

# GOVERNMENT AND POLITICS

[1940–2006]

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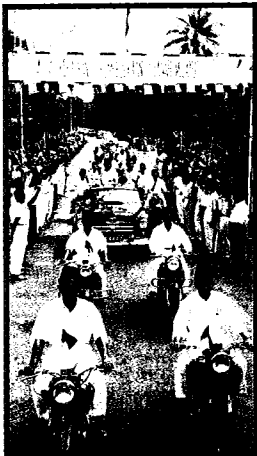
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### Note for Readers

Every effort has been taken to state accurately the titles awarded to persons mentioned as at the date to which their entry in this volume refers. However, information on awards and the dates of their conferment has not always been obtainable. We apologize for any errors or omissions that may have thus occurred.

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FAR RIGHT: Regalia of the Yang di-Pertuan Agong (Paramount Ruler or King) and Raja Permaisuri Agong (Consort to the Yang di-Pertuan Agong) used on royal ceremonial occasions.

TITLE PAGE: The Prime Minister's Office (also known as the Perdana Putra Complex) is located in Precinct One, Putrajaya. The offices of the Prime Minister, Deputy Prime Minister and Chief Secretary to the Government are situated in this office complex.

HALF TITLE PAGE: Tunku Abdul Rahman Putra joins the festivities on the eve of Merdeka Day, 31 August 1957.

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# A constitutional state

*Democratic idealism coupled with the realities of Malaya's political, economic and ethnic situation in 1957 influenced those who wrote the Constitution of the Federation of Malaya. The Constitution provides the basis for a multi-racial and multi-religious society, and serves as the foundation for the rule of law. Importantly, the Constitution, as amended in 1963 upon the formation of Malaysia, recognizes the special rights of the indigenous peoples of Sabah and Sarawak in addition to the pre-existing special rights of the Malays.*

## The Reid Commission

In 1956, the Reid Commission was appointed to draft Malaya's Constitution. The commission comprised (1) Lord Reid (United Kingdom), (2) Sir Ivor Jennings (United Kingdom), (3) Sir William McKell (Australia), (4) B. Malik (India), (5) Justice Abdul Hamid (Pakistan).



## New beginnings

Work on Malaya's Constitution began after the Alliance won by a landslide in the 1955 Federal Legislative Council elections and demanded independence from the British (see 'The Alliance' and 'Merdeka! Malaya's Independence').

With the formation of Malaysia in 1963, the Constitution was amended to include provisions relating to Sabah and Sarawak; and to Singapore, which was eventually excluded from the federation in 1965 (see 'The formation of Malaysia').

## The status of the Constitution

Malaysia is bound by a written constitution. The 183 Articles and 13 Schedules that make up the Federal Constitution embody many features appropriate to maintaining strong central government while maintaining safeguards for a democratic and plural society.

Articles 4(1) and 162(6) affirm the supremacy of the basic law over all pre- and post-independence laws. The superior courts are empowered to nullify legislative and executive actions that violate the Constitution. Since 1957, there have been judicial reviews of government action, even though this safeguard is mitigated by wide-ranging powers given to Parliament in order to combat subversion and emergencies.

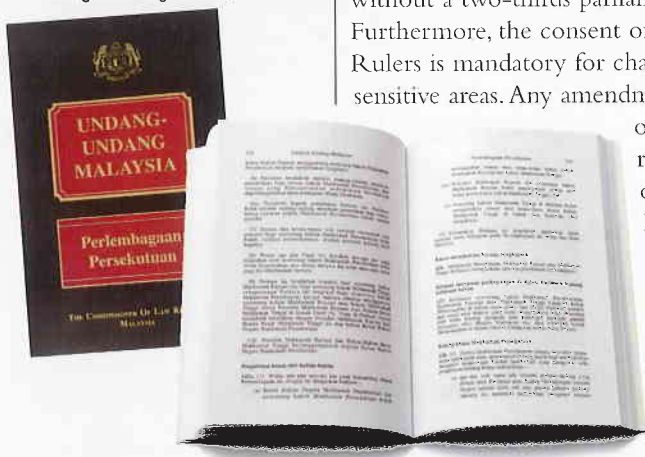
## Constitutional integrity

There are provisions in Malaysia's Constitution which are entrenched and cannot be repealed without a two-thirds parliamentary majority. Furthermore, the consent of the Conference of Rulers is mandatory for changes in 10 politically sensitive areas. Any amendments to the rights

of Sabah and Sarawak require the agreement of the Yang di-Pertua Negeri of those states.

From Malaya's Independence to date, there have been 44 constitutional amendments, including the transformation of Malaya into Malaysia in 1963.

The Federal Constitution came into being on 31 August 1957.



## Main features of the Federal Constitution

### System of government

A Federal Government and 13 state governments possess federal legislative, executive, judicial and financial powers. Federal and state legislative assemblies are elected. The Federal Parliament comprises two chambers: the Dewan Rakyat (House of Representatives) and the Dewan Negara (Senate) (see 'The federal legislature'). State Assemblies have only one chamber. The political executive is part of the legislature and can be removed by elected representatives on a vote of no-confidence.



Parliament House in Kuala Lumpur was built in 1963.

### Special privileges of the Bumiputera

Article 153 prescribes policies for preserving the privileges of Malays and the indigenous peoples of Sabah and Sarawak, collectively known as Bumiputera (natives). A number of features indigenous to the Malay Archipelago are incorporated. Among them are the sovereignty of the Malay Sultanates, the status of Islam as the religion of the federation, Malay privileges, reservation land, Malay as the official language and special protection for Malay customary laws. However, the Constitution also provides special rights and protection for the other communities within Malaysia, such as citizenship rights and the freedom to practise any religion, learn native languages, observe cultural practices, establish vernacular schools and participate in business and other economic activities.



Poster promoting the use of the Malay language.

### The judiciary

The Constitution addresses such matters as the status of the courts and the appointment of judges. The judiciary enjoys many constitutional safeguards, in matters of appointment and dismissal. The terms and conditions of a judge's service cannot be altered to his or her detriment. Courts have the power to punish for contempt. Judges also enjoy absolute immunity in respect of their judicial actions.



Sultan Salahuddin Abdul Aziz Shah court complex, Shah Alam, Selangor.



**The constitutional status of Islam**

The Constitution states that Islam is the religion of the federation but other religions may be practised in peace and harmony. Related provisions are also included in the Constitution which allow the promotion of Islamic education, the setting up of Islamic religious and economic institutions, and the establishment of *syariah* (Islamic law) courts administering Islamic religious laws binding on all Muslims.

In some areas, the life of Muslims is regulated by Malay *adat* (custom). Criminal law is entirely secular and applies to the whole community, determined by provisions enacted by the elected Federal legislatures. Non-Muslims are subject only to secular law.

LEFT: Masjid Negara, the National Mosque, was built in 1965, the brainchild of Prime Minister Tunku Abdul Rahman Putra.



RIGHT: Muslim prayers are often recited at official functions attended by both Muslims and non-Muslims.

**Constitutional monarchy**

Except in a narrow area permitted by the Constitution, the Yang di-Pertuan Agong is required to act in accordance with the advice of the Prime Minister (see 'Constitutional monarchy'). The Conference of Rulers elects one of the Rulers as Yang di-

Pertuan Agong (Paramount Ruler or King).



The first Yang di-Pertuan Agong, Tuanku Abdul Rahman ibni Tuanku Muhammad, who reigned from 31 August 1957 to 1 April 1960.

**Constitutional definition of a Malay**

Before Independence, Malays were readily identified according to their birthplace and ethnicity. The framers of the Constitution, however, had to adopt a definition that distinguished the term 'Malay' from people of Malay stock from other countries.

According to Article 160 of the Federal Constitution, a Malay is defined as a person who professes the Muslim religion, habitually speaks Malay, conforms to Malay custom, and was either born in the Federation before Merdeka Day, or born of parents, one of whom was born in the Federation, or was on Merdeka Day domiciled in the Federation. Offspring of such a person also qualify. For the purposes of the Constitution, a person does not need to be of Malay ethnic origin to be a 'Malay'. Conversely, an ethnic Malay who does not profess the Islamic faith, for example, may be considered a 'non-Malay'.

**Elections**

The Constitution provides for periodic elections, universal adult suffrage run by an independent Election Commission. Each parliamentary constituency returns one MP to the Dewan Rakyat, although rural constituencies may have smaller populations than urban constituencies.



Election clerks counting ballot papers at a vote-counting centre in Kuala Lumpur during the 1964 general election.

**Constitutional guarantees**

Articles 5 to 13 of the Constitution establish a number of 'fundamental' rights such as personal liberty; abolition of slavery and forced labour; protection against retrospective criminal laws and repeated trials; equality before the law; freedom of movement; right to free speech, assembly and association; freedom of religion; rights in respect of education; and rights to property. These rights fall into two broad categories. Some, such as the right to property, are protected against Parliament's legislative power. Others, such as freedom of speech, are shielded only against executive arbitrariness. However, Parliament has the power to impose restrictions on a number of grounds. Thus, personal liberty can be restricted 'in accordance with law'.

The Internal Security Act provides for 'preventive detention': any person deemed a threat to national peace and security may be detained indefinitely by order of the Minister of Internal Security. Freedom of speech is circumscribed by laws such as the Sedition Act, the Printing Presses and Publications Act and the Official Secrets Act (see 'National security'). Thus, 'fundamental liberties' are granted insofar as they do not pose a threat to the nation's peace and security.



**Anti-subversion powers**

When the Constitution was drafted, the threat of communism in the region was very real. The Constitution, through Articles 149-151, armed Parliament and the executive with overriding powers to combat subversion and emergency. These special powers are still in force today and have been employed extensively to control perceived threats to public order and national security. The nationwide emergencies declared in 1964 and 1969 have never been officially revoked.

The 1948-60 Emergency: a communist surrenders.

**Civil service and armed forces**

The Constitution provides for a number of public services together with mechanisms of control (see 'Institutions of state and national security'). Civil servants are required to keep out of politics and their terms are unaffected by the rise and fall of governments. They enjoy safeguards against arbitrary dismissal or reduction in rank. The armed forces are under civilian control.



Minister of Defence Dato' Sri Mohd Najib Tun Abdul Razak (now also Deputy Prime Minister) addresses troops during armed forces exercises in Pasir Putih, Kelantan, in October 2002.