

The History and the Pillars of the Federal Constitution

by Surendra Ananth

Introduction

A written Constitution represents the most important document in any country. It reflects the struggle and aspirations of the founding fathers of a nation. It also guarantees the freedom of individuals and contains the principles on which a country is governed.

The Malaysian Federal Constitution is a document that reflects the compromises made by the various races in Malaysia. It is founded on the notion of equality. In interpreting this document, due regard must be given to its legislative history and the intentions of the framer of the Federal Constitution¹.

This article seeks to set out a brief and summarised history of the Federal Constitution. The aim of this writing is to flash out the core principles on which the Federal Constitution was founded on, and how such principles are now being mutated for political and individual gain. It should be noted at this point that Joseph M Fernando's monograph entitled "The Making of the Malayan Constitution" is the only scholarly work that elucidates, in detail, the legislative history of the Federal Constitution. The author's work on explaining how the Alliance party contributed to the drafting of the Federal Constitution is invaluable and unfortunately underrated. The factual history in this article is largely based on the information available in the said monograph, and as such credit must be given to Joseph M Fernando for a big part of this article.

Formation of the Federation of Malaya

In the early 1940s, during the Japanese conquest, the territories of Malaya were divided into three main regions. The Straits Settlements consisted of Penang Island, Province Wellesley, Malacca, Singapore, Labuan, the Cocos Islands and Christmas Island. The Federated Malay States ("FMS") consisted of Negeri Sembilan, Pahang, Perak and Selangor. The Unfederated Malay States ("UFMS") consisted of Johore, Kedah, Kelantan, Terengganu and Perlis.



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In 1946, after the Japanese occupation was over, Malaya was under British military administration. Malaya was moulded into a crown colony known as the Malayan Union, consisting of FMS, UFMS and the Strait Settlements with the exception of Singapore. The idea at that material time was to prepare the colony for independence. However the intended arrangement would, if implemented, weaken the sovereignty of the Malay rulers and establish equality between the Malays and non-Malays. The Malayan Union constitution never got under way and was replaced in 1948 by the Federation of Malaya Agreement ("FMA").

The FMA was the first Malayan national constitution, which ultimately established the Federation of Malaya (the "Federation"). The FMA established the position of the High Commissioner, who was effectively the head of the state². The FMA provided a framework for the various bodies such as, amongst others, the Council of Rulers, the Executive Council, the Federal Legislative Council (the "Council") and the Judiciary³.

¹ *Teoh Eng Huat v Kadhi, Pasir Mas & Anor* [1990] 2 MLJ 300 (SC), pp. 301–302; *Merdeka University Berhad v Government of Malaysia* [1982] 2 MLJ 243 (FC), pp. 247–249

² The Federal of Malaya Agreement, Federal Treaty of 21 January 1948, Part II

³ *Ibid*, Parts III, IV, VI and VII

The first election to the Council was held in July 1955. The Alliance, consisting of the United Malay National Organisation ("UMNO"), the Malayan Chinese Association ("MCA") and the Malayan Indian Congress ("MIC"), won 51 of the 52 seats contested⁴. Tunku Abdul Rahman, the then-President of UMNO and the Alliance, became the Chief Minister of the Government.

Establishment of the Reid Commission

Following the elections, the desire for political independence and complete sovereignty grew stronger⁵. In August 1955, the United Kingdom ("UK"), the Rulers and the Alliance Government agreed to hold a conference in London to discuss plans for an establishment of a federal constitution⁶. A conference was held in January 1956 in London and attended by representatives of the Rulers, the Chief Minister of the Federation with three other ministers, and the High Commissioner with his advisers⁷. The Conference agreed that, amongst others, a full self-government and independence within the Federation should be proclaimed by August 1957 and that a Commonwealth Constitutional Commission should be appointed to make recommendations for a Constitution for the Federation (the "Reid Commission")⁸. The Reid Commission was headed by Lord Reid (British judge), Sir Ivor Jennings (Master of Trinity Hall, Cambridge), Sir William McKell (former Governor General of Australia), Mr B Malik (former Chief Justice of the Allahabad High Court) and Justice Abdul Hamid (West Pakistan High Court)⁹.

The terms of reference of the Reid Commission were, essentially, to make recommendations for a federal constitution with the following features¹⁰:

1. Westminster style of parliamentary democracy;
2. A bicameral legislature;
3. A strong central government;
4. Safeguards for the position of the Rulers;
5. Common nationality for the whole of the Federation; and
6. Safeguards for the special position of the Malays and the legitimate interests of other communities.

The Reid Commission held public and private hearings between June and October 1956¹¹. At this point, it is important to point out the positions taken by the Alliance and the discussions pertaining to the same.

Positions Taken by the Alliance

The Alliance had submitted a joint memorandum to the Reid Commission on 25 Sept 1956. This memorandum represents the compromises between the three major races in the Federation and was a product of negotiations between a core group of leaders from the various Alliance parties¹². The following are the important positions which the Alliance took¹³:

1. Special position of Malays — The Alliance recognised that

all nationals should be accorded equal rights, privileges and opportunities and there must not be discrimination on grounds of race or creed...

In noting that the Malays are the original sons of the soil, the Alliance took the position that,

"The Constitution should, therefore, provide that the Yang di-Pertuan Besar should have the special responsibility of safeguarding the special position of the Malays".

However, the important caveat for this provision was that

"the Constitution should also provide that any exercise of such powers should not in any way infringe the legitimate interests of the other communities or adversely affect or diminish the rights and opportunities at present enjoyed by them".

On 27 Sept 1956, Tunku Abdul Rahman orally conveyed to the Reid Commission that a review of the Malay special position should be conducted after 15 years.

2. Separation of powers — The Alliance viewed the judiciary as a check and balance to the powers of the executive and legislature. As the memorandum noted,

"The Supreme Court should be vested with powers to decide whether or not the actions of both the Federal Executives and Legislatures are in accordance with the Constitution".

⁴ Shad Saleem Faruqi, Document of Destiny: The Constitution of the Federation of Malaysia (Star Publications, 2008), p. 5 ("Faruqi")

⁵ Ibid

⁶ Report of the Federation of Malaya Constitutional Commission 1957, London, Colonial No. 330, p. 4 ("Reid Commission Report")

⁷ Ibid

⁸ Ibid

⁹ Ibid, pp. 4–5

¹⁰ Ibid, p. 5

¹¹ Ibid, pp. 6–7

¹² Joseph M Fernando, The Making of the Malayan Constitution (MBRAS, 2002), p. 65 ("Fernando")

¹³ Ibid, Chapter 3

3. Fundamental liberties – The memorandum listed 14 wide-ranging fundamental right based on the Indian Constitution.
4. Citizenship – There was much debate and disagreement on the issue of citizenship. The Alliance agreed on the jus soli principle and an eight-year period of residency for those who would become citizens by operation of law.
5. Language – After much debate, it was agreed that Malay would be the national language and that Chinese and Tamil can be used for unofficial purposes.

As Fernando puts it:

“The end product reflected a microcosm of the conflicting interests inherent in Malaya’s plural society; almost half of the memorandum dealt with communally related issues. It was also reflective of the social and political conditions at the time and the desire of the leaders for national unity and political stability as Malaya moved towards nationhood. The Alliance leaders were not working in a political vacuum; the prevailing political tensions and pressures had an important influence on their decisions. The Emergency, the communal clashes after World War II and the communal tensions which followed the introduction of the Malayan Union scheme and the implementation of the 1948 Federation of Malaya Agreement had an important impact on the thinking of the Alliance leaders”¹⁴.

The Reid Commission Report and the Aftermath

The Reid Commission made its recommendations on 21 Feb 1957 (with a draft Constitution). It is pertinent to note that the Alliance memorandum served as an important basis for the Commission’s first draft of the Constitution¹⁵. However, there was dissatisfaction with some of the recommendations¹⁶.

1. Citizenship – Malay organisations felt that citizenship by registration or naturalisation should be discretionary. People not born in the country should not have an automatic right to be citizens. The Chinese groups were unhappy that the principle of jus soli for citizenship was not made retrospective. The principle of dual citizenship was criticised.
2. Malay privileges – The Reid Commission recommended that Malay privileges would continue for 15 years, where after that it would be reviewed, and then either continued, reduced or discontinued.

This position was close to that taken by the Alliance as stated above, except insofar that the Reid Commission provided that the quotas could only be reduced and not increased. This proposal created uproar among the Malays. UMNO, through its General Assembly, decided that there should be no time limit for the privileges. Some Chinese groups criticised the concept as it would create two grades of citizenship.

3. Malay land reservation – The recommendations placed restrictions on the creation of new reservations and made it compulsory that an equivalent amount of land was set aside for non-Malays. UMNO wanted more versatility in creating more Malay reserve lands and also an extension of the same to Penang and Malacca.
4. Official religion – UMNO was dissatisfied that no official religion was prescribed. The Reid Commission decided that religion should be left as a State matter, as per the Rulers request. UMNO objected to this recommendation.

The Tripartite Working Party

As a result of the dissatisfaction stated above, a tripartite Working Party (the **“Working Committee”**) was appointed to examine the Reid Commission’s report. The Working Committee comprised four members of the colonial government (High Commissioner MacGillivray as Chairman, the Chief Secretary Sir David Watherston, the Attorney General T V A Brodie and the Secretary, E O Laird), four representatives of the Malay Rulers (Keeper of the Rulers’ Seal Haji Mustapha Albakri Haji Hassan, Shamsuddin Nain, Tunku Ismail and Neil Lawson, QC), and four representatives of the Alliance (Chief Minister Tunku Abdul Rahman, Dato Abdul Razak, Ong Yoke Lin and V T Sambanthan)¹⁷.

The Working Committee held 23 meetings between 22 Feb and 27 Apr 1957¹⁸. It is important to note that the Alliance and the Malay Rulers were very much involved in the drafting of the Constitution at this stage (the Alliance also played a major role in the first draft by the Reid Commission). Ultimately, the Working Committee’s report made significant changes to the Reid Commission’s report¹⁹.

1. The 15-year limit for Malay privileges was removed. Malay privileges were made an integral part of the Constitution, but clear provisions were added so that the existing rights of the non-Malays will not be

¹⁴ Ibid, pp. 64–65

¹⁵ Ibid, p. 68

¹⁶ Ibid, pp. 144–149; Faruqi, supra n4, pp. 7–8

¹⁷ Faruqi, supra n4, p. 8

¹⁸ Constitutional Proposals for the Federation of Malaya, June 1957, London, Cmnd. 210, p. 3

¹⁹ Faruqi, supra n4, pp. 8–10

extinguished. It is important to note that the Malay Rulers took the position that they preferred to stick with the Reid Commission's proposal of a 15-year periodic review, as a removal of the same would render the guarantee of equality under Article 8 illusory. Ultimately, the position of the Alliance was adopted.

2. Islam was prescribed as the religion of the Federation. However, other communities were guaranteed the full freedom to practise their own faiths. This will be discussed further below.
3. The role of the Conference of Rulers was enhanced.
4. The permission to use Tamil and Chinese in the legislatures was replaced with the provision that these languages could be used for non-official purposes.
5. The provision on citizenship by registration was re-worded to confer some discretion on the Government to grant the same.
6. Persons with double nationality were to be given a period of one year to decide which nationality to choose.

The London Conference

Some issues still remained unresolved after the Working Committee submitted its proposal. The issue on dual citizenship was resolved by an agreement that those holding two citizenships would be able to continue doing so but must choose one or the other within one year. In regards to Malay reserve land for Penang and Malacca, it was proposed that the Governments of these States may set up trusts to buy land for the settlement of Malays²⁰.

The Federal Constitution and its Founding Principles

At the stroke of midnight on 31 Aug 1957, the Federal Constitution was established upon the declaration of independence. As it stood in 1957, the Federal Constitution provided for, and was founded upon, amongst others, the following core principles:

1. Supremacy of the Constitution as guaranteed under Article 4 of the same. No body or organ is above the Constitution. As Tun Suffian, Lord President had observed in **Ah Tian v Government of Malaysia [1976] 2 MLJ 112**, at p. 113:

"The doctrine of the supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of state legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please."

2. The doctrine of separation of powers was pivotal to provide an effective check and balance system. There was no doubt on the applicability of this doctrine back then. As Suffian, Lord President pithily observed in **Merdeka University Berhad v Government of Malaysia [1982] 2 MLJ 243**, at p. 252:

"The fact that the Federal and High Courts are excluded from the definition of public authority does not affect the question before us. It is due to the need to maintain judicial independence, and to make clear that these courts are not part of the Executive."

3. That although Islam is the official religion, the public sphere of the nation would be secular in nature. The Reid Commission took pains to clarify that:

"This will in no way affected the present position of the Federation as a secular State, and every person will have the right to profess and practise his own religion and the right to propagate such religion, though this last right is subject to any restrictions imposed by State law relating to the propagation of any religious doctrine among persons professing the Muslim religion"

This position was further maintained in the Working Committee's report. It is important to reiterate here that, the Alliance and the Rulers played a substantial role in the outcome of this report, which clearly states:

"There has been included in the proposed Federal Constitution a declaration that Islam is the religion of the Federation. This will in no way affect the present position of the Federation as a secular State, and every person will have the right to profess and practice his own religion and the right to propagate his religion, though this last right is subject to any restrictions imposed by State law relating to the propagation of any religious doctrine or belief among persons professing the Muslim religion."

The Constitution in itself guaranteed that other religions "may be practised in peace and harmony in any part of the Federation". The fact that Islam is the official religion of the Federation cannot be applied or interpreted in such a way as to deprive the rights of other communities. Article 3(4), a much forgotten sub-article, provides:

"Nothing in this Article derogates from any other provisions of this Constitution"

²⁰ Ibid, p. 10

4. A guarantee of non-discrimination on grounds of, amongst others, religion, race or descent as provided for under Article 8 of the Constitution. As Fernando observed, "... Article 8, which firmly entrenched the principle of equality in the Constitution"²¹. The Malay privileges were eventually codified under Article 153 of the Constitution. However, the same article provided for safeguards against discrimination, where it would not affect any existing holder of any public office or scholarship, etc; and would not allow discrimination on the grounds of race among Federal employees (in promotions, etc.) once they had joined the public service. Further, Article 136 of the Constitution provides:

"All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially"

That Article 153 was not to be applied in such a manner as to deprive the rights of other communities was clarified by the Working Committee, where it stated:

"He (Yang di-Pertuan Agong) will be required to exercise his functions under the Constitution and federal law in such a manner as may be necessary to safeguard the special position of the Malays and to ensure the reservation for Malays of such quotas as he may deem reasonable; and he will be entitled to give general directions to the appropriate authorities for the purpose of ensuring the reservation of these quotas. In the exercise of these functions, the Yang di-Pertuan Agong will be required to safeguard also the legitimate interests of other communities."

Further, although the 15-year periodic review of the Malay privileges was removed, the Working Committee made it clear that the Yang di-Pertuan Agong should, however, cause a review of the same from time to time.

"The Commission recommended that their proposal for continuing the present preferences should be reviewed after 15 years. This recommendation was given careful consideration but it was not considered necessary to include such a provision in the Constitution. It was considered preferable that, in the interests of the country as a whole, as well as of the Malays themselves, the Yang di-Pertuan Agong should cause a review of the revised proposals to be made from time to time."

I have singled out the above features of the Federal Constitution as I believe that they are very much now under threat.

The Formation of Malaysia

On 27 May 1961, Tunku Abdul Rahman, the then-Prime Minister of the Federation, suggested the formation of Malaysia, a Federation comprising his country, Singapore, Sarawak, Brunei and North Borneo (Sabah). Brunei initially showed interest to join but eventually decided to back out at the closing stages.

In April 1962, a joint British-Malayan commission known as the Cobold Commission was formed and reported that the people of the Borneo States wished to join Malaya. It is pertinent to point that the Report of the Cobold Commission reiterated the position that Malaya was to be effectively a secular state.

"Taking these points fully into consideration, we are agreed that Islam should be the national religion for the Federation. We are satisfied that the proposal in no way jeopardizes freedom of religion in the Federation, which in effect would be secular"

Ultimately, on 16 Sept 1963, the Federation was transformed into the Federation of Malaysia, consisting of the existing States with the addition of Sabah, Sarawak and Singapore. However, Singapore was expelled from Malaysia in 1965 via the Constitution and the Malaysia (Singapore Amendment) Act 1965.

Constitutional Issues

The following misunderstandings or concepts require clarification.

1. Quasi-autochthonous²² — As made clear above, the Alliance had the biggest impact on the shape of the Federal Constitution. As Fernando puts it:

"The final form of the Constitution largely reflected the Alliance's ideas, ideals and compromises. As the leading nationalist movement and the heir-apparent, the Alliance was able to turn the constitutional deliberations in its favour. The other principal parties in the negotiations, the Rulers and the British government, had to be content with a subsidiary but not insignificant role. From the preceding examinations it would not be unreasonable to suggest that if a Malaysian commission had been delegated the task of drafting the Constitution, the basic structure and elements of the new constitution would not have been very different from the document prepared by the Reid Commission."

²¹ Fernando, supra n12, p. 133

²² Fernando, supra n12, p. 212

As such, any view that the Federal Constitution was a foreign product or that it did not take into account the local circumstances is, with respect, erroneous. Understood in this context, it is the respectful view of this author that the observation of Suffian, LP in **Phang Chin Hock v Public Prosecutor [1980] 1 MLJ 70** where His Lordship said, “*When the British finally surrendered legal and political control, Malaya had a ready-made Constitution and there was no occasion for Malaysians to get together to draw up a Constitution*”²³, was not entirely accurate. The Malaysians, through their leaders in the Alliance, played a major part in the drafting of the Federal Constitution.

2. Malay supremacy or “ketuanan melayu” — This concept does not exist and is constitutionally perverse. It came about in the 1980s as a larger political agenda. Even after the UMNO General Assembly had passed a resolution on 28 Mar 1957 to remove the time limit for Malay special privileges, the then-UMNO leaders consistently took the position that such provisions would not infringe the rights and interests of the non-Malays.²⁴
3. Islamic State — From the outset, there is no such thing as an Islamic State. The Quran does not prescribe rules for a system of governance, or for any benchmark to determine if a State is “Islamic”. Any attempt to coercively enforce Shariah laws, is in itself, repudiatory of Islamic principles.²⁵ In any event, the term “Islam” in Article 3(1) of the Federal Constitution is confined to personal law²⁶. Any interpretation to give the term a wider meaning would run foul with Article 3(4) of the Federal Constitution. The same requires that Article 3(1) be subject and pay homage to other provisions in the Federal Constitution, and not that other provisions should be read subject to Article 3(1).
4. Freedom of religion — Though Islam was made religion of the Federation, the Reid Commission, Working Committee and the Cobold Commission emphasised that all citizens would still “*have the right to profess and practise his own religion*”. This is guaranteed under Article 11(1) of the Federal Constitution and equally applies to Muslims. It is only the right to propagate one’s religion that can be limited under Article 11(4) of the same. To deprive Muslims of their freedom of religion is a clear violation of Articles 11(1) and 8(2) of the Federal Constitution. Any Islamic law that is passed under Item 1 of the State list must be read subject to Article 11(1). This is required under Article 74(3). It is this author’s respectful view that the Federal Court in

Lina Joy Iwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain [2007] 4 MLJ 585 (“Lina Joy”) had fell into error when Ahmad Fairuz, CJ said at p. 612:

“Kebebasan beragama di bawah Perkara 11 Perlembagaan memerlukan perayu mematuhi amalan-amalan atau undang-undang agama Islam khususnya mengenai keluar dari agama itu. Apabila ketentuan-ketentuan agama Islam dipatuhi dan pihak berkuasa agama Islam memperakukan kemurtadannya barulah perayu dapat menganuti agama Kristian. Dengan lain perkataan seseorang tidak boleh sesuka hatinya keluar dan masuk agama. Apabila ia menganuti sesuatu agama, akal budi (common sense) sendiri memerlukan dia mematuhi amalan-amalan dan undang-undang dalam agama itu.”

The Federal Court had effectively amended the Federal Constitution to the effect of limiting Article 11(1) in a way that the said right is only available to non-Muslims. No system of law permits the judiciary to use “common sense” to amend a written constitution. The decision of the High Court of Sarawak in the case *Roneey Anak Rebit* in allowing the removal of the word “Islam” from the Applicant’s identity card was spot on. The Syariah Court only has jurisdiction over persons “professing the religion of Islam”, and not Muslims per se. The word “profess” is pivotal. It requires an active act to “*affirm, or declare one’s faith in or allegiance to (a religion, principle, God or Saint etc.)*”²⁷.

There is a further dimension to the discussion. One can also argue that the Federal Court in **Lina Joy** never said that the freedom of religion is inapplicable to Muslims. All the court did was lay down a narrower principle that Muslims who wish to renounce their faith must do so in accordance with the principles of Islamic law, and that this is a matter that only the syariah courts can determine. Therefore, if the syariah court factually determines that a person no longer professes the religion of Islam, it would be immediately deprived of further jurisdiction over the said person. This jurisdictional threshold was recognised by the Court of Appeal in **Kamariah Bte Ali dan Lain-Lain v Kerajaan Negeri Kelantan, Malaysia dan Satu Lagi [2002] 3 MLJ 657**, where, at p. 669, Abdul Hamid Mohamad, JCA (as he then was), said:

“Kesimpulannya, jika mahkamah ini perlu memutuskan persoalan sama ada Mahkamah Syariah mempunyai bidangkuasa memutuskan persoalan murtad, pada pandangan saya, Mahkamah Syariah mempunyai bidangkuasa

²³ At p. 73 of decision

²⁴ Fernando, supra n12, pp. 154–156

²⁵ For a detailed discussion on this proposition, see Abdullah Ahmed An-Naim, *Islam and the Secular State: Negotiating the Future of Shariah* (Harvard University Press, 2008)

²⁶ *Che Omar Bin Che Soh v Public Prosecutor* [1988] 2 MLJ 55 (SC), p. 56

²⁷ *Re Mohamed Said Nabi, Decd* [1965] 1 MLJ 121 (OCJ), p. 122

berbuat demikian. Jika tidak bagaimana mahkamah itu hendak membicarakan kes-kesnya? Bidangkuasanya terhad kepada orang Islam. Adakah setiap kali persoalan itu berbangkit di Mahkamah Syariah, ia perlu diputuskan oleh Mahkamah Sivil terlebih dahulu sebelum Mahkamah Syariah boleh meneruskan perbicaraannya? Ini amat tidak munasabah.”

In essence, if a syariah court determines that a person no longer professes the religion of Islam, it cannot go further to try that person for apostasy. An apostate, by definition, is someone who no longer professes the religion. The syariah court would be deprived of jurisdiction the moment it makes a factual determination that a person no longer professes the religion of Islam. Therefore, criminalising apostasy would be inconsistent with Article 11(1) of the Federal Constitution, even as interpreted in *Lina Joy*.

5. Judicial review — The original Article 4 as drafted by the Reid Commission had a sub-article providing citizens with the redress of judicial review. The Alliance and the Rulers had agreed to the provision with the elements of judicial review (with reservations on the phrase “natural justice”). This was removed during the London Conference. Lord Reid and Sir Ivor Jennings expressed deep displeasure on the amendment.²⁸ However, the power of judicial review is an inherent feature of the principles of separation of powers. Such power stems from the inherent jurisdiction of the courts²⁹. As Salleh Abas, LP pithily observed in **Lim Kit Siang v Dato Seri Dr Mahathir Mohamad [1987] 1 MLJ 383** at pp. 386–387:

“When we speak of government it must be remembered that this comprises three branches, namely, the legislature, the executive and the judiciary. The courts have a constitutional function to perform and they are the guardian of the Constitution within the terms and structure of the Constitution itself; they not only have the power of construction and interpretation of legislation but also the power of judicial review — a concept that pumps through the arteries of every constitutional adjudication and which does not imply the superiority of judges over legislators but of the Constitution over both. The courts are the final arbiter between the individual and the State and between individuals inter se, and in performing their constitutional role they must of necessity and strictly in accordance with the Constitution and

the law be the ultimate bulwark against unconstitutional legislation or excesses in administrative action. If that role of the judiciary is appreciated then it will be seen that the courts have a duty to perform in accordance with the oath taken by judges to uphold the Constitution and act within the provisions of and in accordance with the law.”

This author respectfully disagrees with the latest apex court decisions which state that the inherent power of the courts can be taken away by express provision of the law³⁰. Such a position is untenable as it cripples the very essence of the role of the judiciary and consequently the doctrine of separation of powers. Essentially, these decisions put the courts at the mercy of the legislature.

Conclusion

The various compromises between the Alliance parties in its memorandum to the Reid Commission were made in deference to a wider goal of inter-communal co-operation and national unity³¹. It was always the position of the founders of our country that we are to develop together as a nation. Unfortunately, the frequent usage of racial politics insults the aspirations of our founding fathers. The insidious threat of “Islamisation” is now growing stronger. As Tunku Abdul Rahman once said :

“After all these years of trying to build a genuine multiracial and multireligious Malaysia, we are now confronted with a new danger – Islamic fundamentalism ... they are now raising all kinds of ideas to Islamise the country, and this is not good. Malaysia cannot practise Islam fully because half of the population is not Muslim. They have a different culture and different ways of life, and they don't want Islam ... In the past, and I know this since I have been through all this since Independence, Malays, Chinese and Indians had no problems because we stuck to our constitutional bargain and we don't want to impose our values on other people. Today, even the party that I led for so long has done a lot of new things about Islam and want to Islamise the party.”

The Federal Constitution says what it says. Regardless of our religious beliefs, the supreme Constitution comes first. The Federal Constitution was founded on a secular notion where religion would only play a limited role. We have now come to the point where religion is used to control every aspect of a citizen's life, including their freedom of thought. It is the solemn duty of all citizens to protect the Federal Constitution, and that, we must do, more so ever now, when this sacred document is being trampled on.

²⁸ Fernando, supra n12, pp. 178--179

²⁹ Lai Cheng Cheong v Sowaratnam [1983] 2 MLJ 113 (FC), p. 116

³⁰ Kerajaan Malaysia v Nasharuddin Nasir [2004] 1 CLJ 81, p. 95; Halaman Perdana Sdn Bhd & Ors v Tasik Bayangan Sdn Bhd [2014] 4 MLJ 1, p. 8; Dato' See Teow Chuan & Ors v Ooi Woon Chee & Ors [2013] 4 MLJ 351, p. 360

³¹ Fernando, supra n12, p. 216

³² Ibid, p. 218