SECTION D: MALAYA

Jennings records in his notes that the future Malayan Prime Minister, Tunku Abdul Rahman, a contemporary of his from St Catharine's College, Cambridge, asked him informally (and later formally through the Colonial Secretary) in February 1956 whether he would join the Malayan Constitutional Commission. The five-member Commission, drawn from the Commonwealth, was headed by Lord Reid and became known as the Reid Commission. The Commission was formally tasked by the Queen and the Malayan Rulers to recommend a constitution for an independent Malaya, following agreements in London in early 1956 between representatives of the British Government, the Malayan Rulers, and local political parties. The independent Federation of Malaya came into being on 31 August 1957. The Reid Report was published as *Report of the Federation of Malaya Constitutional Commission 1957*, Cmnd 330 (London, 1957).

1. The 'Malayan Saga': diary from the Reid Commission, 1956–1957

Thursday, 21st June 1956, Kuala Lumpur

Lord Reid[1] left England by sea on the 9th May, or thereabouts, and arrived in K.L.[2] on the 31st May. He was accompanied by Lady Reid, who refuses to travel by air and who is therefore going to be something of a nuisance. Hall,[3] the Secretary, came out by air in time to meet Lord Reid – he refused a pressing invitation to go in the same ship. Len[4] and I left on the 12th June and arrived on the 14th. Sheikh Abdul Hamid[5] had left Karachi a couple of days earlier, was

[1]William Reid, Baron Reid. British Lord of Appeal in Ordinary and former Solicitor-General of Scotland.

[2]Kuala Lumpur.

[3]H.P. Hall, Secretary to the Commission.

[4]Helena, Lady Jennings (his wife).

[5]Justice Abdul Hamid was a Pakistani judge who had also been Secretary to the Law Ministry of West Pakistan; a member of the Commission.

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in Singapore on the 14th, and came to K.L. on the 15th. Sir William McKell[6] reached Singapore on the 16th and K.L. on the 18th. Our Indian colleague was not appointed until the 19th + has not yet arrived.

Lord and Lady Reid refused to stay in a chalet, like the rest of us, but insisted on having a house. It was not ready for them when they arrived, and they were invited to stay at King's House, which they refused to do, perhaps rather brusquely. The rest of us are housed – with Keith Henderson, the Assistant Secretary from the M.C.S.[7] and Mrs Stephenson, the stenographer, in very comfortable chalets in Lake View Road. We are well fed at a mess in another chalet. Lord Reid's theory is that he can entertain better in a house, and no doubt it is correct; but it does mean that the rest of us see a great deal of each other and very little of Lord Reid. He was eventually given a furnished house temporarily and is moving in today. He has seen each of us individually at coffee or tea, and we have had meetings on three mornings this week. We have also seen H.E. (MacGillivray[8]) individually, while Hamid and I called upon the Tunku[9] for tea (and drinks).

Kuala Lumpur, Monday 25th June 1956

Our Indian colleague, Mallick or Malik[10] (I have not seen the name in print) is due to arrive on the 29th, + we leave for Johor Bahru on the 2nd of July. Lord (or Lady) Reid had arranged to go to Johor by train "to see the country". I at once spoke up and said that train journeys bored me and that I preferred to travel by air. The result is that all of us (except McKell who is going by car and Lord and Lady Reid) are going to Singapore by air + will go to Johor Bahru by car on the 3rd. I think most of us are spending the night of the 5th in Singapore + returning by air on the 6th; while Lord + Lady Reid will return by the night train.

[6]Sir William McKell came from Australia, where he had been the Labor Premier of New South Wales and Governor-General, 1947–1953; a member of the Commission.

[7]Malayan Civil Service.

[8]Sir Donald MacGillivray, the last British High Commissioner in Malaya. The office of High Commissioner was the highest British position in the Colonial Administration of Malaya.

[9]Tunku Abdul Rahman, United Malays National Organisation politician; Chief Minister of the Malayan Federation from 1955; Prime Minister, 1957–1970. He was often referred to as 'the Tunku', which is a Malayan title of nobility.

[10]Justice B. Malik, a member of the Reid Commission, had been Chief Justice of the Allahabad High Court in India.

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There has also been some conflict over the length of our stay here. Lord (or Lady) Reid has decided to stay until the Report is completed, though he is willing to allow any of us to spend a couple of weeks elsewhere – he (or she) is thinking of a visit to Hong Kong. He told Hall that he did not intend to spend the winter in England. Abdul Hamid + I are clear that we must have a library at hand; and anyhow there is at present no justification whatever for Trinity Hall and the R.C. on Common Land[11] being deprived of my services for three months. McKell is not so positive, but thinks we ought to leave Malaya. Lady Reid's anxiety to preserve Lord Reid's health and strength is commendable: but such questions as we are discussing ought to be settled on principle. I have already cancelled my brief for the Nigerian Constitutional Conference, and so I stood to gain nothing personally by going home. Lord Reid is also proving difficult in other directions. So far, we have met almost nobody, because nobody is doing the organisation which O.E.G.[12] undertook for the Soulbury Commission. Accordingly, Hall arranged a cocktail party at the Chief Secretary's on Friday, when we met some senior officials, and had persuaded James to enable us to meet some Chinese next Friday. Lord Reid took exception to the latter because he had not met the Chinese Ministers, and anyhow he objects to cocktail parties. I tried to keep the Friday engagement going, but Lord Reid was adamant, and eventually Hall decided to drop the idea. On the other hand, I said plainly that I liked cocktail parties because we did meet people, and one invitation led to another. What the deuce is the good of our sitting in our chalets reading papers, when the Malayans are all around us? The difficulty, of course, is the shyness of the Malays; but ought this to stop us from meeting Chinese, Indians + Ceylonese? What Lord Reid is doing with his time I do not know, for Hamid and I are doing all the work, while McKell [is] lunching + dining with all the Australians. I suspect that much of the trouble stems from Lady Reid, who is the eminence grise of the Commission. Anyhow Lord Reid invited McKell to tea tonight: presumably he intends to talk him over. Perhaps he forgets that McKell represents Australian Labour [*sic*], and anyhow we Asians have a majority, if only Mallick (or Malik) will play.

The Canadian has dropped out. He wanted to bring a wife and five children. In the [*illegible*], difficulties were raised, especially as he is not so very eminent. He has now withdrawn on "medical grounds", and we have been informed, unofficially, that Canada does not intend to

[11]Jennings was also chairing the Royal Commission on Common Land.
[12]Sir Oliver E. Goonetilleke. See p. 19, n. 2.

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replace him owing to the delay involved. We shall therefore be fully constituted on Friday, when the Indian turns up.

K.L. Friday, 29th June.

What a crafty old man he his! We worked out a programme of visits to the States and Settlements and gave it to the press. We – McKell, Hamid and I – had some suspicion that Reid was trying to spin it out, and we left for later decision whether it should end on Sept. 8th or Sept. 15th. A slight modification of the second visit, to the west coast, proved to be necessary – it had to be Perak, Kedah, Perlis and Penang instead of Perak, Penang, Kedah and Perlis – but this caused no difficulty. This morning Lord Reid said that he had been thinking it over, and perhaps a few days between Perlis and Penang would be helpful. We had some discussion about duties, but made no difficulty about meeting Reid's point, McKell very clearly saying that this would not affect the date on which we finished taking evidence. At lunch today, Hall told us that Reid had lengthened the Perak–Kedah–Perlis trip by two days, and extended from three days to five days the interval between Perlis and Penang, with the consequence that we should almost certainly have no time to take K.L. evidence, which would be much the most important, until after the return from the east coast on Sept. 8th or 15th. In other words he had (without consulting his colleagues) sought to put us in the position of lengthening the taking of evidence perhaps by as much as two weeks!

We discussed the matter at lunch and asked Henderson to hold up action until we met again tomorrow. Since he is due to go to Johor on Sunday (1st July), Henderson was reluctant, but finally decided that he should come with me to see Lord Reid this evening. I had given Lord Reid a note showing my engagements in October, November and December and making it plain that I could not stay in Malaya until Christmas, without referring the matter to the P.M. to decide whether I should resign from the Malayan Commission or from the Common Land Commission. Lord Reid had (after going home + presumably consulting Lady Reid) phoned for me to go out to his house this evening to talk things over "informally".

We spent no less time than two hours on the west coast towns, Lord Reid using all the tricks of the small town lawyer. For instance, at one point he went off on an irrelevancy for 30 minutes, coming back eventually to the point in which I was plainly striking. Eventually I agreed to one extra day in the Perak–Kedah–Perlis tour, an extra night at Maxwell's Hill on the ground that Lord Reid was an old man and could not put up with the bother of both unpacking and packing for one night only! We should, however, leave for Penang on the 1st

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(instead of 31st as decided by the Commission and 5th as decided by Lord Reid). Having lost the point, Lord Reid proceeded to hammer his chair for Henderson's benefit, saying that this must be done and that must be done. Henderson kept his [*illegible*] admirably, but was extremely angry about it nevertheless.

That left 30 minutes for my little business, but anyhow I was on solid ground and refused to give way. He demanded to leave the question open until early August, but it is quite plain that he has no intention of giving way. He intended to stay in Malaya until Christmas, and I would guess – though in this I have no evidence – that he intends to plead exhaustion at the end of it, to ask the Lord Chancellor for leave, and so avoid going back to Europe until the spring.

Only Henderson was in to dinner (the others had gone to the Chinese dinner which Lord Reid had refused to attend and from which accordingly I was excluded so as not to make it a rebellion) and got some amusement out of it. They really are an incredible couple, with a truly magnificent effrontery. They have not only mutually appropriated one of the cars, but are now trying to appropriate Majid, our A.S.P.[13] liaison officer, as their own A.D.C.[14] They are having special notepaper printed – they cannot use office paper like the rest of us – with the coronet of a life peer. Last night we had a buffet dinner at King's House[15] to meet the Rulers. At the end our cars were the last to be drawn up. Lady Reid was fuming, said it was a deliberate insult, and so forth.

All this is extremely petty, but clearly the Reids are on the make. My only concern is to get the job done quickly so as to get on with another job. I find the constant appeal to his age rather distasteful. McKell is at least as old, but he makes no song + dance about it. Malik arrived tonight, but I have not seen him yet. No doubt he was tired after his long journey – he has come right through – and wanted a quick dinner and a long sleep.

K.L. Wednesday, 18th July 1956.

We have done astonishingly little in the last three weeks. We had a useful three days in Johor, when we really did get down to brass tacks. McKell, Len + I stayed with the B.A.,[16] A.S. Sommerville, who was not only a pleasant host but also told us a great deal about the problems of the country. Lady Reid managed to put her foot into it at a dinner on the night of the 3rd. Sitting next to the B.A., she pointed out that the

[13]Assistant superintendent of police.
[14]Aide-de-camp.
[15]The official residence of the British High Commissioner.
[16]British agent.

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card marking her place should have shown "The Lady Reid" and not "Lady Reid". The B.A. was furious; but I consoled him the next day by pointing out that the Tunku Mahkota[17] made the same blunder.

The whole party except Lord + Lady Reid (who returned by train on the night of the 5th) and Henderson (who returned by car the same day) stayed the week-end in Singapore, mostly shopping, though Len + I had lunch with the Commissioner-General (Sir Robert Scott[18]) + C.S. (Goode[19]) dined with Jumabhoy[20] (Minister of Commerce – Hamid + Malik were also present). We saw something of Selangor State Administration on the 9th. On the 10th the whole party went to inspect a rubber estate + had lunch with our host (Campbell). Afterwards we went down the Selangor River by launch + had tea with the D.O.[21] at Kuala Selangor. It was an interesting trip, marred by one incident only. Mrs Stephenson was taking a photograph of us on the launch when Lord + Lady Reid (who had stayed below while we jolly sailor boys were sitting up aloft) came up. Naturally, Mrs S. included Lord + Lady Reid in the next photograph. Lady Reid remarked to Hamid that she objected to being photographed without her permission. Afterwards Lady Reid made the same remark to Mrs S., + told Hall that she thought "the staff" were taking part in too many outings.

Since our return from Johor, Lord + Lady Reid have entertained McKell, Hamid + Malik to lunch or dinner. The idea was, evidently, to talk them into staying in Malaysia, or alternatively moving to India (Bangalore + Ootacamund were discussed). Malik dined on the night of the 12th whereupon Lord Reid raised the question at our meeting on the 13th. He asked me immediately before the meeting whether I would have any objection to the question being discussed. I replied, of course, that I had not: and as a matter of fact I had prepared a list of dates so as to be able to present my case if need be. It is, however, a little distressing to find oneself believing that Lord Reid raised this question without notice because it enabled him to think out his tactics + prevented me from doing so. Anyhow the tactics failed. It was agreed tentatively – Lord Reid refused to take anything like a firm decision – that we should leave by the S.S. Victoria on the 1st October + stay either at Geneva or on the French Riviera. This would enable us to discuss the lines of our report on board ship. We would complete our

[17]The Crown Prince of Johor.
[18]British Commissioner-General of South-East Asia.
[19](Later Sir) William Goode, Chief Secretary of Singapore, 1953–1957; Governor of Singapore, 1957–1959.
[20]J.M. Jumabhoy, Labour Front Singaporean Cabinet Minister.
[21]District officer.

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report and then return to Malaya for the signature. On the latter point McKell supported Lord Reid, though the rest of us thought it a waste of time. Nevertheless, Lord Reid was not defeated. He asked Henderson to ascertain whether accommodation was available on the ship + asked Hall to prepare an estimate of cost + ascertain whether the Federation Government objected to our going outside the sterling area.

What is more, Lord Reid saw Watherston[22] on the 14th, though he did not tell us he was going to do so; nor has he (so far) reported back to us. In point of fact, W. did his best to persuade Lord Reid that there was no need for us to come back. I am told, in fact, that the whole question is being raised in Ex. Co.[23] this evening (this is being written at 4 a.m. on the 18th – "this evening" means the evening of the 17th).

Meanwhile, Lord Reid dropped a bombshell this (17th) morning. He has, without consulting us, informed the C.O.[24] that Hall is inefficient and that for personal reasons he, Lord Reid, finds it impossible to work with him; and accordingly that another secretary must be sent out. The rest of us (we discussed it at lunch) had no evidence of inefficiency, and we were not told what were the personal reasons. Naturally we could not take exception to what had been done: we were not asked for our opinion and anyhow we were faced by a fait accompli. We have not discussed it with Hall, nor has Hall discussed it with any of us; but I stated at lunch that if the C.O. asked for my view – and I would tell Hall that I was ready to be invited – I would say what I could in his favour. Obviously failure to work with a Commission would mar Hall's chances of promotion.

K.L., Friday 3rd August 1956.

We left for Ipoh by train on the 19th July and stayed there until the 22nd – Len and I with A.G. Argent, State Financial Officer. We dined with the B.A. (Ballock) on the 21st – I had stayed with them when he was a comparatively junior officer in Ipoh in 1947. On the 22nd we went by road to Kuala Kangsar, where we inspected the Malay College and had lunch with the Sultan of Perak. Then to Taiping by road where we had tea with the D.O. Then up Maxwell's Hill, when Lord + Lady Reid could be persuaded to get into the land-rover. He had imagined a sort of limousine, and he cannot be persuaded even now that he travelled in a land-rover and not a jeep. To climb 4000 feet in 20 minutes, even in the most comfortable conditions, is no joke. Moreover, there was a fairly steep walk at the Box. In the end Lady

[22](Later Sir) David Watherston, Chief Secretary of Malaya, 1952–1957.
[23]Executive Council.
[24]Colonial Office.

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Reid almost collapsed, and they demanded not to go down to Taiping next day. Malik, who stayed with them, but who created a furore by getting "lost" in his room (Lord Reid did not know he had arrived) also stayed [*sic*]. McKell and Hamid were very uncomfortable in Hugh Dow's + decided not to come back next day. In the end only Len + I, Hall and Mrs Stephenson went down and up next day, while McKell, Hamid + I [*sic*] did the honours for the Commission in Taiping next day. This was an advantage, for we did it better than Lord Reid (who is an inefficient chairman) could have done it.

We moved on to the Alor Setar by road on the 24th. Lady Reid was quite ill, + went straight to bed when she got to the B.A.s at Alor Setar. She stayed in bed until the 26th, when she went down to lunch and dined with the B.A. When the B.A.'s wife went in to introduce the doctor, Lady Reid remarked "I don't want to see any books, please leave the room". She also asked for lemon sole, with the result that the B.A.'s wife had to drive to the cold store and then get her cook back from the Istana,[25] since he had been borrowed by the Sultan of Kedah. We stayed with Hill and his wife + were very comfortable.

At Alor Setar the dispute between Lord Reid + Hall came to a head. Lord Reid was angry over Maxwell's Hill (though he had insisted upon it), but anyhow Hall had been uncooperative generally, + there were times when they bit each other's noses off. Lord Reid consulted each of us separately, + we agreed that Hall had better be replaced. Hall was exceedingly angry + threatened that all four (Hall, Henderson, Majid + Mrs Stephenson) would resign. In the end Hall phoned Watherston (Chief Secretary) + asked permission to go home. Lord Reid let him go, but he turned up in K.L. when we returned. The rest of us discussed the matter afterwards + found that none of us had got on very well with Hall. We are of course a difficult Commission + to meet the needs of five of us, with two wives, is no easy matter. On the other hand, Henderson managed to live with us, though Hall did not. Lord Reid said he was always surly; McKell said he always had "a chip on the shoulder"; my remark was that he thought the Commission would be an excellent body if there were no Commissioners. Possibly he was too senior an officer. As he said himself, if he had been on tour by himself he would always have stayed with the B.A.; going round with us he was simply part of "the staff". He tended to think that, as representative of the C.O., he should give instructions to, or at least guide, us; we actually gave him instructions. Each of us had minor grievances against him, too trivial to be mentioned to anybody until we expressed opinions about Lord Reid's actions, when we told each other. I suppose there is some difference between this commission

[25] Palace.

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and the R.C. on Common Land. We are being paid for the job, though at nothing like professional rates, whereas the R.C.C.L.[26] are giving their services to H.M. and therefore have to be treated with considerable deference by the representatives of H.M.G.[27] With Hall it seemed to be rather more than lack of deference. Henderson said that we all expected individual attention, and that is perhaps true; but quite often Hall's response to a request was a [*illegible*]. We could have carried on, however, if a first-class row had not developed between Hall and Lord Reid.

On the 27th July we went on to Kangar by road, where Hamid, Len + I stayed with J. Haner, the B.A., in pretty rough conditions, though hospitality made up for deficiencies in accommodation. McKell + Malik were at the Resthouse, but never took a meal there apart from breakfast, because Mrs H. filled the only gap in our public functions, took us all to the Seremban traders, etc. Indeed, we thoroughly enjoyed both Kedah + Perlis. We returned to Alor Setar by road on the 29th + thence to K.L. by air. Hall, to our surprise, met us at the airport. Watherston had told him to stay around until he and McGillivray had talked the matter over with Lord Reid. Hall left on the 1st August. Henderson has been acting Sec., with an M.C.S. officer as acting asst. sec.

On Tuesday, 31st July [1956], we drove to Seremban + back, without Lord + Lady Reid, Lord Reid having a cold (probably collected on Maxwell's Hill). It was a pleasant journey, and not too heavy a day. For the rest of the week we have been taking evidence from officials. On the working of the present Constn.[28] we are beginning to see daylight, though as yet we have no formulated ideas on the new arrangements.

K.L. Sunday 12th August. We have all settled down and there have been no major incidents on the Penang tour, where the Reids stayed with the Judge, McKell + Malik with the Resident (Bingham) and Len + I with the President of the Municipal Council (Cunningham-Brown): Hamid was housed with Sir T. Ariff, a prominent Malay. There was some sort of a row – Hamid says he was asked to share a room with another guest and to share a bathroom with five others – and Hamid left for the hotel, where he was joined by Mrs + Miss Hamid. The rest of us were very comfortable + our relations among ourselves + with the staff have been cordial.

For the time being, at least, our problems have been solved. Hall has gone, though the C.O. seems to be taking his view and there is some

[26] Royal Commission on Common Land.
[27] Her Majesty's Government.
[28] Constitution.

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polite but rather frigid correspondence going on which I have not seen. One Laird, of the M.C.S.,[29] is to be our secretary, and Henderson has been acting. Mrs Stephenson has been (or is about to be) paid off and sent home. She was a buddy of Hall's and was supposed to be our private secretary, though Hall introduced her to Lord Reid as "my private secretary"; and, in fact, when we applied for her services we were snubbed. Since Hall had handed over all arrangements to Henderson, Mrs S. had little to do except to come to functions with us, where she managed to annoy Len as well as Lady Reid by being "pushy". Henderson himself suggested that she should be paid off + this was agreed. I hope we can move into her chalet. Henderson, Hall and Mrs S. took the three best chalets and sorted out the furniture to suit themselves. McKell has now moved into Hall's and Malik into McKell's.

Meanwhile Majid has been pretty well devoted to the Reids, while a [*illegible*] named Henry has taken over the tours from Henderson. We had a temporary asst. sec. last week, but he will be unnecessary when we have Laird as sec.

Lady Reid is still hankering after Hong Kong – I suggested that she go by herself when Len goes to Canberra on the 6th October but she said that "Scott" could not look after himself. (Actually, he is much more amenable when he is not under discipline. When we were dining with the M.C.A.[30] in Penang on the 10th she got up from her table, walked across to his, and told him audibly not to "drink too much". Afterwards she said to me that she hoped he did not say too much, because they had been "plying him with drink all the evening". After a Chinese had read us a paper and we were talking she came up and said "Come along, Scott, we must go home now". This is not henpecking but lionessing.) We have, however, compromised. The Reids are staying until the 1st November and are then leaving on the "Asia" with McKell + Malik. Len will leave for Canberra on the 6th October and will join us in Europe. I leave for Cambridge on the 26th October + Hamid (who will take his family to Karachi) will join me early in November. The arrangement was that we should meet in Rome (I suggested Geneva but the Reids preferred Rome) on the 21st November; but Hall has been at the C.O. + Malta has been suggested as a compromise. We have replied that we are willing to go to Malta if the C.O. insists, but would prefer Rome, + anyhow Malta would make things more difficult for me. The C.O. also says it wants the Report by December, when the S. of S.[31] meets the Tunku.

[29]E.O. Laird of the Malayan Civil Service.
[30]Malayan Chinese Association.
[31]Secretary of State.

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This is clearly an afterthought suggested by Hall who had (as I think correctly) strong views about the suggestion that we return to K.L. to present the report. Actually I think that proposal is dead. Though Lady Reid has not given up hopes of Hong Kong, the Tunku would not play. The Reids had him to dinner + plied him with brandy; but he was cagy + said that he did not mind where the report was signed. Nothing further has been said about returning, + anyhow I shall plead other engagements. Possibly our discussions in Rome (or Malta) will be prolonged, for we do very little at conferences except listen to Lord Reid's speeches; but I do not mind staying in Rome (or even Malta) for most of the winter, provided that I can make frequent visits to England – though it could be said to be a waste of public money.

Anyhow, with the date fixed for my return to Cambridge, I have not quarrelled with the changes of programme, though I have expressed the hope that we could spend a full month in taking decisions before Hamid + I leave. I have even agreed, reluctantly, to a week-end on Fraser's Hill.

Sat. 8th September 1956, Kuala Lumpur.

In the end, only Malik went to Fraser's Hill with Lord and Lady Reid yesterday, though Majid is in attendance. They have three cars only – leaving the Austin and a hired car with the McKells and us. The Austin broke down this morning, + so we have only the hired car, which will presumably take us to Port Dixon for the week-end. The McKells will therefore have to use a taxi, if they can find one. They are going to Penang by the night train. The Hamids have slipped off somewhere – possibly to Singapore – without telling us where.

As a Commission, we have done very little since we returned from Penang. We have completed the taking of evidence because, in the end, there was little that mattered. The Chinese organisations of all kinds used a standard formula, with some variations of detail, based on the need for "equality" and "justice", while the Malays (of whom there were few) say this is their country + that if they give anything at all to the Chinese it will be because of their kindness and generosity. We are having communal [*illegible*] for the Rulers next week, go to Kelantan and Trengganu in the following week, and receive the [*illegible*] which will be the [*illegible*] document, on our return.

Meanwhile some of us (Hamid + I especially, though Malik + McKell have also done some work) have got down to brass tacks + are having concerns. We are upset by Lawson's[32] argument – in

[32]Rulers' Counsel, Neil Lawson QC.

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instructions from the Rulers – that self-government in the States can be postponed at the will of the Rulers until the States are "ready" for it.

Rome 20th January 1957

I left K.L. on the 26th October and, in spite of the riots, Singapore on the 27th, + owing to the Suez troubles,[33] we were delayed at Karachi until the 28th, got through Cairo on the 29th + returned to England that evening. Hamid had gone to Karachi the day before. The others were delayed in K.L. by the riots in Singapore, but got away on the "Asia" on the 2nd November. Malik + the McKells disembarked at Bombay and arrived in Rome about the 22nd November. Henderson disembarked at Karachi and flew straight to Rome. The Reids and Laird went round the Cape and reached Rome on the 8th December, having compiled a large part of the first draft of the Report.

On the way home I had put the various drafts together and filled up most of the gaps. Claire began typing further notes, and on the 2nd November I was able to give the First Draft to the Press. They did a magnificent job and let me have copies on the 5th. Hamid not having arrived, I did some rapid corrections, sent the Second Draft to the Press on the 7th, + received copies back on the 9th. Hamid had arrived on the night of the 7th + he spent the next week in going through the Second Draft at his rather leisurely pace.

In the following week we went through his corrections. It took us rather a time because he seldom began work before 11 a.m., knocked off from 1 p.m. to 2.15 p.m., + finished at 4.30 p.m. However, we finished about the 22nd November and he left soon afterwards for sight-seeing in London, Paris, Berne and Geneva, arriving in Rome about the 9th December. I saw the Third Draft through the Press, and Claire, Helena and I left by train on the 9th December, arriving on the 10th. Helena had returned from Canberra a couple of weeks before.

The Third Draft was not entirely agreed. We differed on almost 20 points, none of them of first-class importance, + I suggested that they be left to the Commission to settle. We had, however, produced an agreed draft of the most contentious provisions on Malay Reservations and Malay Quotas. Our relations were very happy, and I think Hamid enjoyed Cambridge in general and Trinity Hall in particular. He struck

[33] Britain, France, and Israel occupied the Suez canal through military action in October 1956.

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up a particular friendship with Louis Clarke and T. Ellis Lewis,[34] an odd combination.

In Rome we began consideration of the Third Draft on the 12th December, in the hope of finishing it before I went to England, for the Royal Commission on Common Land, on the 7th January. We got on quite well up to Christmas. Laird and Henderson then went to spend Christmas with their families in England. Accordingly, Helena, Claire + I went to Malta, the McKells to Tanzania, and Malik and Hamid to Spain. On our return I was given a sitting room, which helped enormously. I had been doing all the drafting in a small bedroom in the Eden Hotel, which was difficult because I could not work in the small room without waking Helena. After Christmas, however, Hamid turned cantankerous. There were several difficulties. First, we were working from 9 a.m. to 5 p.m. at [*illegible*]., with a break for lunch; and this gave Hamid no time for exercise. In Cambridge he walked for an hour every morning, had breakfast at 10 a.m., then had his bath, and started work at 11 a.m. In Rome he ate a very large dinner + took no exercise in the morning. Very soon he was not sleeping well. Another difficulty, though he never mentioned it, was that on nearly all points the Commission agreed with me, or produced a compromise which I could accept, and accordingly I did all the drafting. He argued at great length on points which he thought to be points of principle, whereas we thought them trivial. Owing to his background, he thinks of federalism in terms of the Government of India Act, and the India and Pakistan Constitutions. Many of the precedents are of course not relevant to Malaya, and anyhow we did not think that we were bound by any drafting principles except those laid down by the Terms of Reference. Consequently, when he raised objections to a draft he was usually overruled by 4 to 1. He particularly took exception to criticism by Malik. There is no doubt that Malik is out of his intellectual environment. He is rather a stupid fellow, third class in ability and fourth in imagination. When he gets a point, therefore, he sticks to it with a pertinacity which equals Hamid's. I was Hamid's superior in Karachi and anyhow I try to treat him with special courtesy when we differ: but (quite rightly) he does not regard Malik as his intellectual superior or even as his equal, and he thought Malik objected because he disliked Muslims – which is, I believe, not true. Possibly, too, he was annoyed by the way in which Lord Reid supports Malik. Malik has made himself pleasant to Lady Reid – the rest of us find it difficult to do so – and Lord Reid is therefore prejudiced in Malik's favour. Accordingly, Hamid does not blame Lord Reid or me, but blames Malik, quite unjustifiably.

[34]Fellows of Trinity Hall.

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Lord Reid himself has done a lot of work on the drafts and his criticisms are always acute. He is unfortunately prejudiced by an emotional sympathy with the Rulers; but he might not unreasonably complain that McKell and I have an emotional antipathy to the Rulers. I must confess that I have no very high opinion [of] Tunkus, except Abdul Rahman, who is noteworthy for his plain common sense. On these matters McKell supports me and I support him. Nevertheless, Lord Reid has been a most effective critic of my drafts, which have generally been improved by him. His draft Report, too, is very sensible, and I have not found much in it to criticise – though I have not done very much on the Report, because my main job has been to produce the Draft Constitution.

McKell is a Q.C. but no longer [practises], but he is too honest a person to claim that he is. His prejudices generally accord with mine, but in two respects he seems to me to have gone too far. First, he does not allow sufficiently for the enormous lack of personnel in Malaya, + therefore applies his democratic principles with too close an adherence to his Australian experience. Secondly, he has been too much impressed with economic problems and therefore has tried to make us lay down policy instead of letting us arrange political institutions so that the Malayans can determine policy. On the other hand, he is always ready for a sensible compromise, and I was able to meet him by National Development Plans (invented by me to meet McKell's very sensible observations) and by giving some unnecessary emphasis to some of his proposals about soil conservation and so forth. The Report may be thought to be a bit unbalanced, but it does show (on McKell's insistence) that we realise the fundamental economic problems.

Lord Reid appears likely to dissent on two points and McKell on two others. Malik + I, apparently, will not dissent. Exactly what Hamid will do I do not know. Claire has typed a long screed for him, which he has not yet allowed us to see; but fortunately Claire kept a copy in her drawer, and Lord Reid now has it. The only point of political importance on which Hamid dissents is on Malay Quotas. He has thrown overboard the compromise which I accepted in Cambridge + has produced a memorandum which will start a row in Malaya because it is really a criticism not only of the Alliance[35] but even of our terms of reference. Hamid has no political nous. He lives in a world of his own in which practical problems do not intrude. His paper on Malay Quotas which we have seen really suggests – though

[35]The political coalition that represented the three main political organizations (and communities): the United Malays National Organisation, the Malayan Chinese Association, and the Malayan Indian Congress.

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he does not seem to realise it – that the whole business of granting independence to Malaya is absurd. If he believes his own statements he ought to have resigned months ago.

The rest of us, nevertheless, must go on. We plan to finish consideration of the Fourth Draft on Tuesday next, 22nd January, in order that I may do the cleaning up and send the text to England on the 24th. I should have gone myself on the 22nd in order to preside over the Royal Commission of Common Land, but at Lord Reid's request I have cabled to ask the vice-chairman to take over. We are not sitting on the 23rd and 24th so as to give Hamid time to amend his numerous dissenting notes – extending, I think to about 25 typed pages. He does not realise that, the more he dissents, the less attention will be paid to his observations. I have written a note on this dissent on Malay Quotas, but I do not propose that it be published. I merely hope to make [him] qualify his general, and often extreme statements: but the real solution is to make him dissent as often as possible so that nobody will pay attention to him.

Rome, 2nd February 1957.

When we met on the 21st January, we decided to give way to Hamid over Malay Quotas. Thereafter we got through quickly + finished on the morning of the 22nd. Claire + I spent a hectic day and a half getting the Draft Constitution straight, and it was sent off by the pilot of a B.O.A.C. plane on the 24th.

Hamid had another version of his dissent typed, + this time we insisted on getting copies, which we took home on the 25th. It was a shocker. Out of 26 criticisms of the Draft Constitution, 11 had never been mentioned to the Commission. He attacked us for giving preference to citizens of the U.K. (Art. 15). He threw overboard the compromises on Malay Reservations and Malay Quotas and insisted that the Yang and the Rulers must have discretionary powers to protect the Malays. He justified this part by reference to the Alliance, but mainly by a series of inflammatory appeals to racial prejudice which might even have started riots. He produced a demand for making Islam the State religion which he had emphatically condemned when we had considered the matter in October. On "Provincial Autonomy" he had twelve verbose papers, full of errors and misquotations which helped his argument and of dogmatic statements which nobody could justify. Then came a mass of detailed criticisms, some sensible, some stupid. A second version, equally bad, was circulated on the 28th.

On the 29th we had a meeting to consider this document. For the whole morning Lord Reid kept up the pressure, trying to persuade Hamid to cut out the worst bits. Hamid said he felt like a prisoner

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in the dock, but he was not really giving way. He admitted that on special positions of the Malays he was breaking an agreement with us, but he thought we ought to follow the Alliance, whose Memorandum he had since read. This was not true, actually; he was preparing his memo all the week and, I feel reasonably sure, had the most dangerous paragraphs in the paper which Claire had typed before he accepted our compromise, but he argued rather incautiously. The difference was that, while he was regarding himself as a hero and a martyr in the interests of the poor Malays, he was using crooked, or at least [*illegible*], methods. If we tried to treat him as a crook, his sense of dignity was affronted + we made him more obstinate and extreme. A good example was a phrase at the beginning which said in effect that he had failed to convince his learned colleagues. In eleven matters, including all except one of the politically controversial matters, he had not even tried. In relation to special positions, we had accepted his drafts, with minor modifications to which he had agreed. State religion he had not even mentioned after the meeting in October when he condemned the concept. His reply was that he was at that stage trying to convince, and the Report was not complete until it was signed. If necessary he was willing to sit for another month to improve the Draft Constitution. Hence when the Report appeared, he really will have tried to convince.

We thought we had made some impression during the morning, + therefore decided not to continue to press him during the afternoon, but I was to see him on the 30th to get some of the errors of fact and law removed. Hamid would then revise his Note and we would discuss it again. I did not raise the controversial issues with him on the 30th. I dealt especially with his Part II on "Provincial autonomy", trying to get him to explain his novel theory of federalism more clearly (in order that it might be plain to the reader that it was an idea invented by Hamid), to cut out the errors and misquotations (which were numerous) and generally to clean up a rather dirty piece of work. I did make some impression on him, though he did not accept all my suggestions and in particular he did not seriously cut down the enormous length of this Part.

Hamid had a "rough draft" of his revised note ready on the 1st February. I was allowed a copy because I was leaving for London on the 3rd. Lord Reid was given a copy by Laird without Hamid's permission. The new draft was better, but the worst purple patches had not been removed. At dinner I told Hamid that I was going to draft a violent attack on him as our draft reply to his Note, and that I was going to do it in defence of the people of Malaya, of the Federation Government, and in particular of my friend Tunku Abdul Rahman. Nevertheless, he was to remember that he was my brother,

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and that if he ever came to England he must come to see me at Trinity Hall.

Hamid seems to have been struck with this, for having been upstairs he came down again, sat with us in the lounge, and asked if he could see me in the morning to find out exactly what I meant. I told him then and there what I meant. His note was based on the theory that so long as the Malays were in power they would look after their own interests and when the Chinese acquired power they would look after their interests. This was exactly what the extreme Malays were saying, and accordingly the U.M.N.O.[36] was wrong to allow citizenship rights to the Chinese. It was also what the extreme Chinese were saying, they must have jus soli forthwith, and the M.C.A. was wrong to compromise on this issue. Hence his Note was an attack on the Alliance position from both sides. Their case was that in the course of a few years they could produce a "common nationality" and work a democratic system.

This morning at 9.30 a.m. (2nd Feb) Hamid said that he saw the force of my argument. If anything said by him were to prevent the people of Malaya from living and working together as a band of brothers he would be a very great sinner. He wanted to do everything he could to help, but he feared that it might not work, so he wanted some protection for the Malays, who have been very generous and deserved protection. Would I accept a two-thirds majority and ask Lord Reid to summon an immediate meeting of the Commission. He would then delete everything at [*sic*] Special Position and also – oddly enough – about Provincial Autonomy (This showed, incidentally, that Hamid's theory of federalism was stuff invented to protect the six States in which the Malays were in a majority against a Chinese majority in the Federation). I thought this blatant horse-trading and at first refused, suggesting that Hamid raise the matter when the Commission met on the 4th. Then I decided that perhaps we ought to see Lord Reid about it, + I phoned up.

Hamid put his point, + Lord Reid at once began the advocate's technique of talking at great length in order to think the situation out and see what exactly was in Hamid's mind. He saw no difficulty about Malay reservations or licences. What about scholarships? I said they did not matter much. We both felt very reluctant to tie up Malay quotas in the public services. However, we summoned McKell + Malik to a meeting at 11 a.m. As soon as Malik heard the proposition he appreciated that we were being blackmailed on behalf of the Malays: either give the Malays what Hamid thought they ought to have, or Hamid would publish and be damned. Malik therefore asked exactly

[36]United Malays National Organisation, the dominant political party of Malaya (and later Malaysia).

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what we were being offered. Lord Reid took up the point + said he understood that Hamid was offering to remove all objectionable features, which he would define as pages 2–4, 5–8 and 10–22. Malik then said he would prefer to have a discretionary power vested in the Yang because a 2/3 majority would tie up the position for all time. Lord Reid, McKell + I were against this, and eventually Malik agreed so far as Malay Reservations were concerned, because these were determined by law. He did not agree as to Quotas. (He told me afterwards that he would have agreed in the end, since like me he had decided not to dissent). I then asked Hamid if he was prepared to risk a riot by inserting all this political dynamite merely for a few quotas. Lord Reid broke in and said: "Hamid, do you realise that if this goes in the blood of thousands of people may be on your hands? Will you not remove all this and merely express your dissent on Quotas on the simple basis that you do not think the protection goes far enough?" Hamid said he would accept that, whereupon Lord Reid started to try to draft, but Hamid refused this ploy. He said he would go away and produce a draft on Tuesday (5th Feb.). Lord Reid persisted for some time, but Hamid held out, + eventually it was left on that basis.

Rome, Monday 11th February 1957

I left for England early on the 3rd. On the 2nd we dined with the Indian Charge d'Affaires (a Hall[37] man), Hamid not being present. Before I left Hamid asked if he could come along + see the new draft of Article 82.[38] I said I was dressing + going out to dinner, but I told him what I was putting in. He said it was not enough. He wanted an absolute majority + 2/3 present + voting. He asked me to see Lord Reid about it. I said I was going out to dinner + anyhow if he wanted something changed he had better see Lord Reid. He replied that Lord Reid had called him a murderer, and he (Hamid) was going to complain to his Prime Minister, with the request that he pass the complaint to the P.M. of the U.K. I said it was nothing to do with me, + anyhow I was going to England.

The proof of the Final Draft was awaiting me at Trinity Hall. I worked hard at it, finishing at 9.30 a.m. on Monday, 4th Feb. That completed my job, + glad I was to get it finished. 60 copies (20 bound in cloth + 40 bound in paper) were delivered to the Hall on the 9th. I brought them back on the 10th.

Meanwhile Hamid's draft was circulated on the 4th. It still contained a lot of inflammatory material + so the Commission sat down and deleted all the objectionable phrases. Lord Reid was now

[37]Trinity Hall.
[38]The article concerning conditions of preventative detention.

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in a strong position, + Hamid's only remedy was to resign + publish in Pakistan, while we would publish the complete story if he did. He therefore gave way, + the dissent as published is pretty innocuous. Hamid still appears as the protector of the Malays and as a superior draughtsman who has been overruled by a lot of amateurs, especially Jennings. I have drafted a reply to some of his points, which I will send to the Tunku. I have not answered his criticisms of my drafting, silence being more dignified.

We signed the Report at 6 p.m. on the 10th (McKell was absent, but he signed it after the Opera) and we had a drink on Lord Reid. Laird left for Kuala Lumpur at 4 a.m. today, taking 10 bound copies + 40 paper-covered copies. Lord + Lady Reid gave us lunch at the Hostaria dell'Oro today. Hamid + Malik are leaving tomorrow (12th). The McKells and Jennings leave on the 13th. The Reids leave for Sicily for 2 weeks holiday on the 14th. So endeth another job.

Hamid's behaviour was, I think, another case of mixed motives:

(1) He did not like the way that he was put into a minority of one, + perhaps the way in which he treated his "Provincial autonomy" as a bit of a joke.
(2) He thought that his principal opponent was Malik, who was against Pakistan politically.
(3) He disliked the way in which I took over the drafting in Rome, though the fact was that he could not keep pace with me and I cared not to go at his pace.
(4) He saw himself as the protector of the Malays, + he feared that he would be found to have been too ready to compromise.
(5) He wanted to disassociate himself from the draft, in case it was criticised.

I still doubt if he realises that he has blackmailed us; + everybody else still feels doubtful about it. Probably he is very stupid, and he has no idea how other people's minds work; but somehow he does not seem to be quite the confidence-trickster that his actions suggest. True it is that, having accepted a compromise on the 21st January, he produced a complete denial of that compromise on the 25th; true it is that he had that denial in draft on the 21st.; true it is that, basing himself on the Alliance proposal, he asked for much more in practice + was ready to accept a proposal which the Alliance did not suggest (in other words, his reliance on the Alliance was eye-wash); true it is that he insisted on keeping inflammatory material in when he knew our strong view that it might cause a riot and would undoubtedly do great harm; true it is that he does not believe in State religions, said so emphatically in October, and yet advised it in January; true it is that he insists upon criticising my drafting although he calls us "brothers"; true it is that

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he accused us by innuendo of various things that we obviously were not supporting; and so forth. Even so, I do not think he is a crook. I suspect he is merely stupid. There are, too, other factors. He was obviously eating too much, especially of fats, and was unable to sleep; he felt that his hotel accommodation was inadequate to his station (he told McKell that he was an "untouchable").

Even so, we have managed to avoid a row; and so far as I am concerned he is still very friendly. I hope nevertheless that I shall never have to work with him again, for I think him stupid + shall always suspect his motives.

2. 'Constitutional Changes Implicit in the Terms of Reference' of the Reid Commission, 23 August 1956

(1) "A single, independent, self-governing unit within the Commonwealth"

This phrase implies that the Federation of Malaya, must be equated with Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon. The Federation differs from these countries in that they were, except for the Indian States[39] which acceded to India and Pakistan, parts of Her Majesty's dominions, whereas in the Federation only the Settlements[40] are parts of those dominions. On the other hand, India and Pakistan were created under provisional constitutions with Governors-General and Constituent Assemblies and have now become republics under permanent Constitutions, so that both countries have ceased to be parts of Her Majesty's dominions.

The Settlements are colonies governed under the authority of Her Majesty in Council, which in effect means under the authority of Her Majesty's Government in the United Kingdom. Persons born therein, and the children of persons born therein, are both British subjects (or Commonwealth citizens) and citizens of the United Kingdom and Colonies. It will be necessary, as a minimum:

[39]The Indian Princely States were formally separate from British India and in the run-up to British withdrawal in August 1947 were given the choice to accede to either the Dominion of India or the Dominion of Pakistan. Malaya also had states not under direct British rule headed by indigenous rulers and, like the Indian Princely States, their powers were subject to British approval in practice.

[40]This refers to the Straits Settlements comprising of Penang and Malacca, which were formally British colonial territories and together with the nine Malay States from 1948 made the Federation of Malaya. They were later joined in 1963 by Singapore (briefly), Sabah, and Sarawak.

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(i) to remove the responsibility of Her Majesty's Government in the United Kingdom for the government of the Settlements, as was done by the Indian Independence Act and the Ceylon Independence Act;

(ii) to remove the Settlements from the definition of "Colony" in the Interpretation Act (as was done by the Ceylon Independence Act) and to repeal the Straits Settlements (Repeal) Act, in so far as it applies to Penang and Malacca;

(iii) to repeal the Colonial Laws Validity Act, 1865, in so far as it applies to the Settlements, and to provide that the appropriate legislature in the Federation may repeal or amend any Act of the Parliament of the United Kingdom applying to either Settlement as part of its law (as was done by the Ceylon Independence Act and, in part, by the Indian Independence Act);

(iv) to repeal certain provisions of the legislation of the United Kingdom which at present apply to Penang and Malacca as colonies; and

(v) to remove federal citizens from the category of citizens of the United Kingdom and Colonies and to abolish the power of the Secretary of State to naturalise federal citizens.

The States are not parts of Her Majesty's dominions; and the subjects of Their Highnesses the Rulers are, generally speaking, neither British subjects nor citizens of the United Kingdom and Colonies, but British protected persons. No legislation is needed, except to bring the Federation within the Commonwealth as an independent unit. This would imply the recognition of the Queen either as Queen of Malaya or as Head of the Commonwealth. The latter, which would equate the Federation with India and Pakistan, would probably be preferred, though Her Majesty would remain Queen in Penang and Malacca unless she were willing to surrender her title. Further, it would be necessary to equate the Federation with India, Pakistan and Ceylon by giving federal citizens the status of British subjects or Commonwealth citizens in other Commonwealth countries. So far as the United Kingdom was concerned, this would involve substituting the phrase "Ceylon and the Federation of Malaya" for "Ceylon" in Section 1(3) of the British Nationality Act, 1948. A provision corresponding with that section, or with the appropriate provision in the Constitution of India, would be required in the Federal Constitution.

Other external aspects of independent status, such as membership of the United Nations and of the Conference of Commonwealth

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Prime Ministers, would require no constitutional changes. It would be necessary, however, to produce a completely new Federal Constitution. The High Commissioner, as a part of the constitutional machine (the other Commonwealth countries would no doubt wish to exchange High Commissioners with the Federation, but they would have purely diplomatic functions) would disappear.[41] This disappearance would destroy the foundation of the present distribution of powers between the Federation and the States, since it depends on the overriding power of the High Commissioner – which is not the less effective because it has not been used. Also, the relations between the Federation and the Settlements depend upon the High Commissioner representing the Queen in all three. It would seem, too, (though the matter is not free from doubt) that most public officers are servants of the Crown, since they are appointed by the High Commissioner. Above all, the control of defence and external affairs will be transferred from the Queen to the Federation and the obligation of the Queen to defend the States, except by agreement, will disappear.

(2) "Based on Parliamentary democracy with a bicameral legislature"

This phrase implies the substitution for the High Commissioner in Legislative Council of a Parliament consisting of the Yang di-Pertuan Besar[42] and two Houses. It would be convenient, but not essential, for the First House to represent the people and to be called the House of the Raayat,[43] and the second to represent the States and Settlements and to be called the Chamber of States.[44] This Parliament would have the legislative power prescribed by a new Federation Agreement, but provisions would be necessary to settle disputes between the two Houses. Bills would be assented to by the Yang di-Pertuan Besar and not by the Queen and the Rulers.

Though the Parliament would be democratic, the existence in either House or both Houses (as in Ceylon, where it applies to both Houses) of a few nominated members with or without voting rights, would not be objectionable.

Though it is not expressly so provided, it is implicitly accepted that there should be a Prime Minister and other Ministers collectively

[41] Independent Commonwealth states are represented in Commonwealth states by a High Commissioner who heads the High Commission. The post of High Commissioner is purely a diplomatic post and very different from the colonial-era British High Commissioner in Malaya, who held executive and domestic powers within the Federation.

[42] The constitutional head of state of the Federation. The Yang di-Pertuan Besar (later renamed the Yang di-Pertuan Agung) is a constitutional monarch elected every five years by and from the hereditary rulers of the nine Malay States.

[43] Eventually called the Dewan Rakyat.

[44] Eventually called the Dewan Negara.

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responsible to the First House of the legislature. They would be appointed by the Yang di-Pertuan Besar according to the state of parties in that House.

(3) "A strong Central Government with the States and Settlements enjoying a measure of autonomy"

This is the present position; but the present system, involving the execution by the States and Settlements of policies laid down by the Federal Government, could not apply in a federal system in which both the Federation and the States (and Settlements) would be fully democratic and might possess Governments from different political parties. It is, therefore, necessary to make a more precise division of powers, especially in respect of finance.

(4) "Machinery for consultation between the Central Government and the States and Settlements on certain financial matters"

This provision is no doubt a recognition that in respect of finance, at least, the present arrangements are unsatisfactory, or at least might become unsatisfactory if different parties were in control in the Federation and in one or more of the States and Settlements. No indication is given of the sort of machinery desired, but there are precedents in certain of the Commonwealth Constitutions which the framers of the terms of reference perhaps had in mind.

(5) "The safeguarding of the position and prestige of Their Highnesses the Rulers as constitutional Rulers of their respective States"

This clause has three aspects. First, it implies that the provisions of the State Constitutions relating to Their Highnesses, the succession to their thrones, and so forth, must be safeguarded, though they must be so amended as to make Their Highnesses and their heirs and successors constitutional Rulers.

Secondly, provision must be made, by means of a Civil List or otherwise, to safeguard the position and prestige of Their Highnesses against encroachment by State legislation.

Thirdly, as mentioned above, provision must be made in the State Constitutions for Their Highnesses to become constitutional Rulers. At present executive power is vested in "His Highness in Council"; and this means "His Highness acting after consultation with the State Executive Council, but not necessarily in accordance with the advice of such Council, nor necessarily in such Council assembled". In certain cases, too, His Highness is empowered to act otherwise than in Council. Further, the State Executive Council includes at least four

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ex-officio members, is not responsible to the Council of State, and is presided over by His Highness personally. These and other provisions are inconsistent with the position of His Highness as constitutional Ruler. Indeed, the very concept of His Highness in Council, except as a formal body like the Queen in Council in the United Kingdom, or the Governor-General in Council in Canada, is inconsistent with constitutional government. There are other provisions in the State Constitutions which are similarly inconsistent, though of less importance.

It follows that the Commission is required to make recommendations for new State Constitutions. They need not take the form of the present Constitutions, nor need they be similar (as they are now) for all States, large and small. They must, however, provide in each case that His Highness be a constitutional Ruler; and each must safeguard his position and prestige. Since the Queen is in the same position in the United Kingdom, it seems probable that the Ruler was intended to be treated similarly in relation to his State.

(6) "The Position of Her Majesty the Queen in relation to the Settlements of Penang and Malacca"

This provision appears in paragraph 6 of Paper No. 15 of 1956,[45] in which the terms of reference are set out, but not in the terms of reference. It was understood at the London Conference in relation to the terms of reference, that "nothing in the terms of reference proposed for the Constitutional Commission is to be taken as prejudging the position of Her Majesty the Queen in relation to the Settlements of Penang and Malacca".

The provision does not prevent the Commission from making recommendations whose effect would be to remove Her Majesty from any connection with Penang and Malacca, except as Queen of the Federation (if it were so recommended) or as Head of the Commonwealth in which the Federation was an independent country. It does, however, serve notice that Her Majesty's Government in the United Kingdom reserves the right to object to any such proposal if it thinks fit to do so.

The reservation does not imply that Her Majesty's Government in the United Kingdom would, after the enactment of the necessary constitutional instruments, retain any responsibility for the government of Penang and Malacca. Any such interpretation would be inconsistent with the provision of the terms of reference under which the Federation is to become an independent country within the

[45]Not included.

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Commonwealth. It implies only that the Commission must consider (but not necessarily recommend) a solution in which Her Majesty was the constitutional Ruler of Penang and Malacca, as Their Highnesses are to be constitutional Rulers of their respective States. Her Majesty could not act except on advice, and the advice could not be that of the Government of the United Kingdom. Accordingly, if the Commission decided that it was desirable to retain the position of Her Majesty in relation to Penang and Malacca, it would be necessary to consider whether advice should be tendered by the Government of the Federation or by the Governments of the respective Settlements.

(7) "A Constitutional Yang di-Pertuan Besar for the Federation to be chosen from among Their Highnesses the Rulers"

"Their Highnesses the Rulers" clearly mean the Rulers of the nine States and do not include the Ruler or Rulers of the Settlements. On the other hand, it is for the Commission to recommend how the Yang di-Pertuan Besar should be chosen and what should be his term of office. As a constitutional authority, he would not exercise the discretionary powers of the High Commissioner, but would act on the advice of the Government of the Federation.

(8) "A common nationality for the whole of the Federation"

With this provision of the terms of reference must be read the statement in paragraph 6 of Paper No. 15 of 1956 that this sub-section "is not to be taken as precluding the Commission from making recommendations which would allow British subjects or subjects of Their Highnesses the Rulers to retain their status as such after they had acquired the proposed common nationality".

The two clauses are not as inconsistent as they appear at first sight. The main implication is that federal citizens shall not, as is at present usually the case, obtain their federal nationality from the fact that they are State subjects or citizens of the United Kingdom and Colonies; indeed, the latter status would be inconsistent with the independence of the Federation. Accordingly, there must be a federal nationality laid down by law and recognised by a federal instrumentality. On the other hand, a federal citizen may be the subject of the Ruler of the State to which he belongs, and indeed this would be desirable in order to qualify him for the franchise in the State. In Penang and Malacca federal citizens would not be subjects of any Ruler, but they could be subjects of the Queen. In fact, however, all federal citizens should be British subjects or Commonwealth citizens on the same terms as Indian or Pakistani citizens, in other words, a common federal nationality is required and

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must be recommended by the Commission; this need not prevent the Commission from recommending that federal citizens be subjects of their Rulers or citizens of Penang or Malacca; and the inclusion of the Federation of Malaya among the independent countries of the Commonwealth implies that federal citizens will be British subjects or Commonwealth citizens in the same way as Indian or Pakistani citizens.

(9) "The safeguarding of the special position of the Malays and the legitimate interests of other communities"

The "special position of the Malays" under the present law, which has to be "safeguarded", seems to be compounded of the following elements:

(a.) The position of Their Highnesses the Rulers who must by the State Constitutions be Malays.

This matter is regulated by clause (ii) of the terms of reference and is dealt with in paragraph (5) above.

(b.) The provisions of the Federation of Malaya Agreement and the State Constitutions relating to the Muslim Religion and the Customs of the Malays.

These provisions are ambiguous and require clarification; they must, too, be read in conjunction with the need to safeguard "the legitimate interests of other communities", some of which include Muslims. Nevertheless, they help towards that "special position" which has to be "safeguarded".

(c.) Paragraph (d) of Clause 9(1) of the Federation Agreement, which imposes upon the High Commissioner the "special responsibility" of the safeguarding of the special position of the Malays and of the legitimate interests of other communities.

This provision must be revoked, for there cannot be a High Commissioner under the new Constitution. In future the "special position" must be safeguarded in other ways.

(d.) The provisions of Clauses 40 and 40A of the Federation Agreement, which require appointed and elected members of the Legislative Council to be able to read and write the English or the Malay language, the provision of Clause 63 making English and Malay the official languages of the Legislative Council, and the corresponding provisions of the State Constitutions and of the Federation of Malaya Order in Council (in so far as there are such provisions).

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(e.) The provisions of the Federation Agreement relating to the Conference of Rulers.

Since Their Highnesses are to become constitutional Rulers, the Conference, if it met at all, would have purely formal or ceremonial functions.

(f.) The omission of any revenue arising from Zakat, Fitrah, Bait-ul-Mal or similar Muslim religious revenue from the provisions of the Federation Agreement relating to finance.

(g.) The provisions of the State Constitutions under which any Malay born in a State is a subject of the Ruler, from which it follows in accordance with the Federation Agreement that he is also a citizen of the Federation, whereas a member of any other community (unless a citizen of the United Kingdom and Colonies) requires more stringent qualifications.

It is not the case, as is commonly assumed, that a person who claims to be a Malay is entitled to registration as an elector. Like a member of any other community, he must prove that he is a citizen, and for this purpose he must prove that –

(i) he habitually speaks the Malay language;
(ii) professes the Muslim religion;
(iii) conforms to Malay custom; and
(iv) was born in a State.

Even so, stricter qualifications, more difficult to prove, are required of Chinese, Indians, etc., other than those who are Malays or citizens of the United Kingdom and Colonies.

(h.) The provisions of the State Constitutions whereby a person who applies for citizenship by registration must satisfy the Rulers that he is able to speak the Malay or English language with reasonable proficiency; and the similar provision of the Federation Agreement relating to citizenship by naturalisation.

(i.) The provisions of the Federation Agreement relating to land, and in particular the provision that Malay reservations are within the federal legislative power only to the extent of ensuring common policy.

(j.) The provision of the State Agreements whereby Their Highnesses desired and His Majesty the King agreed that it should be a particular charge upon the State Governments "to provide for and encourage the education and training of the Malay inhabitants . . . so as to fit them to take a full share in the economic progress, social welfare and government" of the States and of the Federation.

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There are, on the other hand, provisions of the constitutional documents which seem designed to safeguard "the legitimate interests of other communities". These are:

(i) The special responsibility of the High Commissioner to which reference is made in paragraph (c) above.

As mentioned in that paragraph, this special responsibility must disappear and be replaced by safeguards in the new Constitution.

(ii) The representation in the Legislative Council provided for "Scheduled Interests" and "'Racial Minorities".

(iii) The inclusion within the reserved power of the High Commissioner of all matters relating to the creation or abolition of any federal public office and to the appointment, salary or other conditions of service of any federal public officer or officers.

This provision must disappear, but in accordance with the London Agreement (Paper No. 6 of 1956) a Public Service Commission, a Judicial Service Commission, and a Police Service Commission are to be set up.

(iv) The power of the High Commissioner to refuse assent to Bills or to reserve Bills for Her Majesty's assent.

In future the Yang di-Pertuan Besar will be a constitutional Ruler and the power of reservation must disappear.

(v) The provision that the Chief Justice and the Judges of the Supreme Court shall be appointed by the High Commissioner for and on behalf of Her Majesty and Their Highnesses.

This provision meant that in practice the Chief Justice and the Judges were appointed by Her Majesty's Government in the United Kingdom. Accordingly, the protection given by the provision will disappear.

(vi) The provision for appeals to Her Majesty in Council.

This provision is not inconsistent with the terms of reference – appeals are still taken to Her Majesty in Council from Australia, New Zealand and Ceylon.

(vii) The provisions of the Federation Agreement and the State Constitutions for the acquisition of citizenship by persons who are not Malays, and in particular the provisions granting privileges to citizens of the United Kingdom and Colonies.

Since Penang and Malacca will cease to be "colonies", it will not be possible to obtain citizenship of the United Kingdom and Colonies by birth in the Federation. In any case, the rules for

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acquisition of citizenship must be superseded by provisions for "a common nationality for the whole of the Federation".

(viii) Provisions of the general law (in Malaya and elsewhere) granting privileges to citizens of the United Kingdom and Colonies.

As mentioned above, in future citizenship of the United Kingdom and Colonies will not be obtained by birth in Penang and Malacca, or by birth of fathers born in Penang and Malacca.

(ix) The provisions of the State Constitutions to the effect that all religions may be practised in peace and harmony by the persons professing them.

(x) The provisions of the State Constitutions requiring Their Highnesses to govern according to law.

In future the responsibility for executive action will be vested in the State Governments, not in the Rulers.

(xi) The provisions of the Federation Agreement, the Order in Council, and the State Constitutions authorising the use of the English language.

(xii) The provisions of the State Agreements and in particular
- (a) The requirement (waived in 1956) that Their Highnesses shall accept the advice of their British Advisers;
- (b) The requirement that all persons of whatsoever race in the service of a State shall, subject to the terms and conditions of their employment, be treated impartially.

It is not suggested that the terms of reference require the Commission to safeguard the "special position of the Malays and the legitimate interests of other communities" as they were in 1948 or as they have become by 1956. The lists above give some idea of what was in the minds of those who agreed to the terms of reference at the London Conference. The situation will, however, be altered fundamentally by the new Constitution, for two reasons. First, the guiding hands of Her Majesty's Government in the United Kingdom and its representatives in the Federation will be removed. Secondly, the responsibilities of Their Highnesses will be limited to those of constitutional Rulers. In other words, in the last resort all questions will be decided by majorities in the Federal and State (and Settlement) legislatures. It is the duty of the Commission to frame such provisions as may be needed, in that changed situation, for "the safeguarding of the special position of the Malays and the legitimate interests of other communities".

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3. The State Constitutions, 31 August 1956

I. COMPOSITION OF STATE COUNCILS

The present composition of the State and Settlement Councils is given in the Attorney-General's letter of 9th August (C.C. 2111).[46] The size varies from 19 in Perlis to 45 in Perak. There is, however, a large official element in each, and presumably it will be agreed that all official members should disappear. The composition, if it remained unaltered, would then be:

	Population	Nominated	Elected	Total
Perak	1,204,785	7	20	27
Johor	947,755	6	16	22
Selangor	926,205	6	13	19
Kedah	692,329	5	12	17
Penang	550,410	5	14	19
Kelantan	520,640	5	16	21
Negri Sembilan	352,292	5	12	17
Malacca	307,232	5	8	13
Pahang	298,828	5	16	21
Trengganu	265,200	?	15	?
Perlis	86,423	3	9	12

Trengganu has 11 nominated, official and unofficial, but does not prescribe the number of officials. Following the others, we may assume 5 unofficials [*sic*], giving a Council of 20 unofficials.

2. The continuation of nominated members would be criticised as undemocratic, but it might be justified on the following grounds:

(a.) the poor quality of the elected members, especially in the backward States;
(b.) the small size of the electorates if the number of elected members was substantially increased, and the consequent risk of electoral corruption; and
(c.) the need to secure representation of special interests and minorities.

[46]Not found.

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3. The dangers are:

(i.) the Mentri Besar[47] might nominate his personal and political friends, and in particular use nomination to keep himself in power;
(ii.) where the Sultan had real influence, he might secure the nomination of impecunious and unsuccessful Tunkus;
(iii.) there would almost certainly be excessive preference for Malays (or, in Penang, for Chinese).

These dangers would be more or less avoided if, instead of nomination being used, additional members were elected by the elected members by proportional representation. This would, however, fail to secure most of the advantages of having non-elected members.

4. An alternative would be to have election for special constituencies defined by regulations: for instance –

Rubber producers,
Tin producers,
Chambers of Commerce, Indians,
Other minorities as appropriate.

The difficulties of this arrangement would be:

(a.) the persons so elected would probably be "communalists" in that they would be more concerned to speak for their interests than to take part in general political work;
(b.) communal representation has been shown by experience to encourage communalism and to discourage the development of genuine nationalist sentiments; and
(c.) one would not necessarily get the best people to strengthen the Council.

5. There need not be uniformity, because the arguments for nonelected members apply differently in different States. In Perak and Penang they would be required mainly to represent otherwise unrepresented interests – rubber, tin and perhaps Indians (if suitable constituencies could not be carved out) in Perak; Indians, Eurasians and the Chambers of Commerce in Penang. In Kelantan, Trengganu and

[47]The Chief Minister in a Malay State.

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Perlis the main object would be to secure a better personnel. The following are very tentative suggestions:

Perak:	1 elected by rubber producers; 1 elected by tin producers; 2 nominated to represent Indians and Pakistanis; 2 nominated at large.
Johor:	1 elected by rubber producers; 1 elected by tin producers; 2 nominated to represent Indians and Pakistanis; 2 nominated at large.
Selangor:	1 elected by rubber producers; 1 elected by tin producers; 2 nominated to represent Indians and Pakistanis; 1 nominated to represent other minorities; 1 nominated at large.
Kedah:	1 elected by rubber producers; 1 elected by tin producers; 1 nominated to represent Indians and Pakistanis; 2 nominated at large.
Penang:	1 elected by combined Chambers of Commerce; 1 elected by rubber producers; 1 nominated to represent Indians and Pakistanis; 1 nominated to represent other minorities; 1 nominated at large.
Kelantan:	1 elected by rubber producers; 1 nominated to represent Chinese; 1 nominated to represent other minorities; 2 nominated at large.
Negri Sembilan:	1 elected by rubber producers; 1 elected by tin producers; 1 nominated to represent Indians and Pakistanis; 1 nominated to represent other minorities; 1 nominated at large.
Malacca:	1 elected by combined Chambers of Commerce; 1 elected by rubber producers; 1 nominated to represent minorities; 2 nominated at large.

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Pahang:	1 elected by rubber producers; 1 elected by tin producers; 1 nominated to represent minorities; 2 nominated at large.
Trengganu:	1 nominated to represent Chinese; 3 nominated at large.
Perlis:	1 nominated to represent Chinese; 3 nominated at large.

To avoid the danger of a Mentri Besar putting in too many of his friends, and particularly the danger of a State Council being dissolved in order to secure a majority by nomination, and to avoid party politics disrupting the rubber and tin interests, it would seem desirable that nominated members should sit for fixed terms: perhaps, if the normal term of a State Council was 3 years, nominated members should sit for four years, one-half (or thereabouts) retiring every two years.

5. [*sic*] The number of elected members depends in part on the size of the electorate and in part on the nature of the executive authority – anything equivalent to a Cabinet system would, as explained below, require a Council at least four times the size of the "Cabinet". The size of the electorate depends upon the franchise, but if we assume for purposes of study (a) that all adult Malays are enfranchised, and (b) that about half the adult Chinese and Indians are enfranchised, the relation between population, probable electorate, and electorate per present seat would be:

	Population	Electorate	Electorate per seat
Perak	1,204,785	384,000	19,200
Johor	947,755	308,000	19,250
Selangor	926,205	270,000	20,700
Kedah	692,329	280,000	23,300
Penang	550,410	174,000	12,400
Kelantan	520,640	255,000	15,900
Negri Sembilan	352,292	118,000	9,800
Malacca	307,232	107,000	13,400
Pahang	298,828	113,000	7,100
Trengganu	265,200	128,000	8,500
Perlis	86,423	39,000	4,300

The figures for "electorate" are little better than intelligent guesses, but they give a total electorate of 2,176,000, which must be compared

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with the 1,280,000 registered in 1955; and an estimated increase of 900,000 is quite substantial. On the other hand, any approach to jus soli would gradually raise the figure. Nor must we forget that among the young men and women coming on the register every year will be an increasing proportion of potential electors, because (even under the present law) a high proportion must be qualified as citizens by operation of law.

6. There is, however, another factor which would help to determine the number of State constituencies. It would be administratively more convenient and cheaper to have the State constituencies as subdivisions of Federal constituencies, so that common registers could be used for Federal and State elections and the problem of delineation simplified. Indeed, it would be desirable to have a single Election Commission (as in India) charged with the functions of (a) compiling registers, (b) delineating constituencies, and (c) organising elections, for the States as well as for the Federation. It is usually considered in the West that a reasonably free and uncorrupt [*sic*] election can be hoped for with an electorate of 30,000 – which would require, at present, a population per constituency of about 85,000. (It is necessary to work on population figures because they are ascertainable from the census, whereas electorate figures fluctuate from year to year and may in fact, be inflated by false entries). On this basis the members of the Federal House would be elected as follows:

Perak	18
Johor	11
Selangor	11
Kedah	8
Penang	6
Kelantan	6
Negri Sembilan	4
Malacca	4
Pahang	3
Trengganu	3
Perlis	1
Total	75

The actual distribution might be rather different, since the census figures of 1957 would be used; but, the total being based on estimated population on 31st December, 1955, the increase by 1957 would not be great. It would seem offhand that a Federal House of 75 would be adequate, allowing for State representation in the other House also.

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Ceylon has 95 seats for 8,000,000 population, with a larger proportion of citizens.)

7. For State elections it would be impossible to hope for the ideal of 30,000 electorate, but it would be dangerous to come below 15,000. In other words, each Federal constituency could contain two State constituencies. On this basis the number of State constituencies could be:

	Future	Present
Perak	36	20
Johor	22	16
Selangor	22	13
Kedah	16	12
Penang	12	14
Kelantan	12	12
Negri Sembilan	8	12
Malacca	8	8
Pahang	6	16
Trengganu	6	15
Perlis	2	9

This works well for Perak, Johor and Selangor, and is not unreasonable for Kedah, Penang and Kelantan, though in the cases of Penang and Kelantan (if the scheme suggested in para. 4 were accepted) there would be rather a high proportion of nominated seats. For the smaller States there would clearly be too few elected members. The alternatives are:

(i.) to have smaller constituencies, which could very easily become corrupt;
(ii.) to have two-member or three-member Constituencies; and
(iii.) to have annual or biennial elections for the same constituencies, as was formerly the case in the English boroughs.

The third is the least attractive: it is expensive, it encourages apathy through too frequent elections, and above all, it would render impossible the weapon of dissolution, which ought to be usable against a recalcitrant or unworkable State Council. As between the other alternatives, it seems impossible to decide on general principles. It may be convenient to give separate representation to a town inhabited mainly by Chinese and Indians although its electorate would be well below 15,000. On the other hand, it may be convenient to have a three-member constituency, each elector having three ballot papers on each of which he must place one mark, in the hope that the

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majority community would dissipate its votes and the minority would concentrate them, thus providing a primitive form of proportional representation (the more sophisticated kinds are impossible with an illiterate electorate). Accordingly, the question might be left to the Election Commission to decide on the spot, with a general instruction, rather on the lines of that in Ceylon (which was adopted from South Africa, where it was intended to solve the problem of English and Afrikaner), to secure adequate representation for various interests. On this basis the representation could be:

	Special Interests	Elected	Total	Present Unofficial
Perak	6	36	42	27
Johor	5	22	27	22
Selangor	6	22	28	19
Kedah	5	16	21	17
Penang	5	16	21	19
Kelantan	5	16	21	21
Negri Sembilan	5	12	17	17
Malacca	5	12	17	13
Pahang	5	12	17	21
Trengganu	4	10	14	20
Perlis	4	8	12	12

This is a tentative conclusion, which must be checked against arguments relating to executive government, as suggested in para. 5.

II. EXECUTIVE GOVERNMENT

8. The Rulers will become constitutional monarchs and executive government must be placed under the control, direct or indirect, of the State Councils. It is assumed that the Ruler (or in Penang or Malacca the Governor) would appoint a Mentri Besar (or in Penang or Malacca a Chief Minister) who would have, or hope to obtain, a majority in the State Council. For convenience of exposition, in what follows "Ruler" includes "Governor" and "Mentri Besar" includes "Chief Minister". It is assumed that the Ruler would have power, on the advice of the Mentri Besar, to dissolve the State Council, but that, like the Queen, he need not accept the advice. The Ruler would not be empowered to dissolve without advice, though, of course, he could always appoint a new Mentri Besar who was likely so to advise because he had no majority. Three possible arrangements suggest themselves:

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(i.) A Cabinet System.

The Cabinet would be called the Executive Council (to maintain continuity) and would be presided over by the Mentri Besar. It would include four or five Ministers, according to the scope of State functions. There seems to be no case for Assistant Ministers, whose appointments are used, in Singapore, as "jobs for the boys".

The ordinary conventions of Cabinet Government would apply.

This system is well understood throughout the Commonwealth and will be used in the Federation. Singapore experience has shown, however, that the number of members of the legislature must be at least four times the number of Ministers, since, if this is not the case, opposition parties will seek to attract government supporters by the offer of "jobs for the boys". On the basis contemplated in para. 7, the system would work in Perak, Johor and Selangor, and might work in Kedah, Penang and Kelantan. One difficulty is that Ministers must be full-time. They cannot be allowed to continue to run their professions or trades, because conflict arises between private and public interests if they do. In the smaller States it would be difficult to secure suitable personnel, and expensive to pay adequate salaries to enable Ministers to give up their other employments.

(ii.) Local Government System.

Perlis is the size of a small county borough, whose Council has vested in it both legislative and executive powers and exercises those powers on the advice of committees. Something of this kind was obviously contemplated for Penang and Malacca by section 30 of the Order in Council.

It is doubtful if the system would work in the States. It would be new, because even the municipalities have appointed Chairmen. It would not have behind it the vast experience of English local government. Moreover, the legislative powers of the State Councils will be much more than those of English local authorities, which are concerned mostly to carry out in detail the legislation enacted in general (and usually empowering) terms by Parliament. The idea should not be excluded on a priori grounds. If the Commission considers that the States should, in the main, carry out, with such local variations as they think desirable, a general policy laid down by the Federal Parliament, the English local government system would provide a suitable analogy. If on the other hand "a measure of autonomy" means a measure of legislative authority, it would not be desirable to follow this system, even in Perlis: and anyhow the Raja of Perlis has somehow to be fitted into the picture.

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(iii.) Cabinet – Committee System.

This system was invented for Ceylon by the Donoughmore Commission[48] and was extended with modifications, to Jamaica. An experiment on these lines is being tried in Penang. It implies (a) that the State Council would have both legislative and executive powers, (b) that executive powers would be delegated to committees of the State Council, which would seek Council decisions on all questions of principle, and (c) that the chairmen of the committees would be members of the Executive Council, which would be responsible to the Council for Finance but otherwise would carry out in the executive field, the decisions of the State Council.

The weaknesses of the system, as exhibited in Ceylon, were (i.) the committees showed less interest in general policy than in detailed administration, particularly as it affected their constituents; (ii.) appointments, promotions and transfers took up a great deal of time, and there was much canvassing by prospective candidates, including (on occasion) public officers already in service; (iii.) there was lack of co-ordination between committees, especially when the chairmen were not particularly friendly; and (iv.) the Board of Ministers (i.e., the Executive Council) were [*sic*] not homogeneous, with the result that Ministers sometimes fought against each other in the State Council. The second of these difficulties would, however, not apply in the States – except as to transfers – if the Public Service Commission had jurisdiction.

9. The conclusion appears to be that none of these methods is suitable for the smaller States and that something new should be devised. It should, if possible, be a development out of the present system because it is familiar. It seems plain that in the smaller States it will be enough to have one full-time Minister, the Mentri Besar, or at most two, the Mentri Besar and the Minister for Finance. The others should be more like the chairmen of committees in English local government; part-time politicians specialising in certain fields of administration. Since they would be part-time, they should be chairmen of committees and not Ministers, except in name, so that any conflict between public and private interests would be overcome by having full committee decisions.

[48]Among other reforms, the 1927 Donoughmore Commission to Ceylon established a system of executive committees based on the London County Council, rather than the Cabinet model that the local politicians wished for.

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10. The details would have to be worked out in drafting, but the following would be the main points:

(1.) There would be no elected Speaker, but the Mentri Besar would preside over the State Council. (This is perhaps arguable, and is not essential to the scheme, but it avoids the possibility, which has occurred in Tasmania,[49] of a small body being equally divided and functioning under the Speaker's casting vote.)
(2.) The Ruler should have power to appoint one or more Ministers, in addition to the Mentri Besar, but it would be provided in the Constitution that such Minister would be full-time. One Minister, but not more, might be chosen from outside the State Council, and he would have the right to sit but not to vote.
(3.) All functions not allocated to Ministers would be vested in the Council and stand referred to committees of the State Council, but the chairmen of such committees would be nominated by the Ruler.
(4.) The Mentri Besar, the Ministers, and the chairmen of committees would be members of the Executive Council, over which the Mentri Besar would preside, and which would be collectively responsible for all functions not allocated to committees.

11. This diarchy seems awkward, but it has not the defects of most schemes of diarchy. A committee could be overruled by the whole Council, and accordingly the Executive Council, if it had a majority, could get a committee decision reversed. If the committee proved obdurate, it could be dissolved and reconstituted, though it might be that the Mentri Besar would prefer another Chairman. The committee scheme could not apply to the whole field of government because at least a full-time Minister of Finance would be required. On the other hand, it would be impossible, in a small State, to find enough full-time Minister[s] of the requisite quality. Presumably, it would be necessary to pay small allowances to committee chairmen, but it would be assumed that they had other jobs. Moreover, the system would be flexible: a complete, though small, Cabinet system could be applied if personnel were available. It is suggested that the scheme could be worked with the membership specified in para. 7 above.

[49]In the 1955 and 1956 Tasmanian State elections there had been a hung parliament, with the incumbent Labor government and Liberal Party opposition holding the same number of seats.

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III. ADMINISTRATIVE ORGANISATION

12. Even in a large State there would not be more than six or seven Ministries and in Perlis there would probably be only two – the Mentri Besar's Office and the Ministry of Finance. It does not seem either necessary or desirable to departmentalise administration as in the larger Commonwealth countries and (probably) in the Federation. The colonial system, with a State Secretary as the funnel of administration, is at present in use in the States, the Heads of Departments being technical officers. There seems no reason why this arrangement should not continue, with a Secretary to each Minister of fairly low rank (except, perhaps, the Secretary to the Mentri Besar, who might take the place of the Deputy Mentri Besar, where there is one). It may be noted that the constitutional provision for Permanent Secretaries in Ceylon has been, partially at least, a failure, because it has not been followed by a departmental reorganisation (as the original draft provided).

13. The replacement of the Legal Advisers raises questions about the federal legal organisation. Unless that is changed, it would be desirable to continue the present arrangement, except that (i.) he should be summoned to Executive Council only if his presence was required by the Mentri Besar, and (ii.) he should have the right to sit but not to vote in the State Council. A larger State should not be prohibited from having a Minister of Justice, but there would be little for him to do.

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