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# Communalism and Constitution-making in Fiji

R. K. Vasil

IN PLURAL SOCIETIES the Constitution, the supreme law of the land, is of more than usual importance, for during the formative period of the nation it provides the broad framework for the development of mutual relations among the various communal groups and, more important, it indicates the thinking and attitudes of the majority community or the indigenous community (who believe that they have an inherent right to political paramountcy) towards the other communities and towards the fundamental problems of communalism and nation-building. The Constitution also indicates whether the ruling community has faith in the eventual economic and political integration of the various communities and the creation of a united new nation where, in the words of Prime Minister Lee Kuan Yew of Singapore, "people, regardless of their race, religion and different cultural backgrounds, should get a just share of the good things of life as citizens of equal worth" or that it believes in the involuntary assimilation or absorption of the minority or immigrant communities and seeks to establish the paramountcy of the majority or indigenous community through constitutional and political means. The present article examines this problem as it is manifesting itself in Fiji.

According to the 1966 Census, Fiji's population consisted of the following:<sup>1</sup>

The most important demographic fact is that the Indians, the immigrant community, are not only the largest single group but that they con-

		Per cent of total
Chinese and Part-Chinese	5,149	1.1
European	6,590	1.4
Fijian	202,176	42.4
Indian	240,960	50.6
Part-European	9,687	2.0
Rotuman	5,797	1.2
Other Pacific Islanders	6,095	1.3
All other	273	—

<sup>1</sup> F. H. A. G. Zwart, *Report on the Census of Population, 1966*, Government Printer, Suva, 1968, Table 1.

## *Pacific Affairs*

stitute an absolute majority of the population while the indigenous people, the Fijians, represent no more than 42.4 per cent of the total. Even though the Indians do not form a majority of the *electorate*, there is an immense fear of majority rule among the Fijians who believe that it would inevitably lead to their dispossession in their own country. Added to this is the widely held belief that Indians have a predominant share of economic and commercial power and, given equality of political rights, would take over the country.

This fear was recognised by the British colonial rulers (many maintain that it was even to some degree inspired by them), and formed the core of the policy pursued by them. The Deed of Cession of 10 October 1874, under which the islands passed into the hands of the British, was interpreted throughout to mean that the primary responsibility of the British was towards the Fijian Chiefs and their people and that the Fijian interests must always be protected and preserved and must remain paramount. A higher political status for the Fijians in relation to the immigrant Indians was established as the corner-stone of British policy. The Indians, however, were opposed to this British approach and referred to the Salisbury Despatch of 1875<sup>2</sup> as the basis of their status. Now that most Indians are Fiji-born and have nowhere else to go there is even greater and more widespread opposition among them to the idea of the political paramountcy of the Fijians.

Since the Constitution of Fiji has maintained a strong continuity with the practice in the pre-independence period, it is useful to have a look at the salient features of constitutional changes during the British period. There were two key features of these changes. Firstly, they introduced the divisive and basically unworkable system of communal representation and communal electoral rolls. This meant that the different communities were represented by their own kind. Later, when elections were introduced, people were divided on the basis of race into separate electorates. The price of this system in India, according to many, was the partition of that country. In Fiji, the danger is not that of partition but that it may be impossible to undo the system and that it may remain as a permanent obstacle in the way of integration of the different communities into one nation.

Secondly, Europeans (constituting only a very insignificant part of the population of the country) were not only given separate representation but for some time a parity of representation with the Indians and the Fijians. The Europeans, with a very heavy concentration of economic wealth and power in their hands and afraid of being forced to give it up, established themselves constitutionally (as nowhere else in the world, except perhaps in South Africa and Rhodesia) as a party to the dispute with an equal position. This was to protect their special position when independence came and afterwards. Europeans who had "protected" the Fijians in the past now prepared themselves to assume a new role, that of a permanent ally, which

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<sup>2</sup> See Adrian C. Mayer, *Indians in Fiji*, London, 1963, p. 78.

### *Communalism and Constitution-making in Fiji*

they would have to play once Fiji became a free country. They were fully conscious of the fact that their traditional role of the "protector" would become untenable in independent Fiji.

In 1965, the British introduced significant constitutional changes which maintained continuity with the past and provided the framework for the constitution of independent Fiji. A Constitutional Conference was held in London during July-August 1965 and was attended by all the 18 unofficial members of the Legislative Council, 6 from each of the Fijian, European and Indian communities. Because of the strongly opposed views among the representatives from Fiji no agreement was reached with regard to the system of representation. The British Government recognising "that election on a straight common roll was not practicable for Fiji until a greater degree of integration of the communities had been achieved" put forward certain proposals under which some members of the Legislative Council would be both elected by and responsible to voters drawn from all communities.<sup>3</sup> These formed the basis of the recommendations accepted by the Fijian and European representatives. All the Indian representatives, except one (who had accepted the proposals in part), were unwilling to accept the proposals because they believed that, even though these had for the first time introduced a non-communal constituency, they did not at all go beyond the principle of communal reservation of seats. They put forward an improved version of these proposals<sup>4</sup> but that was not acceptable to the Fijians and the Europeans. In the circumstances the original British proposals containing both communal and cross-voting electorates was incorporated into the new constitution. Under this the Legislative Council was composed of 36 members elected in the following manner:

Fijians (including Rotumans and other Pacific Islanders): nine seats on Fijians communal roll; three on cross-voting roll (one from each of the three constituencies in the Colony); two elected by the Council of Chiefs.

Indians: nine seats on Indian communal roll; three on cross-voting roll.

Europeans (including Chinese and others): seven seats on the communal roll; three on cross-voting roll.

In the system of cross-voting, though seats were reserved in equal proportions for members of the three communities (the Rotumans and other Pacific Islanders being grouped with the Fijians and the Chinese and others with the Europeans), each member was elected by persons of all communities. The other important aspect of the new arrangement was that the Fijians were given a larger representation (two more) than the Indians.

Following the constitutional conference, elections were held in Fiji in

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<sup>3</sup> *Fiji, Constitutional Conference, 1965*, Cmnd. 2783, p. 7.

<sup>4</sup> *Ibid.*, pp. 11-12.

## *Pacific Affairs*

1966 for the 34 elected seats in the Legislative Council. Even though the Federation Party had rejected the recommendations of the 1965 Constitutional Conference, it chose not to boycott the elections. The two contestants, therefore, were the predominantly Indian Federation Party, and the Alliance Party, dominated by the Fijians and the Europeans. As expected, the Alliance scored significant successes and won 22 of the 34 directly elected seats. The three independents elected from the General Seats (Europeans and others) were also Alliance supporters. The Federation Party was able to win only the nine Indian communal seats; the three Indian cross-voting seats were secured by the Alliance. Thus the Alliance came out of the elections with a large majority of 25 to 9.

The emergence thus of the Alliance as the most powerful political force in the country lessened the Fijian fear for further constitutional advance. Their political supremacy having been established not only through the 1965 constitutional arrangement but now through the general elections of 1966, reduced their resistance to rapid advance to independence. Therefore, it was not surprising that the country now saw rapid political change and proceeded to independent status in October 1970.

A major part of the Constitution of independent Fiji was made final at discussions between the representatives of the Alliance Party and the Federation Party starting from August 1969 and continuing through March 1970.<sup>5</sup> It was only towards the end, late in January 1970, that the British Government sent Lord Shepherd, Minister of State for Foreign and Commonwealth Affairs, at the invitation of the Chief Minister of Fiji and the Leader of the Opposition, "to acquaint himself at first hand with the position reached in the talks." The central issue around which most of the controversy revolved was related to the question of representation in the parliament of independent Fiji. The question really was who should have political power? Should it be exercised by the majority on the basis of one man one vote? Or should it be entrenched in the hands of a minority through the Constitution? There was no agreement on this issue and "it was agreed that the parties needed more time to do some detailed research, and study the implication of various formulae put in by both sides."<sup>6</sup> The two sides also agreed in a statement signed by them, before Lord Shepherd returned, to report to the British Government that in case there was no agreement on the question of representation "the constitutional instrument for independence should reflect, subject to any formal changes arising from indepen-

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<sup>5</sup> These crucial talks were presided by Ratu E. T. T. Cakobau of the Alliance. The first session was attended by seven members of the Alliance led by Ratu Sir Kamisese Mara and the Federation Party was represented by only A. D. Patel and S. M. Koya. It was only at the next session, held on 3 November after the death of A. D. Patel, that the group was expanded to include all members of the two parties in the Legislative Council.

<sup>6</sup> *Report on Lord Shepherd's Visit to Fiji*, Legislative Council of Fiji, Council Paper No. 1 of 1970, p. 4.

### *Communalism and Constitution-making in Fiji*

dence, the provisions of the existing constitution.”<sup>7</sup> This meant that if the two parties could not come to an agreement before or during the constitutional conference to be held at London in April to finalise the constitution, the country would be granted independence on the basis of the existing arrangement for representation which had been introduced in 1965 and which had then been rejected by the Indian representatives. But before going into the details of this key question it will be useful to look at the other contentious issues on which agreement was reached in Suva before the London talks.

First, there was the issue of independent Fiji’s status in the Commonwealth. The Alliance Party, representing the wishes of the Fijians and the Europeans, insisted on Dominion Status and on retaining the Queen as the Constitutional Monarch represented in Fiji by a Governor-General. The Federation Party, on the other hand, representing the sentiments mainly of the Indians, asked for an independent republic. It however asserted that, in order to maintain a link with the past, a person who is ethnically a Fijian would be elected as the Head of State in a direct election and that the independent republic would seek membership in the Commonwealth. At the first meeting of the working parties of the Alliance and the Federation Party on 12 August 1969, A. D. Patel had insisted that “this country has reached the stage where it could immediately be independent.”<sup>8</sup> Ratu Sir Kamisese Mara, the leader of the Alliance, had replied:<sup>9</sup>

Well, we are not averse to a form of independence. We call it full internal self-government. . . . But when you say independence, you mean there has been a suggestion from your party of a republic . . . the Fijians particularly feel that there has been real meaning for them in their link with Great Britain because of Cession and this is what they would rather have developed to full internal self-government.

Patel’s view was that this link with Britain could be maintained through Fiji’s membership of the Commonwealth.

The next meeting of the working parties was held on 3 November. Earlier, A. D. Patel had died in October and the leadership of the Federation Party had been assumed by S. M. Koya, a Fiji-born Indian. It is widely believed by the Indians in Fiji that many of the concessions subsequently made by the Federation Party under the leadership of Koya would not have been conceded by Patel. At the very first meeting of the group after the death of Patel agreement was reached on the question of the status of independent Fiji in the Commonwealth. Koya asked Ratu Mara how far the Alliance “were prepared to go along the path of change towards independence”

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Constitutional Talks, Notes of Meetings between the Alliance and National Federation Working Parties* (mimeographed official record), p. 1. This being a verbatim record sometimes quotations do not read very smoothly.

<sup>9</sup> *Ibid.*, p. 5.

## *Pacific Affairs*

and if it was to be dominion status with all its implications and on the same lines as Australia and New Zealand. Mara's reply was that the Alliance would accept full dominion status with all its implications and would have a treaty with the United Kingdom for defence.<sup>10</sup> Koya sought an adjournment of the meeting to consult with his colleagues in private and when the meeting resumed he announced:<sup>11</sup>

We, from our side are well aware and appreciate the anxiety which exists in the minds of the Fijian people as to what would happen if we were to go right into independence straightaway. Whilst we are quite confident we can manage our own affairs without Gt. Britain and enter into separate treaties with nearby independent countries, in the circumstances we feel that we would be happy to accept your proposal and what we say is this: *we accept as a first phase of the constitutional changes* immediate dominion status, on the lines of Australia and New Zealand with all its implications.

Second, there was disagreement with regard to the adoption of a common name for all the people of Fiji. The fear of the Fijians was that with the use of the term "Fijian" to refer to all the people of Fiji they would tend to lose their separate identity. This was also opposed by the Council of Chiefs and towards the end of January 1970 there were rumours that the Council had rejected the use of "Fijian" to include non-Fijians. Countering these rumours Mara stated in the meeting of the Alliance and Federation Party representatives held on 26 January that "the Council of Chiefs at its last meeting agreed to defer this question to the next meeting with a request from me that they find an alternative to this word if they objected to it."<sup>12</sup> In a later meeting Mara indicated that the Fijian community's objection to the use of "Fijian" by non-Fijians was that "it will be another way of adopting Common Roll."<sup>13</sup> However, the Alliance having gained many concessions from the Federation Party, was able to persuade the Council of Chiefs to accept the use of the term "Fijian" to refer to all the people of Fiji.

Third, the Alliance insisted that the constitution must contain a definite reference to the Deed of Cession of 10 October 1874. The Fijians have always seen the Deed of Cession as a charter of their rights and position and they wanted this to be acknowledged in the constitution by the British and the Indians. They considered this essential because in the future, if there was a threat to their position through constitutional changes, they could invoke the Deed. In deference to the wishes of the Fijians Koya announced on 26 January 1970 that they had acceded to the request.

As was indicated above, the two parties were unable to agree on the vital issue of representation. The Federation Party maintained right from

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<sup>10</sup> *Ibid.*, p. 10.

<sup>11</sup> *Ibid.*, p. 10. Emphasis added.

<sup>12</sup> *Ibid.*, p. 134.

<sup>13</sup> *Ibid.*, p. 311.

## *Communalism and Constitution-making in Fiji*

the beginning that the right of the majority to rule must be accepted. Its view was that, since all men are equal, the only way to identify a majority was to establish the principle of one man one vote. As part of this, they rejected the system of a communal roll including the allocation of seats to various communal groups and demanded the implementation of a common roll. In a debate on the 1965 Constitutional Conference in the Fiji Legislature Council, A. D. Patel had asserted:<sup>14</sup> "It [a common roll based on one man one vote] is the only genuine method of democratic representation. It is the only way to bring about political integration and change a multi-racial society into one nation. It should precede and not follow racial integration." Countering the argument that a common roll should be introduced only after a substantial degree of integration of the different communities had already taken place, Patel asserted that if voting on separate communal roll was to bring about integration, it would have been achieved a long time ago, as the communal franchise had been introduced in Fiji as far back as 1929.<sup>15</sup> The Fijian objections to common roll were the following:<sup>16</sup>

1. The races are too far apart to permit a system of common voting and "considerations of ethnic, linguistic, religious or cultural loyalties are dominant."
2. Fijians wish to preserve a political identity as their only mainstay to economic and social survival.
3. Fijians, if racially rejected, would find themselves violently aroused into a "Fiji for the Fijians" attitude. They cite the Fijian reaction to Alliance's defeat in the 1968 by-election.<sup>17</sup>
4. Common roll should not be introduced unless greater integration within the community takes place.
5. In Malaysia its introduction had failed to unite, and it inflamed the races especially the indigenous Malays.
6. Common roll is not practiced in New Zealand (where Maoris have reserved seats) and common roll has failed in newly emergent countries in Africa and elsewhere, but works in older countries.
7. Democratisation must be allowed to proceed peacefully, and communal and cross-voting have served to bring the communities together.

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<sup>14</sup> Legislative Council, Fiji, *Debate on a Motion Arising from the Constitutional Conference in London, 1965*, p. 633.

<sup>15</sup> *Ibid.*, p. 630.

<sup>16</sup> Quoted in "Paper on Common Roll," presented by the National Federation Party, 9 March 1970, pp. 2-3.

<sup>17</sup> The nine Federation Party members of the Legislative Council walked out on 1 September 1967 in the midst of a speech by Vijay R. Singh, the Leader of the Indian Alliance, on a motion of the Leader of the Opposition asking that "Her Majesty's Government of the United Kingdom should call a Constitutional Conference immediately to ensure that a new constitution is worked out based on true democratic principles. . . ." *Legislative Council Debates*, August-September 1967, p. 612. They boycotted the Council for the next nine months and this forced by-elections in all the nine Indian communal constituencies. In the elections Federation candidates were returned in all, mostly with increased majorities. Fijians charged that Indians had voted communally and the Fijian Association held rallies that passed resolutions calling for the deportation of Federation leaders and repeal of legislation giving security of tenure to Indian farmers.

## *Pacific Affairs*

The Federation Party was completely opposed to the continuation of a communal roll and their arguments against the system were:<sup>18</sup>

1. Communal roll stands for divided loyalties, it inhibits national consciousness among the people; it is generally identified with religious fanaticism or racial separation or economic or social privilege.
2. Communal roll can be a serious obstacle to the successful operation of parliamentary democracy. The elected representatives of a racial or religious sub-community cannot afford to subordinate the interests and prejudices of their people to those of a larger community. . . . It will inhibit the formation of secular parties. Success in politics will depend upon reflecting exactly the communal interests and prejudices. Compromise will be rendered difficult and relative party strength may be frozen for long periods because a party can grow only with an increase in the size of the community upon which it is based. . .
3. Communal roll tends to magnify communal differences and new communities discover themselves, as further claims to separate representation are lodged.

The party believed that only through a common roll could Fiji emerge as "one people, one country, one nation." It rejected the view that a common roll would result in Indian domination and maintained, firstly, that the difference between the population of the Indians and the Fijians was not so great as to allow the former "a sweeping majority over the Taukeis [the indigenous Fijians] much less over all the others as to sweep the polls and be in a dominating majority in the legislature."<sup>19</sup> Secondly, the bulk of the difference in numbers of the Indians and the Fijians is in the under-twenty age-group—a non-voting population. In fact, Indians do not form a majority of the electorate.<sup>20</sup> Thirdly, the "steeply and steadily" falling birth rate of the Indians is further going to reduce the difference in population between the Indians and the Fijians. Finally, the party asserted that a "judicious" demarcation of constituencies under common roll would make it necessary for political parties to appeal to all the citizens rather than appeal to one racial group alone.

In the discussions between the Alliance and the Federation Party, before the contentious question of representation was taken up, the latter agreed to the introduction of a second chamber primarily with the function of safeguarding the interests of the Fijians. K. C. Ramrakha, one of the top-ranking leaders of the Federation Party said:<sup>21</sup>

We are quite sympathetic to the idea of a weightage for the Fijians. I think you will have to spell it out because too much is bad; again too little is just as worse. I think the upper house would be the best place to do it; even if you want the Council of Chiefs as a base. . . . I think it is inevitable that somewhere you will have to give Fijians a weightage, for particular legislation and for power of veto. You can assume for that purpose that upper house is agreed to.

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<sup>18</sup> "Paper on Common Roll," *op. cit.*, pp. 8-9.

<sup>19</sup> *Ibid.*, p. 22.

<sup>20</sup> The racial breakdown of the electorate is: Indians 75,678; Fijians 75,065; General 6,346.

<sup>21</sup> *Constitutional Talks* (Session on 13 January 1970), *op. cit.*, p. 65.

## *Communalism and Constitution-making in Fiji*

Mara was extremely pleased and referred to this as “a very significant statement.” He further said:<sup>22</sup>

. . . I think this is most significant in dealing with the Council of Chiefs, the fact that I should indicate to them the sympathy of the Opposition particularly in the safeguard of their interests which will be affected by the change in the Constitution. . . . I want to repeat that so that I can indicate to them that the message is that the Opposition is most sympathetic how Fijian interests could be safeguarded as it has been in the past. . . .

This drew an immediate query from R. B. Patel of the Federation Party:<sup>23</sup>

Don't you think that this should be connected with the composition of the Lower House. . . . What will be the connection to adjust a balance between the Lower House and Upper House?

The very significant reply of Mara was: “*Quid pro quo.*” It is also interesting to note that Mara's reply was not pursued so as to secure a more definite commitment; Koya who spoke immediately after Mara only referred to the Upper House and said that its more important function would be to protect the Fijian interests. He did not attempt to seek a concession on the question of representation in the lower house as a *quid pro quo* to the establishment of an upper house with the primary purpose of protecting the interests of the Fijians.

The significant point is that initially on the matter of representation the Alliance adopted a conciliatory attitude and gave the impression that it was interested in a genuine give and take; in fact, its leaders seemed to be very much on the defensive. On 23 January 1970, when for the first time there was substantive discussion on the question of representation in the lower house, Mara, referring to his experience with the Council of Chiefs with regard to the issue of upper house, said:<sup>24</sup>

I had a torrid time before the Council of Chiefs. . . . I and my colleagues were accused of steamrolling; that they were not informed of what was going on. Yesterday I was impeached; luckily it was not carried out. That just goes to show, and I wish to get this message across, the extent of inertia embedded in the customs and traditions.

Vijay R. Singh, the President of the Indian Alliance, pleaded:<sup>25</sup>

. . . we agreed to certain things, that we would not come to a decision unless the Council of Chiefs were consulted. You have already had an indication of what they

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<sup>22</sup> *Ibid.*, p. 68.

<sup>23</sup> *Ibid.*, p. 69.

<sup>24</sup> *Ibid.*, p. 78. Referring to this confrontation with the Council of Chiefs, Mara was to say later: “There was a strong harangue against me and Ratu George that we were selling the Fijians down the drain; that we were Indian lovers; that I had no experience of Indians; that I was trying to foist common roll on them. There was no proposition in any of our papers for common roll. It is very difficult to analyse a mind which is not analysable.” *Ibid.*, p. 95.

<sup>25</sup> *Ibid.*, p. 95. Emphasis added.

## *Pacific Affairs*

think . . . *one can reasonably surmise that no matter how much we become convinced, we have no hope of going back to the Council of Chiefs. . . . Let us be realistic.*

Basically, the Alliance view at this time was that it was impossible to argue with the Fijians and their Chiefs with regard to common roll. The reality was that they had a fear and it could not be surmounted by argument. The following two quotes from the session on 23 January 1970 give a good idea of the position:<sup>26</sup>

*W. M. Barrett* (Alliance—European): I have questioned my electorate: “What is your fear? What do you fear with common roll?” And there is no substantial reply. It is like a fear of the dark. . . . It is a fear of the unknown.

*Ratu Mara*: We have tried with the Council of Chiefs but the brightness was overwhelmed by the darkness. At the last conference we decided that we would try common roll at local government level and even though common roll is practiced, there is still a fear.

Koya obviously was impressed by the compulsions faced by the Alliance leadership, Ratu Mara in particular, and was willing to cooperate with them. A very significant discussion took place towards the end of the session on 23 January:<sup>27</sup>

*Koya*: What is your party’s view on the method of election, *would you agree to making it whatever would be agreed to in the constitution a temporary thing.* The alternative would be to make a permanent feature. We are working towards a certain goal. I am not committing myself but I am against anything permanent in the constitution except of course things like Fijian land.

*Vijay R. Singh*: I think what Mr. Koya is saying is that the constitution itself might not mention this system of election at all, which would be embodied in some subsidiary legislation which would be easier to change.

*Mara*: *I think we all want to get into the position where there is less controversy on the matter of qualifications. We will have to maintain this dialogue for the next five years. One of the greatest suspicions that the Fijians have is that only three months ago both sides were at loggerheads. Now they cannot find anything to disagree on.*

*Koya*: I don’t blame them either. . . . Would you like to consider not making the method of election permanent feature?

*W. B. Toganivalu*: In other words you want a time limit and then a review.

*Koya*: Yes. Personally I am worried about making anything permanent. . . .

*Mara*: *I think we made a statement that the ultimate goal is common roll and we have not gone back on that. Although the progress may be disappointing to your side it has been rather rapid as regards the Council of Chiefs.*

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<sup>26</sup> *Ibid.*, p. 96.

<sup>27</sup> *Ibid.*, pp. 104-5. Emphasis added.

### *Communalism and Constitution-making in Fiji*

This must have made it obvious to the Alliance leadership that the Federation Party and its leader, Koya, were not going to insist on immediate common roll. What they now were seeking was that whatever arrangement was agreed upon would only be an interim one. The Alliance, therefore, put forward its demand that the system of communal roll and cross-voting be retained and that the lower house of the Parliament should consist of 22 Fijian, 1 Rotuman, 20 Indian and 8 General.

It was at this time that Lord Shepherd, Minister of State for Foreign and Commonwealth Affairs, arrived in Fiji. On 27 January he and the other officials with him joined in the discussions between the Alliance and the Federation Party. Realising that the Federation Party was on the defensive and that what it was being offered by the Alliance was so one-sided that it would create embarrassment for the British Government, possibly even to the extent that it might be difficult to get the plan through the British Parliament, he counselled:<sup>28</sup>

You have two things you must consider in this matter. There is this situation in Fiji where there is need to give assurances to the Fijian. You have also got to take into account that when you become independent so you become a sovereign independent country and you are to be judged by others. *An election system that is clearly and utterly wrong and so rigid that there is to be no change will not bring credit to an independent sovereign Fiji.*

He further asserted:

. . . I think there is a lot in the Alliance Party proposal of communal roll, which I don't think one can avoid and an extension of the cross-voting seats. . . . Very briefly, it would seem to me that the 22 Fijian seats and 1 for Rotuma, a total of 23, as against the Indians 20 (and seeing this rather large figure of 8 for General), I wonder whether there is some room to bring the Indian and Fijian figures a little bit closer together by the reduction of the General figure and perhaps an increase in the Indian figure to bring it closer to the Fijian. This is coupled with an upper house. I think there is considerable merit in looking after Fijian interest in an upper house. . . .

He then warned:

I am not going to say that it smacks of Rhodesia but the enemies could say that we have agreed to a constitution which provided that a minority should rule a majority, although in Rhodesia the minority is very small in comparison to the size of the African population.

He suggested that the two parties should accept the present arrangement that was being negotiated as for the time being and in six years time—one year of the present parliament and five years of the next parliament—set up a Royal Commission, headed by an independent Commonwealth “judicial figure,” “to consider all the aspects relating to the Constitution, the way

<sup>28</sup> *Ibid.*, pp. 167-8. Emphasis added.

## *Pacific Affairs*

in which it is working and to then make recommendations to the Parliament on changes that the Commission might consider necessary."<sup>29</sup> He termed this as "a very honourable solution."

The response of the Federation Party was a positive one. R. D. Patel was willing to go along with the idea of the Royal Commission as a device to keep the door open for reconsideration of the issue of a common roll on the condition that the review was held within five years. Koya did not comment on it in explicit terms, but he implied (in fact, in an earlier meeting, as already noted, he had himself suggested the idea) that he was willing to accept the arrangement and suggested the establishment of an Electoral Boundaries Commission as "another way of seeing that the matter is kept under review."<sup>30</sup> However, unfortunately, even though the Federation Party had accepted the suggestion in good faith, the final constitution did not reflect the idea of review by an independent commission in its spirit. As will be seen later, any review was subject to approval by at least two-thirds of all members of the two houses of the Parliament.

There was no serious controversy with regard to representation. The reduction in the representation of the General Electors suggested by Lord Shepherd was vehemently opposed by the European representatives of the Alliance. Mara stated that he had a difficult time in getting the General Electors within his party to accept 8 seats instead of the 10 that they had under the 1965 constitution and maintained that 8 seats was "the barest minimum."<sup>31</sup> On the question of representation of Indians, Mara gave the impression that he was willing to make minor adjustments so as to meet the demands of the Federation Party. That Party did not press for a reduction in the representation of the General Electors and gave the impression that they were willing to accept the allocation of seats suggested by the Alliance with minor adjustments.

On 28 January, R. D. Patel made an interesting suggestion on behalf of the Federation Party which drew a very hostile response from the leaders of the Alliance. He suggested that his party would like to throw open its quota of reserved Indian communal seats to common roll. He asserted:<sup>32</sup> "We would like to make an experiment that would create a precedence which would give some data to be placed before the Royal Commission when it came as to how that has worked out. . . ." The Alliance leadership, considering this as the thin end of the wedge, were not willing even to discuss

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<sup>29</sup> *Ibid.*, p. 168. He maintained that this would satisfy both parties. "It would equally meet the Federation Party. They would be able still to maintain their desire to see common roll and the door is not closed to them. As far as I know, the Alliance Party itself does not close the door. With the door being left open the question will be looked at again after a certain period." *Ibid.*, p. 169.

<sup>30</sup> *Ibid.*, p. 171.

<sup>31</sup> *Ibid.*, pp. 172-3.

<sup>32</sup> *Ibid.*, p. 182.

### *Communalism and Constitution-making in Fiji*

this suggestion. Significantly, this response was very different from that of the earlier period when they had generally shown no hostility and had given the impression that they were willing to discuss any suggestions.

*Mara:* How can this be done when we do not accept this? Only yesterday you were not going to impose common roll on the Fijian people.

*David Toganivalu:* Well, if you expect the Fijians to vote on common roll it is an imposition of common roll. In other words, we do not accept it.<sup>33</sup>

The position of the Federation Party was further elaborated when Koya stated:<sup>34</sup> "We would also like to test whether the Indian voters are really going to become broadminded and show themselves that they are prepared to vote for non-Indians in their own constituency from their quota of Indian voters purely." As the matter was pressed by the Federation Party the Fijian response became even more vehement. David Toganivalu warned:<sup>35</sup>

This issue, I can forecast a lot of dangers arising from it if this goes outside the conference table because as we have already expressed in our previous meetings, the fears of the Fijian. The mere word "common roll" stinks to them. If this comes out, I can foresee certain elements going to the extreme saying, "We support Fiji for the Fijians only." I say this very sincerely.

Mara even went further when he said: "The only solution to all this is some form of partition—let the Indians have their common roll in a separate part of Fiji."<sup>36</sup>

Lord Shepherd too was to put his weight against the suggestion when he said that "it would look very strange" and that it would take him a great deal of parliamentary time to explain it and the reasons for it in the British Parliament. As a result the Federation Party chose not to pursue the suggestion.

Even though the question of representation had been amply discussed during several meetings, no formal agreement was recorded. The final statement said only that an understanding had been reached that the two parties would have further consultations prior to the London talks and that a final decision would be taken in London. But it was obvious that the Federation Party was in no position to pursue the matter of a common roll; it had more or less given up the demand for a common roll during the talks in Fiji. This had been obvious to the Alliance. The only reason why it did not formally drop the demand at this stage was that it had grave fears that since A. D. Patel, the foremost champion of common roll, had died only a few months before, it might have to face violent opposition from

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<sup>33</sup> *Ibid.*, p. 184.

<sup>34</sup> *Ibid.*, p. 185.

<sup>35</sup> *Ibid.*, p. 187.

<sup>36</sup> *Ibid.*, p. 193.

## *Pacific Affairs*

the Indian community. The leaders of the party were afraid that they would be charged with having sold out the Indian community soon after A. D. Patel was gone. They considered it advisable to postpone the final decision until the last so as to give the impression to the Indian community that they had fought for a common roll until the very end and had given in only when there was no other alternative.

It has been suggested to this writer that Koya's conciliatory attitude towards the Alliance and his intention not to press the common roll issue too strongly was a reflection of his own personal position and attitude. In this he had not consulted the party rank and file and leadership at various levels. During the period of the discussions in Fiji prior to the London talks there had been little attempt on the part of the national leadership to consult the party on the various crucial issues that they were discussing with the Alliance. Even among the top leaders of the party there was little consultation.<sup>37</sup> Very little prior preparation was made to present the Federation Party view effectively in the discussions.<sup>38</sup> It has been further alleged that Koya and his group had attempted to establish that A. D. Patel towards the end of his life had become less rigid and had shown more willingness to accept a compromise solution with regard to the crucial question of common roll.<sup>39</sup> It has also been suggested that A. D. Patel had accepted the system of cross-voting as a transition to common roll.

The Fiji Constitutional Conference was held in London from 20 April to 5 May 1970. The Alliance presented a united front in the discussions. The Federation Party, on the other hand, was seriously divided and had made little preparation in Fiji prior to the talks to come to an agreed position on

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<sup>37</sup> The talks between the Federation Party and the Alliance were held in private. Within the rank and file of the two parties very few people were even aware that these talks were going on. There was no public debate at all. It has been alleged that within the Federation Party attempts were made deliberately to divert the attention of the people to the hearings being held by Lord Denning during this period on the sugar cane contract dispute and later the Denning award.

<sup>38</sup> Interview with a high-ranking leader of the Federation Party, Suva, September 1970.

<sup>39</sup> Interview with a high-ranking leader of the Federation Party, Suva, September 1970. S. B. Patel, one of the closest friends of A. D. Patel and Koya, told this writer that before the 1968 by-elections in Fiji A. D. Patel had a rather tough and rigid posture. He was uncompromising. But following the success in the by-elections in which the Federation Party won all the 9 seats he felt that the continued confrontation with the Fijian leadership was not good. He began thinking in terms of some cooperation with them. At the same time, following the elections, Mara, on the other side, came to the realisation that the Federation Party was the only genuine representative of the Indian community and that the Indian Alliance had no mass base among the Indians. Consequently, he sought some contact with the Federation Party. And with a change in the posture of A. D. Patel several meetings took place between Mara and Patel. In these discussions, according to S. B. Patel, the two leaders were able to identify the areas of agreement and were to start discussing the issues that divided them. But at this time A. D. Patel died. S. B. Patel asserts that, even if A. D. Patel had not died, a political settlement would have been achieved between the two parties. But since the personalities of A. D. Patel and Koya were very different, the settlement would probably have been a different one. Interview with S. B. Patel, Lautoka, September 1970.

### *Communalism and Constitution-making in Fiji*

the vital issues. Of the Federation Party delegation all but Mrs. Jai Narayan and K. C. Ramrakha shared the view of Koya that they should not insist on a common roll and should be willing to compromise. They maintained that if they did not compromise they would have to go back to Fiji with the 1965 arrangement with regard to the composition of the legislature. They also did not want to have an open confrontation with the Alliance at this time, the time of independence. According to them, once independence was attained there would be ample opportunities to seek all that they stood for. Mrs. Jai Narayan and Ramrakha did not share this view, maintaining that the party must stick to the fundamentals of its policy and should not compromise with regard to the common roll.

Their view was that the British were very eager to get out of Fiji and that, even if the Federation Party continued to insist on a common roll, there was no likelihood of the British using this as a pretext to delay the granting of independence. Also, even though they themselves had agreed in Suva that, in case of no agreement on representation, independence would be granted on the basis of the 1965 constitution, it was so one-sided that the British would hesitate to give independence under that arrangement. That arrangement was so blatantly discriminatory that the British would be seriously worried about international reactions and criticism within the British Parliament and by the British press. They believed that the British possibly would use their influence with the Fijians and the Europeans to achieve a more reasonable settlement. They further maintained that what they were being offered was against their interests and not much better than the 1965 arrangement. If they did not come to an agreement now, at least the question would remain open and they would certainly get a better deal in the future when the British would not be involved. But if they accepted it now, even though this was being offered only as a transitional arrangement, this would be considered an indication of their weakness and the present arrangement would tend to become the permanent settlement. However, Koya was able to assert himself and get the Federation Party representatives to accept the deal offered by the Alliance. Mrs. Jai Narayan and Ramrakha being in a minority were forced to go along with the majority. They were also afraid that, if they insisted on going against the majority, they would be isolated and branded as communalists by the Alliance.

On 30 April, Ratu Mara reported to the conference that the Leader of the Opposition, S. M. Koya, had agreed that he should make the following statement to the conference.<sup>40</sup>

The Alliance Party stated that as in 1965 they recognised that election on a common roll basis was a desirable long-term objective but they could not agree to its intro-

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<sup>40</sup> *Report of the Fiji Constitutional Conference, 1970*, Legislative Council of Fiji, Council Paper No. 5, p. 1.

## *Pacific Affairs*

duction at the present stage. On the other hand the National Federation Party reiterated its stand that common roll could be introduced immediately in Fiji and could form the basis of the next general elections without in any way one race dominating others but resulting in a justly representative national Parliament.

The two parties having regard to the national good and for peace, order and good government of independent Fiji reached the following conclusions.

The two parties stated their belief that the democratic processes of Fiji should be through political parties, each with its own political philosophy and programme for the economic and social advancement of the people of Fiji cutting across race, colour and creed, and that all should work to this end. The conference called upon the Government of Fiji to see to the immediate completion of the extension of common roll to all towns and township elections in particular Lautoka and Suva. The Conference also agreed that at some time after the next general election and before the second election the Prime Minister, after consultation with the Leader of the Opposition, should arrange that a Royal Commission should be set up to study and make recommendations for the most appropriate method of election and representation for Fiji and that the terms of reference should be agreed by the Prime Minister with the Leader of the Opposition. The Conference further agreed that the Lower House should be composed as follows:

	<i>Communal</i>	<i>National Roll</i> <sup>41</sup>
Fijian	12	10
Indian	12	10
General	3	5

In agreeing to this composition for the Lower House the parties acknowledged that this is an interim solution and provides for the first House of Representatives elected after Independence and the Parliament would, after considering the Royal Commission Report, provide through legislation for the composition and method of election of a new House of Representatives, and that such legislation so passed would be regarded as an entrenched part of the Constitution.

According to the agreement between the two parties, the Parliament of Fiji was to consist of two houses, the Senate and the House of Representatives. The Senate was to comprise 22 members; 8 nominated by the Fijian Council of Chiefs according to procedure determined by the Council itself, 7 by the Prime Minister, 6 by the Leader of the Opposition and 1 nominated by the Council of Rotuma. The composition of the lower house has been noted earlier. This arrangement gave the Fijians a dominant position. In the upper house they could count on the support of 16 of the 22 members. And in the more important lower house, as the party system exists today in Fiji, they could count on the backing of at least 30 (22 Fijian and 8 General) of the 52 members. This arrangement was thus clearly geared to the establishment of Fijian political paramountcy. Indians, forming a majority of the population and a near-majority of the total electorate, have been allocated 22 of the 52 seats in the House of Representatives.

Even though this arrangement establishing minority rule has been pre-

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<sup>41</sup> The National Roll would be composed of all registered electors on the three communal rolls.

## *Communalism and Constitution-making in Fiji*

sented as only an interim arrangement, the amendment procedure laid down in the Fiji Constitution makes it impossible to effect any change in the basis of representation without the support of a significant number of the representatives of the Fijians. The amendment procedure agreed at the London Conference and incorporated into the Constitution of Fiji provides that in case of most important provisions of the Constitution<sup>42</sup> any bill seeking to alter the Constitution will need to have the approval of not less than three-quarters of all the members in each of the two houses of the Parliament.<sup>43</sup> The agreement at London further provided:<sup>44</sup>

Those provisions relating to the composition of the House of Representatives and the method whereby members are to be elected, including the delimitation of constituencies, could not be amended until three months after the laying before both Houses of the report of a Royal Commission appointed by the Governor-General at any time after the first general election after independence to make recommendations for the most appropriate method of election and representation in the House of Representatives. Thereafter Parliament could amend those provisions by a bill passed in each House with the support of the votes of not less than two-thirds of all the members of the House, but, as from the date Parliament made any amendment to those provisions, all those provisions would become provisions to which paragraph 75<sup>45</sup> applies.

What this means is that, whatever the report of the Royal Commission may say, it would have to have the approval of at least 35 members in the House of Representatives, 13 more than the total representation allocated to the Indian community. In the Senate the attempt to change the basis of representation would require assent by at least 15 of the 22 members, 9 more than the 6 nominated by the Leader of the Opposition. This makes it absolutely impossible to achieve a reasonable basis of representation until there has been a complete change of heart on the part of the Fijian community. The Fijian community alone thus enjoys a power of veto over any change towards majority rule in Fiji.

The agreement in London gave further protection to Fijian interests when it provided that "amendment or revocation of the following measures could only be effected if the bill for that purpose were passed in each House of Parliament with the support of the votes of three-quarters of all the members of the House."<sup>46</sup>

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<sup>42</sup> Such as Chapters 1, 2 (Fundamental Rights), 3 (Citizenship), the position of the Governor-General, the composition of the Senate, amendment procedure, procedure for alteration of certain laws etc.

<sup>43</sup> Article 67 (2) of the Constitution of Fiji. For the rest of the Constitution alteration requires only the support of two-thirds of all members of each House of Parliament.

<sup>44</sup> *Report of the Fiji Constitutional Conference, 1970*, op. cit., p. 11. This is incorporated in Article 67 (4) of the Constitution of Fiji.

<sup>45</sup> Paragraph 75 refers to those provisions of the Constitution which require the support of three-fourths of the membership of each of the two houses of the Parliament to effect an amendment.

<sup>46</sup> *Report of the Fiji Constitutional Conference, 1970*, op. cit., p. 11. See Article 68 (1) and (2) of the Fiji Constitution.

## *Pacific Affairs*

- (a) The Fijian Affairs Ordinance;
- (b) The Fijian Development Fund Ordinance;
- (c) The Native Lands Ordinance;
- (d) The Native Land Trust Ordinance;
- (e) The Rotuma Ordinance;
- (f) The Rotuma Lands Ordinance;
- (g) The Agricultural Landlord and Tenant Ordinance;
- (h) The Banaban Lands Ordinance;
- (i) The Banaban Settlement Ordinance.

It was further laid down that any amendments to law affecting Fijian land and customs could not be made without the supporting votes of 6 out of the 8 members of the Senate nominated by the Council of Chiefs.<sup>47</sup>

In all, there are three fundamental features of constitution-making in Fiji. Firstly, the Constitution was made under conditions in which the Indians, represented in the main by the Federation Party, did not enjoy an equal position with the other parties to the dispute and had little bargaining power. Secondly, the Constitution that was framed establishes minority rule. And thirdly, the key provisions of the Constitution laying down the basis and mode of representation in the Parliament are only of an interim nature.

### *Acreeage in Various Tenure Categories of Non-Fijian Lands*

Category	Crown	European	Indian	Chinese	C.S.R. Company*	All others
Freehold	73,967	295,377	69,686	5,000	75,105	3,682
Leasehold from Fijians	27,311	44,853	78,503	1,561	31,301	1,088
Leasehold from Crown	26	4,470	14,484	110	579	3,332
Total	101,304	344,700	162,678	6,671	106,985	8,102
Per cent of alienated land	14.5	44.5	23.4	0.9	15.4	1.2

\* The Australian-owned Colonial Sugar Refining Company Limited.

### *Contributions to Fiji's Economy*

	Total	Fijians	Indians	Europeans	Others
Contribution per acre of used land	£13. 6s.	£5. 4s.	£44. 0s.	£5. 6s.	£2. 2s.
Contribution per acre available	£2. 12s.	12s.	£27. 6s.	£3. 15s.	16s.

Source: Wright and Twyford, *Soil Resources of the Fiji Islands*, Government Printer, Suva 1965, pp. 9 and 14.

<sup>47</sup> It is useful in this connection to note the following statistics on the land situation in Fiji.

## *Communalism and Constitution-making in Fiji*

It is very significant that in Fiji, where the differences between the conflicting positions of the Indians on the one side and the Fijians and the Europeans on the other were much greater than in Malaya (now Malaysia), the British left it very much to the two parties to determine the constitution of the country with their help, whereas in Malaya they constituted a non-partisan Constitutional Commission consisting of well-known jurists from different countries of the Commonwealth to make recommendations for a constitution of independent Malaya. In Malaya in 1956, when the Constitutional Commission was constituted, there was agreement between the Malays and the non-Malays that the constitution must grant complete equality of political rights to all citizens, irrespective of their racial origins. There was also agreement that the indigenous people, the Malays, who had lagged behind the non-Malays in the economic and commercial spheres, be accorded a special position to enable them to catch up with the non-Malays. The differences were mainly relating to the question of citizenship and the duration of the special position of the Malays. What is more important, the differences were only between parties, United Malays National Organisation and the Malayan Chinese Association, working together in the ruling Alliance Party.

It is also significant that the Alliance had won 51 of the 52 seats in the Federal Legislative Council in the first national elections in the country. In spite of this the British set up the Constitutional Commission and did not leave it to the political organisations of the Malays and the non-Malays to negotiate among themselves and come to an agreement with regard to the constitution. The Constitutional Commission went around the whole country securing memoranda from various organisations of all the communities and finally made its recommendations. The very important thing that happened was that the recommendations made by the Commission, a non-partisan body of experts from outside the country, provided a framework with a special prestige which could be altered only marginally. Even though the non-Malays, like the Indians in Fiji, had little bargaining power vis-à-vis the Malays, the recommendations of the Commission strengthened their position and, more important, set a limit to extremism on both sides. Once the recommendations were made public, extremists on both sides came under heavy pressure to moderate their position; they found it difficult to make demands which were in complete conflict with the spirit and framework of the recommendations of the Constitutional Commission. And the result was that even though the recommendations were not accepted in full and the constitution was finalised by a Working Party which had only one non-Malay representative,<sup>48</sup> it was not so blatantly one-sided as the Constitution of Fiji.

<sup>48</sup> The Working Party consisted of the High Commissioner, 4 representatives of the Rulers, 4 representatives of the Government of the Federation (only one of these was a non-Malay), the Chief Secretary, and the Attorney General.

## *Pacific Affairs*

In Fiji, even though the differences between the Indians on the one side and the Fijians and the Europeans on the other were so sharp that there was no likelihood at all of their coming to an understanding and attaining a reasonable compromise, the British chose to leave it to the two disputants to negotiate and come to an agreement. They attempted to give the impression that the dispute was between the Fijians and the Indians and that they themselves could play the role only of a non-partisan moderating third party. But in reality, and in line with their orientation and policy throughout the colonial period, they showed little concern for the Indian community and attempted to put little pressure on the Fijians and Europeans to offer a reasonable and workable compromise. Indians, therefore, found themselves severely isolated and without any significant bargaining power. The Fijians and Europeans were able to introduce a constitution which is blatantly one-sided and establishes minority rule. If, as in Malaya, the British had set up a constitutional commission consisting of non-partisan experts from outside, possibly the Indians would have received greater justice. In Malaya, in spite of the fact that no integration had taken place between the Malays and the non-Malays, the Constitutional Commission had recommended that the lower house of the Parliament should be wholly elected by single-member constituencies on a territorial basis and that "we do not think that any other system would be appropriate."<sup>49</sup>

The significant point about the arrangement in Fiji is that it was accepted by the leadership of the Indians as only a matter of expediency. The dominant feeling was that the first task before them was to see that British rule was ended; so long as the British were there they had little hope of securing a reasonable deal. They believed that once the British were gone they would be able to negotiate with the Fijians on an equal basis and secure a just solution of the problems. In Malaya too, at the time of independence in 1957, the situation was similar. As a consequence of the British policy of treating the Malays alone as the *bumiputra*, to whom the country belonged, and the rest as aliens who had come to Malaya in search of employment and livelihood, the non-Malays generally were not sure of themselves and were on the defensive. And even though the concessions made by their political organisations were not exactly the compromise that they had hoped for and they were quite angry about them, there was little that they were prepared to do or could do about it. They did make some noise and there were even some riots and demonstrations, but they accepted the constitution and its basis as a matter of expediency. It was only a matter of time when they were to reject the "compromise" made at the time of independence. This is what happened in Malaysia during the 1969 general elections and the terrible bloodbath that followed it and the country has been plunged back to the pe-

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<sup>49</sup> *Report of the Federation of Malaya Constitutional Commission, 1957*, Government Printer, Kuala Lumpur, 1957, p. 23.

### *Communalism and Constitution-making in Fiji*

riod of independence.<sup>50</sup> Now new compromises need to be worked out and feelings on both sides having been hardened during the last few years it is going to prove a far more difficult exercise than at the time of independence.

With the sort of "compromise" forced upon the Indians this is the sort of tragedy that might be difficult to avoid in Fiji unless the leadership of the Fijians and the Europeans shows realism and statesmanship and utilises the opportunity, which may well prove to be the last one, provided in the constitution to effect a change in the basis and nature of representation during the next five years or so. As was emphasised in the joint statement of the two parties at the London Conference of 1970, the arrangement for representation prescribed in the constitution is only "an interim solution." The country is committed to the establishment of a Royal Commission within the next five years or so "to study and make recommendations for the most appropriate method of election and representation for Fiji." One can only hope that the present unworkable arrangement will then give way to a genuinely representative government which will do justice to all the people of the country and in the process secure their sincere support and faith.

*Victoria University, Wellington, October 1971*

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<sup>50</sup> See my book, *The 1969 General Elections in Malaysia*, Kuala Lumpur and London: Oxford University Press, 1971.