

The Position of Islam in the Constitution of Malaysia

Joseph M. Fernando

The Federal Constitution of Malaysia states that Islam is the religion of the Federation. This provision in Article 3(1), inserted in 1957 when the independence constitution was framed, has drawn considerable scholarly attention in recent years. Most of the studies, however, have not been able to consult the primary constitutional documents. Invariably, many have given varied and ambiguous interpretations of the provision. This article examines the primary constitutional documents and constitutional debates between 1956 and 1957 to trace the origin of Article 3(1) and to determine the intentions of the framers in inserting this provision in the constitution.

Article 3 (1) of the Federal Constitution of Malaysia states that Islam is the religion of the Federation.¹ This provision has drawn considerable debate in recent years from scholars, politicians, lawyers and the general public in Malaysia. Varied interpretations of the article have surfaced in recent years and the provision in the Federal Constitution continues to be widely debated from time to time because of its perceived ambiguity. Most scholarly work on the issue, however, has been based on information derived from a reading of the published material available on the Constitution – the report of the Reid Constitutional Commission,² the White Paper on the Constitutional bill,³ Parliamentary proceedings, newspaper reports and judgements handed down by the courts in the

Joseph M. Fernando is a Lecturer in the Department of History at the University of Malaya, Kuala Lumpur. He may be contacted at jmfernando@um.edu.my. The author would like to thank Dr Loh Wei Leng from the History Department at the University of Malaya for suggestions on an earlier draft of this article and two anonymous readers for their valuable comments.

1 Article 3 (1) states: 'Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation.' Malaysia at the time of the drafting of the Federal Constitution in 1956–57 was known as the Federation of Malaya.

2 The Reid Commission, which drafted the Federal Constitution between 1956 and 1957, was chaired by Lord Reid, an Appeal Court judge in Britain. The other members of the Commission were Sir William McKell, a former Governor-General of Australia and Cabinet Minister; Sir Ivor Jennings, a constitutional expert and Master of Trinity Hall, Cambridge; Justice B. Malik, a former Chief Justice of the Allahabad High Court in India; and Justice Abdul Hamid, a High Court judge and former Secretary to the Ministry of Law in West Pakistan. The Commission, which was appointed following agreement between the Alliance government, the Malay Rulers and the British government at the London Conference in January 1956, took evidence in Malaya from political parties, organisations and individuals from June to October 1956 before travelling to Rome to prepare the draft Constitution. The draft was published on 20 February 1957 and submitted to the Alliance government, the Malay Rulers and the Colonial Office simultaneously. Joseph M. Fernando, *The making of the Malayan constitution* (Kuala Lumpur: Malaysian Branch of Royal Asiatic Society, 2002).

3 Federation of Malaya Legislative Council Paper No. 42 of 1957.

post-independence period. None of the existing works have examined adequately the primary Constitutional documents to ascertain the intentions of the framers. These documents include the minutes of the Working Party, which reviewed the Reid Commission's draft Constitution; the documents relating to the Constitutional talks in London in May 1957; the Constitutional papers of the Alliance Party; and Colonial Office documents relating to the Constitution-making process. This article seeks to fill this gap by examining these primary documents to provide a clearer picture of the intentions of the framers. For a proper understanding of Constitutional provisions, a study of the primary documents is essential. A constitution is not only the product of political and socio-economic forces operating at the time of its framing, it is also about the intentions and motives of its framers. Thus the historian's tools – a chronological examination of the debates, the disputes and compromises between the framers – are indispensable to a fuller understanding of the meaning of Article 3(1) of the Federal Constitution. This approach allows latitude in examining more directly the evolution of the article and the debates surrounding it at the different stages of the Constitution-making process. As Kenneth Wheare has noted, to understand the significance of the document, we must look beyond the formal legal phrases, to discover the predominant forces in the framing and adopting of a constitution.⁴ The articles of a constitution are often ambiguously couched in cryptic legal parlance, and it is here that the historical approach is most useful in unravelling the ambiguity of the legal phrases through a close scrutiny of the documents.

A general survey of the existing works indicates that the views of two former Chief Justices have until recently largely tempered this contentious debate over Article 3(1) and provided a sort of consensus. Former Lord President Tun Mohamed Suffian Hashim has written that Islam was made the official religion primarily for ceremonial purposes, to enable prayers to be offered in the Islamic way on official public occasions, such as the installation or birthday of the Yang di-Pertuan Agong (the Supreme Ruler [King]), Independence Day and similar occasions.⁵ His article, which was the first real attempt to address the issue of a state religion in the Federation, served as a benchmark for a long period. Following this, another former Lord President, Tan Sri Mohamed Salleh Abas, in a landmark judgement in 1988 ruled that the term 'Islam' in Article 3(1) meant 'only such acts as relate to rituals and ceremonies'.⁶ Salleh Abas noted further that 'the law in this country is still what it is today, secular law, where morality not accepted by the law is not enjoying the status of law'. These two clarifications have in the past been considered definitive in any discussion of Article 3(1) of the Federal Constitution. Both these jurists nonetheless have had to rely only on the published documents of the Reid Constitutional Commission and the sparse writings on Malaysia's Constitutional and administrative history to draw their conclusions. Their references and authoritative citations were in a sense restricted as they had no access to the primary documents at the time. Another prominent legal scholar, (later Tan Sri) Ahmad Ibrahim, in affirming

4 Kenneth Wheare, *Modern constitutions* (London: Oxford University Press, 1964), p. 98.

5 Mohamed Suffian Hashim, 'The relationship between Islam and the state in Malaya', *Intisari*, 1, 1 (1962): 8.

6 Che Omar bin Che Soh v Public Prosecutor (1988), 2, *Malaysian Law Journal* 55; Tan Sri Mohamed Salleh bin Abbas, *Constitution, law and judiciary: Selected articles and speeches* (Kuala Lumpur: Malaysian Law Publishers, 1984).

Suffian's view, has written that while the Alliance Party insisted that Islam should be declared in the Constitution as the official religion of the Federation, 'it did not ask that the Constitution should also declare, as did the Pakistan Constitution, that the State shall be an Islamic State'.⁷ Many scholars have affirmed the position adopted by Mohamed Suffian and Salleh Abas in attempting to explain the Constitutional provision for an official religion.⁸ Most of the research, however, deals with the broader role of Islam in Malaysian politics and has not specifically or substantively addressed the provision in Article 3(1).

In recent years, however, with the growing influence of religion in politics in Malaysia there has been a renewed debate on the meaning and scope of Article 3(1), and this has sometimes led to varied and ambiguous interpretations of the provision in the Federal Constitution. Some legal scholars, Abdul Aziz Bari for example, have noted that while some quarters feel that the constitution is secular, it was more a question of interpretation and he felt that there are arguments to say that it is not. He writes that Article 3 is vague because of the lack of clarity in the 1957 White Paper explaining the amendments made to the Reid Constitutional proposals. 'Part of the reasons for this is the vagueness to be found in the relevant recommendations themselves. While the Reid Commission did not make any recommendation on it, the White Paper was not particularly clear about the scope and implication of the provisions. The latter merely stated that "it would not affect the secular nature of the Federation."⁹ In contrast, another leading legal scholar in Malaysia, Shad Saleem Faruqi, has noted that while Article 3(1) declares that 'Islam is the religion of the Federation', it imposes no limits on the legislative power of Parliament, and the intention in making Islam the official religion of the Federation was primarily for ceremonial purposes.¹⁰ Faruqi notes further that the differences of opinion over whether Malaysia is an Islamic or secular State are attributable to semantics: 'Opinions are clashing because there is no litmus test or universally agreed list of criteria to typify a social or legal system as theocratic or temporal.'¹¹ He writes that the word 'secular' does not appear anywhere in the Constitution although there is historical evidence that the country was meant to be secular.¹² More recently, Abdul Rashid Moten has argued that the Federal

7 Ahmad Ibrahim, 'The position of Islam in the constitution', in *The constitution of Malaysia: Its development, 1957–1977*, ed. Mohamed Suffian, H. P. Lee and F. A. Trindade (Kuala Lumpur: Oxford University Press, 1979), p. 53. See also Ahmad Ibrahim, *The administration of Islamic law in Malaysia* (Kuala Lumpur: Institute of Islamic Understanding Malaysia, 2000), pp. 377–407.

8 Hussin Mutalib, *Islam in Malaysia: From revivalism to Islamic state* (Singapore: Singapore University Press, 1993), pp. 117–18; Muhammad Kamil Awang, *The Sultan and the Constitution* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2000), p. 157; Ozay Mehmet, *Islamic identity and development* (Kuala Lumpur: Forum, 1990); Mohamad Abu Bakar, 'Islam and nationalism', in *Islam and society in Southeast Asia*, ed. Taufik Abdullah and Sharon Siddique (Singapore: ISEAS, 1986), pp. 157–8. Mohamad Bakar notes that Malay nationalists, who dominated Malaysian political life in the post-independence period, 'turned the country into a secular state with a nominal commitment to Islam'.

9 Abdul Aziz Bari, *Malaysian Constitution: A critical introduction* (Kuala Lumpur: The Other Press, 2003), p. 46.

10 Shad Saleem Faruqi, 'Secularism or theocracy: A study of the Malaysian Constitution', paper delivered at the Malaysian Strategic Research Centre – Konrad Adenauer Foundation Intercultural Discourse Series, 5 Sept. 2002, Kuala Lumpur.

11 Shad Saleem Faruqi, 'The Malaysian Constitution, the Islamic state and the hudud laws', in *Islam in Southeast Asia*, ed. K. S. Nathan and Mohammad Hashim Kamali (Singapore: ISEAS, 2005), p. 265.

12 *Ibid.*, p. 268.

Constitution does not declare Malaysia to be a secular state: ‘The Constitution does not declare shar’iah to be the law of the land. But by the same token, the Constitution does not declare it to be a secular state.’¹³ Other scholars have made general references in recent writings to the provision with varying degrees of ambiguity.¹⁴ Semantics or otherwise, these recent works have raised serious questions about the intent of the framers of the Constitution. In addition to these scholarly works, a media debate – print and electronic – has continued from time to time in the last few years on the meaning and scope of Article 3(1) in the context of a wider debate on Islam and the state in Malaysia.¹⁵ The discussion above indicates that the existing works have been unable to determine clearly the intentions of the framers in relation to this article. This is largely because these works have not examined the primary constitutional documents.

This study seeks to fill this gap by examining the primary documents to ascertain the intentions of the framers when they inserted Article 3(1) into the Federal Constitution. It begins with an examination of the discussions within the Reid Commission on the Alliance’s proposal that a provision be inserted making Islam the religion of the Federation. Following this, the article considers the deliberations of the Working Party – comprising the representatives of the Alliance government and the Malay Rulers and the High Commissioner Sir Donald MacGillivray – which reviewed the Reid draft Constitution and then inserted a new article stating that Islam would be the religion of the Federation. The third section of the article examines the subsequent discussions at the London Constitutional talks in May 1957 and the debates in the British Parliament and the Federal Legislative Council in Kuala Lumpur in July 1957 to elucidate further the intentions of the framers. This will be followed by some concluding observations. This historical and chronological approach in examining the evolution of Article 3(1), based on primary documents, will enable us to establish more precisely the intentions of the framers.

The Reid Commission and the issue of state religion

The Reid Constitutional Commission, which drafted the 1957 Malayan Federal Constitution between June 1956 and February 1957, did not provide for an article declaring Islam the religion of the Federation despite the Alliance Party’s request in

13 Abdul Rashid Moten, ‘Malaysia as an Islamic state: A political analysis’, in *Malaysia sebagai sebuah negara Islam* (Kuala Lumpur: Institute of Islamic Understanding Malaysia, 2005), p. 61.

14 Jan Stark, ‘The Islamic debate in Malaysia: The unfinished project’, *South East Asia Research*, 3, 2 (2003): 173–201; Patricia A. Martinez, ‘The Islamic state of the state of Islam in Malaysia’, *Journal of Contemporary Southeast Asia*, 23, 2 (2001): 474–529; Farish A. Noor, ‘Blood, sweat and jihad: The radicalization of the political discourse of the Pan-Malaysian Islamic Party (PAS) from 1982 onwards’, *Journal of Contemporary Southeast Asia*, 25, 2 (2003): 200–32.

15 See *The Star*, 12 July 2005, on the debate in the Malaysian parliament on the question of whether Malaysia is an Islamic state; *The Sun*, 25 July 2005, on an interview with Malaysian political scientist Farish Noor on the question of the Islamic state; and ‘Letters to the Editor’, in *Malaysiakini* online newspaper (www.Malaysiakini.com), June and July 2005. On 29 Sept. 2001, then Prime Minister Datuk Seri Dr Mahathir Mohamad announced at the Gerakan Party’s annual general assembly that Malaysia is in fact an Islamic state. The leading opposition parties, the Democratic Action Party (DAP) and Parti Se-Islam Malaysia (PAS), strongly contested the validity of Mahathir’s statement (*The Star*, 30 Sept. 2001). The DAP adopted the issue as one of its main campaign issues in the 2004 general election campaign.

its memorandum to the Commission that this be done.¹⁶ This was largely because the Commissioners felt that such a provision would contradict the secular nature of the state. Further, they took note of the strong objections of the Malay Rulers to the inclusion of such a provision. The Alliance memorandum urging the Commission to provide for Islam as the religion of the Federation had stated unequivocally that such a provision would not impose any disability on non-Muslims and did not imply that the state was not secular.¹⁷ This provision for an official religion contained in the Alliance memorandum was a concession made by the MCA and MIC to UMNO as part of a broader inter-communal bargain achieved among the three parties in their deliberations, which agreed on their joint memorandum to the Commission.¹⁸ The party's papers indicate that there was no lengthy debate on this issue because it was clearly understood that the provision was intended in a limited sense.

The Rulers meanwhile had submitted that such a provision in the Constitution would encroach on their traditional position as heads of the Muslim religion in their respective states and urged the Commission not to insert any such article. They also felt that any interference with the established position of faith in the states could threaten internal security and the success of the on-going anti-insurgency campaign.¹⁹ Their counsel, Neil Lawson, pointed out to the Commission during the private hearing at the tripartite discussions at the London Conference in January 1956, which drew up the Commission's terms of reference, that there would not be any change in the position. Lawson told the Commission: 'Their Highnesses having considered the matter are not in favour of a declaration being included in the Constitution as to the Muslim Faith being the established religion of the Federation. This is a state matter and much better left as a state matter.'²⁰ Under the 1948 Federation of Malaya Agreement, religion was a state matter and the sultans were head of religion in their respective states.²¹ Islam, however, was not the state religion in Penang and Melaka, which were Crown Colonies.

16 The Alliance Party, the leading nationalist movement from 1952, comprised three communal parties representing the three major communities in the Federation: the United Malays National Organisation (UMNO), the Malayan Chinese Association (MCA) and the Malayan Indian Congress (MIC).

17 Alliance Memorandum to the Reid Constitutional Commission, 27 Sept. 1956, p. 19. The Alliance memorandum stated: 'The religion of Malaysia shall be Islam. The observance of this principle shall not impose any disability on non-Muslim nationals professing and practising their own religions, and shall not imply that the State is not a secular State.'

18 UMNO/SUA (Secretary-General) 154/56, Report to the Alliance National Council by Dato Razak bin Dato Hussein, chairman of the Alliance Ad-Hoc Political Sub-Committee, 4 May 1957. In its report to the Alliance National Council, the Sub-Committee noted: 'The Political Sub-Committee agreed that Islam shall be the official religion of Independent Malaya, and that it should be written into the Constitution that there will be complete freedom to propagate and practice all other religions and to establish and maintain other religious institutions.' See also minutes of Alliance Ad-Hoc Political Sub-Committee meeting, 2 April 1957. The minutes of this meeting indicate that the provisions on the religion of the Federation and Malay Special Position were a concession made by the MCA and the MIC in response to the concessions made by UMNO on citizenship and language.

19 See 'Proposals of Their Highnesses the rulers made to the Constitutional Commission', 12 Sept. 1956, B/X/5/III (93), Ivor Jennings Papers.

20 Verbatim report of hearing granted to Rulers' counsel and representatives, 14–15 Sept. 1957, CO 889/1.

21 Article 5 of the 1948 Federation of Malaya Agreement reads: 'Except as provided in Clauses 100 and 101 of this Agreement, nothing in this Agreement (including the Schedules thereto) shall apply in any Malay States to matters relating to the Muslim Religion or the Custom of the Malays: Provided that provision may be made by Federal Ordinance for enabling any Court of Justice to ascertain the Hukum Shara' or the Custom of the Malays, concerning any matter before it.'

The Reid Commission in its report explained they had not provided for a state religion because of the objections of the Malay Rulers:

We have considered the question whether there should be any statement in the Constitution to the effect that Islam should be the State religion. There was universal agreement that if any such provision were inserted it must be made clear that it would not in any way affect the civil rights of non-Muslims. In the memorandum submitted by the Alliance it was stated – ‘the religion of Malaysia shall be Islam. The observance of this principle shall not impose any disability on non-Muslim nationals professing and practising their own religion and shall not imply that the State is not a secular State.’ There is nothing in the draft Constitution to affect the continuance of the present position in the States with regard to recognition of Islam or to prevent the recognition of Islam in the Federation by legislation or otherwise in any respect which does not prejudice the civil rights of individual non-Muslims. The majority of us think that it is best to leave the matter on this basis, looking to the fact that Counsel for the Rulers said to us – ‘It is Their Highness’ considered view that it would not be desirable to insert some declaration such as has been suggested that the Muslim Faith or Islamic Faith be the established religion of the Federation. Their Highnesses are not in favour of such a declaration being inserted and that is a matter of specific instruction in which I myself have played very little part.’ Mr Justice Abdul Hamid is of the opinion that a declaration should be inserted in the Constitution as suggested by the Alliance and his views are set out in his note appended to this Report.²²

While officially the Reid Commission cited the submissions of the Rulers in omitting a provision making Islam the religion of the state, in private the Commission expressed concern over the contradiction between the Alliance’s declaration that Malaya would be a secular state and its proposal for Islam to be the official religion of the Federation. In fact, the Commission had intended to seek further clarification on the matter from the Alliance during the private hearing given to the coalition, but because of the short duration of the meeting, which lasted for a little over two hours (the hearing for the Rulers, in comparison, was over two days), the question was not raised.²³ At the hearing, Lord Reid only asked the Alliance for clarification over the discrepancy between its proposals on the ‘practice and propagation’ of religion found in different sections of its memorandum. Page 19 of the Alliance memorandum stated that there should be no disability on non-Muslims ‘professing and practising’ their religion, while the appendix of the memorandum advocated freedom ‘to profess, practise and propagate any religion’. The Alliance representatives pointed out that the broader proposal as outlined in the appendix should be followed.²⁴ The Commissioners’ reservation over the Alliance’s request is also revealed in comments later made by Sir Ivor Jennings, one of the members of the Commission, on the Reid draft Constitution. Jennings felt that the religion of a minority or even a majority should not be formally established, adding that for the same reason he disliked the

22 *Report of the Federation of Malaysia Constitutional Commission, 1957* [hereafter Reid Report] (Kuala Lumpur: Government Press, 1957), p. 73.

23 Summary record of 34th meeting of Commission, 26 Sept. 1956, CO 889/1. The minutes note: ‘The question of the religion of the State officially being Islam at the same time as the State is secular require further explanation.’

24 Minutes of hearing given by Commission to the Alliance representatives, 27 Sept. 1957, CO 889/1.

establishment of the Church of England. 'I do not think Islam needs the power of the State to support it.'²⁵

The requests by numerous non-Muslim organisations urging the Commission to ensure the secular nature of the state, and their concerns over freedom of worship, as well as a confidential letter from the Secretary of State for the Colonies, Alan Lennox-Boyd, emphasising the need to ensure that the Constitution guaranteed the freedom of religion, greatly influenced the decision of the Commission not to insert an article providing for a state religion.²⁶ The Labour Party of Malaya, for instance, stressed in its memorandum that 'only by the creation of a secular State can religious peace, and consequently, civic harmony, continue to flourish in Malaya'.²⁷ The Straits Chinese British Association urged the Commission to enshrine 'cast-iron safeguards' in addition to basic fundamental rights and asked it to ensure that there was 'no discrimination against any citizen on the grounds of religion, race, sex, place of birth or any of them'.²⁸ This concern among the Commissioners is also reflected in the insertion of Article 11, which guarantees religious freedom and which is almost identical to Article 25 of the Indian Constitution.²⁹

Apart from UMNO, several Malay and Muslim organisations and individuals, on the other hand, urged the Commission to provide for Islam to be made the state religion. The Malay Forum, led by a group of high-ranking Malay officers from the Malayan Civil Service, for example, urged the Commission in its memorandum to make Islam the state religion in the Federation while ensuring that this provision did not prejudice the freedom of worship.³⁰ Party Negara Secretary-General Dato Onn Jaafar, who did not submit a memorandum to the Commission but prepared a draft constitution which appeared in the *Singapore Standard* on 25 April 1956, also touched on the matter. In the section titled 'Right to religious freedom' in his proposed draft, Onn stated: 'The State shall recognise the special position of Islam as the religion professed by the great majority of the citizens. The State shall also recognise Christianity, Buddhism and Hinduism as some of the religions and beliefs existing in the territory of the Union at the commencement of the Constitution.'³¹ Onn's broader and more inclusive provision on religion appears to be drawn from a similar provision in Burma's Constitution (Section 21), which, while recognising the special position of Buddhism as the faith practised by the majority of its

25 'Comments on Reid Report,' by Sir Ivor Jennings, B/X/7/II (26), Jennings Papers (undated).

26 See, for example, the submissions of the Malayan Tamils Association (6 June 1956, memorandum), Eurasian Union (31 Aug. 1956, hearing) and the Straits Chinese British Association, Malacca (7 June 1956, memorandum), CO889/1, (2) and (11), respectively; Minutes of the 23rd meeting of the Commission, 25 Aug. 1956, CO 889/1.

27 Memorandum by Labour Party of Malaya, 25 Sept. 1956, CO 889/6.

28 Memorandum by the Straits Chinese British Association, 7 June 1956, CO 889/6; See also CO 889/1 (18). The General Secretary of the Malaysian Christian Council, for example, told the Commission in a hearing on 23 Aug. 1957 that 'it would be proper if the new independent state were to be a secular one giving no particular favours or privileges to any one religion, as is the case in India'.

29 See G. N. Joshi, *The Constitution of India* (London: Macmillan, 1956), p. 85.

30 Memorandum by the Malay Forum, 6 Aug. 1956, CO 889/8. The memorandum is signed by Yacob bin Abdul Latif, Director of Information, Federation of Malaya; Abdul Kadir bin Shamsuddin; and Raja Mohar Badiozaman of the Malayan Civil Service.

31 *Singapore Standard*, 25 Apr. 1956. Dato Onn was formerly the chief of UMNO, the leading party in the Alliance coalition. Onn did not submit a memorandum to the Commission because he disagreed with its terms of reference.

citizens, also accords constitutional recognition to Islam, Christianity, Hinduism and animism.³²

The Pakistani member of the Commission, Justice Abdul Hamid, initially agreed with the other members on the decision to omit any provision for an official religion in the draft Constitution when the subject was discussed.³³ In his note of dissent, written later when the Commission reassembled in Rome to prepare the final draft, Hamid changed his mind. He now stated that the Alliance's proposal should be adopted as it was 'innocuous', pointing out that at least 15 countries had similar provisions in their constitutions.³⁴ In his note of dissent, Hamid wrote:

It has been recommended by the Alliance that the Constitution should contain a provision declaring Islam to be the religion of the State. It was also recommended that it should be made clear in that provision that a declaration to the above effect will not impose any disability on non-Muslim citizens in professing, propagating and practising their religions, and will not prevent the State from being a secular State. As on this matter the recommendation of the Alliance was unanimous their recommendation should be accepted and a provision to the following effect should be inserted in the Constitution either after Article 2 in Part I or at the beginning of Part XIII: 'Islam shall be the religion of the State of Malaya, but nothing in this article shall prevent any citizen professing any religion other than Islam to profess, practise and propagate that religion, nor shall any citizen be under any disability by reason of his being not a Muslim.' A provision like the one suggested above is innocuous.³⁵

The majority of the members of the Commission were uncomfortable about providing for a state religion when the Alliance memorandum stated that the state would be secular. They were concerned about the contradiction between the secular state and an official religion and the implications if such a provision were to be misinterpreted. Hamid's proposed draft of the article above also shows that his provision on state religion was intended in a limited sense.

When the Reid Commission published its report in February 1957, UMNO leaders were dissatisfied with the absence of a provision for state religion in the draft Constitution.³⁶ They argued strongly for the inclusion of such a provision in the Working Party, which reviewed the Commission's draft. The Rulers also issued a statement to clarify their position, as the Commission had cited their submissions in its report. The Rulers explained that their objection to the provision for an official religion was based on two grounds. First, under the existing Constitutional arrangement they were the heads of the Muslim faith in their respective states and, second, religion under both the existing and proposed new Constitutions was a state matter. In the circumstances, the Rulers argued that a provision declaring an official religion for the Federation would encroach upon

32 'Fundamental liberties' by Jennings, 21 Sept. 1956, CO 889/2.

33 Note by Justice Abdul Hamid on the list of points to be raised with the Rulers' representative, 3 Sept. 1956, B/X/5/III (26), Jennings Papers. See also 'Note on Hamid's dissent' in Jennings Papers, p. 4.

34 Reid Report, p. 99.

35 Reid Report, p. 100.

36 Fernando, *The making of the Malayan Constitution*, p. 154.

their individual position as the Head of the Faith in their respective states and the rights of the states to deal with matters of faith.³⁷ The discussion above shows that there was considerable objection to any provision for state religion from several quarters. The Reid Commission, having considered these objections, decided not to insert a provision for a state religion in their draft constitution. We now turn to the deliberations of the Working Party, which reviewed the draft.

The Alliance, Rulers and the Working Party deliberations

When the Working Party, comprising the Alliance and Rulers' representatives and the High Commissioner, met for the first time on 22 February 1957 to review the Reid Commission's draft, the Alliance and UMNO chief Tunku Abdul Rahman requested that an article declaring Islam the religion of the Federation be included in the new Constitution, as had been proposed in the Alliance memorandum.³⁸ The Tunku assured the committee that the state would be secular. Referring to the Rulers' objections, the Alliance assured them that if the Federal government set up a department of religious affairs, it would be for 'liaison purposes only'. High Commissioner MacGillivray, who chaired the meeting, felt that such a provision would be helpful as the Yang di-Pertuan Agong would then be able to become Head of the Faith in the former Crown Colonies of Penang and Melaka.³⁹ The Tunku's proposal in the Working Party was largely the outcome of

37 Outward Telegram from Commonwealth Relations Office (CRO), 1 Mar. 1957, CO 1030/522. The Rulers' statement read:

It appears that misunderstandings have arisen concerning Their Highnesses the Rulers' attitude to the question of establishing the Muslim religion as the state religion of the Federation under the new constitution. It must, therefore, be made clear that Their Highnesses' view that this should not be done, is based on two matters – firstly that they are the respective heads of the Muslim faith in their States in which the faith is constitutionally established – secondly that under the present and proposed constitutional arrangements, Muslim faith is a matter which is preserved to the State. It is Their Highnesses' view that to declare the faith as the established religion of the Federation would then prejudice their own position as heads of the faith in their respective States, and would also seriously encroach upon rights of States and their governments solely to deal with the question of the Muslim faith.

38 Minutes of the First Working Party Meeting, 22 Feb. 1957, CO 941/85. See also MacGillivray to secretary of State, 22 Feb. 1957, CO 1030/524 (1). The meeting was attended by High Commissioner Sir Donald MacGillivray, Tunku Abdul Rahman, Dato Abdul Razak bin Dato Hussein, V. T. Sambanthan, Ong Yoke Lin (all Alliance) and the Rulers' representatives: Tuan Haji Mustapha Albakri bin Haji Hassan, Che Shamsuddin bin Nain, Tunku Ismail bin Tunku Yahya and Neil Lawson.

39 First Meeting of Working Party, 22 Feb. 1957, CO 941/85. The minutes read:

The Alliance representatives said that they wished a statement to be inserted in the Constitution to the effect that although the States should be secular the official religion would be the Islam religion. They said that if the Federation government decided to set up a Department of Religious Affairs, it would be for liaison purposes only. The High Commissioner pointed out that there was at present no Head of the Faith in the two Settlements and suggested that it would be convenient if the Yang di-Pertuan Besar [later termed 'Yang di-Pertuan Agong'] could be the Head of the Faith in the new States of Penang and Malacca. It was agreed that an acceptable solution might be to include a statement in the Federal constitution that Islam should be the official religion of the Federation with the Yang di-Pertuan Besar as the Head of the Religion for the Federation as a whole but without any derogation from the position of each of the individual Rulers as Heads of the Religion in their respective States and without affecting the implementation of the recommendation that the Muslim religion should be included as an item in the State list. It was agreed that the Alliance representatives would draft an article on these lines and thereafter discuss the draft with the Rulers' representatives.

pressure from within the ranks of UMNO and the Malay opposition parties, which had made this one of the key issues in their protest against the Reid Constitutional proposals.⁴⁰ In the Working Party, UMNO leaders had argued that the provision for an official religion would have an important psychological impact on Malays. But in deference to the objections of the Rulers and the concerns of non-Muslims, the Alliance agreed that the new article should include two provisos: first, that it would not affect the position of the Rulers as Head of Faith in their respective states and, second, that the practice and propagation of other religions in the Federation would be assured under the Constitution.⁴¹ The MCA and MIC representatives in the Working Party did not raise any objection to the insertion of the new article, despite concerns expressed by many non-Muslim organisations, as they were assured by their UMNO colleagues that it was intended to have symbolic significance rather than practical effect, and that the civil and political rights of the non-Muslims would not be impaired. Under these circumstances, the Constitutional documents indicate, there was not much objection in the Working Party to UMNO's proposal following Tunku Abdul Rahman's explanation on the purpose of the article, with the exception of several points raised by the Rulers' representatives.

The new article providing for an official religion went through several drafts in the Working Party before the final form was agreed. The main exchanges on the draft were between UMNO and the Rulers' representatives. The minutes of the Sixth Meeting of the Working Party on 4 March 1957 indicate that there was a general consensus for the inclusion of an article providing for Islam to be made the religion of the Federation while providing safeguards (Article 11) for other religions to be practised, subject to public order and some restrictions imposed by some states on the 'propagation' of other religions among Muslims. At this meeting the members agreed that Attorney-General T. V. A. Brodie's draft should be accepted subject to the addition of a provision to Clause (1) of the draft referring to the existing position of the religion in the states. While the first meeting of the Working Party on 22 February had agreed that the Alliance representatives would prepare the draft, it appears that this task was subsequently delegated to Brodie. The minutes do not indicate why this switch was made. The wording of the draft of the new article is clear from the minutes of the Sixth Meeting of the Working Party, which read:

It was agreed that the Attorney-General's draft relating to the Muslim religion should be accepted, subject to the addition of a proviso to Clause (1) of that draft based on the present provision in the State Constitutions relating to this matter. The proposed new Article 2A would accordingly read as follows:

40 MacGillivray to Secretary of State, 8 Apr. 1957, CO 1030/324 (300). See *Straits Times*, 29 and 30 Mar. 1957. The Tunku told the UMNO General Assembly on 28 Mar. that four big issues in the Reid Report had been settled: the responsibility for safeguarding the right and privileges of the Malays would be left to the Paramount Ruler; Islam would become the state religion written into the new constitution; Malay would be the only national and official language, although English would continue to be used for 10 years; and, UMNO would not accept dual citizenship.

41 Minutes of Alliance ad-hoc political sub-committee meeting, 2 Apr. 1957, UMNO/SUA 154/56.

2A-(1). Islam shall be the religion of the Federation:

Provided that all other religions may be practised in accordance with the provisions of Article 11 in peace and harmony by the persons professing them in any part of the Federation.

(2) In every State other than Malacca and Penang the position of the Ruler as the Head of the Religion in his State in his manner and to the extent acknowledged and declared by the Constitution of his State and all rights, privileges, prerogatives and States and powers now had or enjoyed by the Ruler as such Head subject to the provisions of the Constitution of the State shall remain unaffected and unimpaired.

Provided that each of the Rulers as the head of the Religion in his State shall authorise the Yang di-Pertuan Agong for the time being to represent him in such acts, observances and ceremonies of the Religion as it may be desirable to do, observe or perform in respect of the Federation as a whole.

(3) In the State of Malacca and of Penang respectively the Yang di-Pertuan Agong shall be the Head of the Muslim Religion in such State in such manner and to such extent as may be provided by the Constitution of the State and the Yang di-Pertuan Agong shall, subject to such Constitution, have and enjoy such rights and privileges, prerogatives and powers as may properly appertain to his position as such Head.⁴²

In agreeing to the Alliance's proposal with some modifications, the Rulers stated at the same time that they were against the setting up of a Federal Department of Religious Affairs. The Rulers' unease with the implications of the provision is evident throughout the deliberations of the Working Party. When the provision was discussed again at the 11th Meeting on 12 March, the Rulers' representatives requested that a note be added below Article 2A to be considered at the forthcoming London Conference (scheduled to be held in May) and that it should read: 'The Alliance representatives have given an undertaking that it is not their intention to establish a Federal Department of Religious Affairs with executive functions.'⁴³ This was an additional guarantee sought by the Rulers from the Alliance to protect their position and status in their respective states. The Rulers were clearly intent on ensuring the retention of religion under their jurisdiction, viewing the setting up of a Federal Department as an encroachment on their traditional sphere of influence. Matters did not rest at that, and questions were raised when the provision on religion was discussed further in the 19th Working Party Meeting on 17 April 1957. The Rulers' representatives raised concerns about the potential for the Department of Religious affairs to be headed by a non-Muslim.⁴⁴ The possibility of Article 2A on state religion being misinterpreted was also raised. The Chief Minister and Alliance leader, Tunku Abdul Rahman, however, reassured the Rulers that if a Federal Department was set up it would be under the jurisdiction of the Yang di-Pertuan Agong, to allay any fears that it would be headed by a non-Muslim. On the possibility of the provision on religion being misinterpreted, the Tunku assured the Working Party that 'the whole Constitution

42 Minutes of 6th Working Party Meeting, 4 Mar. 1957, CO 941/85.

43 Minutes of 11th Working Party Meeting, 12 Mar. 1957, CO 941/85.

44 Later, after further talks, the Rulers agreed to the setting up of a Federal Department for Religious Affairs under the purview of the Yang di-Pertuan Agong.

was framed on the basis that the Federation would be a secular State'.⁴⁵ The minutes of the 19th Meeting are perhaps the clearest indication of the real intentions of the Alliance leaders. The Tunku, in this instance, states unequivocally that the whole Constitution was framed on the basis that the Federation would be a secular state.

The Attorney-General's draft on the provision for a state religion, Article 2A (later renumbered Article 3) with the amendments suggested by the Rulers, as noted above, was the form which was inserted in the Federation's new Constitution with the additional provision for the Yang di-Pertuan Agong to be made the head of religion in Penang and Melaka. At the 23rd Meeting of the Working Party on 27 April, it was agreed that the Yang di-Pertuan Agong would be the head of the Muslim religion in these two sultan-less states 'in such manner and to such extent as may be provided by the Constitution of the State' and that it would be possible accordingly for the Legislative Assembly to determine the extent of his authority in this matter.⁴⁶ Thus came to an end the bargaining in the Working Party over the vexing issue of a state religion. The text of the draft of Article 2A agreed in the Working Party, as we shall see below, was left largely untouched during the London constitutional talks in May 1957 at the urging of the Malayan delegation, although the Parliamentary draftsmen assisting the Constitutional talks made some changes to the phrasing style of the clauses.

The London Constitutional talks and Parliamentary debates

At the London Constitutional talks in May 1957, the Colonial Office, while apprehensive at first of Article 3 (still numbered 2A) providing for an official religion, did not object after being assured by the Alliance leaders that they 'had no intention of creating a Muslim theocracy and that Malaya would be a secular State'.⁴⁷ A note prepared by the Colonial Office, for example, reflects this position clearly:

One deviation from the recommendations of the Reid Commission is that Islam becomes the State Religion of Malaya. Since, however, the provisions safeguarding the rights of religious minorities remain, this alteration has more political significance than practical effect. The members of the [Alliance] delegation stressed that they had no intention of creating a Muslim theocracy and that Malaya would be a secular State.⁴⁸

45 Minutes of the 19th Meeting of the Working Party, 17 Apr. 1957, CO 941/87. The minutes of the Working Party relating to this discussion on state religion (Article 2A) read:

The Working Party discussed the view of Their Highnesses the Rulers that the Federation government should not establish a Muslim Religious Department because such a department would be under the control of a Ministry which might be headed by a non-Muslim. It was agreed after discussion that if a Department was required for purposes of liaison and co-ordination between the Federal Government and the State Governments the Department would be set up as part of the establishment of the Yang di-Pertuan Agong. In this connection there was discussion on the proposal that Islam should be the religion of the Federation. It was thought that the proposed new Article 2A might be misinterpreted. The Chief Minister said however that the whole Constitution was framed on the basis that the Federation would be a secular State. He referred in particular to the Amended Article 11 and he thought that it would be clear that the Federation was to be a secular State.

46 Minutes of 23rd Meeting of Working Party, 23 Apr. 1957, CO 941/87.

47 Memorandum by Jackson on the Constitutional talks held in London in May 1957 with the Alliance delegation and the Rulers' representatives, 23 May 1957, CO 1030/494 (20). See also Minutes of First Working Party meeting in London, 14 May 1957, CO 1030/496 (10); and *Constitutional proposals for the Federation of Malaya Cmnd. 210* (London: HMSO, June 1957), p. 20.

48 Memorandum by Jackson, 23 May 1957, CO 1030/494 (20).

The Colonial Office accepted the explanation of the Alliance that the provision had more political significance than practical effect. The Colonial Office felt it should not interfere in the matter unless there was a danger of discrimination against non-Muslims. A brief prepared for the Secretary of State for the Parliamentary debate in the House of Commons on the Malayan independence bill states this assurance from the Alliance:

HMG [Her Majesty's Government] considers this eventually a point for the people of Malaya to decide for themselves. The only grounds on which HMG would feel justified in intervening in a domestic matter of this kind would be if there was any reasonable fear that religious discrimination against non-Moslems would result During the talks held in London in May assurances were given that Malaya would be a secular state. HMG does not consider that there can be any reasonable fear of discrimination against non-Moslems.⁴⁹

The minutes of the London talks in May 1957 indicate that the provision on religion was not discussed at length following the assurances given by the Alliance to the Colonial Office.⁵⁰ The Parliamentary draftsmen assisting the committee in London reviewing the draft Constitution were given strict instructions to keep 'as closely as possible to the Working Party text' when dealing with the article on state religion (numbered Article 2A).⁵¹ Thus the final version of Article 3 of the Federal Constitution that emerged following the talks in London was essentially in the form agreed by the Working Party in Malaya with minor changes made by the draftsmen to the phrasing style. The new Article 3 now read:

3. (1) Islam is the religion of the Federation, but other religions may be practised in peace and harmony in any part of the Federation.
- (2) In every State other than Malacca and Penang the position of the Ruler as the Head of the Muslim religion in his State in the manner and to the extent acknowledged and declared by the Constitution of that State, and, subject to the Constitution, all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired; but in any acts, observances or ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his capacity of Head of the Muslim religion authorise the Yang di-Pertuan Agong to represent him.

49 Brief for Parliamentary debate on Federation of Malaya Independence Bill (undated), CO 1030/487 (6).

50 Minutes of the London Constitutional talks, 13–21 May 1957, CO 1030/496. This meeting was attended by Secretary of State Alan Lennox-Boyd, High Commissioner Sir Donald MacGillivray, Chief Minister Tunku Abdul Rahman, Dato Abdul Razak (Minister for Internal Defence and Security, Federation of Malaya), Ong Yoke Lin (Minister for Transport), V. T. Sambanthan (Minister for Labour), Tuan Mustapha Albakri bin Haji Hassan (Keeper of the Rulers' Seal), Tunku Ismail bin Yahya (Menteri Besar, Kedah), Shamsudin bin Nain (Menteri Besar, Negri Sembilan), Dato Panglima Bukit Gantang (Menteri Besar, Perak), T. V. A. Brodie (Attorney-General, Federation of Malaya), Neil Lawson, Q. C. (Rulers' legal adviser) and E. O. Laird and officials from the Colonial Office, Foreign Office, Home Office, Commonwealth Relations Office and Parliamentary Counsel N.K. Hutton and H. P. Rowe.

51 Minutes of 1st Meeting of Working Party, 14 May 1957, CO 1030/496 (10).

- (3) The Constitution of the States of Malacca and Penang shall each make provision for conferring on the Yang di-Pertuan Agong the position of Head of the Muslim religion in that State.
- (4) Nothing in this article derogates from any other provision of this Constitution.⁵²

This was the form that appeared in the new Federal Constitution that came into force on 31 August 1957. The provision for a state religion was nevertheless raised in the Parliamentary debates both in Malaya and in Britain. In Malaya, the Alliance government tabled a White Paper in Parliament in July 1957 to explain the changes made to the Reid Commission's draft Constitution by the Working Party in Kuala Lumpur in March and the tripartite body at the constitutional talks in London in May. The White Paper (Legislative Council Paper No. 42 of 1957) explained that while a new provision, Article 3, declaring Islam the religion of the Federation was now included in the Constitution, this would not affect the position of the Federation as a secular state, or the powers and privileges of the Malay Rulers as Heads of Religion in their respective states. The White Paper stated:

There has been included in the proposed Federation Constitution a declaration that Islam is the religion of the Federation. This will in no way affect the present position of the Federation as a secular State, and every person will have the right to profess and practise his own religion and the right to propagate his religion, though this last right is subject to any restrictions imposed by State law relating to the propagation of any religious doctrine or belief among persons professing the Muslim religion. The position of each of Their Highnesses as head of that religion in his State and the rights, privileges, prerogatives and powers enjoyed by him as head of that religion will be unaffected and unimpaired. Their Highnesses have agreed however to authorise the Yang di-Pertuan Agong to represent them in any acts, observances or ceremonies agreed to by the Conference of Rulers as extending to the Federation as a whole.⁵³

According to the White Paper, the Yang di-Pertuan Agong would be the head of the religion in the states of Melaka and Penang. The paper also stated that if the government felt it was necessary to set up a Department of Religious Affairs at the Federal level, the Yang di-Pertuan Agong would, after consultation with the Conference of Rulers, 'cause such a department to be set up as part of his establishment.'⁵⁴ The new provision for an official religion clearly was a compromise between the Alliance Federal government and the Rulers on one hand, and between the three communal parties in the Alliance coalition, on the other. In the ensuing debate in the Malayan Parliament on 10 July 1957, Tunku made only a passing reference to the inclusion of the new article (Article 3) while assuring the Rulers that if it was necessary a Muslim Department of Religious Affairs would be set up as part of the establishment of the Yang di-Pertuan Agong.⁵⁵ The Tunku did not attempt to go beyond the White Paper to explain the meaning of this provision.

⁵² *Federation of Malaya Constitutional Proposals* (Kuala Lumpur: Government Printers, 1957), p. 33.

⁵³ See *Federation of Malaya Constitutional Proposals (White Paper) 1957* (Kuala Lumpur: Government Printer, 1957), Legislative Council Paper No. 42 of 1957, pp. 18–19.

⁵⁴ *Ibid.*, p. 19.

⁵⁵ *Federal Legislative Council Debates*, 10 July 1957, pp. 2662–862.

But his colleague (later Tun) Tan Siew Sin's remarks on the provision while speaking in the House in support of the Constitutional bill, reinforces the intentions of the Alliance leaders in inserting Article 3 in the Constitution. Tan told the Federal legislature that although it had been provided that Islam would be the official religion, it had also been expressly laid down that 'this does not in any way derogate from the principle, which has always been accepted, that Malaya will be a secular state and that there will be complete freedom to practise any other religion'.⁵⁶ Tan's remarks indicate clearly the consensus reached by the Alliance parties.

The provision for a state religion received further comments from several other members in the debate that followed in the Malayan Parliament; while generally supportive, they expressed a degree of caution. The members spoke of the need to respect the country's diversity and to ensure that the new provision did not cause any disability to non-Muslims. Tuan Sheikh Ahmad said it was proper that Islam be made the state religion without causing any disability to the non-Muslims: 'Due to the fact that the Malays and their Rulers profess the Muslim religion, it is only fair and reasonable that Islam should be made the state religion, at the same time without causing any interferences whatsoever to other people professing other religions.'⁵⁷

Another speaker felt the provision was unsuitable to the nature of modern politics. Haji Ahmad bin Haji Hussain said he felt that Islam should not be associated with the modern state:

Provision is made in the Constitution that Islam shall be the official religion but this will lower the dignity of Islam, for Islam cannot, under modern conditions, be associated with the State. I do not know what will be the implication, but what we should like to have, when Islam is accepted as a State religion, is that its teachings and requirements should, in so far as it is practicable, be carried on without hindrance.⁵⁸

A. R. Abdul Karim cautioned about the 'conflict of ideas' in the Constitutions regarding the state religion, and urged that if there was to be religious liberty, 'not only religion as a whole, but the denominations of the sects too must be allowed to practise according to their own tenets'.⁵⁹

On the second day of the debate on the Constitutional bill, G. Shelly, representing the Eurasian community, spoke of the need for religious tolerance and urged members to protect the nation's doctrine of religious liberty: 'This is the rich heritage which the past is handing to the future, and it is the responsibility of this Government and the future Governments of the Federation to sustain this rich inheritance.'⁶⁰ K. L. Devaser, professing to belong to a secular school of thought, urged that the state should be above religion. 'Let every religion be practised but the state should be above religion.'⁶¹ He felt that Clause 4 of Article 11 gave liberty with one hand and took it away with the other. The Alliance deputy leader (later Tun) Dato Abdul Razak, in responding to a point raised by

56 Ibid., p. 2872.

57 Ibid., p. 2900.

58 Ibid., p. 2909.

59 Ibid., pp. 2912–13.

60 *Federal Legislative Council Debates*, 11 July 1957, p. 2942.

61 Ibid., 10 July 1957, pp. 2992–3.

Haji Ahmad during the debate, assured the House that the new provision would not restrict the practices of other religions as this would be contrary to the principles of the United Nations.⁶² At the end of the debate, the Malayan Parliament passed the Constitutional bill without any amendments. But it was evident from the debate that there were concerns among the members, including several Muslims, about the implications of the provision.

In the House of Commons and House of Lords debates on the Malayan Independence Bill, the new article providing for state religion drew much attention from several members who were concerned about its potential implications. In the House of Commons debate on 12 July 1957 (Second Reading), Joan Vickers, a Member of Parliament from Devonport, asked: 'I wonder whether if we are not careful we may eventually have – as has happened in Indonesia – religious parties, as religion is tied up with race, putting up for Parliament, which I think would be a very great mistake. I hope that we can find out for what reason this change was made.'⁶³ Graham Page of Crosby, on the other hand, felt that there should be no fear of a non-secular state being created with the inclusion of the new provision on state religion: 'On religion, the Reid Commission recommended, as my Hon. Friend the member for Devonport (Miss Vickers) pointed out, that there should be no mention of state religion in the Constitution. It is now inserted in Article 3, but is so watered down by the later Articles that I do not think there can be any real fear of a non-secular State being created.'⁶⁴ Later, at the Committee Stage on 19 July, the issue of state religion was raised again by Vickers, who felt the issue should be clarified further: 'Religion, which is always a delicate question, is mentioned in the Declaration of Human Rights. Up to the present, the different States have been observing different holiday days. Some States observe Sunday as a day of rest and others Friday. We should have a clear indication of what will happen in future. If there is to be a secular religion, it would be better to have a definite date settled before the Constitution comes into being.'⁶⁵ R. W. Sorenson (Leyton) said he hoped that if Islam was to be the official religion of Malaya, there should be the widest freedom for all other forms of religion: 'I have no doubt that that will be so, but I regard it as a great pity that there should not be in Malaya today a recognition that the best way out of their difficulty in having three, four or five religions in the country, practised by large numbers of people, is to allow all of them complete freedom of worship, freedom of exposition and freedom of assembly, the State itself being non-theocratic.'⁶⁶ Graham Page further noted that while the provision that Islam was to be the religion of the Federation was reduced in its effect by Article 11 (Freedom of Religion) of the Constitution, 'money can be collected by way of taxation from persons professing other religions and spent on Islam'.⁶⁷ In response to the points raised on state religion, Secretary of State for the Colonies, Alan Lennox-Boyd said he agreed to this provision because of the unanimous view put forward by the Conference of Rulers and the Alliance ministers. He felt there were sufficient safeguards in the Constitution to preserve religious freedom. Lennox-Boyd said:

62 *Ibid.*, p. 2980.

63 *Official Report of Parliamentary Debates Commons*, 12 July 1957, p. 692.

64 *Ibid.*, p. 702.

65 *Official Report of Parliamentary Debates Commons*, 19 July 1957, pp. 1583–4.

66 *Ibid.*, p. 1587.

67 *Ibid.*, p. 1590.

The Constitution contains a series of impressive safeguards to preserve religious freedom to which the Rulers and the Government of Malaya have raised no objection of any kind. I discussed this matter with them when they were here. Article 3 proclaims religious toleration. Article 11 specifically entrenches freedom of religion within the Constitution. Article 12 proscribes any form of discrimination, including religious discrimination, at the same time entrenching the right of any religious group to run its own schools and proclaiming in any religion other than his own.⁶⁸

The Federation of Malaya Independence Bill was passed in the Commons without any amendments. In the House of Lords debate on 29 July, Lord Reid (who had headed the Constitutional Commission in Malaya) pointed out that the Commission did not put in a provision on state religion because the Rulers had specifically urged them not to: 'As we set out in our Report, we were specifically asked by the Rulers, who are the guardians of Islam in their respective States, not to put anything of that kind in the Constitution. But they have changed their minds since we were in Malaya, and, speaking for myself, I see no objection in the change that has been made in the Constitution following upon that.'⁶⁹ The Earl of Perth, in response to the points raised by Lord Reid, said he felt that religious safeguards in the constitution were adequate:

Originally there was no thought of having a State religion, but subsequently those concerned felt that it was best, and it is now laid down, that Islam will be the State religion. Under Articles 3 and 11 of the Constitution, however, tolerance for other religions and freedom of religious observance are fully enshrined and safeguarded. So far as religious education is concerned, Article 12 lays down that there is to be no discrimination on the grounds only of religion, or indeed of race, descent, or place of birth, and every religious group has the right to establish and maintain institutions for the education of children belonging to its own religion. So I feel confident that the religious safeguards in the Constitution are all that one would wish.⁷⁰

The Bill was later passed by the House of Lords without any amendments. The new Article 3 thus raised serious concerns in both houses as to implications for religious freedom and the potential for the article to be misinterpreted. But following the assurances given by the Colonial Office, the Bill's passage in the British Parliament was not obstructed.

The intentions of the framers of the Constitution

The primary documents indicate clearly that the Working Party, in providing for Islam to be made the religion of the Federation by the insertion of Article 3(1), had intended the state to be secular. The UMNO and Alliance leaders had no intention of creating a theocratic state or a quasi-theocratic state. Article 3(1), the Alliance leaders assured the Colonial Office, would not encroach on the civil and political liberties of the non-Muslims or the freedom of worship. The intentions of these leaders are clear at each stage of the deliberations. The Alliance Party's original proposal in its memorandum to

68 *Ibid.*, p. 1599.

69 *Official Report of Debate in House of Lords*, 29 July 1957, p. 250.

70 *Ibid.*, p. 259.

the Reid Commission states: ‘The religion of Malaysia shall be Islam.⁷¹ The observance of this principle shall not impose any disability on non-Muslim nationals professing and practising their own religions, and shall not imply that the State is not a secular State.’⁷² This statement states unequivocally the original intentions of UMNO and Alliance leaders. It was a compromise reached between Alliance parties, hence there was no objection from the MCA and the MIC to the inclusion of this provision in their joint memorandum. The Reid Commission, however, did not include the Alliance proposal in their draft Constitution, citing the objection from the Malay Rulers. The latter had argued that such a provision would encroach on their position and status as Heads of the Faith in their respective states. Privately, the Commission was also concerned about the contradiction in the Alliance’s proposal for an official religion while the state was to remain secular.

The subsequent constitutional deliberations at the Working Party stage in Malaya between February and April 1957, wherein the new article was first inserted at the request of UMNO leaders, affirms the intentions of UMNO and the Alliance. Tunku Abdul Rahman’s clarification in the Working Party meeting that ‘the whole Constitution was framed on the basis that the Federation would be a secular State’,⁷³ is perhaps the clearest indication of the intentions of the framers. The new provision did not intend to alter the secular nature of the state. Justice Abdul Hamid’s reference to the provision being ‘innocuous’ was an apt description of the intentions of the Alliance. It was largely intended to have symbolic and ceremonial significance and not cause any disability to any quarters. Mohamed Suffian’s reading of the provision being intended primarily for ceremonial purposes is also a fair reading of the article as intended by the Alliance leaders. The passage of time has blurred the real intentions of the Malaysian framers of the Constitution and some recent scholarly works and discussions have questioned the secular basis of the state. An inadequate examination of the primary documents has largely contributed to these varied interpretations. This problem is not limited to scholars alone. Barely a year after independence, the Prime Minister Tunku Abdul Rahman had to clarify the meaning of this provision during a debate in the Legislative Council. Said the Tunku: ‘I would like to make it clear that this country is not an Islamic State as it is generally understood, we merely provide that Islam shall be the official religion of the State.’⁷⁴ The historical evidence presented in this article, based on primary documents, clearly affirms the secular basis of the state.

71 The word ‘Malaysia’ is used in the Alliance memorandum to refer to the Federation of Malaya because the Alliance had wanted the independent state to be called ‘Malaysia’. The Reid Commission decided that the change of name was outside their terms of reference.

72 Alliance Memorandum to the Reid Commission, 27 Sept. 1956, p. 19.

73 Minutes of the 19th Meeting of the Working Party, 17 Apr. 1957, CO 941/87.

74 *Federal Legislative Council Debates*, 1 May 1958, pp. 4671–2.