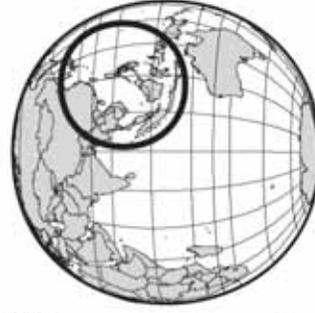


Federation of Malaysia

Capital: Kuala Lumpur
 Population: 24.3 Million
 (2002)

Boundaries and place names are representative and do not imply any official endorsement.



Source: ESRI/IAL; CIA World Factbook;
 Times Atlas of the World

Malaysia

(The Federation of Malaysia)

GORDON P. MEANS

1 HISTORY AND DEVELOPMENT OF FEDERALISM

The Federation of Malaysia is composed of 13 states and three Federal Territories.¹ It is located on the Malay Peninsula at the southeastern tip of continental Asia and along the northern part of the Island of Borneo. The federation evolved from the pattern of British rule, which was based on treaties with Malay sultanate states. Four of the Malay states joined in a federation in 1896, while five states remained “unfederated.” In the colonial period the British also ruled directly three colonies – Singapore, Melaka and Penang – and exercised indirect colonial rule over the Borneo states of Sarawak and North Borneo. After the Second World War, various efforts were made to unify these states and territories. A proposal to form a Malayan Union had to be abandoned due to the combined opposition of the Malay sultans and the Malays, who feared loss of political power if immigrant communities of Chinese, Indians and others were fully represented in the pro-

1 The three Federal Territories are as follows: Kuala Lumpur was made a Federal Territory in 1974; Labuan was made a Federal Territory in 1984; and Putrajaya which was created as a Federal Territory in 2001. The administrative capital of Malaysia is now Putrajaya, which is located about 25 miles north of Kuala Lumpur, and is a new city designed exclusively for the federal government.

posed democratic institutions. Instead, in 1948 a Federation of Malaya was created, with special provisions to protect the powers of the Malay Rulers and the interests of their Malay subjects. The federal system was designed to assure the political dominance of the Malays and provide a bulwark against pressures from immigrant communities for full representation and democratic reforms. The 1948 federation included nine Malay States and the former colonies of Melaka and Penang, but not Singapore.

British rule over the Federation of Malaya continued until 1957 when Malaya was granted independence. The federal system, as established in 1948, had centralized legislative powers but decentralized administrative responsibility to the states. The new constitution of 1957 providing for independence revised the federal system, giving each level of government prime responsibility for the administration of subjects within its legislative competence. Both the states and the federal government were given power to delegate their powers to the other through agreements made by executive action. This feature has made the federal system flexible over time and amenable to the enhancement of federal authority.

During the years from 1948 to 1960, the government was preoccupied with a communist guerrilla insurrection, which was gradually and effectively suppressed. The guerrillas attempted to recruit support primarily from Chinese labouring and rural communities. In response, government counter-insurgency policies attempted to address the threat by vigorous military measures and by meeting some of the demands of the immigrant communities, thus slightly tempering the overt ethnic bias (in favour of the Malay population) of the federal system.

In 1963 the Federation of Malaya expanded to include the states of Singapore, Sarawak and Sabah (formerly North Borneo), which had been under British rule and were now facing independence. An agreement was worked out for the creation of an expanded Federation of Malaysia. However, the proposal was vigorously opposed by some minorities in the joining states and by both Indonesia and the Philippines. Despite the opposition, the wider Federation of Malaysia came into being in 1963. The new Malaysia Agreement further modified the federal system in a complex set of special arrangements to placate the concerns both of joining states and of the federal leaders in Malaya.

Shortly after the formation of the Federation of Malaysia, a political contest developed between the leaders of Singapore and the leaders of the federal government over the terms of the Federation Agreement defining the relative autonomy of Singapore and the exercise of federal powers over security and political activity. At issue was whether the ruling party in Singapore had rights to mobilize political support in

the remainder of Malaysia and whether the political supporters of the federal government, backed by sympathetic federal-controlled security forces, could mobilize opposition to the government in Singapore. Political demonstrations rapidly escalated over ethnic issues, since the population of Singapore was 75% Chinese and only 14% Malay, while the rest of Malaysia, excluding Singapore, was 45.9% Malay and 36% Chinese. Furthermore, the federal government was committed to asserting the primacy of the Malays as the indigenous people through an elaborate system of special rights. Thus, the contest between the federal authorities and those of Singapore raised fundamental issues of ethnic political supremacy, rights of minorities and the equality of citizenship. Demonstrations and counter-demonstrations, egged on by politicians on both sides, inflamed ethnic passions. Finally, Malaysia's Prime Minister, Tunku Abdul Rahman, decided Singapore should be expelled from the Federation. Confronted with an ultimatum, Singapore's leaders agreed and in August 1965, with great secrecy and haste, Malaysia's Parliament ratified the Constitution Amendment bill which expelled Singapore.

This dramatic event demonstrated the superior political and legal powers of the federal government and had a profound effect on the subsequent development of federal-state relations within the revised Malaysian Federation. Singapore's exit from the federation also changed the political calculus since Malaysia without Singapore reinforced the political dominance of the Malays and assured that federal policies would remain unchallenged. This was especially true for the formula of inter-ethnic relations – based on a system of Malay rights and privileges – that was being promoted by the Malay leaders in the federal government. There were differences in the ethnic mix between the peninsular states and those in Borneo, yet, after Singapore's exit, there was steady pressure from federal authorities to bring the Borneo states into conformity with federal policies and integrate their party structures into the system of ethnic party alliances that sustained the federal government.

Great effort has been taken by federal authorities to intervene in the politics of the two Borneo states to maintain in power political coalitions that would collaborate with federal leadership and be harmonious with federal objectives and policies. Extensive federal patronage, combined with federal police and other coercive powers, have been used to reward supporters and isolate and defeat those state leaders who defend all the conditions of state autonomy for Sarawak and Sabah that were incorporated into the original Malaysia Agreement.

A constitutional crisis developed in May 1969 which dramatically shifted the balance of the federal system. Following an inconclusive

election, racial riots broke out and the government declared a national emergency which suspended both the constitution and Parliament. For over 15 months a government-appointed National Operations Council ruled the country by decree and eventually prepared for the restoration of constitutional rule. State governments continued to function but under the restrictions of emergency rule. When constitutional rule was finally restored, the *Sedition Act* was amended to make it unlawful for anyone, including Members of Parliament, to discuss or criticize the powers or status of Malay Rulers, citizenship rights, Malay special rights, the status of Islam as the official religion, and Malay as the national language. Since some of these issues were included in the federal-state distribution of powers, this ordinance made it a crime to have public discussion of any of these issues even in Parliament or in state legislative assemblies. Conviction under the *Sedition Act* is an automatic disqualification for holding elected office. On ethnic issues, it became clear that the states had to conform to the direction of federal leaders.

2 CONSTITUTIONAL PROVISIONS RELATING TO FEDERALISM

Malaysia is a parliamentary democracy. The head of state is a constitutional monarch known as Paramount Ruler (*Yang Di-Pertuan Agong*), elected on the basis of seniority for a five-year term by the Conference of Rulers from among their own members who are the nine Malay Rulers (Sultans) of the original Malay States in the earlier Federation of Malaya (Articles 32-38). This system creates a rotation of office among the Malay Rulers. The Malay Rulers are important defenders of federalism, since they exercise substantial power at the state level and they provide political continuity with a traditional political system that predates British colonial rule.

After Singapore's expulsion from Malaysia in May 1965, the federal system was composed of 13 constituent units which included nine Malay States plus Penang and Melaka (both former British colonies) in Peninsular Malaysia, plus the two East Malaysian (Borneo) states of Sarawak and Sabah. The nine Malay States are headed by a hereditary ruler (Sultan) and the other four states are headed by a Governor appointed by the Paramount Ruler (on the advice of the federal Prime Minister). Each constituent state is governed by an elected Legislative Assembly, with effective power given to a Chief Minister who is elected by majority support in the Assembly.

Each state has a constitution which must include "essential provisions" set out in the Eighth Schedule of the federal constitution,

thereby imposing a degree of uniformity on all the states. Parliament has legislative power to remove state constitutional inconsistencies with the Eighth Schedule. Both the federal government and the states are given the power to delegate their powers to the other through executive agreements.

The formal division of powers in the constitution allocates to the federal government the most important powers, thus giving the federation a very strong central government. Federal powers include, *inter alia*, external affairs, defence, civil and criminal law, citizenship, state and federal elections, finance, trade, commerce and industry, taxation, education, health, labour and social security (Article 74, Ninth Schedule). Federal laws take precedence over state laws in matters of incompatibility. Although residual powers are assigned to the states, the extensive list of functions defined in the constitution has left virtually no unassigned residual powers for the states to claim. The states have primary responsibility for land and agriculture, local government and services, plus administration of Islam and Malay customary law (Article 95B, Ninth Schedule). Because the latter issues are less relevant to the non-Malay states, additional powers were given to the states of Sarawak and Sabah at the time they joined the federation, thus creating a federal system with unequal powers among the constituent states.

At the federal level, the upper house of Parliament, the Senate (*Dewan Negara*), was designed to represent the states and to be a bulwark against federal encroachment of state rights. The Senate consists of 69 members, two elected from each state by the Legislative Assembly, and the rest appointed by the Paramount Ruler on the advice of the Prime Minister. Because the ruling Alliance Party has usually won controlling majorities in at least nine or more of the state assemblies, Senators have been appointed for their loyalty and service to the ruling party, thus making the Senate an important source of patronage for the ruling party. In practice the Senate has not defended state interests but has become primarily a rubber stamp for government-sponsored legislation coming from the popularly elected lower house of Parliament (*Dewan Rakyat*).

A constitutional amendment requires the support of a two-thirds majority in Parliament without any participation by the states (Article 15). Because the federal government has always commanded greater than a two-thirds majority, constitutional amendments have been passed at a rapid pace, some of them with retroactive effect to make legal those federal actions which might otherwise have been challenged in court. A number of constitutional amendments were introduced, passed both houses of Parliament and received royal assent in a matter of hours with no prior public announcement and virtually no public

debate. From 1957 to 2003, the constitution was amended 43 times, which created a total of 643 amendments to individual articles. The cumulative effect of these amendments has been the creation of overwhelming superiority of federal power and federal control over state policy and administration.

Fiscal arrangements outlined in the constitution favour the central government. All major tax powers are assigned to the federal government, but states are guaranteed a share of federal revenues calculated primarily on the basis of population and road mileage (Tenth Schedule). There have also been revenue-sharing agreements involving oil revenues for the littoral states for offshore production. A National Finance Council composed of federal and state representatives was supposed to provide coordination, but because it had only consultative authority it never developed into an effective coordinating institution. Instead the Economic Planning Unit in the Prime Minister's Department and the Ministry of Finance produce the annual economic reports and the national five-year economic plans that shape public revenue distributions and set economic goals. With strong federal direction and scrutiny, a series of national, state and district development committees oversee and coordinate the implementation of those national economic plans.

Because all major taxing powers reside with the federal government, all levels of government rely on a system of transfers from federal to state authorities and from state authorities to local authorities. In 2003, federal revenues constituted 23.1% of Gross Domestic Product (GDP), while combined state revenues, including federal grants, were 2.85% of GDP. Federal grants to the states came to 0.705% of GDP. Measured by the relative size of revenues, this means that the federal government has over eight times the revenue as that of all the states combined. The states in turn transfer about 40% of their revenue to local authorities. This system has created periodic financial deficits for state and local authorities and gives federal authorities extraordinary leverage over policy and politics at both state and local levels.

The largest sources of federal revenues are derived from direct tax on companies, petroleum tax and individual income tax, which together accounted for 52.1% of federal revenues in 2003. Other federal sources include property tax, capital gains tax and estate duties. In addition, export and import duties on a wide variety of products and commodities, plus excise duties on products, petroleum and motor vehicles, combined with indirect taxes give the federal government a very extensive tax base. The major sources of revenue for the states are derived from license fees and royalties from forests, lands and mines. The limited base of state revenues has tended to generate excessively

rapid resource depletion policies by state authorities both to generate needed state revenues and also to provide lucrative opportunities for high levels of corruption by state authorities controlling the allocation of resource extraction licenses. Rapid resource depletion is particularly rampant in states with large stands of tropical rain forest, despite sustained protests by many of the inhabitants living in the areas affected.

The constitution assigned resolution of constitutional disputes to the courts. However, the power of the courts is limited under Article 150 of the constitution which gives the federal government authority to declare an "Emergency." When invoked, emergency legislation cannot be challenged in the courts on grounds of constitutionality, except as relating to religion, citizenship, language, Malay custom and native law. Preventive detention laws and the *Sedition Act*, which prohibits any "seditious tendency," have given virtually unbridled powers to the Prime Minister to restrict individual rights and freedoms, and these acts also override the balance of powers in the federal system. The role of the courts was further compromised in 1988 when Prime Minister Mahathir objected to several Supreme Court decisions relating to individual rights and to the legal status of the ruling party. First a constitutional amendment was passed limiting the power of the courts, leaving ultimate jurisdiction for the federation as a whole to parliamentary enactments. Then, he appointed an impeachment tribunal which removed the Lord President and two other Supreme Court judges from the High Court. Finally, the Prime Minister appointed judges who were less confrontational. Following that crisis, a constitutional amendment transferred the power of judicial review from the courts to Parliament. Thereafter, subject to increased executive control, the courts now give extraordinary deference to federal authorities in the interpretation of laws and the constitution.

In addition to their preeminent financial powers and their capacity to influence the judiciary, federal authorities have consistently relied upon Parliament's power to amend the constitution to enforce their view on any matters of dispute in the federal system.

3 RECENT POLITICAL DYNAMICS

The traditional Sultans in the nine Malay States symbolized Malay political dominance and were given prerogative powers to protect Malay rights. Because they were also made part of democratic institutions, their role was somewhat ambiguous, especially on matters requiring "royal assent." In several states, the Sultan refused to cooperate with a Chief Minister in disputes over timber concessions,

patronage, legislation, or alleged lack of deference. In the 1980s, Prime Minister Mahathir decided to reduce the scope of royal powers by a constitutional amendment that would allow 15 days for royal assent to bills, after which assent was deemed to have been given. A crisis ensued when the Paramount Ruler refused to assent to the amendment passed by Parliament. Eventually, agreement was reached with the Sultans that royal assent could only be delayed for 30 days. Later, in 1993, constitutional amendments revoked the Rulers' power of delay in conferring royal assent, eliminated their immunities for personal actions and terminated their power to grant pardons.

In 1997 the countries of Asia experienced devastating economic problems, with stock markets plunging, high corporate debts, bankruptcies and falling currency values. In Malaysia a dispute arose between Prime Minister Mahathir and Deputy Prime Minister Anwar Ibrahim, who was also Finance Minister. Mahathir favoured implementing economic controls by imposing fixed currency rates, limiting currency transfers, providing government bailouts combined with forced mergers of debt-ridden enterprises. Anwar Ibrahim favoured the program of free market economic reforms promoted by the International Monetary Fund, including reduction of government spending, and elimination of waste and patronage. Mahathir blamed the economic crisis on "globalization," international currency traders and share-market speculators. Anwar blamed cronyism, nepotism and corruption.

When these policy differences became public, faced with a potential succession challenge, Mahathir first removed Anwar from office, then removed his supporters from government, party posts and party-owned enterprises. After public rallies in support of Anwar, Mahathir had him arrested and charged with corruption and sodomy. The trial opened a major fracture in the government's political support base, amid charges of violations of human rights, forced confessions, coercion of witnesses, and manipulation of the justice system. After 14 months of legal proceedings and massive public protests, Anwar was sentenced to 15 years in prison and also barred from participating in politics for five years after his release. Protests over the sentence were not successful in securing his release and court appeals were also rejected.

Although the public remained divided over that issue, public attention gradually shifted to other matters. In June 2003, Mahathir announced that he would retire in October. In October 2003, Deputy Prime Minister Abdullah Ahmad Badawi replaced him as leader of the party and the government. The June announcement stimulated much speculation on the consequences of the leadership succession. Opinions

of informed Malaysians have varied widely from “virtually no change” to “a fundamental reassessment of some established policies and a recasting of political alliances.” Uncertainty and anticipation dominate all political activity in this period. Due to national priorities, the issues of federalism and the balance among federal, state and local governments are unlikely to receive serious public attention for the foreseeable future.

The federal system in Malaysia is dominated by the central government. Yet, for political and cultural reasons, the states continue to be viable because of citizen loyalties to their states and political leaders, especially for the Malay Rulers in the Malay States. The federal government relies on the states for administration of many of its programs, and the political system at all levels is based on state representation. Proposals have been made for reforms which would balance revenue sources in the federal system and revive the powers and autonomy of local government. If and when a more open and democratic political system becomes established at the federal level, it may then be possible to address the accumulating issues of reform and renewal at both state and local levels of government.

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Table I
Political and Geographic Indicators

Capital city	Kuala Lumpur Administrative capital: Putrajaya
Number and type of constituent units	<i>13 States:</i> Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Penang (Pulau Pinang), Perak, Perlis, Sabah, Sarawak, Selangor, Terengganu, <i>3 Federal Territories:</i> Labuan, Kuala Lumpur, Putrajaya (created 1 February 2001)
Official language(s)	Bahasa Melayu
Area	329 750 km ²
Area – largest constituent unit	Sarawak – 124 449 km ²
Area – smallest constituent unit	Federal Territory of Labuan – 98 km ²
Total population	24 305 000 (2002)
Population by constituent unit (% of total population)	Selangor 18.0%, Johor 11.8%, Sabah 11.0%, Perak 9.0%, Sarawak 9.0%, Kedah 7%, Kelantan 5.8%, Kuala Lumpur 5.8%, Pahang 5.5%, Penang (Pulau Pinang) 5.5%, Terengganu 4.0%, Negeri Sembilan 3.7%, Melaka 2.7%, Perlis 0.9%, Labuan 0.3%, Putrajaya: N/A
Political system – federal	Constitutional Monarchy – Parliamentary System
Head of state – federal	Paramount Ruler Syed Sirajuddin ibni Almarhum Tuanku Syed Putra Jamalullail, the Raja of Perlis. The king is elected for a 5-year term by the Conference of Rulers from among their own members. Election last held 13 December 2001 (next to be held 2006).
Head of government – federal	Prime Minister Datuk Seri Abdullah Ahmad Badawi (2003), leader of the party that wins a plurality of seats in the House of Representatives, to serve a 5-year term. Prime Minister appoints Cabinet from among the members of Parliament with the consent of the Paramount Ruler.
Government structure – federal	Bicameral: Parliament <i>Upper House</i> – Senate (Dewan Negara), 69 seats. 2 members are elected from each state by the legislative assembly, the remaining members are appointed by the Paramount Ruler on the advice of the Prime Minister. Members serve a 3-year term for a maximum of 2 terms. <i>Lower House</i> – House of Representatives (Dewan Rakyat), 193 seats. Members are elected by popular vote in single seat constituencies for a 5-year term. Election last held 29 November 1999 (next to be held by November 2004)

Table I (continued)

Number of representatives in lower house of federal government of most populated constituent unit	Selangor – 17
Number of representatives in lower house of federal government for least populated constituent unit	Federal Territory of Labuan – 1
Distribution of representation in upper house of federal government	Each of the 13 states has 2 representatives in the Senate, elected by state legislatures. The remaining members are appointed by the Paramount Ruler on the advice of the Prime Minister.
Distribution of powers	The federal Parliament has the authority to legislate in the fields of external affairs, defence and internal security, justice (except for Islamic law), health, education, social security, industry, commerce, finance, transportation and communication. The powers of the states are confined primarily to land and natural resource management, the oversight of local governments and administration of Islamic and customary law. Sabah and Sarawak retain certain constitutional prerogatives in particular in matters of land law, finance, and religion. In the event of conflict between federal law and state law, the former will prevail.
Residual powers	Residual powers belong to the states.
Constitutional court (highest court dealing with constitutional matters)	Federal Court. Judges are appointed by the Paramount Ruler on the advice of the Prime Minister.
Political system of constituent units	Unicameral Legislative Assembly (between 14 and 56 members). The Federal Territory of Kuala Lumpur is administered directly by the federal government. Each state has its own constitution.
Head of government – constituent units	<i>Head of state</i> – some Peninsular Malaysian states have hereditary rulers (Sultans). In the other states Governors are appointed by the Paramount Ruler (on the advice of the federal Prime Minister). <i>Head of government</i> – Chief Minister, elected by the assembly.

Table II
Economic and Social Indicators

GDP	US\$216.8 billion at PPP (2002)
GDP per capita	US\$8 921.4 at PPP (2002)
National debt (external)	US\$43.4 billion (2001)
Sub-national debt	N/A
National unemployment rate	3.4%
Constituent unit with highest unemployment rate	N/A
Constituent unit with lowest unemployment rate	N/A
Adult literacy rate	87.9% ¹
Life expectancy in years	72.8
National expenditures on education as % of GDP	6.2%
Federal government revenues – from taxes and related sources	US\$12.8 billion (2000 prel.)
Constituent unit revenues – from taxes and related sources	US\$741.8 million (2000 prel.)
Federal transfers to constituent units	US\$2 077 billion (2000 prel.)
Equalization mechanisms	Federal transfers are based on a combination of unconditional shares of certain federal taxes and unconditional and conditional per capita grants.

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Note

¹ Age 15 and above.