PRE-NATAL INJURY AND THE RIGHTS OF THE UNBORN CHILD

Pre-natal injury like nervous shock is an area in which the law remains unsettled. In the tortious context, it is one aspect of the specific application of the duty and remoteness of damage issues in negligence. English and Malaysian courts have so far declined to allow the recovery of damages for pre-natal injury and there are a number of policy considerations mitigating against such recovery. It is hoped, however, that like nervous shock and negligent mis-statement, which were once conceived to be non-recoverable, the courts will now begin to assess those considerations in terms of current notions of public policy in the law of tort. The object of this paper is to examine the areas where pre-natal injury may result and the application of ordinary principles of tort liability to determine the rights of the unborn child in those instances.

A. INSTANCES OF PRE-NATAL INJURY

In accidents, whether rail, air, sea or road accidents, which involve pregnant women the unborn child may be injured and may consequently be deformed at birth.[1] Abnormality may also arise from drugs, infections and hereditary disease. Few drugs have not been suspected, at some time, of causing foetal damage. The use of LSD was suspected of causing chromosonal breaks, while thalidomide is now clearly established as a causal factor in foetal-malformation.[2] Venereal disease and rubella are the classic examples of infections which are potentially dangerous to the foetus and hereditary factors with causal potency include radiation, haemophilia and mental illness.

The English Law Commission in a recent report, drew particular attention to the following situations:[3]

(a) Trauma experienced by the mother, with the result that the child is born with brain damage or as an epileptic or with physical deformity of some kind.

[1] *Watt* v. *Rama* [1972] A.L.J. 590 (child born with brain damage); *Montreal Tramways* v. *Leveille* [1933] S.C.R. 456 (child born with club feet); *Dural* v. *Seguin* (1972) 26 D.L.R. (3d) 418 (child born a spastic); *Walker* v. *G.N. Railway of Ireland* [1890] 28 L.R. (child born a cripple).

[2] S. v. *Distillers* [1970] 1 W.L.R. 114.

[3] *Injuries to Unborn Children*, English Law Commission Working Paper No. 47, ss. 6–14 (1973).

(b) The mother, and perhaps the child, is injured in such a way that complications arise at birth and the child is thereby injured.

(c) The mother takes drugs, for example, thalidomide, which injures the child, or a dangerous and defective oral contraceptive which leads to a handicapped child.

(d) The mother takes an abortifacient which injures but does not abort the child.

(e) A parent is negligently irradiated, with adverse consequences for the child.

(f) The mother is negligently infected, for example, with rubella, with adverse consequences for the child.

B. APPLICATION OF THE GENERAL PRINCIPLES OF NEGLIGENCE

Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff.[4] Therefore to establish negligence leading to liability on the defendant's part, the plaintiff has to establish the ingredients of a duty owed to him by the defendant, a breach of that duty and consequential damage suffered by him. In the case of a plaintiff suing for damages while still unborn, certain complications arise. Can a duty be owed to an unborn child? During what stage of its development can it be said to be in existence as an individual in the eyes of the law? The answer to the first question could be found by the direct application of the foreseeability test as laid down by Lord Atkin in the classical case of *Donoughue* v. *Stevenson*.[5] He said:

> "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

For Lord Atkin's foreseeability test, it is clear that so long as damage is reasonably foreseeable, a duty is owed by the defendant to the plaintiff. The following hypothetical example is illustrative of this point:

> B was driving along a narrow stretch of road when A came along and by his negligent driving crashed into B. B was eight months pregnant and the accident caused her to become a quadriplegic. Subsequently when the baby was born he suffered from brain damage and periodic fits.

[4] *Winfield and Jolowicz on Tort* (Ed. Jolowicz) (9th ed.) (1971), p. 45.
[5] [1932] A.C. 562, at p. 579.

A as a user of the road owes a duty to the other users of the road to take reasonable care to avoid blameworthy conduct on his part which he can reasonably foresee will damage them. He therefore owes a duty to B. He cannot say he owes no duty to the unborn child because as in *Haley* v. *London Electricity Board*,[6] where it was held that the number of blind people using the road was sufficient to give rise to a duty of care on the defendant's part, here the number of pregnant women using the road is certainly a sufficient warning to other road users that if there is an accident not only will they suffer damage but their unborn babies are likely to be injured. Hence A owes a duty to B's unborn child. Since A has breached the duty through his negligent driving, which has resulted in B's child suffering from brain damage and periodic fits flowing from the same negligent conduct, B's child should be able to recover damages. A defence based on remoteness of damage would not succeed because the damage is such as the reasonable man should have foreseen. This test of foreseeability for determining remoteness of damage was enunciated by Viscount Simonds in *Overseas Tankship (U.K.) Ltd.* v. *Morts Dock and Engineering Co.* (The Wagon Mound No. 1)[7] where he said: ". . . . . it is the foresight of the reasonable man which alone can determine responsibility." To prove that the causal link is still intact we can apply the "but-for" test to determine causation in fact -- but for A's negligence, B's child would not have suffered from brain damage and periodic fits. Having established both causation in fact and causation in law, it is proper that B's child should be able to recover damages for the injury she contracted while she was an infant *en ventre sa mere.*

In Australia, the recent case of *Watt* v. *Rama*[8] where recovery for pre-natal injuries was allowed is authority in this area for the specific application of the duty of care in negligence. The court considered the problem of liability to a child injured as a result of a negligent act taking place where the child is *en ventre sa mere.* The infant plaintiff alleged that as a result of a collision between a motor-car driven by her mother and one negligently driven by the defendant she sustained injuries. At the time of the collision her mother was pregnant. The accident rendered her mother a quadriplegic and when the child was born she suffered from brain damage and thereafter from epilepsy, both of which were traced directly to the negligence of the defendant.

The three legal issues of duty, breach of duty and remoteness of damage were dealt with by the court and it was held that on the facts

[6] [1965] A.C. 778.

[7] [1961] A.C. 388 at p. 424.

[8] *Op. cit.* n.1.

established the defendant owed a duty of care to the plaintiff although at the time of the act the plaintiff was not *persona jurisdica*. Since the damage was not too remote she was entitled to recover. Winneke C.J. and Pap J., dealing with the duty of care, said:[9]

> "It was reasonably foreseeable that by an act of negligent driving a child *en ventre sa mere* could be injured on birth. Therefore, there was a potential duty relationship created which crystallised when the child was born and the right and duty bearing entity had thus come into existence."

A potentially more far reaching answer to the duty question was articulated by Gillard J.,

> "[It is] unnecessary to decide whether [the] plaintiff had to establish an existence in law at the time of the act of fault complained of, before a duty of care could be owed to her . . . . .
> Even if it was necessary, she was already in existence at that time."

Even the narrower *ratio decidendi* in *Watt* v. *Rama*[10] shows that in accident cases damages for pre-natal injury can be recovered on the application of the general principles of negligence.

In the Irish case of *Walker v. G.N. Railway of Ireland*[11], a child was born crippled and deformed after an accident to its mother while she was pregnant and was travelling on the defendant's train. The accident was due to their negligence. The defendant was held not liable to the child. All four judges based their decision on the ground that the defendant owed no duty of care towards the child because the defendant, not knowing of the existence of the child, could not be said to have received it as a passenger. It is submitted however, that if a similar case arose today the decision would be in the plaintiff's favour since it is reasonably foreseeable that expectant mothers go on trains and that any injury caused to them by the negligence of the train operators can also affect their unborn babies.

Unlike the position in England and in Malaysia, Article 1053 of the Quebec Code provides for actions for the recovery of pre-natal injuries. In *Montreal Tramways* v. *Leveille*,[12] where the plaintiff's mother was injured in a train accident, and the plaintiff then unborn was subsequently born with club feet, it was held that the plaintiff succeeded on the ground that unborn children, if subsequently born alive, have all the rights they would have had if born at the material time. The Supreme Court of Canada affirmed the decision.

The above cases show that if duty, breach of duty and remoteness of damage requirements are satisfied, damages for pre-natal injury are

[9] *Ibid.*, at p. 590.
[10] *Op. cit.* n.1.
[11] *Op. cit.* n.1.
[12] *Op. cit.* n.1.

recoverable on the application of the proximity test. But just like cases of economic loss, certain categories of damages may not be recoverable because of important policy considerations which frequently determine where the line between recovery and non-recovery should be drawn. Where the courts decide that it would be in the public interest to allow recovery, they will do so. But if the courts feel that it would be contrary to public policy they will refuse recovery even though all the requirements for the establishment of the tort have been complied with. The "neighbour" test in *Donoghue* v. *Stevenson*[13] has been used by the courts as a convenient facade behind which they could extend, or restrict the existing categories of negligence, which according to Lord Macmillan "are never closed". The true judicial process of determining duty by articulating policy consideratons was brought to the surface by Lord Pearce in *Hedley Bryne* v. *Heller & Partners, Ltd.*[14] when he explained that the width of the sphere of duty of care in negligence "depends ultimately on the court's assessment of the demands of society for protection from the carelessness of others."

C. THE ROLE OF PUBLIC POLICY IN LIABILITY DETERMINATION

Policy considerations underly the decisions in *Weller* v. *Foot & Mouth Disease Research Institute*,[15] *S.C.M. (U.K.) Ltd.* v. *W.J. Whittall & Son Ltd.*[16] and *Spartan Steel & Alloys Ltd.* v. *Martin & Co. (Contractors) Ltd.*[17], where Lord Denning said:

> "At bottom I think the question of recovering economic loss is one of policy. Whenever the courts draw a line to make out the bounds of *duty*, they do it as a matter of policy so as to limit the responsibility of the defendant. Whenever the courts set bounds to the *damages* recoverable – saying that, they are, or are not, too remote – they do it as a matter of policy so as to limit the liability of the defendant."

The courts in the above three cases held that pure economic loss not consequential on material damage is not recoverable because "in such a hazard as this, the risk of economic loss should be suffered by the whole community who suffer the losses . . . . . rather than rest on the one pair of shoulders, that is, on the contractor on whom the total of them, all added together might be very heavy."[18]

Rondel v. *Worsley*[19] is a good illustration of the non-applicability of the forseeability criterion because public policy demands that although

[13] *Op. cit.* n. 5

[14] [1964] A.C. 465.

[15] [1966] 1 Q.B. 569.

[16] [1971] 1 Q.B. 337.

[17] [1972] 3 All E.R. 557 at p. 561.

[18] *Ibid.* at p. 564.

[19] [1969] 1 A.C. 191.

other professional men are liable to be sued for damages if loss is caused to their clients by their lack of professional skill or by their failure to exercise due care, barristers are immune from liability for litigation related work.[20] The House of Lords after balancing the public advantages and public disadvantages of abolishing the immunity, concluded that a barrister owes no legal duty of care to his client so far as his work is related to the litigation process because in order to fulfil his duty to the court and to the administration of justice the barrister must be relieved of the possibility that actions for negligence might be brought against him by disgruntled clients. If the rule were otherwise one undesirable consequence would be the need for judicial reconstruction of the issues which gave rise to his client's liability. Lord Morris of Borth-y-Guest put it this way:[21]

> "I cannot think, however, that it would be in the public interest to permit a sort of unseemly excrescence upon the legal system whereby someone who has been convicted and has, without success, exhausted all the procedures for appeal open to him should seek to establish his innocence (and get damages) by asserting that he would not have been convicted at all but for the fact that his advocate failed to exercise due care and skill."

D. SOME POLICY CONSIDERATIONS FOR AND AGAINST RECOVERY FOR PRE-NATAL INJURIES

1. *Liability of Manufacturers, Suppliers and Distributors for Defective Products.*

Before *Donoughue* v. *Stevenson*[22] was decided in 1932, it was doubtful whether the transferor of a chattel owed any duty to the ultimate transferee, in the absence of a contractual relationship between them, unless the chattel belonged to the class of dangerous chattels e.g. guns, explosives, etc. or was actually known to the transferor to be dangerous. *Donoughue* v. *Stevenson*[23] finally established that apart from contract, or any special rule about dangerous chattels, there are circumstances in which A owes a duty of care to B for the breach of which he is liable in negligence. It therefore introduced the rule that a manufacturer owes a duty to his ultimate consumer by introducing the "manufacturer" principle, which stated:

> "[A] manufacturer of products, which [are sold] in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with knowledge that the absence of reasonable care in

[20] *Ibid.* at p. 227.

[21] *Ibid.* at p. 250.

[22] *Op. cit.* n. 5.

[23] *Op. cit.* n. 5

the preparing or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care."[24]

In *S.* v. *Distillers Co. (Biochemicals) Ltd.* [25] the plaintiffs sued the defendants for damages as a result of their mothers' taking the drug thalidomide during their pregnancies. Having been injured "in utero" by the drug, they were born deformed. The dispute was settled by an out of court compromise between the parties. The original action was one of damages for negligence. If the original action had been litigated upon, the plaintiffs may well have been able to recover damages unless the defendants were able to prove either that they had conformed to the required standard of care through adequate testing or that this particular category of damages was unforeseeable. The drug thalidomide had been issued by the manufacturer in the form in which it was to be consumed. There was no likelihood of an intermediate examination prior to consumption. It was reasonably foreseeable that if the drug was defective or harmful it would cause injury to the child "in utero." Therefore the defendants owed a duty of care to the plaintiffs and the deformation which resulted from their negligence was not too remote because reasonable men in the position of drug manufacturers should have foreseen that negligence in the manufacture of the drug was likely to bring about deformity.

The "manufacturer" principle has been extended from manufacturers to include repairers, fitters, erectors and assemblers; in other words to persons who have done something active to create the danger. If the essential basis of *Donoughue's*[26] case is that someone has negligently manufactured a defective chattel and that neither the transferee nor the ultimate consumer could have been expected to examine it, then it would seem that the principle of the case should not be further extended to suppliers i.e. vendors, who are unaware of the defect or danger, for such persons cannot reasonably have foreseen that there was a risk of injury to the ultimate user. Affirmative duties to inspect are not generally imposed except as the price of a benefit. Today, however, the courts are more willing to take the view that a supplier should in certain circumstances make enquiries or carry out an inspection of the chattel, and if it is dangerous for some reason of which the supplier should have known, his failure to warn of it will amount to negligence. Therefore, should damage

[24] *Op. cit.* n. 5 at p. 599.

[25] *Op. cit.* n. 2.

[26] *Op. cit.* n. 5.

result, both the manufacturers and the supplier would be held liable.[27] It follows that in drug cases, the proprietors of drugstores and the dispensers of defective drugs may share responsibility with the drug manufacturers when pre-natal injuries occur if it can be shown that the supplier was in a position to inspect the drug and was expected to do so. Similarly suppliers of drugs may be liable if they carelessly represent the goods to be harmless without having made any adequate tests, but it should not be suggested that these cases impose a general duty on suppliers to subject their goods to an exhaustive examination.

2. *Scientific Progress at the expense of the Unborn Child.*

In cases such as the Thalidomide case[28], there are further policy considerations which require elucidation. It is understandable that a certain degree of sacrifice has to be made if progress in the field of science is to be achieved and that experiments will occasionally go awry. The same reasoning applies in cases of artificial insemination and embryo transfers, which in the past have not received much attention but which have now become a reality as a result of recent and successful experimentation and progress in medical research. There have, for example, been recent reports of successful embryo transfers conducted in Europe resulting in the birth of normal healthy babies. Suppose that as a result of one of these transfers, a baby suffers from brain damage and thereafter from epilepsy, can the child institute a civil action against the physician? It is submitted that in such a situation, the objective to be gained from embryo transfers, which is to enable an otherwise infertile woman to conceive, is a significant one. It demands that unless the plaintiffs can establish that the physician was negligent in performing the transfers, as in *Home Office* v. *Dorset Yacht*[29], where the Court held the Home Office liable because there was a breach of duty, public policy dictates that the courts should not entertain such suits for the reasons articulated in *Roe* v. *Ministry of Health.*[30] In that case, two patients were operated on and during the operation a spinal

[27] In *Andrews* v. *Hopkins* [1957] 1 Q.B. 229, by arrangement with the plaintiff the defendant sold a second-hand car to a finance company and the company hired the car to the plaintiff under a hire purchase agreement. The car was some eighteen years old, and the defendant, who was a dealer in secondhand cars, had taken no steps to see that it was in a roadworthy condition although the car had been in his possession for a week. In fact the car had a defective steering mechanism which caused the plaintiff to have an accident a week after he took delivery of the car. McNair J. held that the defendant was liable.

[28] *Op. cit.* n. 2.

[29] [1970] 2 All E.R. 294.

[30] [1954] 2 Q.B. 66.

anaesthetic was administered. After the operation, they became paralysed from the waist downwards because the anaesthetic contained traces of phenol, a carbolic disinfectant which had penetrated the glass ampoule containing the anaesthetic through "invisible" cracks. The trial judge held the defendants not liable. On appeal to the Court of Appeal, the decision was upheld on the ground that "medical science has conferred great benefits on mankind, but these benefits are attended by considerable risks. Every surgical operation is attented by risks. We cannot take the benefits without taking the risks. Every advance in technique is also attended by risks."[31] If liability is imposed on hospitals and doctors for everything that happens to go wrong, "doctors would be led to think more of their own safety than of the good of their patients. Initiative would be stifled and confidence shaken."[32] Therefore "a proper sense of proportion requires us to have regard to the conditions in which hospitals and doctors have to work. We must insist on due care for the patient at every point, but we must not condemn as negligence that which is only a misadventure."[33] The decision of the Court of Appeal illustrates that in defining "blameworthy" conduct even the breach of duty determination involves policy considerations. These particular policy considerations must be weighed carefully against the deterrent effect of tort liability in maintaining a high professional standard of care.

3. *Insurance factor.*

Another reason for making damages for pre-natal injury recoverable after all the necessary conditions have been satisfied is that unlike other types of damage pre-natal injury is not now insurable. Victims of road and most industrial accidents are assured of compensation since insurance is made compulsory by legislation.[34] In addition, the modern system of social security as it exists in England also provides for financial benefits. The National Insurance Act, 1965 provides for the payment of money to victims of personal injury.[35] The unborn child who is consequently born

[31] *Ibid* at p. 83.

[32] *Ibid* at p. 86, 87.

[33] *Ibid* at p. 87.

[34] In England: Road Traffic Act 1960, s. 201 Motor Vehicle (Passenger Insurance) Act 1971; In Malaysia: the Road Traffic Ordinance, 1958, s. 74(1) states that "subject to the provisions of this Part of this Ordinance it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor-vehicle by that person or that other person, as the case may be, (without) such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this part of this Ordinance."

[35] The National Insurance (Industrial Injuries) Act 1965, which repeals and replaces the Act of 1946, covers industrial injuries suffered by persons employed under

alive and who has suffered damage as a result of injury sustained while "in utero" is, however, left without such statutory remedy. The deformed child must look for redress to the law of tort, which is his sole means of compensation.

4. *Intra -- Family Action for Pre-natal Injury.*

In cases where pre-natal injury results because the mother is suffering from one of the more serious forms of venereal disease, such as syphillis or gonorrhea, or because she takes a drug like thalidomide which injures the child, or a dangerous and defective oral contraceptive which leads to a handicapped child or because she takes an abortifacient which injures but does not abort the child,[36] or because the father is suffering from an inherited disease which infects the child, should the child be allowed to recover damages? It is submitted that a child may be disallowed from suing his mother or father although the duty and the breach of duty requirements have both been met. The bond between a mother and her child or a father and his child is one which the courts should protect. By allowing recovery they would be acting against public interest if the result is a greater risk of broken homes and the impairment of the intra – family relationship. If the possibility of such a result is substantial then damages for pre-natal injury should not be allowed. On the other hand, mothers and fathers should have the interest of their children at heart. If they know that deformity can result from their conduct they should be encouraged to ensure that pregnancy does not occur or to take steps to avert the danger of giving birth to defective babies. It is against the public interest that mothers and fathers can legally neglect their maternal and paternal responsibilities and bring into the world deformed babies who will one day grow up into helpless individuals dependent on society for their well-being and to whom no responsibility for their fate can be assigned. The position of the law on this issue should be responsive to the sociological considerations at stake.

E. CONCLUSION

It is apparent from the judicial trend towards articulating policy factors in negligence that Lord Atkin's "neighbour" principle based on reasonable foreseeability which has proved to be a convenient smokescreen for policy considerations in the past, has now largely served its purpose. In

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contracts of service and provides for a variety of benefits payable to injured workmen or, in the case of fatal accidents, their dependants. Non-industrial injuries are dealt with in the same way as is illness and the benefits are regulated principally by the National Insurance Act 1965.

[36] *Op. cit.* n. 3.

articulating public policy considerations the courts have made use of foreseeability. Foreseeability is the hand maiden of policy in two ways. It is used by the courts on the one hand to improve standards of behaviour by laying stress on the foreseeable likelihood of harm in an ever increasing number of situations and thereby insisting that appropriate precautions be taken; on the other hand it enables courts to exercise a supervisory power of deciding whether or not it is reasonable to ascribe liability to particular plaintiffs. It is therefore a double edged instrument used by courts in allowing or disallowing recovery. The continuing expansion of the tort of negligence and particularly its application to pre-natal injury clearly merits a broader contextual approach to the question of care and a general re-appraisal of existing policy considerations. This view was clearly enunciated by Lord Denning in *Spartan Steel* v. *Martin & Co.*[37] After reviewing the cases where economic loss was held not to be recoverable because the defendant was either under no duty to the plaintiff or the loss was too remote, he continued:

> "The more I think about these cases, the more difficult I find it to put each into its proper pigeon-hole. Sometimes I say 'There was no duty.' In others I say: 'The damage was too remote.' So much so that I think the time has come to discard those tests which have proved so elusive. It seems to me better to consider the particular relationship in hand, and see whether or not, as a matter of policy, economic loss should be recoverable. Thus in *Weller & Co.* v. *Foot & Mouth Disease Research Institute*[38] it was plain that the loss suffered by the auctioneers was not recoverable, no matter whether it is put on the ground that there was no duty or that the damage was too remote. Again in *Electrochrome Ltd.* v. *Welsh Plastics Ltd.*,[39] it is plain that the economic loss suffered by the plaintiff's factory was not recoverable, whether because there was no duty or that it was too remote."

We can conclude that damages for pre-natal injury should be recoverable in tort in some cases and that the line to be drawn must be determined by systematic reference to the policy considerations involved in each case and canvassed in this article.

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[37] *Op. cit.* n. 17, at p. 508.

[38] Op. cit. n. 15.

[39] [1968] 2 All E.R. 205.

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THE AMENDMENT PROCESS UNDER THE MALAYSIAN CONSTITUTION*

INTRODUCTION

Herman Finer[1] once defined "constitution" in terms of its process of amendment for, in his view, to amend is to "deconstitute and reconstitute". The learned author added that the amending clause is so fundamental to a constitution that he was tempted to call it the constitution itself. The importance of the amendment process is particularly highlighted in respect of the Constitution of Malaysia which has often been characterized as a document "so painstakingly negotiated and agreed upon by the major races in Malaysia".[2]

The Reid Commission[3] which was entrusted with the task of drawing up the draft constitution on which the new Federation of Malaya in 1957 was to regulate itself, adopted many of the recommendations of the Alliance Party. These recommendations were the product of intensive negotiations and bargaining among the components of the Alliance Party, a coalition of three parties representing the three major races in the country.[4] As such it could be asserted that the Constitution embodies the terms fordged by three contracting parties to an agreement. Thus if one were to look upon the Constitution as a "contract" one could see how the original "terms" as initially bargained could be subsequently varied through the employment of the amendment process. From this viewpoint, amendments to the Malaysian Constitution assume fundamental significance.

The Constitution of Malaysia is still comparatively "young" but since

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[1] Herman Finer, The Theory and Practice of Modern Government, p. 127.

[2] As stated by the Prime Minister of Malaysia, Tun Abdul Razak – "Parliamentary Debates on the Constitution Amendment Bill, 1971" , p. 3.

[3] The Commission was headed by the Rt Hon. Lord Reid (U.K.). See ' Report of the Federation of Malaya Constitutional Commission, 1957" hereinafter referred to as the "Reid Commission Report".

[4] The three components of the Alliance Party are: (1) the United Malays National Organisation or UMNO (2) the Malaysian Chinese Association or MCA, and (3) the Malaysian Indian Congress or MIC.