

# Intellectual Discourse

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# *Intellectual Discourse*

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and shown its willingness for a people to move from a status of minority to majority. The latter was imperative in the partition of Palestine; once the League considered the Zionist settlers as a minority, it could conclude protecting them would require total separation from the majority, overlooking the settler colonial nature of Zionism. However, the principle and politics of ethnic separation did not end there; in her Epilogue, the author highlights how partition continued to be the go-to solution in the aftermath of World War Two (WWII), notably in Europe.

Laura Robson's book is a valuable contribution on many levels. First, it synthesises the state of the current trends and knowledge on the Middle East. Second, it shows how central the concepts and practice of separation, transfer, and partition have affected the making of the modern Middle East and the World. And third, it highlights how important these concepts are as a framework in the understanding and analysis of the political history of the Middle East and of the nation-state system. The narrative style of Robson makes the book easy to read whilst the clarity and density of the argumentation and the articulation of the ideas makes it a necessary reading for students and researchers of the Middle East.

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**Our Constitution. By Shad Saleem Faruqi. Subang Jaya, Malaysia: Sweet & Maxwell, 2019, pp. 425. ISBN 9789672187059 (paperback).**

*Reviewer:* Ramizah Wan Muhammad, Associate Professor, Department of Islamic Law, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Email: [ramizah@iium.edu.my](mailto:ramizah@iium.edu.my)

A Constitution is not only the supreme law of the land, it creates the various branches and institutions of the state, describes the powers and functions of these institutions, and prescribes rules about the relationship of the various branches and institutions with each other and with the citizenry. It confers some basic rights to all citizens and imposes limits on state power that restrict these rights. Finally, it describes the political, religious, moral, cultural and economic values on which society is founded. The book under review, written by an acknowledged constitutional law expert, Shad Saleem Faruqi, provides a good and clear understanding of the Malaysian Federal Constitution.

He is Professor of law at the University of Malaya holding the Tunku Abdul Rahman Chair as Professor of Constitutional Law. He is also the fourth holder of the Tun Hussein Onn Chair in International Studies at the Institute of Strategic and International Studies (ISIS) Malaysia.

The book is divided into nine parts comprising a total of 36 chapters. It explains the pre-Merdeka ethnic compromises, the evolution and sources of the Constitution (Part I), the main characteristics of the Federal Constitution (Part II), separation of powers, fundamental liberties (Part III), citizenship (Part IV), Constitutional Institutions including the Conference of Rulers, the Yang Di-Pertuan Agong, ministerial responsibility, the making of laws, and the judiciary (Part V), and the electoral process (Part VI). The succeeding two parts deal with Powers to Combat Subversion and Emergency (Part VII), and Pre-Merdeka Ethnic Compromises (Part VIII). Part nine looks to the future. It is perfectly possible to turn the chapters outside down beginning with the ethnic compromises that took place prior to the formulation of the Constitution. The present arrangement, however, does not affect the argument presented in this book.

Shad Saleem Faruqi uses his knowledge as an expert of Constitutional law to provide a comprehensive explanation of the Federal Constitution of Malaysia. Reading between the lines, it becomes clear that the author does not consider the Constitution to be the vehicle of Malaysia's legal, political and social life reflecting the nation's dreams and demands, its values and vulnerabilities. He explains how it seeks to reconcile the irreconcilable demands and expectations of the various racial and religious communities. He also points out the gaps in the Constitution, for instance, its silence about an expeditious trial thus forcing many remanded prisoners to spend years waiting for their day in court.

He makes it clear that the Malaysian constitution reflects the social, historical and economic realities of Malaya in 1957 and 1963 to which were added contemporary ideals of constitutionalism, rule of law, social justice and good governance. Unlike the United Kingdom, the Malaysian Constitution is written and, as per Articles 4(1) and 162(6), affirm the supremacy of the basic law over all pre and post-independence legislation. The Constitution is the supreme law of the federation and no law can violate its prescriptions. Interestingly, Parliament is not supreme, and hence there are procedural and substantive limits on



Parliament's powers. Likewise, executive actions can be tested in the courts for their constitutionality.

As Islam is a core feature of Malay identity, the Constitution in Article 3(1) declares Islam to be the religion of the Federation. Muslims are compulsorily subjected to the Shariah and to the jurisdiction of the Shariah courts in the enumerated areas. However, Article 3(1) on Islam takes full note of the multi-religious nature of Malaysian society and prescribes that all other religions may be practised in peace and harmony and that Non-Muslims cannot be subjected to Islam due to freedom of religion. In fact, the Constitution provides for at least three categories of law which includes written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof. This would give the Constitution a secular orientation. This is not to neglect the fact that there is an increasing assertiveness by the Shariah establishment in many areas of social life. Thus, the Malaysian legal system consists primarily of secular Codes drafted by legislative authorities and Shariah law for Muslims in matters of personal law.

The Constitution is federal in nature so as to preserve the position of the Malay Rulers in their regions. In some respects, the federal system in 1957 was inspired by the experience of the Federation of Malaya 1948. In the Federal Constitution, there is division of legislative, executive, judicial and financial powers between the Centre and the States. In response to the humanitarianism of the era, the Constitution, in Articles 5 to 13 and elsewhere, protects a large number of political, civil, cultural and economic rights. Elsewhere in the Constitution, there is a right to vote and to seek elective office, protection for public servants, and some protection for preventive detainees.

There is a constitutional monarchy at both the federal and state levels. The unique aspects are that (i) there are not one but nine Rulers, one at the federal level and nine hereditary Sultans/Rajas at the state level. Four states, without hereditary rulers, have State Governors. (ii) The federal monarchy is elected and rotational. (iii) The King can be dismissed by the Conference of Rulers. (iv) The King and his brother Rulers are not immune from civil or criminal proceedings. However, any proceeding against them must commence in a Special Court under Articles 182-183.

The Constitution is parliamentary, and the government is part of the Parliament, is answerable, accountable and responsible to it, and can be dismissed on a vote of no-confidence by the Lower House. Popularly elected assemblies exist at both the federal and state levels. At the federal level, the Parliament is bicameral but with preponderance of power in the House of Representatives (Dewan Rakyat) over the Senate (Dewan Negara). All 13 State Assemblies are unicameral. The Constitution mandates periodic elections, universal adult suffrage (right to vote) and an independent Election Commission. The Constitution provides for a single member constituency system. Every citizen of age 18 who has registered as a voter in a constituency is eligible to vote unless he/she suffers from an electoral disqualification.

Independent judiciary: The superior courts are separate from, and independent of, the executive and the legislature. The constitutional position of judges is that they are not regarded as civil servants and enjoy many special safeguards in matters of appointment and dismissal. Their terms and conditions of service cannot be altered to their detriment. In addition, they are insulated from politics and have power to punish for contempt of court. In the performance of their functions, they enjoy absolute immunity.

Impartial public service: Civil servants are required to maintain a reserve in politics. Their term in office is unaffected by the rise and fall of governments. Under Article 135, they enjoy many procedural safeguards against arbitrary dismissal or reduction in rank.

Democratic system: The legal system has most of the formal attributes of a democracy – elections to choose the federal and state governments; a bicameral Parliament at the federal level; a unicameral Assembly in each of the States; a well-developed electoral system; a system of political parties; a judiciary with safeguards for judicial independence; and constitutional protection for enumerated human rights in Articles 5-13. Unfortunately, there is also constitutional permission for executive detention without trial; laws about sedition, treason, and official secrets; prior restraints on free speech through licensing and permits for the media; police control over assemblies and processions; and censorship and banning of books and publications.

In sum, the Constitution reflects the realities of the past as well as the ideals of the present. It is indigenous in many provisions yet it borrows

the best practices from many other jurisdictions. The book provides a comprehensive explanation of the Malaysian Federal Constitution. The structure is clear and contains helpful headings to enable easy access to the relevant information. The book is written in clear and simple language and deserves a special place on Library shelves.

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***Metodologi Penyelidikan Dalam Pendidikan: Amalan dan Analisis Kajian.* By Ghazali Darusalam & Sufean Hussin. Kuala Lumpur: Penerbit Universiti Malaya, 2019, pp. 630. ISBN: 978-967-488-009-5.**

*Reviewer:* Khairil Husaini Bin Jamil, Department of Qur'an and Sunnah Studies, Kuliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia. Email: husaini@iium.edu.my

Offering a review for the third print of a second edition of a book has proven to be a daunting task. Whilst considering the fact that the book must have achieved a certain level of reception to have justified the new print, I have to also admit at this very early instance that my area of concentration does not relate directly to the subject of the book. Nevertheless, the book under review deserves to be consulted and discussed by the intellectual community, particularly in departments where teacher training and research on education are showcased amongst its main agenda. On the other hand, I stumbled upon this book while looking for references to be utilised in expounding research philosophy and methodology for Qur'an and Sunnah education. Since this book concentrates on educational research methodology in general, it would not be too far-fetched to consider this review as a contribution from a different perspective to the enhancement of research methodology in education, especially when Islamic education or scriptural dimensions are concerned.

Entitled originally as *Metodologi Penyelidikan Dalam Pendidikan: Amalan dan Analisis Kajian* (*On Methodology of Educational Research: Research Techniques and Data Analysis*), the book was written in the intermediate level of the standard Malay language and explicitly targeted undergraduate and postgraduate students at private

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