law Order in Council of 1893:[48] but it has slipped in arid out of the statute book without a whisper of recognition. At times, we do not deserve our history: and indeed, there are some, politicians and others, who consider that history is bunk.

For the Perak Order in Council of 1893 imported "certain national laws and customs of the Empire of China, regarding marriage, adoption and inheritance," and sought to define the personal law of a Malaysian Chinese with a little more success than, say, several judges of our latter days. The status of a principal wife was assured; desertion for three years was tantamount to divorce; majority came at the age of eighteen; adopted children had the same rights as natural children; sons had a due claim on the estate of their father, unless guilty of "unfilial conduct"; wills could be oral or written; the eldest son of the principal wife took the lion's share of an intestate father's estate; and "Chinese Assessors, and the evidence of skilled witnesses" were where necessary to be obtained by the courts, in adjudicating upon the issues referred to in the Order in Council. The law remained on the statute book until 1930, when it melted away into an enactment containing rules on the distribution of property.[49]

With growing numbers of Chinese labourers came legislation, at first primitive indeed but, after the creation of the office of Secretary

[46] Perak, 7 of 1899; Selangor, 8 of 1899; Negri Sembilan, 13 of 1899; Pahang [19] of 1899.
[47] *Ibid.*, s.2.
[48] Order in Council No. 23 of 1893.
[49] Distribution Enactment (12 of 1929).

for Chinese Affairs, of ever-increasing complexity. This legislation has had a profound influence upon the contemporary statute book, but naturally, there are more complex influences at work in this area than those stemming from the Chinese alone. In Perak, hot upon the heels of a formal adoption of the Penal Code of the Straits Settlements, came the Chinese Labour Regulations of 1885 and 1886; provisions regulating the desertion of Chinese contract coolies (1886), tickets for Chinese coolies (1887) and coolies' working hours (1889). In 1891 an element of benevolence appears, with law on the Protection of Indentured Chinese Labourers and, a year later, the Transmission of Chinese letters — an Order in Council intended "to facilitate the transmission of letters to the interior of China." Rules were made under the Secretary for Chinese Affairs Enactment providing for the status and qualifications of Chinese interpreters.

Out of the laws regulating Chinese labour came such measures as the labour legislation of 1904, with laws "Chinese Mining" and "Chinese Agricultural",[50] prescribing abstracts, concise and readable summaries of the relevant labour law, required to be exhibited in coolie lines and *kongsi* houses. This legislation was to be absorbed in general legislation, such as the Labour Code of the Federated Malay States,[51] leading on (the Chinese influence spent) to laws on workmen's compensation (1933) and, significantly last, trade unions (1941).

As a kind of by-product of the laws on immigration and labour, came a new batch of laws, designed to assist the community in a harmonious assimilation of the Chinese immigrants. The regulation of brothels, the protection of prostitutes and *mui tsai*, soon gave way to a general concept of welfare legislation designed to protect women and girls. At first, the law aimed at the elimination of malpractices through the use of Chinese societies, without the intervention of a government agency: for, after all, many Chinese had left their homeland precisely because they detested the interventions of government into their private lives. Section 22 of the common form of Secretary for Chinese Affairs Enactment enabled the Secretary for Chinese Affairs, on the direction of the Resident, to establish a local society, the *Po Leung Kok,* to help Government in detecting the kidnapping of women and children: a society still to be observed today.

The scheme of the law merits comment. It can readily be appreciated that it would be the Secretary for Chinese Affairs who would be best informed on these issues: but his authority could only be exercised on the direction of the Resident. We see here, as we may note elsewhere in the statute book, a general distrust on the part of the administrator for the functions of the specialist: and it may well be that the policy of the law was correct, for the specialist sees many things in detail, and the administrator many things in general.

But, to resume. Once the office of Secretary for Chinese Affairs had been established, we see a new impetus given to legislation of a social nature. In the field of welfare, registration of prostitutes was covered by a Perak law of 1887; in 1899 rules were made (under the Secretary for Chinese Affairs Enactment) for the *Po Leung Kok,*

[50] See *e.g.,* Selangor Enactments 17 and 18 of 1904.
[51] 6 of 1912.

places of safety for women and girls; and rules, too, were made for Chinese Passenger Lodging Houses, at the same time. Then, in 1902, came the Women and Girls Protection Enactment,[52] which *inter alia* enabled the Protector of Chinese to issue "protection tickets" to any prostitute found in a brothel: tickets, in English and Chinese, carrying the following notice: "Wherever a prostitute has any grievance, she may come to the Protectorate, District Office or Police Office and complain. Anyone daring to prevent her will be arrested and punished. These tickets are to be always kept by you on the person." Split infinitive or not, the message was clear: government, and not the secret societies, was concerned with the welfare of women and girls, especially those of Chinese origin. Brothels, however, continued for almost another thirty years, before becoming illegal.

In the realm of education, government intervention was belated. To legislate is, after all, one thing: to enforce a law, another; and there is no merit in seeking to regulate the activities of small Chinese schools, built with the funds of, say, industrious squatters in remote areas, with teachers recruited from China, unless a team of competent inspectors is available. It was not until 1920 that, in Malaysia, legislation was passed providing for registration of schools, and government began to take an interest in Chinese schools, where Kuomintang teachers posed a problem:[53] and in 1923 Government supervision of Chinese schools began. This phase recognised problems in the way of education, bi-lingualism, culture and so on, that have not yet been resolved, and in effect have come to a head in article 153 of the Constitution of Malaysia.

In that article, with its emphasis on the special position of the *bumiputra,* we have travelled a long way from the recognition by a Governor of Singapore in 1927, that the Chinese were indigenous inhabitants of British Malaya: and the existence of that article creates a sense of the alien, as if the Nanyang Chinese of Malaysia were indeed "a source of friction between the successive Chinese authorities on the one hand and the governments and people of Southeast Asia on the other."[54] In Sarawak, for example, there were no Chinese officers in the civil service until 1946: although by an Order of 1911[55] the Rajah of that State had established a Chinese Court in Kuching "for the hearing and settlement of all causes amongst the Chinese population in the Territory of Sarawak relative to marriages, divorce, division of property, succession to property passing on the death of the holder, or other causes for the proper settlement of which a knowledge is required of Chinese laws, customs and usages, as also for the consideration of, or to report on, any causes remitted to them from the superior courts of Sarawak." But the tide was on the ebb, and no magistrate was appointed to the court after 1919. As in Malaya,

[52] Perak Enactment No. 7 of 1902: but as in other instances in this essay, the pattern can be seen in legislation of other States and Settlements.

[53] Even in the early 1950's, I remember that the K.M.T. was, in Sarawak, regarded with more anxiety than the activities of Mao and his colleagues: so belated is our recognition of reality. In Singapore the K.M.T. had been registered as a society: ten years later, it was declared illegal.

[54] Kwan Siu Hing, "China and the Overseas Chinese Communities in Southeast Asia", Journal of the History Society, University of Singapore, July 1977, p. 14.

[55] Order IX of 15 June 1911: see *Sarawak Gazette,* 1911, p. 110.

the policy was one of assimilation: a policy arrested with the development of the policy implicit in article 153 of the Constitution of Malaysia, that somehow the Chinese were not indigenous to the country. In part, this attitude has derived from section I of the Chinese Nationality Law of 1909,[56] which declared that "a child born of a father who at the time of its birth is Chinese" has Chinese nationality by parentage, "whatever the locality may be in which (such child is) born": but the Chinese of Malaysia have had nothing to do with such a law, and its influence should not be accepted as adverse to their interest.

So, throughout the history of modern Malaya, anxiety in relation to the Chinese community has existed: at its highest, at that turning point when there was a shift of thought on the part of Chinese settlers, away from a return to China, to a permanent settlement in Malaya. Out of that change of attitude came modern Malaysia. In the realm of citizenship, the efforts made in 1946 to confer equal citizenship rights on all born in Malaya, and on all resident there for ten out of the fifteen years preceding 1942, failed in the face of a not unreasonable Malay anxiety. Then, in 1948, the Federation of Malaya Agreement introduced new, restrictive citizenship laws, under which only about half a million Chinese (say, a quarter of their total number) became eligible for citizenship, as compared with about the entire Malay community of two and a half million. Enlightened Malay and Chinese leadership contrived amendment of the law, in 1952, to open the door to citizenship further; and by December 1958 almost a million Chinese had become citizens. By 1962, when the principle of *jus soli* had enjoyed a brief honeymoon following independence and was then abandoned, the problem of a handicapped access to citizenship on the part of the Chinese community of the country had been abandoned. And even the ghost of the *jus sanguinis,* the Chinese nationality law that has haunted many of the relationships between China and the countries of Southeast Asia, was apparently laid by the joint statement made by Chou En Lai and Tun Razak in 1974, under which the Government of the People's Republic of China announced that it considered "anyone of Chinese origin who has taken up of his own will or acquired Malaysian nationality as automatically forfeiting Chinese nationality."[57]

Even so, the economic power of the Chinese, their keen concern for the education and welfare of their children and their restless energy and industry remain a cause for concern. Since 1946 it has in general been appreciated that (to quote the words of an opposition Member of Parliament, Mr. Lim Kit Siang, in a debate in the Dewan Ra'ayat on 23 February 1971) that "the basic problem in Malaysia is an economic and class one, and not a racial one."

Article 153 of the Constitution, then, is perhaps the most significant provision in contemporary Malaysian law, and is one that exists as a kind of reaction to the Chinese presence in the country. Dating from the Federation of Malaya Agreement of 1948 (when Clause 19(1)(*d*) required the High Commissioner to have, in his executive authority, a special responsibility for "the safeguarding of the special position of the Malays and of the legitimate interests of other com-

[56] American Journal of International Law, Vol. 4 (Supp.) (1910) 160.
[57] *Foreign Affairs Malaysia,* v. 7, n. 2, June 1974, p. 53.

munities") this provision has now been entrenched in the Constitution, in the sense that it can only be amended with the concurrence of two-thirds of the total number of members of each House of Parliament and, since an amending Act of 1971,[58] the consent of the Conference of Rulers. Further, the article itself was then put beyond the pale of any discussion questioning it in any way: a prohibition extending even to parliamentary proceedings.

As Mr. Lim Kit Siang said in the debate on that amending Bill, "such punitive provisions will only stifle and suppress open criticism, though it cannot stamp out mounting frustration and discontent with the matter." Soon, it is to be hoped, the parliamentary prohibition at least may be relaxed: when the provisions of the article can then be debated. For all parties in Malaysia appear to accept the need for some special provision designed, as it were, to hold the scales between the Malay and Chinese communities until such time as the lot of the majority of the Malays and those others regarded as indigenous to the area is regarded as more or less equal to that of the Chinese.

As wiser heads have observed, the struggle remains one between political power, vested primarily in the hands of the Malays, and economic power, vested primarily in the hands of the Chinese. Were life a simple and orderly matter, no doubt each would be content with their own area of influence: but in these latter days of ours politics and economics become inextricably intertwined, as all strive for the Utopia of the welfare state. Under the aegis of article 153 the Malays and other *bumiputras* seek economic power, while under the aegis of the electoral process the Chinese seek political power. In such a situation, the burden of responsibility resting upon leaders of the Malay and Chinese communities is indeed a heavy one.

It is possible by the use of law to gerrymander constituencies in order to ensure the election of the mixture of members of Parliament required: and to a significant extent such a process is to be observed in some of the amendments made since independence to the Constitution of Malaysia. Control over the delimitation of electoral boundaries was in 1962[59] removed from the independent Election Commission set up by article 113 of the Constitution and vested in the Cabinet and Head of State; a thirteenth schedule was added to the Constitution at the same time, under which a weightage in favour of rural (predominantly Malay) areas was added, so that a rural constituency could return a member of Parliament with, say, half the number of electors the average urban (predominantly Chinese) constituency might possess; and in 1973[60] even this two-to-one ratio was abandoned.

The history of that part of the Constitution dealing with the electoral process therefore reflects a kind of struggle to retain political power where it is, or is thought to be, at the moment, in the hope that, while this ring is held, a Malaysian identity compounded of the diverse elements of Malaysian society will emerge. Here we trespass

[58] Act A30.
[69] Constitution (Amendment) Act 1962.
[60] Act A206, s. 15(1)6(. The form of the amendment obscures its effect.

into the realm of politics, and can do no more than hope that the rule of law will continue to be adopted, as a means of resolving communal difficulties, and that with the gradual abolition of an economic imbalance — and, after all, many Chinese are as poor as their Malay counterparts — the vestiges of racial discrimination will wither away.

The traffic has not been only one way. The Chinese of Malaysia have embraced some western ways with enthusiasm, as Purcell has noted — western dress, companies with limited liability, the Gregorian calendar, business practice, together with an addiction to horse-racing, gambling and the consumption of cognac. The Chinese of Kuala Lumpur is not the Chinese of Hong Kong, still less the Chinese of Kwangtung or Peking: he has undergone the strange change that comes over the immigrant who, after a dozen or so generations (anxious to retain his ties with his homeland though he may be) has acquired a new identity; created, willy-nilly, a new culture; and possibly planted the seeds of a new civilisation.

Not only pressures from the Chinese within Malaysia have dictated the pattern of legislation there for, on occasion, policies originating in China itself have also exercised a significant effect. The most notable instance of this is the Chinese Nationality Law of 1909, from which many consequences unforeseen by its originators have flowed; but a topical example lies in the Banking Ordinance of 1958.[61] Here we may observe that a bank cannot operate in Malaya "if the Minister is satisfied that fifty *per centum* or more of its capital issued and paid up is owned by or on behalf of the government of any country other than the Federation or of an agency of such government, or that all or a majority of the persons having the direction, control or management of the bank are appointed by or on behalf of such government or agency."

It would seem that this provision of the first banking legislation in Malaysia was aimed at the Bank of China, then in business in the Federation: and in this context it must be remembered that the emergency declared in 1948 did not end until 1960, so that the Government of the Federation was understandably concerned with, say, the influence that a foreign creditor can exert upon a local debtor. The provision has been accepted, it seems, as a sound one, and reappears in the Banking Act of 1973.[62]

In some respects legislation concerning the Chinese in Malaysia and Singapore has been more benevolent than that in Thailand, where King Vajiravudh saw the Chinese as "the Jews of the East". There, the hours of teaching the Chinese language in the schools were controlled by law; in 1943 aliens were denied the right to purchase land — a restriction affecting mainly the Chinese community; and such legislation as the Un-Thai Activities Law of 1952 enabled the Government to take action against alleged communist activities by Chinese in Thailand. In all, the interaction of Malay, Chinese and British has in Malaysia and Singapore been, by and large, beneficial to all: only with article 153 of the Constitution of Malaysia is there cause for anxiety, with an apparent perpetuation of division within society.

[61] Ordinance No. 62 of 1958, s. 4(*c*).
[62] Act 102, s. 6.

In reviewing article 153 of the Constitution of Malaysia it is worth pausing a while, to consider what the academics would call the Singapore experience. Endowed with a Constitution originally designed to fit into that of a federal Malaysia, Singapore has since 1965 been independent. The manner in which minority rights are treated in Singapore could be said to be in the form of a kind of reverse, mirror image of article 153 of the Constitution of Malaysia: for in 1973 [63] a Presidential Council for Minority Rights was established. The Council's existence is in fact additional to the provisions of article 89 of the Constitution of Singapore, which affirms that the Malays "are the indigenous people of Singapore", and places a general responsibility upon the Government to protect, safeguard and promote Malay cultural interests and the Malay language: difficult objectives indeed, in Singapore.

The concept for such a Council grew out of a recommendation of the Wee Constitutional Commission of 1966. Members of the Council (who must be at least thirty-five years old) are appointed by the President on the advice of the Cabinet, and at present consist of the Chief Justice, as chairman, together with up to twenty other members; their function is to scrutinize draft legislation, and ascertain whether it "is, or is likely in its practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly giving advantage to persons of another community."[64] Such a "differentiating measure" can only be enacted with the support of a majority of at least two-thirds of the total membership of Parliament — and then, only after an adverse report from the Council.

In this way the Council acts as a watchdog over Parliament, and one guarding the interests of minorities in Singapore.[65] Some of us may think that this is a happier method of ensuring racial harmony than, say, article 153 in the Constitution of Malaysia, or all the legislation on racial equality that clogs the contemporary English statute book. At any rate, the institution of the Presidential Council for Minority Rights is the solution of the Chinese of Singapore to the problem of discriminatory legislation: and it is a solution worth thinking upon, in a world that seems to be in process of foundering upon problems posed by minority rights in democracies based upon the rule by the majority.

VI

And what can we deduce from this brief and chaotic sketch? In short, we can conclude that the influence of the Chinese community upon legislative development in Malaysia and Singapore has been both

[63] By the Constitution (Amendment) (Presidential Council for Minority Rights) Act 1973.

[64] See the definition of "differentiating measure" in art. 81A of the Constitution of Singapore.

[65] During the year ending July 1968 the Council considered 24 Bills and found no provision that was a "differentiating measure". Also, no issue affecting any racial or religious community was referred to the Council by Parliament or the Government, under the provisions of the Singapore Constitution, during the year: *Straits Times,* 25 September 1978.

positive and negative: positive, in the sense that it has created certain norms or standards in vital areas such as labour and social welfare; negative, in the sense that checks and privileges designed to protect those regarded as indigenous to the area have been introduced in an effort to curb the increasing power and influence of the Chinese community.

In such circumstances, the collective influence of those several million souls, men and women born into a cultural *milieu* all their own, and one so insulated by language, tradition and history from that of all others, has been profound. Even at this close distance in time, a few lessons can already be drawn. First, we can assert with some reasonable degree of confidence that a largely non-Christian community can accept the principles of the common law, but only up to a point where these do not conflict with the customs and personal laws of that community. In a reasonable, intelligible consolidation of the principles of the common law, therefore, such as that found in those branches of Indian statute law adopted in Malaysia and Singapore, there is an area of acceptance.

Second, we can say that the Chinese presence in the Straits Settlements and Malay States has had a significant influence in the development of legislation on labour, immigration, societies, social welfare and education, and may well (by a kind of paradox, perhaps) have contributed to an improvement in the status of women. The points of impact have been those affecting the basic aspects of life in society (apart from those prohibitions of a penal nature, common to all mankind) but these have been shaped by the pressures of Chinese immigration and, later, settlement.

Yet we can perhaps draw a third conclusion, one adverse to the continuance of any kind of Chinese identity, and one to be meditated upon by leaders in Peking, Kuala Lumpur and elsewhere. All communities in the area have been subjected to western influences, in varying degrees: and these influences have crossed, and not been affected by colonial boundaries. The impact of modern technology is universal, and no corner of the globe escapes from it. Go up the furthermost river of darkest Borneo, and *Coca Cola* is there in the riverside shophouse. No culture can escape the steady, insidious effect of the powerful tide of western attitudes, conveniences, inventions, fashions, mores, goods, writings. In this situation, the limitations of legislation are all too obvious: useful as a means of organising a bureaucracy capable of working towards a welfare state, legislation cannot of itself create a sense of common identity and purpose and often, indeed, works contrary to the objectives of harmony within society.

Whatever the forces that may shape the future of society, however, we can safely say that without the existence of the Chinese of Malaysia and Singapore, the modern statute book would not bear its present stamp. The influence of the Chinese is all-pervasive, and without them the legislative history of Malaysia would no doubt have followed the strict principles of Islamic jurisprudence and the lines of development dictated by the needs of those called, since the mid-1960's, the *bumiputras.* In this respect, legislation has gone off at a

tangent, and article 153 of the Constitution become nothing more than a paper rice bowl. After all, the true natives of peninsular Malaysia are the *orang asli*, the aborigines: yet they do not fall within the dubious benefits of article 153, and appear but briefly in the Constitution, where article 8(5) permits legislation cutting across the principle of equality in article 8(1) "for the protection, wellbeing or advancement of the aboriginal peoples of the Malay Peninsula" and the reservation to aborigines of "a reasonable proportion of suitable positions in the public service."

So the liberal may hope that it is almost time for the illusion of the indigene to be abolished, and for all citizens to be treated in all aspects of their social life with the even-handed justice meted out by the Malaysian Courts, whose reputation has been developed by far-sighted and able judges. If any significant lesson is to be drawn from a sketch of Chinese influence on Malaysian legislative history, this may be the one most apt to modern circumstances.

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