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CONSTITUTIONAL AND LEGAL DEVELOPMENT
IN SELANGOR UNDER BRITISH INFLUENCE (1874 - 1948)

by

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0703AA

A project paper written in partial
fulfilment of the requirement of the degree of Bachelor
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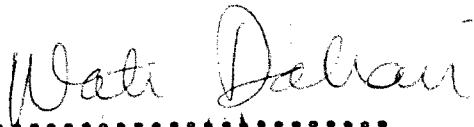
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Fakulti Undang-Undang,
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FRONTIS PIECE

SELANGOR AND ITS DISTRICTS.

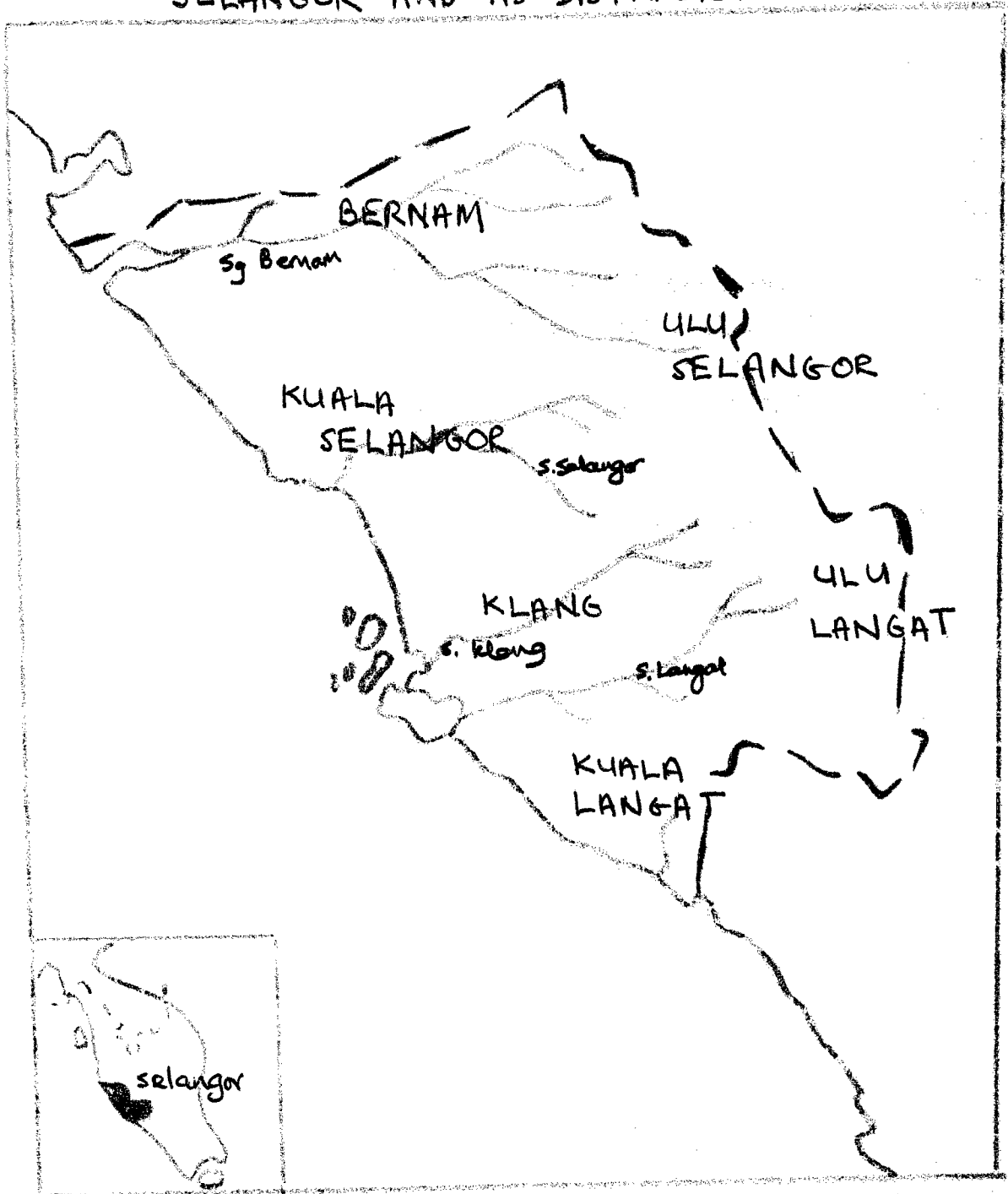


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LIST OF ABBREVIATIONS

JMBRAS	-	Journal of Royal Asiatic Society (Malayan Branch)
A.R. Sel.	-	Selangor Annual Report
M.L.J.	-	Malayan Law Journal
FMSLR	-	Federated Malay States Law Report
M.C.	-	Malayan Cases
A.C.	-	Appeal Cases
Q.B.	-	Queen's Bench Division
SSLR	-	Straits Settlement Law Report
S.S.C.M.	-	Selangor State Council Minutes
J.C.	-	Judicial Commissioner
C.J.C.	-	Chief Judicial Commissioner
Ag. C.J.C.	-	Acting Chief Judicial Commissioner
JSBRAS	-	Journal of the Royal Asiatic Society (Stratis Branch)

LIST OF CASES

- 1) Awee v. Ibrahim (1916) 1 FMSLR 274.
- 2) Duff Development Company v. Kelantan Government [1924] A.C. 79.
- 3) Haji Abdul Rahman v. Muhammad Hassan [1917] A.C. 209.
- 4) Kandasamy v. Suppiah (1919) 1 FMSLR 381.
- 5) Leonard v. Nachiappa Chetty (1923) 4 FMSLR 265.
- 6) Mighell v. The Sultan of Johore [1894] 1 Q.B. 149.
- 7) Motor Emporium v. Arunugem (1933) 2 MLJ 276.
- 8) Official Administrator v. State of Selangor (1938) FMSLR 123.
- 9) Ong Cheng Neo v. Yap Kwan Seng (1890) 1 SSLR Supp. 1
- 10) Panicher v. Public Prosecutor (1915) 1 FMSLR 169.
- 11) Ramah v. Laton (1927) 6 FMSLR 128.
- 12) Re The Will of Yap Kim Seng (1924) 1 FMSLR 313.
- 13) Re A Reference by the Registrar of Titles, Selangor, (1936) 6 MLJ 9.
- 14) Re Chong Fong Sen (1932) MLJ 140.
- 15) Re Nambiar (1946) MLJ XXVI
- 16) Re Lam Weng Chek (1946) 2 M.C. 188.
- 17) Tengku Abu Bakar & Ors. v. The Sultan of Johore (1949) MLJ 187.
- 18) Woon Ngee Yew v. Ng Yoon Thai (1941) MLJ 187.
- 19) Yap Hon Chin v. Parry (1911) 2 FMSLR 70.
- 20) Yap Tham Thai v. Low Hup Neo (1919) 1 FMSLR 383.

INTRODUCTION

It is difficult to understand why a country or a state adopts a particular form of government without a knowledge of its constitutional development. Hand in hand with this, we need to study its legal development in order to understand the peculiarities of its legal system.

Much had been written about the constitutional and legal development of Western Malaysia as a whole by historians and legal scholars alike but no attempt has been made so far to study each state individually and comprehensively. This project paper is thus such an attempt. Selangor has been chosen because it has always been the seat of central government.

It is the intention of the writer to trace the constitutional and legal development of Selangor from the advent of the British in 1874 to the signing of the Treaty of Federation, 1948 which paved the way to independence for the whole nation. 1948 was and is the critical date for the history of Malaya generally and Selangor especially for this treaty determined the whole constitutional make-up of the country.

In Chapter I, a brief sketch of the constitutional and legal setup of Selangor prior to the coming of the British is given. The beginnings of British rule under the Residential system from 1874 to 1895 is also discussed.

Chapter II inspects the beginnings of the Federation and deals with the development of the state constitutionally, legislatively and judicially during the early years of the Federation up to the outbreak of Second World War.

Chapter III marks the return of the British to Malaya with their controversial Malayan Union scheme which was a far cry from their pre-war policy. This turned out to be a blessing in disguise for it speeded the country to independence. It also settled once and for all the position of the immigrant groups in Malaya constitutionally. For the first time too Selangor was given a constitution.

Last but not least, Chapter IV examines the legal development of Selangor as regards the reception of English law, the laws applicable and the status of the personal laws of the different communities.

CHAPTER I

SELANGOR BEFORE THE ADVENT OF THE BRITISH AND UNDER THE RESIDENTIAL SYSTEM (1874-1895)

Selangor as a state is of recent edition. It was only in the late eighteenth century (1742 to be exact) that Raja Lumu was proclaimed by Sultan Mahmud of Perak as Sultan Sallehuddin Shah, the first Yamtuan of Selangor. In fact the ruling Sultan in 1874, Sultan Abdul Samad was only the fourth of his line.

Nineteenth century Selangor was a land of five rivers — the Bernam, Selangor, Klang, Langat and Lukut¹ — flowing in an east-west direction with its source in the backbone ranges of Malaya and its mouth into the Straits of Malacca. Each had its own river valley, separated by thick tropical forests and highlands. Communications were thus difficult, the only methods available being by way of rivers and occasional jungle footpaths. This peculiar geography of Selangor greatly affected its political set-up and the later course of its history.

Newbold recorded the native tradition of dividing the estimated indigenous population which was a scanty 12,000 into three distinct pockets of settlement.²

Along the coast the Bugis who were seafaring people and traders dominated. They were a large and distinct political unit who completed their

¹ Lukut was later ceded to Negri Sembilan on 1st July 1880 in exchange for Semenyih

² T.J. Newbold, Political and Statistical Account of the British Settlements in the Straits of Malacca with a History of the Malayan States, (1939), Vol. 2, p. 2

'colonization' of Selangor when one of their chiefs, Raja Lumu, was installed on the throne.

On the right banks of the Klang and Selangor valleys we have the Malaccan Malays who were said to have come there at the time when Selangor was a subject of the Malaccan Sultanate.

On the left banks of the river valleys we have the Jakuns and the immigrant Sumatrans - the Rawas, Mandilings and Bataks. There was keen rivalry between those immigrant Sumatrans and the Bugis dating back to the sixth century.³ Because of this tradition of hostility between the two groups, any matters were settled through intermediaries holding the office of "Dato Dagang" or "headmen of foreigners."

The Chinese were also present in the rich tin mining river valleys especially at Klang and Lukut, headed by their own leader called the Capitan China.

In ascending order, the state was the largest political unit ruled over by an hereditary monarch with the Malay title of Sultan. He was aided in the administration of the state by a number of territorial chiefs holding the areas of the state in which they lived. They in turn had minor chiefs and headman at their command for purposes of administering the villages which were the smallest political unit in the Malay political system.

In theory the Sultan was supreme and the symbol of state unity. Embodied in him were both daulat - the mystical reinforcement of personality conferred by kingship - and kuasa - the supreme temporal authority.⁴ Apart

³The Sumatrans had tried to wrest control of the river valleys from the Bugis.

⁴R.O. Winstedt, Kingship and Enthronement in Malaya, JMBRAS XX (1947) p. 98.

from his ritual and symbolic roles, in matters of external relations and defence he represented the people though even then important decisions required the presence and consensus from the senior chiefs.

In practice his exercise of authority beyond his district was limited by the extent he could in fact control and command his chiefs. Thus, as in Selangor of 1826 - 1852, the Sultan was only a district chief among district chiefs. The Sultanate was only maintained by the chiefs as a basis for their position vis-a-vis each other. Whatever the real situation might be, there was a general acceptance of the Sultanate (if not the Sultan) as the formal head of government. The precarious system of succession further undermined the effective control of the Sultan. He had to be acceptable to the major chiefs and so long as he had their approval he may be succeeded by his eldest legitimate son or his nearest male kin.⁵

By virtue of its geographical setting, each river valley was an autonomous political unit headed by a chief or a raja. It was said that there were four territorial chiefs in Selangor: the Penggawa Permatang and Penggawa Tua who ruled the estuaries and the coast; the Penghulu Aru who was in charge of the interior except for the tinmines of the Klang valley mining areas which were under the charge of another territorial chief, the Orang Kaya Kechil. However in Selangor the internal management of the state was a family affair due to the large number of the ruling class. Thus in 1870, Bernam was in the hands of Raja Hitam (a nephew of Sultan Abdul Samad); Selangor, the royal district was administered by the heir presumptive Raja

⁵ A Sultan's sons by his royal wife took precedence over those of his inferior wives or concubines. For purposes of succession only sons by royal wives were fully legitimate.

Muda Musa; Klang which was the subject of later dispute was in the hands of Tengku Ziauddin, his son-in-law; Langat was the royal residence while Lukut was held by the Sultan's brother-in-law, Raja Juma'at.⁶ But however, independent they might be since their respective territories were enfeoffed to them by the Sultan, they had to pay him a fixed percentage of the customs dues and duties which they had collected. Their revenue mainly came from tin, custom duties on rattan and gutta perca and import duties on ironware and salt. Thus it would appear that the main advantage of the rank of chief lay in the right it gave the holder and his kin to a share in the economic resources of the state in the form of taxation and toll, monopolies and concessions, produce, labour or followers.

A chief held his district by his own strength rather than by the backing of the Sultan. The basis of his strength was manpower. Much therefore depended on the chief's ability to gather and retain a following from among his kinsmen and the peasants. The size of the chief's following was thus the "gauge of his power"⁷ especially when he had a retinue of foreignborn Malays in tow. A typical chief's household consisted of dependent kin performing the necessary duty of administering his lands; of mercenaries and free volunteers who provided the armed forces; of debt bondsmen and slaves who filled a variety of roles from household domestics and concubines for the chiefs and their followers to boatsmen and gardeners. In the chief's hands laid the power of dispensing justice, administration, revenue collection and general leadership in times of war and disorder.

⁶ J.M. Gullick, Indigenous Political Systems of Western Malaya, (1959), pp. 91-92, 97-98.

⁷ F.A. Swettenham, British Malaya: An Account of the Origin and Progress of British Influence in Malaya, (1955) p. 126.

Mainly due to economic advantages in living together, the rakyat lived in village communities⁸ led by their leader called the Penghulu. He provided the link between the peasants and the local chiefs. At times he belonged to the ruling class but more often to the peasantry. His manifold duties ranged from keeping the peace to informing the district chief of village affairs.

As in other Asian countries, the Malay method of administering justice was closely tied up with the political system. There was no concept of the separation of powers as known in British jurisprudence nor was there an independent judiciary. In actual fact, there was close correspondence between the machinery for enforcing the law with the distribution of powers.

In ascending order the Sultan was the fount of justice. He was to deal with capital offences⁹ and the death sentence was his royal prerogative. Any disputes between the chiefs were to be referred to him. In practice however the Sultan exercised little power for it was usurped by the chiefs who administered justice as they pleased. There was no proper courts with properly trained staff, rules of procedure or trials with assessors, or juries. Audiences were held in the houses of the chiefs whenever the need for a trial arose. At the village level the headman had a single 'mata-mata' or constable through whom to exert his authority. However in the small world of the village social sanctions were sufficient. There was, too, no equality before the law between the ruling class and the rakyat, the law being more lenient towards the former.

⁸ Each village community tended to be a homogenous group related by kindred or affinity.

⁹ R.J. Wilkinson, Malay Law - An Introductory Sketch, Papers on Malay subjects, (1908), p. 28 lists capital offences — treason, incert, robbery, arson, theft, cheating, prisoning, stablimg and murder.

Eventhough so, it could not be said that the conditions were chaotic and arbitrary. The mobility of the population and the interest of the chiefs to retain them for the sake of revenue provided an effective check on the powers of the chiefs. At its best it encouraged a chief to assist his own followers against a stranger especially where there were rival magnates. Only where all the people acknowledged a common territorial chief would you expect justice to be honestly meted out. All in all

".... a peasant had a moderate expectation of justice at the hands of his own chief because the chief could not afford to disintegrate the population of his district by a general course of oppression beyond what the conventions of the relationship between ruler and subject permitted."¹⁰

No codes of law were used in dispensing justice though a digest of Selangor laws was available. There was thus no definite jurisprudential system. The law administered seemed to rest entirely on the individual equity of the ruler and the chiefs. The only laws prevailing was a composite law of Muslim law intermingled with Malay custom — in this case Adat Temenggong.

Adat Temenggong being an autocratic law with patriachal overtones could be said to further strengthen the political system. Its administration of justice was "savage and deterrent"¹¹ seeking to deter not reform as evidenced by its criminal law which was based on the principle of retaliation, (lex talians). The offender would lose that limb which was used in the commission of the offence.

The rakyat held lands only in terms of occupation and tenure was revocable at will by the ruler or the chief. Although the adat followed was patriachal yet the law of property had matrilineal overtones. Ancestral

¹⁰Gullick, op. cit., n. 8, p. 119.

¹¹Ahmad Ibrahim, Towards a History of Law in Malaysia and Singapore (1970) p. 6.

property belonged to the tribe through the female line as in adat perpatih.¹² On divorce, property jointly acquired during marriage was to be divided equally. Fairness to women was its redeeming feature.

Thus Muslim law or Hukum Shara which came to Selangor through Indian traders was not Muslim law in its entirety but tempered by Malay adat law. Personal laws of the minorities were not interfered with due to the laissez faire attitude of Muslim law. Furthermore, the Malay system was said to be deficient in supplying a method for the trial of cases involving inter-racial elements. Thus, though theoretically the Chinese were under the jurisdiction of the Sultan yet in practice they were independent under their own leader, the Capitan China. Yap Ah Loy, the Capitan China in Kuala Lumpur, was outstandingly efficient in administering justice using their own laws and customs but such a system was only workable in normal conditions not in times of fighting.¹³

It was thought that the security of life and property of British subjects in Selangor¹⁴ would be safeguarded by improving the system of administering justice. At that time there was no adequate machinery for the settlement of disputes or enforcement of contracts. The Sultan ignored the acts of piracy committed on British subjects for to him it was only a means of obtaining revenue. Thus, the drawbacks and inadequacy of the political and judicial

¹² W.E. Maxwell, The Law and Customs of the Malays, (1884), p. 48.

¹³ S.M. Middlebrook, Yap Ah Loy (1837 - 1885), JMBRAS, Vol. XXIV, Pt. 2 (1951) p. 23.

¹⁴ Due to growth of trade and development of tin mining Chinese traders and miners as well as European concession holders flocked to Selangor.

system made it unwise for it to be extended to the British subjects who, being unaccustomed to it, pressed for British intervention.

Even before formal intervention, the British did embark on occasional attempts into Selangor's affairs. The pretext was finally provided in 1874 when pirates raided a British lighthouse at Cape Rachado killing the eight passengers and crew of a Malaccan shipping vessel. Nine perpetrators of the crime were recognized when they visited Malacca. On arrest, the offenders were extradited¹⁵ and handed over to the Viceroy, Tanjku Ziauddin. The Sultan was told to set up court at the mouth of Jugra river. Two British commissioners were sent to hear the trial on behalf of the British Government. The Sultan was finally forced to ask for the appointment of a British resident in his letter to the Governor dated 1st October, 1874 which was finally formalized by the Governor's proclamations of January, 1875.¹⁶

British intervention in Selangor did not by any means imply a direct annexation of the state but rather political advice or indirect rule without any responsibility incurred. This was the Residential System, its aim being to achieve prosperity through political stability. To realize it changes had to be made to the existing political system — without doing away with the Malay political institutions.

The outcome of such a system was wholly dependant on the abilities of the Resident and his relationship with the Sultan and the chiefs. In Selangor, J.G. Davidson and Frank Swettenham were personal friends of the Sultan and his chiefs. What responsibility fell onto the Resident could not be

¹⁵ Indian Act No. 7 of 1854.

¹⁶ Maxwell and Gibson, (Ed.), Treaties and Engagement Affecting the Malay States and Borneo, (1924), p. 35-36.

discovered though of course it could be nothing as specific as formal control of legislative, judicial and executive powers. The Sultan was still the sovereign and fount of all authority and law. Thus, Britain juridically had no jurisdiction at all over Selangor. The powers were acquired through an 'agreement' which was nothing more than an exchange of letters and even then, of a very general nature. The letter on 1st October, 1874¹⁷ specified:

"As to my friend's request that I will enter into an agreement... that my friend may collect all the taxes of my country,... set my country to right...."¹⁸

and this was couched in similar terms in the Proclamation of 25th January, 1875:

"... that Sultan Abdul Samad.... being desirous of better government in his country, has asked us for an English officer to assist him to open up and govern his country... and especially in protecting the lives and property of dwellers in , and traders..."¹⁹

There was no guidelines for J.G. Davidson to follow specifically though there was a set of instructions. He had however to take into account that the state was not a colony but a protectorate and also the existing local customs. Thus, two years later when Douglas sacked the Tengku Panglima Raja from the State Council for alleged bribery, the Governor reprimanded him stating that,

"The Residents have been placed in the native states as advisers, not rulers, and if they... disregard this principle, they will most assuredly be held responsible if trouble springs out of their neglect of it."²⁰

¹⁷ See clauses VI, VII, X of Bangkok Engagement, 1874, ibid., pp28-30.

¹⁸ ibid., pp. 35-36.

¹⁹ ibid.,

²⁰ Cited by E. Sodkha, The Protected Malay States 1874-1895 (1964) p. 104.

Juristically speaking, there was nothing in the 'agreement' that would enable the residents to rule the country. The Sultan was to rule and the Resident was to advise; not the Resident to rule and the Sultan to advise. However, if the terms of the 'agreement' were given a liberal construction, then the Sultan had to ask and follow the Resident's advice on all and every question excepting Malay custom and religion. This would tantamount to subjection not protection. ²¹

It was inevitable that the Resident would assume control of the whole administration of the state. Power accorded to him to collect taxes made it inevitable that he would encroach on other state matters. With no one to check on his powers, the Resident was left to experiment and evolve a political system best suited to the particular conditions of the state, framing policies, initiating legislation and supervising state departments manned by a hierarchy of British officials. The Sultan was relegated to a role of secondary importance and whatever vestiges of supremacy he had was taken away when in 1892 he withdrew from the State Council leaving the presidency of the council to the Resident.

The State Council, termed first as the mixed council, was formed in 1877 with its members being Tengku Kudin (president), the Resident, the Collector and Magistrate at Langat, James Innes, Yap Ah Loy, Raja Kahar (Sultan's son), Syed Din (Tengku Kudin's henchman) and Tengku Panglima Raja. They were appointed for life after sanction obtained from the Governor. In theory, the State Council was to be an advisory body seen as a "... compensatory device, substituting a formal connection with the government for the

²¹ R. Braddel, The Legal Status of the Malay States (1931) pp. 13-14.

powers they [the Malays] once enjoyed... assist the Commissioners by keeping them in touch with Malay feelings... giving the Rajas an interest in the country's affairs by involving them in discussion and... consider specifically questions of Muhammadan religion..."²² Yet like many legal fictions the British took a delight in, it began to assume legislative, executive and judicial functions. Whatever its duties and authorities were evolved by practice. Legislatively the Council enacted orders or Regulations formally passed by Sultan in Council on the advice of the Resident. Executively, it dealt with affairs of local importance like appointments and salaries of Penghulus and Kathis. Judicially, it was the final Court of Appeal with the Sultan or his representative sitting on it.²³

Though the desire to establish a well ordered judicial system was a motivating factor in British intervention yet there was no specific reference to administration of justice in the 'agreement'. However this did not hamper the Resident. Douglas, during the tenure of his office (1876-1882) appointed British officers to act as Collectors and Magistrates and were stationed in the districts. Mr. James Innes was posted to Langat, Mr. Robert at Selangor, Mr. E. Neubronner at Bernam while the Resident presided over the Magistrate's court at Klang. They were empowered to try minor offences involving fines not exceeding \$100 or six months imprisonment in criminal cases and in civil cases the value of which was \$150. The Penal Code and other Straits Settlements Ordinances were adopted together with the

²² E. Sodkha, 'State Councils of Perak and Selangor 1877 - 1895' in K.G. Tregonning (ed.) Papers on Malayan History (1962) p. 101.

²³ J.H.M. Robson and Berrington, 'Regulation XI of 1893: The Regulation to define the Constitution and powers of the Civil and Criminal Courts', The Laws of Selangor 1877-1895, p. 351.

usual form of summonses, subpoenas and judgments.

Any religious or cases concerning the Muhammadan law of marriage and divorce were dealt by Imams in open courts while in other aspects the Malay immigrants especially in Kuala Lumpur were ruled over by their Dato Dagang until 1879.

The Chinese were ruled over by their Capitan China, Yap Ah Loy with the help of his right-hand man, Yap Ah Shak. They tried minor cases like inheritance, settlement often taking the form of arbitration according to Chinese law and custom until European administration was introduced in 1879.²⁴ Even then, the more serious cases were transferred to Klang.

The Resident was appointed by the Sultan as Judge to try the more difficult cases assisted when possible by one of Rajas of higher rank or Capitan China. In murder cases, the Resident as Judge was assisted by a jury consisting of one European, two Malays, two Chinese and one Indian. The Residents then placed the proceedings in court before the Selangor State Council to decide whether the Sultan should issue a warrant for the execution of the criminal. The Resident however had extra-magisterial duties to hold court settling disputes referred to him while visiting the different parts of the state. Thus, by 1877 a system of district courts was established in the Malay States generally and Selangor especially. The judicial system existing then was essentially British in features based on that of the Straits Settlement with one essential difference — the absence of lawyers. A few local magistrates were appointed to advise the European magistrates in matters of local customs but little was done to reorganize the Penghulu system.

²⁴ Middlebrook, op. cit., n. 13, p. 91.

After 1877, additional courts were set up -- one in Ulu Selangor and one in Ulu Langat making a total of six courts, due to the growth of population and district administration. Justice was administered by British officers as part of his administrative duties. The courts in Selangor was only formally constituted in 1893 by an Order in Council passed by the State Council to legalize the defacto judicial setup as well as to clarify the jurisdiction of the magistrates.²⁵ If there was no law passed, then there would be a possibility of any person questioning the authority of British officials to adjudicate in civil and criminal matters.

In ascending order, the Sultan in Council was the final court of Appeal though instances of appeals to Governor of the Straits Settlements could be cited especially in criminal cases.²⁶ The Sultan in Council had full powers of revision, reversal and confirmation with the death sentence being its royal prerogative.

Down the line we have the Resident's Court and the District's Courts. In these two courts European officials tried the cases of all races helped by a small staff consisting of one interpreter for each language, a writer, a process-server and a bailiff.

The efficiency of administration of justice in the districts depended on the District Officers who were responsible to the Residents, who in turn could hear appeals from the various district courts and try capital offences.

²⁵ Annual Report on Selangor, 1893.

²⁶ Cited by E. Sodha, The Residential System in the Protected Malay States 1874 - 1896; Ph.D. Dissertation (1960), p. 110.

²⁷ Tan Siew Sean, Administration of Justice in the Malay States 1874 - 1896, Academic Exercise (1959), p. 35.

In 1882 a Chief Magistrate's Court was established having the same jurisdiction as the Resident - the only exception being cases where capital punishment was the penalty. The appointment of a Chief Magistrate was a milestone in Selangor's legal history for it introduced a court officer with legal qualifications to draft all the laws and regulations of Selangor. He was assisted by an Assistant Magistrate whose jurisdiction covered criminal cases where the fine was not more than \$1500/- and the term of imprisonment did not exceed seven years.

Western methods of procedure were observed like in criminal and civil proceedings, the Indian Penal Code and Civil Procedure Code were followed.²⁸ Various ordinances were also adopted like the Limitation of Suits Ordinance and Summary Criminal Jurisdiction Ordinance.

With the growth of district administration, native justices of the peace were appointed to hear cases in the districts. Raja Kahar held court in Ulu Langat up to 1883 and Raja Indut was the native magistrate at Bernam.²⁹ Capitan Yap Kwan Seng and K. Thamboosamy were also appointed as justices of the peace.

Assessor's help were sought in intricate accounts of native laws. In 1892 there were five Asian assessors in Selangor - the Malay assessors being Raja Laut and Raja Bot; Yap Ah Loy and Chow Ah Yoke representing the Chinese community and Thamboosamy for the Indians.

Though justice in Selangor was administered by British officials almost exclusively, various native courts were constituted at the same time.

²⁸ It was formally adopted in Selangor in 1886 and 1888 respectively.

²⁹ By virtue of Courts Legislation of 1890 and 1893.

The Kathi's and Assistant Kathi's Court dealt with offences relating to Muhammadan's law especially matrimonial disputes. The Penghulu's Court dealt with local administration in helping with the policy of indirect rule. Their jurisdiction covered cases valued at \$10 and where a fine of \$5 could be imposed covering petty cases in their mukims within their jurisdiction as defined in their kuasa.³⁰

The native magistrates who were appointed from the Malay chiefs and headmen of indigenous races were usually members of the State Council and sat with the Sultans and other members in the highest court of Appeal while acting as assessors with European Magistrates.

Thus these native institutions played a subsidiary yet a necessary role.

Laws were also introduced to attract investors into the country thus explaining the promulgation of the Land Regulations of 1892 which was later replaced by the Selangor Land Code and Registration of Titles Regulations in 1891 - thus introducing the Torrens system of Registration of Titles into Selangor.³¹

All in all, political stability and economic viability was reached under Pax Britannica. This was possible due to the whole power being in the hands of the Resident. It enabled him to achieve the objective of laying down a system of administration of justice. The authority of the Resident was to remain largely unquashed until the formation of the Federation in 1896.

³⁰ i.e. letter of authority given by the Sultan. Robson and Berrington, op. cit. n. 23, p. 353.

³¹ ibid., pp. 254-255.

CHAPTER II

CONSTITUTIONAL DEVELOPMENT IN SELANGOR 1895 - 1941

The signing of the Treaty of Federation on 1st July 1896 was not the result of sudden and hasty decision but marked the climax of long and deliberate correspondence ensuing between the colonial office and the Governor of the Straits Settlements.

The idea was first mooted³² by the then Secretary of State, Marquis of Ripon, who felt that financial difficulties encountered by British officials especially in the administration of Pahang could be solved by amalgamating Negri Sembilan and Selangor. The Governor of the Straits Settlement then, Sir Cecil Clementi-Smith agreed with him and added that the time was ripe to include Perak and Pahang.³³

Two principal arguments could be discerned in favour of the proposal. Firstly, there was a need to secure some degree of administrative uniformity and continuity of policy as well as to promote efficiency and economic development. By this, resources available could be utilized for all. Secondly, the Governor felt that the Residents were becoming too independent and were were practically uncontrolled in their actions. The necessity for the Federation was further stressed by Mitchell, the new Governor, as the

³²This is the official view. Swettenham claimed he was the originator of the idea. He had discussed it informally with Charles Lucas of the Colonial Office while on leave in England; F.A. Swettenham, British Malaya (1955) p. 273.

³³Correspondence Respecting the Federation of the Protected Malay States, May 1893 - December 1895 (Taiping, Perak, 1896).

states were drifting further and further apart in the matters of the administration of justice, taxation and land settlement. Thus a central authority was needed to curb a further drift in the governmental policies among the Residents.

The essence of the whole scheme was the establishment of the office of a Resident-General under the Governor who would be the chief executive officer to supervise and control the administration of each state. He was too, to be the liason officer between the Governor and the Residents. However for the new system to be a success it "must not be uncongenial or unduly wound the susceptibilities of the Malay communities and their rulers" for the Malays had national prejudices and difficult to please unlike the Chinese who would readily fall in with any system of government that was not oppressive.³⁴ Of course at the top of the hierachy was the Governor of the Straits Settlement who would be styled the High Commissioner. To help the Resident-General achieve the objectives of the Federation, a common civil service under one set of regulations, ^{was set up} and state departments, ^{was} headed by Federal Heads - one of the important departments being the Judiciary. Periodical meetings of an advisory assembly of Chiefs and Residents were to be held so as to bring the reality of the federation home to the individual Sultans. Thus, the structure of the proposed government was similar to that of the Crown Colony yet all the while the states were to remain juridically sovereign British protected states. The man delegated to obtain the approval of the Sultans and to clarify to them the consequences of federation was Sir Frank Swettenham.

³⁴ R. Emerson, Malaysia: A Study in Direct and Indirect Rule, (1974) p. 171.

It was emphatically stressed to the Rulers that the agreement would not in any way and "not in the slightest degree be diminishing the powers and privileges which they now possess nor be curtailing the rights of self-government which they at present enjoyed."³⁵ On this fictitious basis Swettenham succeeded in winning the approval of all the rulers.

The Treaty of the Federation of 1896 was a document remarkable for its brevity containing only five clauses and coming to less than two printed pages. In fact as Emerson suggested it was a masterpiece of loose and casual drafting. It was a very vague document not defining at all the respective powers of the Federation or its four component states. All that was stated was that the rulers agreed to accept the appointment of a Resident-General who was responsible for controlling the activities of the Residents and whose advice they would have to accept, except in matters relating to the Muslim religion.³⁶ However, on the other hand it was stressed that on no account would it diminish the powers the rulers then enjoyed.

Thus on being assured of his status, the Sultans were quite willing to plunge into the new political experiment. Furthermore they were assured of a large income which came to them "with the most desirable certainty and promise."³⁷ He did not feel so much that he was robbed of all of his powers for even then, the bulk of the effective power in the state was exercised by the Residents under the Residential System. In fact, Sultan Abdul Samad ceased to exercise any power at all by the mid- 1880's though the State Council meetings were still conducted in his name.

³⁵ Text, Maxwell and Gibson, Treaties and Engagements, (1924), pp. 70-71.

³⁶ Article 4, The Treaty of Federation, 1895.

³⁷ Emerson, op. cit., n. 34, p. 175.

It was the Resident who felt most the loss of power. A large portion of the executive authority of the Resident in the state was wrested by the Resident-General. Thus, for the first time the states were one for general purposes of administration.

The Residents were now subjected to the authority of the Resident-General. Clause 5 of the Federal Administrative Scheme which outlined the federal bureaucracy succinctly stated that the Resident-General "...while travelling or residing in any state... can communicate with anyone direct on any subject... Similarly, if any native or European officials or un-official addresses him on any subject, the Resident-General shall offer consultation with the Residents, send a reply if any, through him... using his own discretion only in a matter of urgency..." Though the ultimate say laid in the hands of the Resident-General yet where there was a difference of opinion between the two the matter could be referred to the Governor. Pending appeal to the Governor, the Resident had to obey the Resident-General's instructions.³⁸ However the Resident still continued to enjoy the right of dealing with the appointments or promotions of officials on a fixed or temporary basis where the officials' salaries did not exceed \$600 per annum.

One of the main objects of the federation as stated above was the establishment of a central bureaucracy in which the departments were manned by Federal Heads. Certain administrative prerogatives were still vested in the Resident's hands. However, the expansion of the bureaucracy was such that the Federal Chiefs demanded efficiency and swiftness of action. They felt that the necessity of going through the Residents to communicate with

³⁸ Clause 8, Federal Administrative Scheme.

the State Departments were wasting their time. Deliberately, the Federal Heads chose to ignore the Residents until it was pointless for the Residents to protest against the loss of their prerogatives one by one to an excessive bureaucratic centralization.

To man the common civil service, British officials called cadets were recruited at the end of 1896 in Selangor. Three cadets were recruited from England - Pourtney, Thompson and Arton.³⁹ The civil service which was modelled on the pattern in the other Crown Colonies based its selection on an open, competitive examination not nomination as under the Residential System. The candidate was specifically required to be a British born subject between the ages of twenty-one to twenty-four and was required to know at least one indigenous language apart from English - be it Malay, Chinese or Tamil. Thus on being equipped with a sound knowledge of the vernacular and customs of the people, it was hoped he would be ^a better administrator. He might even be sent to India or China as the case may be to study the language and customs of the people. After that they were required to pass law examinations like Maxwells' "Duties of a Magistrate", "Commentaries on the Indian Penal Code" and other important acts and ordinances.⁴⁰

Because of shortage of staff, recruitment into the civil service was intensified. However up to 1910 it remained purely British manned. This was a grave defect for the needs of the community could not be discerned though it was true that these administrators had to know the language and customs of the people they were serving. The British did make 'genuine' attempts to

³⁹ Selangor Annual Report, 1898, p. 12.

⁴⁰ Lim Tuck Hee, Malayan Civil Service 1896 - 1941, (1958) p. 35.

recruit native civil servants but the system of education was not equipping the Malay for government employment.

In 1910 perhaps as an act of guilty conscience on the part of the government, the Malay Administrative Service (MAS) was created to enable the Malays to catch up on the other races that had left them behind.⁴¹ In theory any Malay of proved ability may be promoted to the Malayan Civil Service but it was only tardily carried out. However, because of the pressure by the Federal Council urging the government to implement its policy, the High Commissioner then (in 1932) Sir Cecil Clementi, accelerated the promotions. Thus, by 1937 some twenty Malays were promoted, some holding the post of District Officers.⁴² Basically, most of them were offsprings of the Malay ruling class who received an education along the lines of an English public school like the Malay College, Kuala Kangsar. Alongside this was a struggle by the non Malays to get into the Malayan Civil Service. It was only in 1933 that they were allowed to do so.⁴³

It must be remembered too that since the early days of British influence, Penghulus had always been regarded as government officials. They were indispensable to the District Officers helping the latter in the administration of the districts. However, there was controversy as regards who should pay their salaries and emoluments. They were part of the traditional set up and should be under the authority of Sultan and always his royal prerogative; yet they had become part and parcel of the bureaucratic structure.

⁴¹ L.A. Mills, British Rule in Eastern Asia, (1942) p. 65.

⁴² Ibid., p. 72.

⁴³ S.W. Jones, Public Administration in Malaya, (1953) p. 101.

No doubt the British tried to adhere strictly to the policy of non intervention with Malay affairs yet this was a breach of it. However, even the recruitment of the Kathis and Penghulus into the administrative set up was an expression of the British conscience for in the Treaty of Federation, 1895 it was expressly stated that it was the policy of the central government to recruit more Malays into the civil service.

It was agreed in the Treaty of Federation, 1895 that the legislative authority was to remain for sometime with the State Council. Clause 6 of the Federal Administrative Scheme provided that the State Council was to be the legislative and advisory body. This would, in the light of the Federation Agreement of 1895, be contrary to one of the vital aims of creating the federation, that is, to have uniformity in legislation. However, the Selangor State Council like the Councils of other states confined their scope to legislating of localized topics.⁴⁴ On important matters the drafting of legal measures was taken over by the Legal Adviser who was appointed in 1896.

Mr. Renshaw was the first Legal Adviser. His main task was to draft new enactments as well as amend existing ones to meet the changing needs of the day. Thus we had the introduction of the Land Code, Labour Code, Mining Code and later on the Courts Enactment, Criminal and Civil Procedure Code as well as the Court Fees Enactment. All these served to provide clearcut rules regarding acts which in absence of legislature might not be regarded as offences, thus simplifying the work of the Government administrative officers including the Resident-General. Only after the laws had been approved by the

⁴⁴ For the list of state laws, see A.B. Voules, The Laws of the Federated Malay States, 1877-1920, Vol. 1, pts. 11 - V.C. (1921).

Resident-General would it be sent to the State Councils for notification. The legislative authority of the State Council therefore could be said to be belittled by centralization. Whatever vestiges of majesty left with the State Council was removed when the prerogative of the Sultan to sit in Council and act as the final Court of Appeal for the state was abolished with the appointment of the Judicial Commissioner in 1896. This would, undoubtedly, be inconsistent with the original intention to preserve the dignity and position of the native rulers for this meant the abolition of the chief though unwritten prerogative of the Sultan.

In keeping with the wish of the initiators to hold periodical meetings of the Rulers and the Residents, Clause 21 of the Administrative Scheme provided that "...once a year, there should be a meeting (... under the presidency of the Governor) of the Resident-General, the Residents, the native rulers and the members of the State Council... to discuss matters affecting the mutual interests of the native states."

The first Durbar was held at Kuala Kangsar, the capital of Perak in July, 1897. Discussion was held in Malay "... on matters pertaining to the Muhammadan religion, Malay customs and questions which especially touch the well being of the Malays."⁴⁵ No legislative measures were passed for it was intended to be merely advisory. However, the second durbar which was held in Kuala Lumpur dealt with a more controversial question - the problem of over-centralization. Sultan Idris of Perak, on behalf of the other rulers, protested for the loss of their authority in their respective states and called for "the loosening of the tight knot of the Federation whereby the affairs of

⁴⁵ F.A. Swettenham, op. cit., n. 32, p. 367.

of each state may be managed by its own officers, so that the government may be separate entities...".⁴⁶ However, the Durbar, which existed today in the form of the Conference of Rulers, was only a meeting-ground for the Sultans to discuss their problems amidst pomp and splendour. Its only contribution was to increase the general stock of goodwill among the Federal officers and the Malay aristocracy.

In 1909 the time was considered ripe to have a separate body to "... take charge of the joint arrangement of all matters of common interest and the enactment of federal legislation."⁴⁷ This was effected by the 'Agreement for the Constitution of a Federal Council, 1909'.⁴⁸ This was again a brief agreement with only eleven clauses, the members being the High Commissioner as the President, the Resident-General, the four Rulers, the four Residents and four unofficial members nominated by the High Commissioner.

What was striking about the Federal Council was the prominence of the High Commissioner as the President of the Council. He had no more right or power than the King of England then, to preside over a Council of Malay Rulers.⁴⁹ As High Commissioner his functions should be one of guiding and advising from without and, not one of effective participation in the Council's affairs. No doubt the intention was quite sincere enough. Sir John Anderson, the High Commissioner, came to realize that the Residents and the Resident-General had become too powerful and propose this as a remedy to bring the

⁴⁶ cited by Emerson, op. cit., n. 34, p.

⁴⁷ Sir George Maxwell, The Constitutional Problems of British Malaya, (1932) p. 74.

⁴⁸ Maxwell and Gibson, op. cit., n. 35, pp. 74-75.

⁴⁹ Maxwell, loc. cit.

High Commissioner directly into the administration and to associate the Rulers and Residents with him. The Malay Sultans who were again guaranteed that their powers would not be curtailed were stripped of much of their prestige by sitting as ordinary members on the level with their own subjects except for the right to nominate one of his members to represent him in case of disability.⁵⁰ Moreover, it was the signature of the High Commissioner, not of the Rulers, that appeared on all bills passed by the Council.

What right the Federal Council had to pass laws was doubtful. The treaty still confirmed the rulers' position as absolute monarchs. Thus, whatever enactments passed by the Federal Council was of no legal force in any state generally and Selangor especially save from the fact that the Ruler of the state assented to it.⁵¹ Thus, whatever the legal niceties, the rulers were reduced a rung lower.

The creation of the Federal Council was the reflection of the tug-of-war of power between the Governor as High Commissioner and the Resident-General. The latter stood too high in his position as the chief executive authority in the Federated Malay States. Without any prior consultation with the members of the Federal Council, the High Commissioner abolished the title of Resident-General and replaced it with the title of Chief Secretary to the government. This would no doubt be in open violation of the 1895 Treaty which provided for the post of Resident-General. Because of the generally increased level of prosperity, however, any discontent with the bureaucracy in Kuala Lumpur was forgotten.⁵²

The Federal Council went even further from its jurisdiction by

⁵⁰ The Report of Brigadier-General Sir Samuel Wilson on his visit to Malaya, (1933) pp. 6-7.

⁵¹ R. Braddel, The Legal Status of the Malay States, (1931) p. 13.

⁵² The Wilson Report, op. cit., n. 50, p. 7.

stipulating that the State Councils can only pass laws which "... he [the High Commissioner] considers should be properly dealt with only by the State Councils."⁵³ Thus, even the rights and prerogatives of the Sultan was subject to the opinion of the High Commissioner. This could be illustrated by the succession case in Selangor in 1936.⁵⁴ The British forced the Sultan to install his third son as the new heir presumptive bypassing his two elder sons - one who had held the office on election by the traditional chiefs because of his 'character'; the younger for the simple reason he had not been to England. The Sultan dissatisfied with the decision, though old and ailing, braved the journey to England to see the King. It was to no avail. Perhaps due to depression he died six months later.

The Judiciary was one of the state departments under a Federal Head - in this case, the Judicial Commissioner. This was a recognition of the need to revise and reorganize the judiciary and the legal system, even if there was no federation, to keep pace with the growing requirement of the progressive communities.

The most significant change after the Federation judicialwise was the coming into force of the New Courts Enactment, 1896 in Selangor which abolished the courts of the Residents and Sultans-in-Council with the Judicial Commissioner's Court as the final Court of Appeal for the Federation. The qualification here was in the case of death sentences. Then the Judicial Commissioner had to transmit to the Sultan for final confirmation his report and records of the proceedings of the case. Any ruling made by him had first

⁵³ Maxwell and Gibson, op. cit., p. 74.

⁵⁴ Haji Buyong Adil, Sejarah Selangor, p. 90.

to be approved by the Sultan in Council before gazetted.⁵⁵ This was an improvement for the Judicial Commissioner was a qualified personnel of at least ten years standing compared to the members of the Sultan-in-Council who had no legal knowledge or qualifications to deal competently with the civil appeals.

His presence thus established a reliable tribunal to which the Senior Magistrates could apply for advice or by which decisions might be reviewed if necessary.

Perhaps the most important result was that judicial administration was brought under greater supervision and co-ordination. Judicial procedure, powers of magistrates, scale of fees were regulated. He was given wide and overriding powers over the lower courts yet Mr. L.C. Jackson, the first Judicial Commissioner, would never interfere with a Magistrate's sentence unless there was a strong case of error, prejudice and severity based on wrong principles made out to him.⁵⁶ His was an exclusively appellate jurisdiction except in cases of murder.

It was to aid the Judicial Commissioner to draft laws that the Legal Adviser was appointed. He was empowered, too, to act as the Attorney-General and prosecute in important cases. In less serious cases it was sufficient that the prosecution was left to a prosecuting officer who could be a lawyer or a police officer.

It was felt that the public should have the assistance of a body of men trained in law due to an increase in the number of cases of technical

⁵⁵ A.B. Voules (Compiler) Laws of Selangor 1877-99 (1901), The Judicial Commissioner's Regulation, 1896.

⁵⁶ J.M. Reay, F.M.S.: A Digest of Reported Cases (1897 - 1925), (1929) p. 20.

nature - thus the admission of advocates into the courts of Selangor. Before, petition writers helped illiterate litigants to draft petitions to the authorities but in actual fact they gave what purported to be 'legal assistance'. The result was disastrous and made the work of the magistrate more difficult for these men were untrained and unqualified. Lawyers were admitted into the Senior Magistrates Courts in February, 1897, while in the other courts in October, 1897. The introduction of advocates saw a marked improvement in court procedure and ^{the} standard of the magistrates' work. Legal assistance was provided to an accused in need of legal aid,⁵⁷ the rationale being it would not be in the interests of justice to sentence undefended person to death while prosecution was conducted by an experienced and learned lawyer in the person of the Legal Adviser. However since it was impossible to do so in every case, it was confined to capital punishment.

Since the judiciary then was overworked due to an increase in the volume of cases, measures were taken to overcome the problem - one of the steps being the appointment of Circuit Magistrates. They were selected from senior officials and had to make periodical trips to the courts in the various districts. A Senior Magistrate was appointed in 1882.

With the same objective in view, the post of Secretary of Chinese Affairs was established with wide judicial powers to adjudicate matters among the Chinese who in the eyes of the British administrators were those responsible for the prosperity of the Malay State.⁵⁸ In fact, after the death of the Capitan China of Selangor, Towkay Yap Kwan Seng, in 1902, the post was never filled.

⁵⁷ The Malay Mail, 13 January 1897.

⁵⁸ J.M. Reay, op. cit., n. 56, p. 111.

Since the well being of every community depended upon a strong and efficient administration of justice, courts thus played a prominent part in the general preservation of peace and maintenance of law and order in the state. Court procedure and organization had to be stream-lined. Magisterial work had been delineated yet there was no definite Code of Procedure. Thus the judiciary had to be re-organized.

Western rules of procedure were generally observed in the courts. The Indian Civil and Procedure Code had been adopted *faite de mieux* in the state since 1893 for general guidance except where provision had been made in the local law or where there were established customs. The Codes proved inadequate for the provisions were frequently inapplicable to local conditions. There was therefore a great necessity to introduce a set of clearly defined rules of court procedure especially suited to the local conditions if troublesome doubts were to be avoided. Thus in 1900 we have the introduction of the Criminal Procedure Code and in 1902 the Civil Procedure Code with provisions as necessitated by dictates of local laws, customs, practice and community's needs.⁵⁹

In 1900, there was an overhaul of the whole judiciary by the new Courts Enactment. In descending order we have Judicial Commissioner's Court, Kathi's Court and at the lowest rung we have the Penghulu's Court.⁶⁰ The jurisdiction of each was redrafted and redefined in that the powers of the District Magistrate was reduced considerably and most of the criminal work was entrusted to the Senior Magistrate's Court.

The Senior Magistrate's Court was the highest court of original

⁵⁹ SSCM, 10 May 1900.

⁶⁰ SSCM, 1 October 1902.

jurisdiction. However, they need not be specialized with legal training for they were civil servants appointed and transferred to and from other civil posts in the ordinary way. He had full powers to supervise and revise proceedings and decisions of lower courts.

The Magistrate's Courts were classified into two grades. The first class Magistrate had a maximum power of punishment of a year's imprisonment or a fine not exceeding \$500/- and in civil cases where the subject matter value does not exceed \$500. The jurisdiction of Second Class Magistrates were half of that of the First Class Magistrates. They were usually European members of the Civil Service with some legal qualifications.⁶¹

Below this, we had the Native Tribunals - the Kathi's Court dealing with trial of offences relating to Muhammadan religion, law of marriage and divorce and the Penghulu's Court dealing with petty offences or disputes among Malays and other Asians. Though the volume of work was small and jurisdiction was limited yet the retention of these native courts were necessary if native participation in the administration of justice were not to be entirely excluded. In other words this would amount to a recognition of the needs and wishes of the local population.

Before 1900, a Magistrate may summon assessors or jury to aid him in trying a particular case.⁶² However, with the new Courts Enactment of 1900, the jury system was abolished mainly because it was difficult to secure the "twelve good men and true". Instances of bad and perverse judgments were not rare and unheard of. In one case in 1897, a jury by a majority of five

⁶¹ Winstedt, Britain and Malaya 1786 - 1941, (1944) p. 48.

⁶² SSCM, 11 April 1893, Regulation No. XI of 1893.

to two after an unusually short time of deliberation acquitted both accused from the charge of murder before the Judicial Commissioner in Kuala Lumpur though the evidence against them were overwhelming.⁶³

However in 1905, a new Courts Enactment overhauled the legal institution. Because of a need for a central court to entertain and decide cases affecting land and property in more than one state, a Supreme Court was set up consisting of a Chief Judicial Commissioner and two Judicial Commissioners. The Senior Magistrate's Court was abolished.⁶⁴ The judicial system in the Straits Settlement became practically identified with that of the Federated Malay States for reciprocal legislation was passed for one of the judges of the colony to be appointed temporarily in case of appeals. Thus a system of reciprocal enforcement of judgments was established.⁶⁵

In 1906, the right of appeal to the Britannic Majesty in Council in civil matters was introduced by an order in council - "The FMS Appeals Order in Council, 1906". At first the High Commissioner feared the Sultans would regard it as the latent innovation of encroachment upon their prerogative but the Sultan of Selangor later expressed desire of such right of ultimate appeal. As the Malay States were not part of British territory, the British Crown juridically had no power to establish courts of justice in or for them and could only be empowered by a law. The Sultan and the Chiefs as well as the State Council had never approved the appeals from Penghulu's court and Kathi's Court to the Magistrate's Court.⁶⁶ This was discussed at the

⁶² Malay Mail, 10 April, 1897.

⁶⁴ Selangor Annual Report, 1906 in the FMS Annual Report, 1906; First Chief Judicial Commissioner was Mr. Justice W.H. Hyndman-Jones, Senior Assistant Judicial Commissioner was Mr. A.J.D. Berrington and the Junior Assistant Judicial Commissioner was Mr. L.M. Woodward. The titles were changed to Chief Justice and Judge in 1925.

⁶⁵ Federal Council Proceedings, 8 July 1913.

⁶⁶ Malay Mail, 2nd October, 1903, Official Minutes

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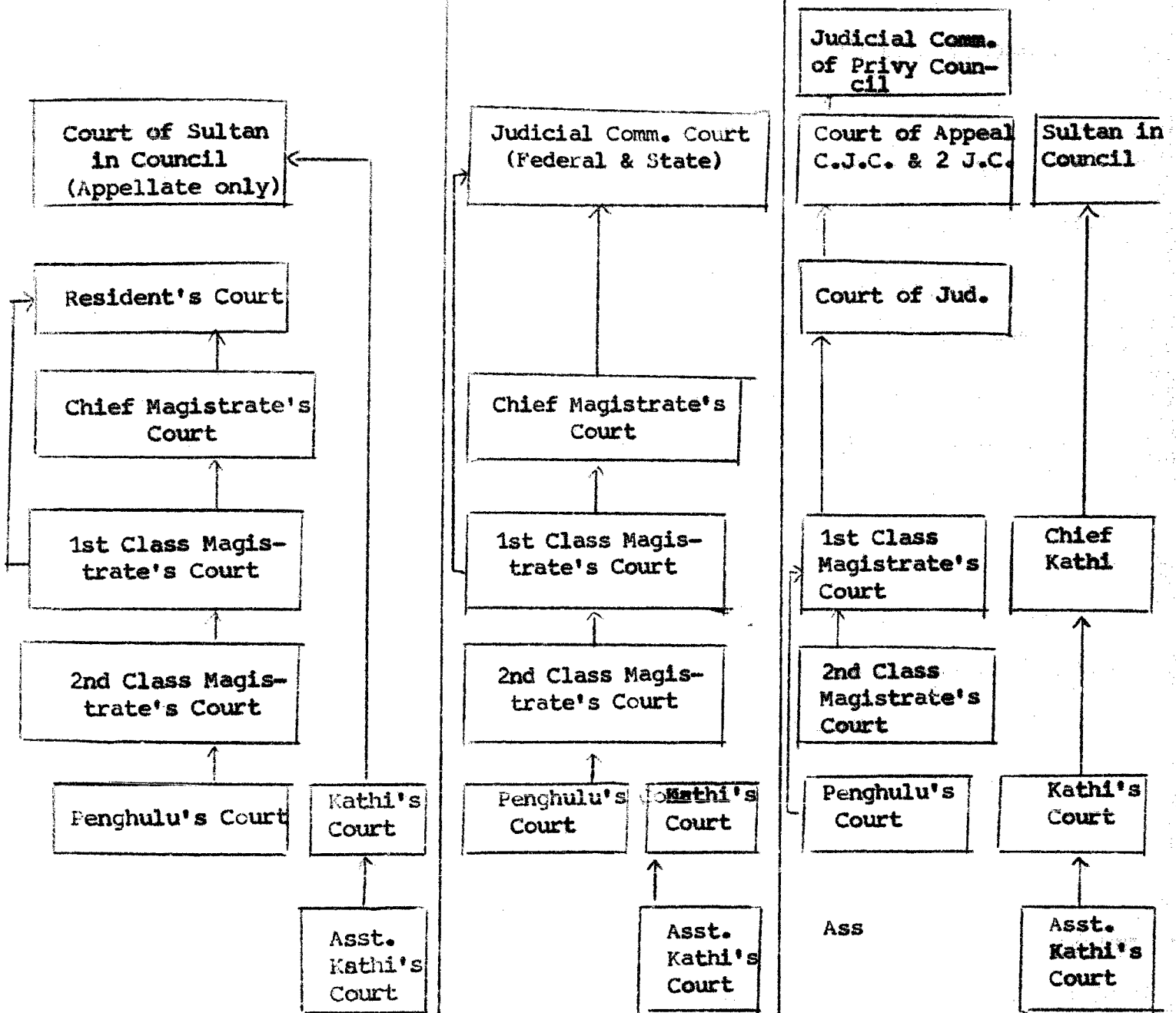
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⁶⁶ Malay Mail, 2nd October, 1903, Official Minutes

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Federal Conference of 1903. The rulers led by the Yang Di Pertuan Besar of Negri Sembilan pressed for the appointment of a Chief Kathi to hear such appeals with final Appeals to the Sultan and his chiefs. Their contention was based on the interpretation of the Pangkor Treaty. Thus the New Courts Enactment of 1905 recognized that such appeals were to go to the Sultan and Council.

In 1920, the question of decentralization was raised by Sir Lawrence Guillemard. He considered the governmental set up too complicated. With authorization from the Colonial Office he issued a statement that it was not the policy of the government "to exert... any pressure upon any other state to enter the Federation." The general policy was one of "friendly co-operation... between the several Malayan units in all matters of common interest, on the understanding that each party was free to act as it though best in local matters." ⁶⁷

Even then in effecting his policy of decentralization, Guillemard enacted that the Resident not the Sultan could take action in certain matters without the customary prior approval of the Chief Secretary. His efforts to shelve the post of Chief Secretary was shelved but Guillemard managed to introduce a three fold division annual estimates.

With regard to the position of Rulers, so as to remove the indignity they suffered 'An Agreement for the Reconstitution of the Federal Council of 1927' was signed by which the Sultans were removed from the Federal Council. The idea of an Upper Chamber to accomodate the Sultan was rejected in place of which was the Durbar.

⁶⁷ Federal Council, Proceedings, December 13, 1921 cited by Emerson, op. cit., n. 34, p. 208.

For the first time too there was an explicit statement that the Council was to pass all laws intended to apply throughout the Federation. Any law passed or thereafter passed by the State Council continued to have full force except in so far as it was repugnant to the provisions of any federal laws. Muslim law and custom or anything that affected the rights or prerogatives of the Rulers were reserved. This time, the laws were given legal force by the signatures of the four rulers/^{not} of the Governor.

However the net effect of the Agreement of 1927 failed even more lamentably than that of 1909 to provide juristically the remedy which it intended to give. Decentralization was not put through for though the State Councils remain ineffective, the Residents form part of the official majority in the Federal Council, the lawmaking body against whom the Sultan had no right of appeal.

Decentralization was never lost sight of. Though the British aimed at creating a union of these Malay States yet it was the cardinal policy of the day to maintain the position, authority and dignity of the Malay rulers. In fact, the newspapers commented that under the pressures of the various 'decentralizing' High Commissioner,

"... decentralization... has been carried to an extent that.. all that remained of the independence of Selangor, after thirty odd years of federation, is the control of a dozen minor services and the only government of which the enlightened public takes notice of us the Federal Government."⁶⁸

This complete submersion of the individual states was commented by W.G.A. Ormoby Gore, the Parliamentary Secretary for Colonies, in his report

⁶⁸ Straits Times, August 13, 1932.

on his visit to Malaya. At the same time, there was a proposal to attain economic and political integration through a Malayan union. This situation lasted till 1941.

CHAPTER III

CONSTITUTIONAL DEVELOPMENTS IN SELANGOR

1946 - 1948

The British liberation forces reached Kuala Lumpur on 12th September, 1945 after landing at Morib ready to take over from the Japanese. They set up the British Military Administration (BMA) laying the path for a civil government to take over on 31st March, 1946.

A military administration was not the most welcomed type of government but it was the only one available. The officers no doubt had little knowledge of the problems of the country but they managed to re-establish a peacetime government again through their rough and ready methods.⁶⁹ There was complete freedom of speech and association for pre-war controls restricting political activity were not enforced. Though they assumed full legislative, judicial, executive and administrative powers laws in force at the time of the Japanese were allowed to prevail in so far as the military exigencies permit and whether it was practicable in the opinion of the Chief Civil Affairs Officer. Though civil administration was suspended the administration of the law was immediately reassumed. Courts were set up throughout the country and the existing law was further supplemented by additional regulations passed by the administration. Procedures however were simplified and accelerated without violating the principles of justice wherever possible. Persons charged before the Japanese court could be charged again as held in

In re Nambiar⁷⁰

⁶⁹ F.S.V. Donnison, British Military Administration in the Far East, (1954) p. 381

⁷⁰ (1946) MLJ xxvi.

and

In re Lam Weng Chek⁷¹

for time was said never to run against the laws and there was no limitation for a criminal offence at all.

It was during this period that the Malayan Union agreement was signed - a culmination of the McMichael treaties signed by the individual Sultans with Sir Harold McMichael, the British emissary.

Before his arrival in Malaya generally and Selangor especially, Brigadier H.C. Wilson of the Colonial Legal Service in his capacity as Deputy Chief Civil Affairs Officer in the British Military Administration had visited the nine states and interviewed various holders of office including the Sultans. They felt insecure though it was made clear to them that they would not lose their position. In Selangor, the Japanese had installed a new Ruler, Musaeddin (the deposed heir apparent) in place of the British candidate, Hishammuddin. MrMichael was given the power, too, to decide who was or was not competent to sign on behalf of each state - he could thus confirm or replace a ruler in his position. The wording of the instructions by the British government to Sir Harold McMichael was enough to instil fear into the rulers' hearts.

"In any Malay State where the Ruler recognized by His Majesty's Government is either no longer in office or has so compromised himself in relation to the enemy... You should telegraph to the Secretary of State for the Colonies... the name and credentials of the Malay personage whom you recommend as competent and responsible to undertake such a commitment in respect of the state concerned..."⁷²

⁷¹(1946) 2 M.C. 187.

⁷²McMichael Mission Report (1946) p. 6.

All the rulers had to 'collaborate' with the Japanese - to do otherwise meant abdication as in Selangor.

The British felt that the reoccupation of Malaya would provide them with an opportunity which might never recur, for the complete overhaul of the system of administration into a single effective political unit. It seemed ridiculous that such a small region could have ten ruling sovereigns, nine Malays and one British, each having a separate system of administration and legislature as well as civil services.

Thus the White Paper presented by the Secretary of State for the Colonies to the Parliament of the United Kingdom in January, 1946 emphatically stressed that the increasing complexity of modern administrative, economic and social development demanded a less cumbersome government. In the long term it would not be conducive to the development of responsible self-government.⁷³ The White Paper which was forwarded by the newly-elected Labour Government had been planned in London during the war years without any consultation with the Malay rulers. In fact consultation with anyone in Malaya was impossible because of the Japanese occupation.

The first major change recommended was that the nine Malay States and the two settlements of Penang and Malacca should be amalgamated into a Union called the Malayan Union - separate from Singapore which was to be erected into a separate colony. It was to be ruled and headed by a British Governor assisted by appointed legislative and executive councils. The Rulers were to have little else to do than advise on Malay customs and religion. Even then their assent was no longer needed. The real ruler in each of the

⁷³ L.A. Mills, Malaya: A Political and Economic Appraisal, (1958) p. 316.

states would be the Resident Commissioner who was responsible not to the Sultan but to the Governor. The ultimate power rested with the Governor in Council who could delegate powers of a purely local nature to the State and Settlement Councils. He had the ultimate power to alter, repeal or to declare any State Laws void if they were repugnant to the union legislation.⁷⁴

All assets of the Malay States including land, excepting those connected with the Muslim religion and Rulers' personal property were to be taken over by the Malayan Union government. For unoccupied lands, crown grants, were obtainable from the Governor.⁷⁵ Thus, the Governor was to be the virtual ruler of the Malayan Union. He was to be the link between the Malayan Union, the Colony of Singapore and the British dependencies in Borneo. He had no direct executive authority over any of the territories, his chief function being to co-ordinate and direct the policies of these territorial governments, convening conferences of pan-Malayan importance like higher education, immigration, currency and income tax.⁷⁶ All these and even the change in the title of the British officer was sufficient to convince anybody that the acceptance of the Malayan Union constitutional proposals would tantamount to reducing the Malay States to the status of colonial territories not protectorates.

The second major change which further incensed the anger of the Malays was the creation of a Malayan Union citizenship. A common citizenship would be offered to all who could establish a claim by birth or a suitable

⁷⁴ Malayan Union and Singapore: A Summary of Proposed Constitutional Arrangements, cl. 9 (b).

⁷⁵ Ibid., cl. 12 (a)(d)

⁷⁶ Malayan Union and Singapore: Statement of Policy on Future Constitution, p. 4-5.

period of residence to belong to the country. Thus many, who under the old laws were not eligible for citizenship, could now apply. The Malays saw this (and rightly too) as eroding their special position. It seemed as though the British government no longer considered the states to be "Malay" States. It was like stabbing into the Malay heart itself. Their opinion was found to be true. Viscount Addison in his speech in the British House of Lords:

"If... the Chinese... become more numerous, it will be open to them to become citizens.... you cannot start making distinctions and... it is not our policy to establish privileged minorities."⁷⁷

This was nothing but a clear indication that the British government had chosen to abandon its pre-war pro-Malay policy. As a logical follow up of the citizenship provision, all the new citizens would be eligible for membership to the Malayan Union Legislative Council and of the State and Settlement Councils and for positions in the public services.⁷⁸ Perhaps to drive the point home to the Sultans and the Malay people, members of any Council, other than Council of Sultans and Malay advisory councils, should take an oath of allegiance to the British monarch not the Malay Sultan.

It was mandatory to have new treaties signed with each of the Malay rulers so as to introduce the new constitutional changes. The Crown as it stood then had no jurisdiction to do such a thing in the Malay States. The British emissary did his duty efficiently and without publicity; not giving time even for the Sultans to consult each other and discuss the implications of such a political scheme.

⁷⁷ F.G. Casnell, Malayan Citizenship Legislation reprinted International and Comparative Law Quarterly (1952) p. 505.

⁷⁸ British Malaya, Vol. XX No. 9 (January 1946) p. 252.

However, the Malayan Union constitution though coming into force on April 1, 1946 was not enforced especially on the issue of citizenship. In fact between 1946 and 1948 (when the Union was replaced by the Federation) all the laws or Ordinances of the Union were made by the Governor of the Union in consultation with an Advisory Council consisting of the Chief Secretary, the Attorney-General, and such other persons thought fit to be so appointed by the Governor.⁷⁹ The true effect of the Malayan Union Order in Council, 1946 was clearly elucidated by Lord Listowell (the Under Secretary for the Colonies) letter in the case of Sultan of Johore v. Tengku Abu Bakar & Ors.⁸⁰ By the terms of the agreement, the Sultan would be deemed to abandon his position and status as an independent sovereign ruler. Prior to 20th October, 1945 the Sultan was an independent ruler with the usual attributes of sovereignty subject only to the provisions of the 1895 and 1914 agreement. It was only in consequence of the Treaty of Federation dated 21st April 1948 and the Federation of Malaya Order in Council, 1948, that the Sultan regained his former status as a sovereign ruler entitling him to immunities, privileges and prerogatives normally accorded by a comity of nations to a sovereign ruler.

The loud, vehement protests from all sides - politicians, the masses, the rulers themselves and even ex-Malayan Civil Servants - forced the British to reconsider the whole situation. They denied any duress on the Sultans in signing the Malayan Union agreements. It was to them a policy of extending political rights to all "who regarded Malaya as their real home and the object of their loyalty".⁸¹ Thus, they still maintained that the

⁷⁹ L.A. Mills, loc. cit.

⁸⁰ (1949) MLJ 187.

⁸¹ British Malaya, loc. cit.

Malayan Union plan should be retained with minor modifications.

Civil administration was resumed on the inauguration of the Malayan Union but the Malays launched a total boycott by refusing to serve on any Board or Council. This deadlock continued until a Federation was substituted for the Union in due course.

The whole constitutional position was reviewed by a Working Committee which was established in July 1946. Its function was to work out in detail "fresh constitutional arrangements in the form of a provisional scheme which would be acceptable to Malay opinion and... provide a more efficient administrations..."⁸² The result of the committee's investigations and discussions was embodied in the Federation of Malaya Agreement of 1948 which became the blueprint for the later independent Federation of Malaya constitution in 1957 and the subsequent constitution of Malaysia of 1963.

Briefly, a 'Federation of Malaya' or the Persekutuan Tanah Melayu 'was to be formed covering the same territories as that of the Malayan Union. The British government and the Rulers were to enter into new State Agreements superseding the previous agreements and restoring the Sultans sovereignty in their respective states. The document recognized the central government's authority in matters of importance to the country as a whole, while at the same time preserving the individuality of each state and respecting the dignity, prestige and jurisdiction of the Rulers in all purely Muslim and local affairs. At the top of the hierarchy was the High Commissioner, the chief British official, acting under the authority of the Rulers in Council aided by the Federal Executive and Legislative Council, the latter having

⁸² Malayan Union, Constitutional Proposals for Malaya: Report of the Working Committee. (1946).

power to legislate on all matters of policy or administration common to all the States and Settlements. The High Commissioner was to delegate federal executive functions to the State Governments with the consent of the Rulers. In dispensing his functions, it was his special responsibility to protect the rights of the Federation, to safeguard the finances of the Federal Government and the special position of the Malays and to exercise the prerogative of pardon in the Settlements.⁸³ Matters not reserved to the central authority was left to each State Legislature called the Council of the State and the Executive Council. There would be too a Majlis Raja-Raja Negeri Melayu or Conference of Rulers which was to meet whenever necessary to acquaint the Rulers with important federal problems.⁸⁴

A new Federal citizenship was proposed which was decidedly in favour of the Malays to replace the Malayan Union citizenship proposal.⁸⁵ However, citizenship was still opened to those who regarded Malaya as the object of their loyalty.

For the British government the Report of the Working Committee was a resounding victory. It gave the central government nearly all the wider powers needed for a strong and efficient administration as in the Malayan Union and yet it respected each State as distinct federal units. The system^a was/novelty for the British still reign^{ed} supreme over a unified Malaya through the 'Adviser' system and the executive powers of the High Commissioner.⁸⁶

⁸³ Great Britain, The Federation of Malaya Order in Council, 1948 (1948) 2nd Schedule.

⁸⁴ Malayan Union, loc cit.

⁸⁵ Great Britain, loc. cit.

⁸⁶ Malayan Union, op. cit. n. 84, p. 91.

They could have reached this amicable agreement with adequate consultation after the war instead of using dictatorial methods to rush through a ready made plan as seen by the Malayan Union.

To the Malays the new agreement 'was the crowning glory of the Malays eighteen months struggle to preserve their country', though to the non-Malays it only meant the continuation of the discredited imperialistic policy of divide and rule.⁸⁷

Thus on 1st February 1948 the new Federation emerged after the signing of the agreement on 1st January by Sir Edward Gent on behalf of the British Government and the Malay Sultans in Kuala Lumpur. For the first time too, Selangor as a state/true (also in the case of most of the other Malay States) was provided with a constitution.

⁸⁷ British Malaya, Vol. XXII, no. 15 (Sept. 1947) p. 254.

CHAPTER IV

LEGAL DEVELOPMENT IN SELANGOR

British intervention itself is an interesting study in international law. The British authorities maintained that it was to establish a well-ordered judicial system so as to protect the lives and property of their subjects that prompted them to intervene in Selangor especially. What right they had to arrest the so-called pirates was questioned. Sir Benson Maxwell commented in a letter to the Times that "Inspector Cox had no more right to arrest the pirates in Selangor than a French police agent to arrest a communist in the streets of London."⁸⁸

With Selangor, unlike the other states, there was no formal written treaty - only an interchange of letters, a proclamation and the reception of two officers to assist the Sultan "to open up and govern his country".⁸⁹ The British chose deliberately to protect not annex and thus their courts recognized that the Malay rulers were independent sovereigns as was first expounded in the case of Mighell v. The Sultan of Johore,⁹⁰ where the Sultan by virtue of his position was immune from the jurisdiction of the English Courts. The relationship between the Malay rulers and the King of England was one of protection and friendship as propounded in Duff Development Company v. Kelantan Government.⁹¹ His immunities, privileges and prerogatives

⁸⁸ Cited in Ahmad Ibrahim, Towards a History of Law in Malaysia and Singapore, (1970) p. 44.

⁸⁹ Text in Maxwell and Gibson, Treaties and Engagements affecting the Malay States (1924) p. 35.

⁹⁰ [1894] 1 Q.B. 149.

⁹¹ [1924] A.C. 797.

were accorded to his person by the comity of nations as was held in Tengku Abu Bakar v. The Sultan of Johore.⁹²

Thus, being only protectorates not colonies, there was no question of the corpus of English law being introduced otherwise than by legislation. Malay law was recognized as the law of the land and the Residents had as early as 1890's been told to "endeavour to become conversant with Malay law and customs.. for it is your duty to propound it..."⁹³ As confirmed later by the C.A. in Rambah v. Laton.⁹⁴ The Court must take judicial notice of the law and propound it. It was not competent for the court to allow evidence as to what is the local law. However Malay law then was unfitted to cope with new situations especially those of a commercial character. The lacunae therefore was filled by English rules introduced by the English and English-educated judiciary especially. Thus Innes C.J.C. held that ~~through~~ though there was no enactment defining the age of majority for general purposes, it was "... the practice of this court and of the legal profession... to fill in... these blanks with the common law. By this... the age of majority for general purposes... is 21,"⁹⁵ in the Selangor case of Kandasamy v. Suppiah.⁹⁶

Where necessary for public policy, English law was applied. So in Motor Emporium v. Arumugam.⁹⁷ English rules of equity and law was applied

⁹² [1949] MLJ (8)

⁹³ E. Sadkha, The Residential System in the Malay States 1874-1895 (196) p. 201.

⁹⁴ (1927) 1 FMSLR 188.

⁹⁵ (1919) 1 FMSLR 381 pp. 38-2.

⁹⁶ Ibid., p. 278 (A Selangor case).

⁹⁷ (1933) MLJ 276.

in Selangor though English rules of equity as administered by the Court of Chancery had no jurisdiction in the Malay State. Terrel Ag C.J. in justifying his application of English rules of equity said,

"... hardly be reasonable to exclude... a principle of natural justice merely because... England has adopted such a principle as part of its recognized legal system... the Courts of the Federated Malay States have on many occasions acted on equitable principles... because such rules happen to conform to the principles of natural justice."⁹⁸

This was also the reason that Sproule Ag. C.J. gave in applying the English rule against perpetuities in the earlier Selangor case of Re the Will of Yap Kim Seng.⁹⁹

As regards tort, Braddell C.J.C. stated in Panicker v. Public Prosecutor¹⁰⁰ that the English common law was,

"... the acknowledged guide to which we must turn in arriving at just decisions..."

on construing the Labour Code in Selangor.¹⁰¹

However such a great reliance was placed upon English law that at times local law in existence was forgotten in the process. Thus in Re Chong Fong Sen¹⁰² Reay J.C. and Mudie J. had to remind counsel that,

"it is necessary in the first instance to examine carefully our local law and to ascertain what it is and what respects it resembles or differs from Englaw law."¹⁰³

⁹⁸ Ibid., p. 278 (A Selangor case)

⁹⁹ (1924) 4 FMSLR 313 at pp. 316-7.

¹⁰⁰ (1915) 1 FMSLR 169.

¹⁰¹ Ibid., p. 183

¹⁰² (1932) MLJ 140

¹⁰³ Ibid., p. 142

Another factor to be taken into consideration in applying English common law where the law in the country was silent was to see in how the circumstances of the country and the respective inhabitants present rendered it necessary. This was the basic principle stated by Sir Archibold Law (the Chief Judicial Commissioner) in his judgment in Yap Hon Chin v. Parry.¹⁰⁴ In that case the appellant contended that the Banishment Enactment, 1900 of Selangor should be declared ultra vires in the light of decided cases in the Crown Colonies which were based on the principle of English constitutional law in relation to British territories overseas. Sir Archibold in dismissing the appeal explicitly stated that

"matters have are not on the same footing... supreme legislator... is vested in the Sultan except... limited his own powers by treaty or by grant..."¹⁰⁵

It was only in 1937 by the 1937 Civil Law Enactment that the informal reception of English law was formalized, giving statutory authority to the Courts to do what they had been doing all along.

English law was also being introduced into the Malay States by means of legislation, that is, much of the legislation was based or modelled on English law. Such examples were the Penal Code and Evidence Enactment of 1905; Contracts Enactment introduced in 1899; Criminal Procedure Code in 1902 and Civil Procedure Code in 1918. Local laws based on English legislation were also codified like the Labour Code, Mining Code, the Land Enactment of 1903 and the Legislation of Titles Enactment. However, the power of the Commissioner to amend the state laws existing then was questioned. This was

¹⁰⁴ (1911) 2 FMSLR 70.

¹⁰⁵ Ibid.,

finally settled in the Selangor case of Re a Reference by the Registrar of Titles, Selangor.¹⁰⁶

There, any amending enactment to the state laws by the federal authority had to be notified in the Federated Malay Gazettes for it to come into force. No such notification was ever published but when the 1935 revision was made by the Commissioner, the Civil Procedure Code was put in as amended. Explicitly, the Commissioner had no authority to alter the law - yet the revision had been effected. Ferrel, Ag C.J. held that though the act no doubt was ultra vires yet the amendment was now in force.

Chronologically the laws of Selangor would fall into three categories. From 1887-1894 there were Orders in Council and Regulations passed by the State Council. From 1895-1945, the legislation was known as Enactments. Since 1909 however, Selangor like the other states were subject to federal legislation on the setting up of the Federal Council. All State Legislation up to 1934 could be discerned in their revised edition as part of the Revised Edition of the Laws of the Federated Malay States, 1935.¹⁰⁷

All in all, Selangor's laws in force at 1948 could be classified into -

- a) The Revised Edition of the Laws of the Federated Malay States 1934;
- b) Post 1934 Enactments of State Councils and State Legislative Assembly;
- c) 1934 - 42 Enactments of the Federated Malay States Federal Council;

¹⁰⁶ (1936) 6 MLJ 9.

¹⁰⁷ compiled in A.E. Voules, The Laws of Selangor (1935)

- d) Ordinances of the Malayan Union and the Federation of Malaya Agreement;
- e) Subsidiary legislation under a) - d);
- f) Orders in Council made under the Foreign Jurisdiction Acts, 1890 and 1913.

The Civil Law Enactment did not affect the application of the personal laws of the indigenous races.

As far as the Muslims were concerned, Selangor had its own enactment¹⁰⁸ dealing with the administration of Muslim law by Kathi or Shariah Courts, though questions of Muslim law do come up from time to time for decisions in the High Court. There was however debate on this. In Awee v. Ibrahim¹⁰⁹ it was suggested that,

"the Sultan is the head of the Muhammadan religion and... [has] right to grant to Kathis... authority in all matters concerning Muhammadan religion, marriage and divorce and in all other matter regulated by Muhammadan law... find no jurisdiction conferred upon the Supreme Court to adjudicate..."¹¹⁰

The contrary was held in Ramah v. Laton where the Court of Appeal held that the court had jurisdiction.

Malay customary law was recognized and effected by the courts especially those of the rights of a divorced wife on the division of property

¹⁰⁸ A Federal Enactment was said to be unpracticable because Muhammadan law was varied in the different states by local customs.

¹⁰⁹(1916) 1 FMSLR 274.

¹¹⁰ibid., at pp. 224-5.

¹¹¹(1927) 6 FMSLR 128.

jointly-acquired. Perhaps due to its religious nature, the Muslim courts were always autonomous of the main judicial system.

Chinese personal law was left on its own until 1899 when the Secretary for Chinese Affairs Enactment was passed settling cases with regard to Chinese laws and customs. Thus in Selangor inheritance cases as in Ong Cheng Neo v. Yap Kwan Seng¹¹² and Yap Tham Thai v. Sow Hup Neo,¹¹³ Chinese customary law was applied. Because it was the policy to have some degree of uniformity, the Perak Order in Council No. 23 of 1893, that is, the "Recognition of Chinese Law" was applied in Selangor which set out the broad principles of Chinese Family Law in the inheritance of property. It was only repealed by the Distribution Enactment, 1929 which introduced the main provisions of the English statute of distribution.

On the whole we could say that the British were successful in achieving their aim of having a well-ordered judicial system. They overcome the many problems awaiting them by enforcing various regulations, that is, on slavery, forced labour and land tenure for example. The courts also recognized Hindu customs.

Perhaps, if not for British intervention, Muslim law would have become the 'law of the land' in the real sense of the word. Now it is merely confined to issues affecting marriages, divorces and legitimacy.

The Malay society seemed to have been as broadminded as we are supposed to be now. Minority groups were allowed to practice their own personal

¹¹² (1897) 1 SSLR Supp. 1.

¹¹³ (1919) 1 FMSLR 383.

For further discussion see Sheridan, The Development of Laws and Constitution in Malaya and Singapore, (1961)

laws. Though their laws were unwritten yet we could compare it to the English common law. Even the principle underlining both the laws were same - as a deterrent. In fact, the Adat Temenggong offered the wrongdoer a milder alternative.

Thus we could say that on intervention the British overhauled the whole constitutional and legal system reserving only the matters pertaining to Muslim religion and customs to the Sultan as his prerogative.

CONCLUSION

It had been repeatedly stated that British intervention was the best thing that had happened in Selangor for it saved the state from anarchy and chaos in place of which a modern and orderly government was set up. It was not that there was no political organization at all to keep the peace. The pre-1874 political structure, then, was essentially an indigenous one under the rule of the Sultan and his chiefs. However, the infiltration of Chinese miners into their districts coupled with the rivalry among the district chiefs brought the inherent weaknesses of the Malay system of government to the forefront culminating into a civil war which broke down the old feudal order. That only gave the British a pretext to intervene.

According to some writers, what was notable about British intervention in Selangor was that they purposely chose to advise and protect not to annex just as they could have pressed the Siamese to draw the boundary so as to include Southern Malaya into Malaya in 1909.¹¹⁴ This could be said to be the root of the problems of later British administrators who tried to simplify the complex and multiple systems of government.

The Residential System in force from 1874 - 1895 laid the foundations of modern government for Selangor though it could be said to be a 'makeshift' type originated by the advisers who was the chief executive officer governing the state in the name of the Sultan. Their authority was only backed by a letter from the Sultan to the Governor of the Straits Settlements and a proclamation by the latter.

¹¹⁴ Braddel, The Legal Status of the Malay States, (1924), p. 14.

In 1895 Selangor was included in a nominal federation with Perak, Pahang and Negri Sembilan so as to bring uniformity and continuity of policy to the four states. Actually it was an attempt to restrict the extensive powers of the Residents in their respective states. To keep an eye on them was the Resident General who was to act as the political, administrative and executive head of the federation. However, though the union created by the Treaty of 1895 was styled a federation it failed to meet the requirements of a federation as defined by Meare as "an association of states which has been formed for certain common purposes but in which the member states retain a large measure of their original independence."

By the establishment of the Federal Council in 1909, the British further undermined the position and dignity of the Malay rulers which they had assured the Sultans they would preserve. The Sultans were totally ignored in the new set-up for the reins of power were still held by the Residents and even the Sultan's prerogative as the final judge was removed in 1896. The State Council only remained as a rubber stamp ratifying legislation enacted by the Legal Advisor. Thus we could say that the treaty was only a scheme to recapture what had been lost through the policy of non annexation.

After World War Two, the British returned armed with a scheme to reorganize the political set-up in the Peninsula and to alter the "Malaya for the Malays" policy for it was felt that to regard Malaya as a Malay country was ridiculously in population it was heavily non-Malay, in government it was British and in economics it was Chinese.¹¹⁵

Thus Sir Harold Michaeel as special representative of His Majesty, the King of England signed a treaty with the Selangor Sultan on 24th October

¹¹⁵ Emerson, Malaysia, (1937) p. 130.

and the other Malay rulers whereby full powers and jurisdiction were transferred to the King of England in order to carry out the plans for the establishment of the Malayan Union. Strong opposition from all quarters forced them to reconsider the whole plan and in its place the Treaty of Federation, 1948 was signed. At the same time agreements were signed with the States whereby power and jurisdiction was transferred to the Sultan who this time had to rule the state in accordance with the State Constitution. This was Selangor's first constitution. The Sultan was to have the advice of a State Executive Council and Council of State while reestablishing the policy of protecting the interest of the Malays.

The Treaty saw the establishment of the 'Persekutuan Tanah Melayu' though the British reserved complete control over defence and external affairs of the country. A High Commissioner was appointed and the Rulers agreed to accept his advice with the usual saving. He was to exercise executive authority directly or indirectly through sub-ordinate officers aided by a Federal Executive and Legislative Council, the latter to legislate on matters in the Second Schedule.¹¹⁶

This constitutional development later paved the way to independence. Selangor had developed from an undeveloped land torn by bitter and destructive feuds among the Malay chieftains and Chinese miners in 1870 to the most modern state in Malaya in 1948 well on the road to greater progress and prosperity.

¹¹⁶ Treaty of Federation, 1948, Articles 3, 4, 7, 8, 17, 22, 36, 48, 72, 124.

APPENDIX 1

PANGKOR ENGAGEMENT

PERAK, 1874

ENGAGEMENT ENTERED INTO BY THE CHIEFS OF PERAK AT PULO PANGKOR.

DATED 20TH JANUARY, 1874

Whereas, a state of anarchy exists in the Kingdom of Perak owing to the want of settled government in the country, and no efficient power exists for the protection of the people and for securing to them the fruits of their industry, and,

Whereas, large numbers of Chinese are employed and large sums of money invested in Tin mining in Perak by British subjects and others residing in Her Majesty's Possessions, and the said mines and property are not adequately protected, and piracy, murder and arson are rife in the said country, whereby British trade and interests greatly suffer, and the peace and good order of the neighbouring British settlements are sometimes menaced, and

Whereas, certain Chiefs for the time being of the said Kingdom of Perak have stated their inability to cope with the present difficulties, and together with those interested in the industry of the country have requested assistance, and,

Whereas, Her Majesty's Government is bound by Treaty and stipulations to protect the said Kingdom and to assist its rulers, now,

His Excellency SIR ANDREW CLARKE, K.G.M.G., C.M., Governor of the Colony of the Straits Settlements in compliance with the said request, and with a view of assisting the said rulers and of effecting a permanent settlement of affairs in Perak, has proposed the following Articles of arrangements as mutually beneficial to the Independent Rulers of Perak, their subjects, the subjects of Her Majesty, and others residing

in or trading with Perak, that is to say:-

I. First - That the Rajah Muda Abdullah be recognized as the Sultan of Perak.

II. Second - That the Rajah Bendahara Ismail now Acting Sultan, be allowed to retain the title of Sultan Muda with a pension and a certain small Territory assigned to him.

III. Third - That all the nominations and Officers made at the time the Rajah Bendahara Ismail received the regalia be confirmed.

IV. Fourth - That the power given to the Orang Kayah Mantri over Larut by the late Sultan be confirmed.

V. Fifth - That all Revenues be collected and all appointments made in the name of the Sultan.

VI. Sixth - That the Sultan receive and provide a suitable residence for a British Officer to be called Resident, who shall be accredited to his Court, and where advice must be asked and acted upon all questions other than those touching Malay Religion and Customs.

VII. Seventh - That the Governor of Larut shall have attached to him as Assistant Resident, a British Officer acting under the Resident of Perak, with similar power and subordinate only to the said Resident.

VIII. Eighth - That the cost of these Residents with their Establishments be determined by the Government of the Straits Settlements and be a first charge on the Revenues of Perak.

IX. Ninth - That a Civil list regulating the income to be received by the Sultan, by the Bandahara, by the Mantri, and by the other Officers be the next charge on the said Revenue.

X. Tenth - That the collection and control of all Revenues and the general administration of the country be regulated under the advice of these Residents.

XI. Eleventh - That the Treaty under which the Pulo Binding and the islands of Pangkor were ceded to Great Britain having been misunderstood and it being desirable to re-adjust the same, so as to carry into effect the intention of the Framers, thereof, it is hereby declared that the Boundaries of the sold Territory so ceded shall be rectified as follows, that is to say:-

From Bukit Sigari, as laid down in the Chart Sheet No. Straits of Malacca, a tracing of which is annexed, marked A, in a straight line to the sea, thence along the sea coast to the South to Pulau Katta on the West, and from Pulo Katta a line running North East about five miles, and thence North to Bukit Sigari.

XII. Twelfth - That the Southern watershed of the Krian River, that is to say, the portion of land draining into that River, from the South be declared British Territory, as a rectification of the Southern Boundary of Province Wellesley. Such Boundary to be marked out by Commissioners; one named by the Government of the Straits Settlements, and the other by the Sultan of Perak.

XIII. Thirteenth - That on the cessation of the present disturbances in Perak and the re-establishment of peace and amity among the contending factions in that Country, immediate measures under the control and supervision of one or more British Officers shall be taken for restoring as far as practicable the occupation of the Mines, and the possession of the Machinery, &c., as held previous to the commencement of these disturbances and for the payment of compensation for damages, the decision of such officer or officers shall be final in such case.

XIV. Fourteenth - The Mantri of Larut engages to acknowledge as a debt due by him to the Government of the Straits Settlements, the charges and expenses incurred by this investigation, as well as the charges and expenses to which the Colony of the Straits Settlements and Great Britain have been put or may be put by their efforts to secure the tranquility of Perak and the safety of trade.

The above Articles having been severally read and explained to the undersigned who having understood the same, have severally agreed to and accepted them as binding on them and their Heirs and Successors.

This done and concluded at Pulo Pangkor in the British Possessions, this Twentieth day of January, in the year of the Christian Era, one thousand eight hundred and seventy-four.

Executed before me,

ANDREW CLARKE,
Governor, Commander-in-Chief and Vice-Admiral
of the Straits Settlements.

Chop of the Sultan of Perak.

- " Bandahara of Perak.
- " Tunongong of Perak.
- " Mantri of Perak.
- " Shahbandar of Perak.
- " Rajah Mahkota of Perak.
- " Laksamana of Perak.
- " Dato' Sa'gor.

APPENDIX 2

LETTER FROM SULTAN ABDUL SAMAD TO GOVERNOR OF STRAITS SETTLEMENT.

SELANGOR, 1874

FROM SULTAN ABDULSAMAD, SELANGOR, TO THE GOVERNOR OF THE STRAITS SETTLEMENTS, (SIR ANDREW CLARKE) AS TO THE FUTURE GOVERNMENT OF THE STATE OF SELANGOR.

1st October, 1874

I inform my friend that I have received my friend's letter brought by MR. SWETTENHAM and have understood all that it contains.

As to the \$1,000, I will pay that sum monthly to MR. SWETTENHAM and I should be much obliged if my friend would enter it into my country's accounts.

As to my friend's request that I will enter into an agreement with my friend in order that my friend may collect all the taxes of my country, I should be very glad if my friend would set my country to right and collect all its taxes. This letter of mine with my chop on it can be a token to my friend that I trust in my friend's assistance and that I hand over to my friend all arrangements for opening my country and collecting its revenue, for I am on the most friendly terms with my friend and I trust that my friend and I trust that my friend will assist me in this matter.

And as regards my country at this time there is no disturbance whatever in it and I trust in my friend that there may be unbroken peace in my country.

APPENDIX 3

PROCLAMATION

"By His Excellency Colonel Sir Andrew Clarke, R.E., C.B.,
"K.C.H.S., Governor and Commander-in-Chief of the
"Straits Settlements and Vice-Admiral of the same.

"Be it known to all men that Sultan Abdulsamad, Ruler
"of Salangor, Klang, Langat, Bernam and Lukut, with their
"dependencies, being desirous of better Government in his
"country, has asked us for an English Officer to assist him
"to open up and govern his country, and, at his request, we
"have sent him two Officers, Mr. Davidson to reside at Klang,
"and Mr. Swettenham at Langat, to assist in this work, and
"especially in protecting the lives and property of dwellers
"in, and traders to, Salangor and Provinces. Now, there-
"fore, the Sultan of Salangor having issued a Proclamation
"dated the 21st Shaban, 1291, inviting Merchants and others
"to seek a livelihood in his country, we fully approve of that
"Proclamation and our above-mentioned Officers will assist
"all good men who will go to Salangor and Provinces, either
"to settle or to trade there.

"By His Excellency's Command,

"T. BRADDELL,

"Colonial Secretary.

"Colonial Secretary's Office,

"Singapore, 25th January, 1875".

Moreover I inform my friend that when this fasting month is over I intend to travel in the several districts of the country with MR. SWETTENHAM in order that I may see the condition of the country. As regards my friend's Officer, MR. SWETTENHAM, I have already informed my friend, I am now making a house for him in order that he may live with me in comfort. This is what I inform my friend.

Langat, 21, Shaban, 1291

[L.S.]

1st October, 1874.

APPENDIX 4

TREATY OF FEDERATION, 1895

AGREEMENT between the Governor of the Straits Settlements, acting on behalf of the Government of Her Majesty the Queen, Empress of India, and the Rulers of the following Malay States: - that is to say, Perak, Selangor, Pahang and the Negeri Sembilan.

1. In confirmation of various previous Agreements, the Sultan of Perak, the Sultan of Selangor, the Sultan of Pahang, and the Chiefs of the States which form the territory known as the Negeri Sembilan, hereby severally place themselves and their States under the protection of the British Government.

2. The above-named Rulers and Chiefs of the respective States hereby agree to constitute their countries a Federation, to be known as the Protected Malay States, to be administered under the advice of the British Government.

3. It is to be understood that the arrangement hereby agreed upon does not imply that any one Ruler or Chief shall exercise any power or authority in respect of any State other than that which he now possesses in the State of which he is the recognised Ruler or Chief.

4. The above-named Rulers agree to accept a British Officer, to be styled the Resident-General, as the agent and representative of the British Government under the Governor of the Straits Settlements. They undertake to provide him with suitable accommodation, with such salary as is determined by Her Majesty's Government, and to follow his advice in all matters of administration other than those touching the Muhammadan religion. The appointment of the Resident-General will not affect the obligations of the Malay Rulers towards the British Residents now existing or to be hereafter appointed to offices in the above-mentioned Protected States.

5. The above-named Rulers also agree to give to those States in the Federation which require it such assistance in men, money, or other respects as the British Government, through its duly appointed officers may advise; and they further undertake, should war break out between Her Majesty's Government and that of any other Power, to send, on the requisition of the Governor, a body of armed and equipped Indian troops for service in the Straits Settlements.

Nothing in this Agreement is intended to curtail any of the powers or authority now held by any of the above-named Rulers in their respective States, nor does it alter the relations now existing between any of the States named and the British Empire.

The above Agreement was signed and sealed by the undermentioned Rulers and Chiefs of the various States in July, 1895.

His Highness the Sultan of Perak.

His Highness the Sultan of Selangor.

His Highness the Sultan of Pahang.

His Highness the Yam Tuan Besar of Sri Menanti.

The Dato' Bandar of Sungei Ujong.

The Dato' of Johol.

The Dato' of Jelabu.

The Dato' of Rembau.

The Tungku Dewa of Tampin.

APPENDIX 5

AGREEMENT FOR THE CONSTITUTION OF A
FEDERAL COUNCIL, 1909

AGREEMENT between the High Commissioner of the Federated Malay States acting on behalf of the Government of His Majesty The King, Emperor of India, and the Rulers of the Federated Malay States of Perak, Selangor, Pahang and Negri Sembilan.

Whereas by the Treaty entered into in July, 1895, known as the Treaty of Federation the above-named Rulers agreed to constitute their countries a Federation to be known as the Protected Malay States to be administered under the advice of the British Government, and whereas the above-named Federation was duly constituted as provided in the above-named Treaty, and whereas the above-named Rulers further desire that means should be provided for the joint arrangement of all matters of common interest to the Federation or affecting more than one State and for the proper enactment of all laws intended to have force throughout the Federation or in more than one State, it is hereby agreed:-

1. That on and after a date to be fixed by His Majesty a Council shall be established to be known as the Federal Council of the Federated Malay States.

2. In the first instance the following shall be members of the Council:-

The High Commissioner.

The Resident-General.

The Sultan of Perak.

The Sultan of Selangor.

The Sultan of Pahang.

The Yam Tuan of Negri Sembilan as representing the Undang of the Negri Sembilan.

The Resident of Perak.
The Resident of Selangor.
The Resident of Pahang.
The Resident of Negri Sembilan.

Four unofficial members to be nominated by the High Commissioner with the approval of His Majesty. The absence of any member shall not invalidate any proceedings of the Council at which he has not been present.

3. If hereafter it should in the opinion of the High Commissioner be desirable to add to the Council one or more of the heads of the various public departments, he may do so subject to the approval of His Majesty, and may in such case and subject to the like consent also nominate not more than one additional unofficial members for every official member so added to the Council.

4. A head of a department who is nominated to the Council shall hold office so long as the High Commissioner thinks fit. Unofficial members shall hold office for three years.

5. The High Commissioner shall be President of the Council and in his absence the Resident-General shall be President.

5A. The Legal Adviser of the Government may attend any sitting of the Council and assist in the discussion of any legal questions which may arise in the course of its proceedings but shall not be entitled to a vote; and any head of a public department may similarly attend and assist in the discussion of any matter affecting his department but shall not be entitled to a vote.

6. If any of the Rulers above-named is unable to be present he may nominate one of the members of his State Council to represent him. In the case of Negri Sembilan, the nomination shall be by the Undang.

7. The Council shall meet at least once in every year at a place to be appointed from time to time by the High Commissioner.

8. Unless the President of the Council shall certify in writing that it is a matter of urgency every law proposed to be enacted by the Council shall be published in the Government Gazette at least one month before being submitted to the Council.

9. Laws passed or which may hereafter be passed by the State Councils shall continue to have full force and effect in the State except in so far as they may be repugnant to the provisions of any law passed by the Federal Council, and questions connected with the Mohammedan Religion, Mosques, Political Pensions, Native Chiefs and Penghulus and any other questions which in the opinion of the High Commissioner affect the rights and prerogatives of any of the above-named Rulers or which for other reasons he considers should properly be dealt with only by the State Councils shall be exclusively reserved to the State Councils.

10. The Draft Estimates of Revenue and Expenditure of each State shall be considered by the Federal Council, but shall immediately on publication be communicated to the State Councils.

11. Nothing in this Agreement is intended to curtail any of the powers or authority now held by any of the above-named Rulers in their respective States, nor does it alter the relations now existing between any of the States named and the British Empire as established by previous Treaties.

The above Agreement was signed and sealed by His Excellency Sir John Anderson, G.C.M.G., High Commissioner for the Federated Malay States, on the twentieth day of October, 1909, having been signed and sealed before that date by the undermentioned Rulers and Chiefs of the Federated Malay States:-

His Highness the Sultan of Perak.

His Highness the Sultan of Selangor.

His Highness the Regent of Pahang.

His Highness the Yang-di-Pertuan Besar of Negeri Sembilan.

The Dato' Kiana Petra of Sungei Wjong.

The Dato' of Johol.

The Dato' of Jelebu.

The Dato' of Rembau.

The Tungku Dewa of Tampin.

MCMICHAEL TREATY

AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT WITHIN
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHER IRELAND AND THE
STATE OF SELANGOR.

WHEREAS mutual agreements subsist between His Britannic
Majesty and His Highness the Sultan of the State of Selangor:

AND WHEREAS it is expedient to provide for the consti-
tutional development of the Malay States under the protection of His
Majesty and for the future government of the State of Selangor:

IT IS HEREBY AGREED between Sir Harold MacMichael, G.C.M.S.,
D.S.O., the Special Representative of His Majesty's Government within
the United Kingdom of Great Britain and Northern Ireland on behalf of
His Majesty and His Highness Sir Hisamuddin Alam Shah ibni Almarhum
Sultan Alaiddin Sulaiman Shah, K.C.M.G., The Sultan of the State of
Selangor for himself, his heirs and successors:

1. His Highness the Sultan agrees that His Majesty shall
have full power and jurisdiction within the State of Selangor.
2. Save in so far as the subsisting agreements are inconsis-
tent with this Agreement or with such ~~future~~ constitutional arrange-
ments for Malaya as may be approved by His Majesty, the said agreements
shall remain of full force and effect.

Signed this 24th day of October, 1945.

H.A. MACMICHAEL.

Special Representative of His
Majesty's Government with the
United Kingdom of Great Britain
and Northern Ireland.

Witnessed by:

H.T. BOURDILLION.

H. ALAM SHAH

His Highness the Sultan of the
State of Selangor.

Witnessed by:

HAMZAH RAJA WONG.

APPENDIX 7

THE SELANGOR AGREEMENT, 1948

AGREEMENT made the twenty-first day of January, 1948,
BETWEEN SIR GERARD EDWARD JAMES GENT, K.C.M.G., D.S.O., O.B.E., M.C.,
on behalf of HIS MAJESTY and His Highness HISAMUDDIN ALAM SHAH ibni
Almarhum Sultan ALAIDDIN SULAIMAN SHAH, K.C.M.G., Sultan of the State
of Selangor for Himself and His Successors:

WHEREAS mutual agreements subsist between His Majesty
and His Highness:

AND WHEREAS it has been represented to His Majesty that
fresh arrangements should be made for the peace, order and good
government of the State of Selangor:

AND WHEREAS His Majesty in token of the friendship which
he bears towards His Highness, the subjects of His Highness, and the
inhabitants of the State of Selangor is pleased to make fresh arrange-
ments to take effect on such day as His Majesty may by Order in Council
appoint (hereinafter called "the appointed day"):

AND WHEREAS it is expedient to provide the constitutional
development of the State of Selangor under the protection of His
Majesty and for its future government:

NOW, THEREFORE, it is agreed and declared as follows:-

1. This Agreement may be cited as the Selangor Agreement,
1948, and shall come into operation on the appointed day immediately
after the coming into operation of the Order in Council aforesaid.
Notification of the appointed day shall be published in the Malayan
Union Gazette together with a copy of this Agreement.

2. In this Agreement:

"Enactment" means any law enacted by His Highness with the advice and consent of a Council of State constituted in accordance with this Agreement;

"Federal Government" means the Government of the Federation;

"the Federation" means the Federation of Malaya to be called in Malay "Persekutuan Tanah Melayu", which is to be established on the appointed day;

"Federation Agreement" means the Agreement which is to be made between His Majesty and Their Highnesses the Rulers of the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Perak, Kedah, Perlis, Kelantan and Trengganu for the establishment of the Federation and includes any amendment thereof;

"the High Commissioner" means the High Commissioner for the Federation;

"His Highness" means the Sultan of Selangor and His Successors;

"His Highness in Council" means His Highness acting after consultation with the State Executive Council to be constituted in accordance with this Agreement, but not necessarily in accordance with the advice of such Council nor necessarily in such Council assembled;

"Secretary of State" means one of His Majesty's Principal Secretaries of State.

3. (1) His Majesty shall have complete control of the defence and of all the external affairs of the State of Selangor and His Majesty undertakes to protect the Government and State of Selangor and all its dependencies from external hostile attacks and for this and other similar purposes His Majesty's Forces and persons authorised by or on behalf of His Majesty's Government shall at all times be allowed free access to the State of Selangor and to employ all necessary means of opposing such attacks.

(2) His Highness undertakes that, without the knowledge and consent of His Majesty's Government, he will not make any treaty, enter into any engagement, deal in or correspond on political matters with, or send envoys to, any foreign State.

4. His Highness undertakes to receive and provide a suitable residence for a British Adviser to advise on all matters connected with the government of the State other than matters relating to the Muslim Religion and the Custom of the Malays, and undertakes to accept such advice; provided that nothing in this clause shall in any way prejudice the right of His Highness to address the High Commissioner, or His Majesty through a Secretary of State, if His Highness so desires.

5. The cost of the British Adviser with his establishment shall be determined by the High Commissioner and shall be a charge on the revenues of the State of Selangor.

6. His Highness shall be consulted before any officer whom it is proposed to send as British Adviser is actually appointed.

7. His Highness undertakes to receive within his State such officers of the Federal Government as that Government may require and to permit such officers to exercise such lawful authority and powers and to perform such lawful functions as may be necessary for the purposes of the Federal Government.

8. Any officer of the Federal Government may, with the concurrence of the High Commissioner, perform within the State of Selangor such State duties and may exercise such State powers as may be imposed or conferred upon him by His Highness in Council or by Enactment.

9. His Highness undertakes to govern the State of Selangor in accordance with the provisions of a written Constitution which shall be in conformity with the provisions of this Agreement and of the Federation Agreement and which shall be granted and promulgated by His Highness as soon as conveniently may be either in whole or, if His Highness thinks expedient, in Parts from time to time.

10. In pursuance of the undertaking contained in Clause 9 of this Agreement and in conformity with the provisions of the Federation Agreement His Highness undertakes forthwith to constitute,

(a) a Majlis Meshuarat Kerajaan, to be called in English State Executive Council;

(b) a Majlis Meshuarat Negeri, to be called in English Council of State.

11. His Highness, unless he shall otherwise direct, shall be consulted before any officer is posted by or on the authority of the High Commissioner to any post borne on the State Estimates.

12. All persons of whatsoever race in the same grade in the service of the State of Selangor shall, subject to the terms and conditions of their employment, be treated impartially.

13. His Highness desires and His Majesty agrees that it shall be a particular charge upon the Government of the State of Selangor to provide for the encourage the education and training of the Malay inhabitants of the State of Selangor so as to fit them to take a full share in the economic progress, social welfare and government of the State and of the Federation.

14.(1) The Agreement made on the 24th day of October, 1945, between His Majesty's Government within the United Kingdom of Great Britain and Northern Ireland and His Highness Hisamuddin Alam Shah, K.C.M.G., ibni Almarhum Sultan Ala'idin Sulaiman Shah the Sultan of the State of Selangor for Himself, His Heirs and Successors is hereby revoked.

(2) All Treaties and Agreements subsisting immediately prior to the making of the aforesaid Agreement of the 24th day of October, 1945, shall continue in force save in so far as they are inconsistent with this Agreement or the Federation Agreement.

15. The prerogatives, power and jurisdiction of His Highness within the State of Selangor shall be those which His Highness the

Sultan of Selangor possessed on the first day of December, 1941, subject nevertheless to the provisions of the Federation Agreement and this Agreement; but undiminished by the provisions of any of the Agreements specified in the Schedule to this Agreement.

16. This Agreement shall be expressed in both the English and the Malay languages; but, for the purposes of interpretation, regard shall be had only to English version.

IN WITNESS WHEREOF SIR GERARD EDWARD JAMES GENT, K.C.M.G., D.S.O., O.B.E., M.C., has hereunto set his hand and seal for and on behalf of His Majesty, and His Highness Hisamuddin Alam Shah ibni Al-marhum Sultan Ala-Iddin Sulaiman Shah, K.C.M.G., Sultan of the State of Selangor, has hereunto set his hand and seal, the day and year first above written.

THE SCHEDULE

(1)	(2)
Date of Agreement	Title
1. July, 1895 	AGREEMENT between the Governor of the Straits Settlements acting on behalf of the Government of Her Majesty the Queen, Empress of India, and the Rulers of the following Malay States; that is to say, Perak, Selangor, Pahang and the Negri Sembilan
2. 20th October, 1909 ...	AGREEMENT between the High Commissioner of the Federated Malay States, acted on behalf of the Government of His Majesty the King, Emperor of India, and the Rulers of the Federated Malay States of Perak, Selangor, Pahang and the Negri Sembilan.
3. 7th November, 1912 ...	AGREEMENT supplemental to the Agreement for the Constitution of a Federal Council, 1912.

(1)

(2)

Date of Agreement

Title

4. 9th July, 1924

AGREEMENT further supplemental to the Agreement for the Constitution of a Federal Council.

5. 24th April, 1927

AGREEMENT between the High Commissioner for the Malay States, acting on behalf of the Government of His Majesty the King, Emperor of India, and the Rulers of the Federated Malay States of Perak, Selangor, Negri Sembilan and Pahang.

Signed and Sealed by SIR GERARD EDWARD JAMES GENT, K.C.M.G., D.S.O., O.B.E., M.C., for and on behalf of His Majesty in the presence of:

G.E.J. GENT (L.S.)

A.L. ERSE

.....
.....

Signed and Sealed by His Highness HISAMUDDIN ALAM SAHAH Ibni Almarhum Sultan Ala-Iddin Sulaiman Shah, K.C. M.G., Sultan of the State of Selangor, in the presence of:

HAMZAH Bin ABDULLAH
(In Malay)

TENGGU ALAM SHAH (L.S.)

A.R. MAHMOOD

RAJA MOHAMED BAZID

B I B L I O G R A P H Y

A. Manuscripts

- 1) Selangor State Council Minutes (Vol. 1 - 5).
- 2) Selangor Annual Report 1884 - 1906.
- 3) Federal Council Proceedings, Dec. 13, 1921.
- 4) Correspondence respecting the Federation of the Protected Malay States May 1893 - December 1895 (Taiping).

(available in microfilmed form at the Central Library, University of Malaya).

B. Published Documents.

- 1) Report of Brigadier-General Sir Samuel Wilson on His Visit to Malaya, 1932.
- 2) Report of Sir Harold McMichael on His Mission to Malaya, 1946.
- 3) Federal Council Paper No. 39 of 1925: High Commissioner's Statement on Decentralization and Political Development of FMS.
- 4) Great Britain: Malayan Union and Singapore
- a statement of Policy on Future Constitution, 1946.
- a summary of Proposed Constitutional Arrangements.
- 5) Federation of Malaya Agreement, 1948.
- 6) Malay Mail, 13 January, 1897.
10 April, 1897.
2 October, 1903.

C. Unpublished Sources

- 1) Sadkha, E., The Residential System in the Protected Malay States, (thesis for the degree of Doctrate of Philosophy, Australian National University, 1960) Microfilm.
- 2) Tan Siew Sen, Administration of Justice in the Federated Malay States 1874 - 1896 (Academic Exercise for the Degree of Bachelor Arts, University of Malaya, Singapore, 1959).

- 3) Lim Yoon Lin, Administration of Justice in the Federated Malay States 1896 - 1914. (Academic Exercise for the Degree of Bachelor of Arts, University of Malaya, Singapore, 1960).
- 4) Lim Tuck Hee, Malayan Civil Service, 1896 - 1941. (Academic Exercise for the Degree of Bachelor of Arts, University of Malaya, Singapore, 1960).

D. Other Published Sources

Articles and Journals

- 1) Clementi, C., "Speech on Decentralization at Sri Menanti Durbar", in British Malaya Magazine, October, 1931, p. 246.
- 2) Gullick, J.M., Kuala Lumpur 1880 - 1895 in JMBRAS, Vol. XXVIII, Pt. IV (1955).
- 3) Middlebrook, "Yap Ah Loy (1837 - 85)" in JMBRAS, Vol. XXIV, Pt. 11 (1911)
- 4) Maxwell, W.E., "Law and Customs of the Malays in Relation to the Tenure of Land in JSERAS, Vol. XIII, June (1884).
- 5) Maxwell, Sir George, The Constitutional Problems of British Malaya in British Malaya, (1932).
- 6) Mills, L.A., "British Malaya 1824 - 67", in JMBRAS, Vol. XXIII, Pt. III (1960).
- 7) Kohin, "Constitutional Change in Malaya and Singapore", in Government and Politics of Southeast Asia. (1959).
- 8) Sadkha, E., "The colonial office and the Protected Malay States", in Bostin and Roolvink, Malayan and Indonesian Studies (Oxford, 1964), pp. 184-202.
- 9) _____, "The States Councils in Perak and Selangor, 1877 - 95", in Papers on Malayan History (ed. by K.G. Theouning) (Singapore, 1962).
- 10) Winstedt, R.O., "A History of Selangor", JMBRAS, Vol. XII, Pt. 3 (Oct. 1934).
- _____ , "Kingship and Enthronement in Malaya", JMBRAS XXI, Pt. 1 (1947).
- 11) Wilkinson, R.J., "Malay Law - An Introductory Sketch", Papers on Malay Subjects (1908).

Books

- 1) Ahmad Ibrahim, Towards the History of Law in Malaysia and Singapore, (Singapore, 1970).

- 2) Allen, C.J., Great Britain and the Far East.
- 3) Buyong Adil, Sejarah Selangor, (Kuala Lumpur, 1974).
- 4) Cowan, C.D., Nineteenth Century Malaya - Origins of British Political Control, (London, 1961).
- 5) Emerson, R., Malaysia - A Study in Direct and Indirect Rule, London, 1937).
- 6) Donnison, F.S.V., British Military Administration
- 7) Braddel, R., The Legal Status of the Malay States in the Far East, (London, 1956).
- 8) Gullick, J.M., Indigenous Political Systems of Western Malaya (London, 1958).
- 9) _____, A History of Selangor, 1742 - 1957 (Singapore, 1960).
- 10) Jones, S.W., Public Administration in Malaya, (London, 1953).
- 11) Maxwell and Gibson, Treaties and Engagements affecting the Malay States and London, (London) (1924).
- 12) Mills, L.A., British Malaya - A Political and Economic Appraisal, (London, 1958).
- 13) _____, British Rule in Eastern Asia, (London, 1942).
- 14) Newbold, T.J., Political and Statistical Account of the British Settlements in the State of Malacca, with a History of the Malay States, 2 Vol. (London, 1939).
- 15) Punell, V., The Chinese in Southeast Asia, (London, 1948).
- 16) Sheridan, L.A., Malaya and Singapore: The Development of their Laws and Constitution, (London, 1967).
- 17) Robson J.H.M. and revised by Berrington, The Laws of Selangor 1877 - 1895, (Kuala Lumpur, 1896).
- 18) _____, Records and Recollections, 1889 - 1934, (K. Lumpur, 1934).
- 19) Swettenham, F.A., Footprints in Malaya, (London, 1942).
- 20) _____, British Malaya: An Account of the Origin and Progress of British Influence in Malaya, (London, 1955).
- 21) Winstedt, R.O., The Malays: A Cultural History (London, 1950).
- 22) Wheare, K.C., The Federal Government, (London, 1956).

- 23) Voules, A.B., The Laws of Selangor, 1877 - 99 (Kuala Lumpur, 1961) Microfilm.
- 24) _____, The Laws of the FMS, Vol. 1 - 3 (London, 1921) Microfilm.
- 25) Wilkinson, R.J., A History of the Peninsular Malays with chapters on Perak and Selangor (Papers on Malay Subjects) (Singapore, 1920).
- 26) Middlebrook and Binnick, How Malaya is Governed (London, 1942).
- 27) J.M. Reay, F.H.S.: A Digest of Reported Cases (1897 - 1925) (K.L., 1929).
- 28) Winstedt, Britain and Malaya 1786 - 1941 (London, 1944).