

The Constitution of Malaysia: Further Perspectives and Developments ed. by F. A. Trindade and H. P. Lee, Oxford University Press, 1986. xix + 275 pp.

The Constitution of Malaysia and the developments which have taken place in Malaysian constitutional law are of importance, not merely to the citizens of Malaysia, but also to those who are, as Australians are, in the area of South-East Asia and to students of constitutional law and its operation. Therefore the initiative of the Oxford University Press in publishing a collection of recent essays dealing with the Malaysian Constitution and its operation is to be welcomed.

The work is the second volume of essays on this topic. The first volume, edited by F. A. Trindade, Acting Professor of Law, Monash University, Melbourne, and H. P. Lee, Senior Lecturer in Law, Monash University, Melbourne, jointly with Tun Mohamed Suffian, was published by OUP in 1978. This volume, by the first two of the editors, is dedicated to Tun Mohamed Suffian "in tribute to his work in developing the constitutional law of Malaysia over the last two decades". It is appropriate that the book be dedicated to Tun Mohamed Suffian. He is a man of eminence in the field of constitutional law, as he is in others. He was Solicitor General in 1959, High Court Judge in 1961, Federal Judge in 1968, Chief Justice of Malaya in 1973 and Lord President of Malaysia (1974-82) when the constitutional structure of Malaya (later expanded to the Federation of Malaysia), during a period of some strain, was firmly established.

The book contains eleven essays and a postscript on "The Malaysian Constitutional Crisis: Kings, Rulers and Royal Assent". The authors include persons of high distinction in Malaysia, including Y. A. M. Raja Azlan Shah, Sultan of Perak and formerly Lord President of the Federal Court of Malaysia, Tun Haji Mohd Salleh bin Abas, the present Lord President, and leading academics.

The essays deal, in detail and with perception, with several of the critical areas in the constitutional arrangements in Malaysia. A constitution, and the arrangements which operate under it, are not (or should not be) mere propositions of law. They provide the machinery by which the problems which face the country in which they operate are to be solved or, if not solved, at least brought to an accommodation. It is not for one who is not of, and who does not operate in, a country to hope to understand fully the problems with which the constitution of a country deals. This is particularly true of Malaysia. Malaysia is a country which is rich in its resources and in its people. Like all countries, there are problems with which its constitution and the arrangements made under it must cope. To an outside but interested observer, the problems which the Malaysian Constitution and constitutional arrangements seek to deal include (to describe them shortly): the federal problem; the ethnic problem; the business problem; the public order problem; and the religious problem.

The essays in this book deal with, or at least refer to, each of these

matters. The writers have, directly or less directly, dealt with the provisions of the Constitution, the important legislation, and the judicial decisions dealing with them.

Malaysia is a federal state. Its constitution and arrangements were, in this regard, required to accommodate matters such as the degree of independence, the areas which were brought into federal Malaysia, the constitutional role of "The Rulers", vis-a-vis the federal state, and the relationship between the Rulers themselves. The problem of accommodating a division of powers between federating states and the federal body is not unfamiliar. The particular problems involved in bringing together the states which compose federal Malaysia are illustrated by, for example, the essay by Datuk Nicholas Fung Ngit Chung on The Constitutional Position of Sabah and that on The Constitutional Position of Sarawak by Datuk Haji Mohamed Jemuri bin Serjan.

The position of the Rulers and the problem of their role in Malaysian constitutional arrangements had some similarity to the problem, in India, of the Princely States. In Malaysia, the solution adopted was different from that in India. The position is examined in the essay by Y. A. M. Raja Azlan Shah on The Role of Constitutional Rulers in Malaysia. The federal state of Malaysia has one elected king, nine hereditary rulers and four appointed Yang di-Pertua Negeri. The king is elected by the other hereditary rulers for a term of five years. Each of the hereditary rulers reigns for life. The four Yang di-Pertua Negeri are appointed by the king for four years after consultation with the Chief Minister of the state involved.

The Malaysian monarchy is, as Y. A. M. Raja Azlan Shah has rightly said, "a unique institution". Thus, the Monarch may appoint a Prime Minister, withhold consent to a request for the dissolution of Parliament, requisition a meeting of the Conference of Rulers and, it may be, exercise a more than formal role in relation to legislation. The postscript to the book prepared by Dr. H. P. Lee relating to the refusal by the King to assent to the Constitution (Amendment) Bill 1983 indicates that powers of the King under the Malaysian constitutional arrangements may not yet have been finally determined.

Malaysia contains a number of ethnic groups. The problem of maintaining stability and of binding the different groups has featured large in the recent history of Malaysia: see, for example, James P. Ongkili "Nation Building in Malaysia 1946-74", Oxford University Press, 1985. The Constitution adopted the plan of making the Malay language the language of the Federation and of providing for maintenance of "Malay privileges". The effect of these in promoting the stability of the federal state is examined by Tun Haji Mohd. Salleh bin Abas in an interesting way. The Lord President discusses how, after the "bitter lesson" of the racial riot of May 1969, efforts were made to place the Malay interests and the legitimate interests of the other communities "beyond the reach of communal politics". The Lord President outlines the constitutional arrangements, involving the National Unity Council, and other arrange-

ments set up to deal with the accommodation between the ethnic groups. In relation to education, the matter is examined in more detail by Dato Visu Sinnadurai in *Rights in Respect of Education Under the Malaysian Constitution*. Procedures set up under the Constitution are, I think, of particular interest to constitutional lawyers concerned with multi-ethnic states.

The perception of some had been that the business experience and wealth in Malaysia had been predominantly in the hands of non-Malay ethnic groups. The "Malayness" of the federal state was seen by some to involve the promotion of participation by Malays and other indigenous groups more closely in the economic activities of the State. The constitutional principle has been put into effect by, e.g., the establishment of the national trust "Yayasan Pelaburan Bumiputra" for the purpose of transferring to Malays and indigenous peoples existing wealth and providing for future investment by them. As the Lord President has properly pointed out, the success of the Federation will depend largely upon the proper maintenance of the balance between the groups in this regard. One may hope that, if a further companion volume is published, there will be a closer analysis of what can be, has been, and should be done in this regard.

The Malaysian Constitution was set up at a time when communist insurrection placed great strain upon the new State. It was therefore thought appropriate that the State should have special powers for dealing with those who, from outside the state apparatus, sought to apply force to it. Some of the provisions which historically had their origin in such problems have continued, notwithstanding the disappearance of the emergency which justified them. The continued use of these measures is referred to in the essay by Dr. H. P. Lee "Emergency Powers in Malaysia". There has, on one understanding of the actions of the executive and the decisions of the judiciary, been the use of such emergency powers to deal with internal dissent. The terms of the legislation from time to time have been far reaching and proceedings brought in relation, e.g., to pronouncements made by the Malaysian Bar Council provide illustrations of this.

The problem of maintaining communal stability in Malaysia is not easily solved and the importance of the problem has been stressed, *inter alia*, by Lord President Abas. The question whether the abrasions of inter-communal differences should be, or are best, dealt with by legislation for "treason" is a matter which continues to be of great interest within the Federation.

The role which religion plays in the Malaysian Constitution and in Malay life cannot be overstressed. The notion of a non-Muslim Malay is "alien to the Malay mind". Freedom of religion is guaranteed to the extent specified in the Constitution, subject to the limitations to which the Lord President Abas refers: freedom of worship is limited by the necessity to preserve public order, public health and morality; a person may not be taxed to support a religion other than his own; and the right to propagate a religion may be restricted if such propagation is amongst

Muslims. Both at Federal and State level, money is spent on the administration of the Islamic religion and its law.

The constitutional problems confronting Malaysia are not unique. In other countries in our region, problems of the kinds to which I have referred confront governments and will continue to do so. Solutions which have been adopted, in and under the Malaysian Constitution, are of interest to governments seeking mechanisms whereby such problems can be dealt with in their own countries. The essays contained in this volume provide a detailed factual description and analysis of how the Malaysian mechanisms are applied and the extent to which they have proved successful. For that reason alone, it is good that they have been published.

But the essays are important also because they provide insights into the experience and the thinking of leaders in Malaysian affairs and those who, in the academic world, review what has happened. The countries of South-East Asia have developed at a very fast rate and will continue to do so. Their impact on the world economy has been great and will be greater. For that reason, lawyers in Australia must know what they are doing. But with economic development has come pressure upon their constitutional arrangements. With increase in wealth and in the living standards came pressures for definition of and change in those constitutional rules which determine how the increased wealth is to be distributed and the freedom with which it is to be enjoyed.

Each country in our area will develop its constitution and the arrangements made under it according to its own history and culture but also according to what it sees it appropriate to adapt from the constitutional experience of others. Malaysia is of great interest to those whose constitutional experience is Anglo-Saxon. It has drawn upon the British experience, in the judiciary and the legislature, and has adapted that experience to its own needs. Its use of Malay, British and other experience in dealing with the various problems with which it is faced, and in particular with the ethnic, business, public order, and religious problems, should be of interest to students of constitutional law in Australia who are, as they should be, seeking to understand the developments in our near north.

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