Constitution-making in Asia
Decolonisation and state-building in the aftermath of the British Empire

Edited by
H. Kumarasingham
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Constitutionalism and the politics of constitution-making in Malaya, 1956–1957

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Introduction

Constitution-making is an intricate yet dynamic process that in the modern nation-states that emerged during the period of decolonisation has been influenced by a wide range of political ideals, constitutional traditions and conventions. The form and content of constitutions are shaped by historical circumstances and the experiences of the states concerned and reflect the varying competing interests and compromises inherent in these societies. Most constitutions in the former British colonial territories in Asia and Africa were formulated after the Second World War during the period of decolonisation. The emergent independent states required new constitutions to facilitate the transformation from a colonial dependency or protected state status with limited popular representation to a fully independent sovereign state, and to enable the full working of the parliamentary system of governance. The new constitutions were usually formulated by a committee of representatives in the national legislatures, as in the cases of India and Burma, where committees in the respective constituent assembly framed the new constitution. In some cases, the drafting of new constitutions involved legal experts from Britain, as in the case of Pakistan and Ceylon, or from India as in the instance of Burma. In Malaya, the constitution was drafted by an entirely foreign panel of legal experts from the Commonwealth. It was, as we will see, a conscious choice made by the Malayan political elites.

Invariably, English constitutionalism and institutions shaped the constitutions of the Commonwealth nations as they became independent and drafted a new constitution, as in the case of India and Pakistan, or drafted a constitution and then became independent, as in the case of Malaya. Ideas of parliamentary democracy, bicameral legislatures, cabinet system, doctrine of separation of powers, an independent judiciary and free elections were embraced freely by the Asian and African Commonwealth nations. This is partly because the political elites of these emergent nation-states had been trained in the system of parliamentary democracy during the colonial period. Further, many of the elites in these states were educated in Britain and attracted to the Westminster system of parliamentary democracy and genuinely believed that it was the best system of