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**THE 1993 ROYAL IMMUNITY CRISIS: THE *KERAJAAN*, THE  
CONSTITUTION AND THE DILEMMA OF A NEW *BANGSA*.**

by

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LL.B (Hons) (University of Malaya)  
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A thesis submitted to  
The Kent Law School of the University of Kent, at Canterbury, England  
for the degree of  
DOCTOR OF PHILOSOPHY IN LAW

Kent Law School  
The University of Kent at Canterbury  
April 2000

## Abstract

The 1993 constitutional crisis marked the watershed not only in Malay political culture but also in Malaysian constitutional history. The abolition of the personal royal immunity of the hereditary Malay Rulers conferred by the Federal Constitution upon *Merdeka* (independence) in 1957, did not merely adversely affect the Rulers' immunity in the legal sense but also in the politico-cultural sense. The Malays had for a long period of time been indoctrinated with the notion that the Ruler (that is, the Raja, the root word for *kerajaan*)<sup>1</sup> was of an impeccable lineage, possessing that super-natural quality called *daulat* (this concept, approximately translated as 'sovereignty', embraces legal, cultural and religious meanings) and hence he should never be challenged. To challenge the Ruler in whatever manner, be it passive or aggressive, would tantamount to an act of *derhaka* (treason). The sentence for treason was death. Apart from that, it was also believed that a person who committed an act of *derhaka* would suffer unnatural consequences which was reputed to have taken the form of mysterious diseases. Thus *derhaka* and *daulat* formed the key concepts in Malay political thought which served to enforce the legitimacy of a ruler to rule and the *rakyat*'s (subjects') duty to obey.

With the 1993 constitutional amendments to the immunity-conferring provisions, namely Articles 32 (1) and 181 (2), the myth of the Rulers' *daulat* and impeccability was finally undermined. The amendments had, since then, altered the way in which Malays perceived the ruler or the ruling authority. The initiative of the Prime Minister,

Dr. Mahathir Mohamad to create a new Malay political culture<sup>2</sup> through such amendments has had a far reaching impact on Malay political thought and practice, as illustrated by the events following the economic crisis in late 1998 and early 1999. From 1993 onwards, it is argued, Malays have not only departed from their traditional perception of the hereditary Rulers but also of the modern ruling regime. But in doing so they appeared to have been torn between the traditional conscience of *derhaka* (treason) and the demands of modernity, part of which is symbolized by *merdeka* (liberty).

---

<sup>1</sup> *Kerajaan* has been translated as 'being in the condition of having a Raja' (see Millner, A.C., *Kerajaan: Malay Political Culture on the Eve of Colonial Rule*, The University of Arizona Press, Tucson, Arizona, 1982, p.9.

<sup>2</sup> Traditionally, or according to Malay expression, *ikut adat* (customarily), Malays were required to be obedient or *taat setia* (blindly or unquestioningly loyal) to the ruler. To do otherwise would, in the eyes of the *adat* be considered as *tidak patut* (improper) and in the eyes of the law, *derhaka*.



## ACKNOWLEDGEMENTS

Alhamdulillah, I would not have reached this stage without the supervision of Professor Gerry Rubin, my supervisor who is also the Dean of the Kent Law School, at the University of Kent, at Canterbury. He has contributed generously to this thesis. His commentaries, ideas, and guidance gave me the impetus to move forward and complete this work. Without his confidence in my capability in conducting this research and also his encouragement and assistance in other aspects of my studentship, this thesis would have long been aborted. I am also grateful to the Student Union of the University of Kent for its assistance during the last stage of my study at the university. My heart-felt gratitude also goes to Professor R.H Hickling, a colleague, who is also an ex-visiting lecturer at the Law Faculty of the Universiti Kebangsaan Malaysia (National University of Malaysia). He has been very kind enough to share with me his invaluable experience in Malaya (later, Malaysia) as well as his expertise as a constitutional lawyer. Those amusing anecdotes and memories of his stay there, and of his acquaintances with some of the prominent personalities in Malaysian political and legal history have been reproduced here in this thesis. They are purposely included, for beside testifying to the facts and points herein argued, they helped to provide an extra 'flavour' to what would have been a dull discussion of a dry subject.

I am also greatly indebted to Dr. Bill Watson of the Department of Anthropology at the University of Kent, for sharing with me his ideas and knowledge about the Malays and their political culture. His suggestions and useful comments on the

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Dr. Ulrich Kratz, Head of the Department of the Languages and Cultures of Southeast Asia and the islands, at the School of Oriental and African Studies (SOAS), University of London should also be thanked for his kindness in allowing me to 'steal' a fraction of his precious time for discussing some aspects of Malay political culture. His friendliness and kindness will be dearly treasured. I must also express my gratitude to Professor Andrew Harding, Head of the Law Department at SOAS who has been kind enough to discuss with me issues on the latest political development in Malaysia from a constitutional point of view. His opinions and commentaries on this particular crisis enlighten the writer in many ways, and have helped to sharpen her views on the subject. With regard to SOAS, the writer wishes to thank the librarians for their assistance rendered to the writer while using the library. Special thanks must go to Miss Mohini for the photocopy services and other assistance provided during the whole period of my research there.

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This research would not have been made possible without the scholarship and study leave from my sponsor, the Universiti Kebangsaan Malaysia (the National University of Malaysia), Bangi, Selangor. It deserves many thanks for bearing with me not only in terms of financial aid but also for the time spent on this research. In the course of this study too, I have had numerous assistance from many friends as well other people unconnected with my field of research. Marzuki Abdullah Muhammad has been especially generous to me in letting me use his new computer, without which I would have been in deep trouble. Hamidin, Abdul Rahman Aziz, Abdul Rahman Tan and his wife Amnah, have all been very helpful in their own

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Canterbury,  
KENT.

1, Muharram, 1421 Hijri  
April 2000 A.D

## Glossary

adab	etiquette
adat	customs/customary law/tradition
adil	just/fair/equal/equitable
amok	amuck
asykar	soldiers
bahasa	Malay language
bakti	service /good deeds, devotion
bangsa	race, stock, nation, tribe
barisan	front/line
baru	new
bersama	with
bicara	speak
budaya	culture
budi bahasa	manners
bumiputra	indigenous
dakwah	Islamic missionary work
daulat	sovereignty
derhaka	treason against the Ruler/ ruling authority
dunia	world
Dewan Rakyat	House of Representatives
Dewan Negara	Senate
fikrah	thought
gerak(an)	move(ment)
hamba	me/I/myself/slave

hidup	live
hikayat	epics
hilang	disappear
kerajaan	condition of having a Raja
kaum muda	young faction
kaum tua	old faction
ketuanan	lordship/ownership
krisis	crisis
kuliah	lecture/course
mahkamah	court
Majlis Raja-Raja	Conference of Rulers
masyarakat	community/ society
masyarakat madani	civil society
Melayu	Malays
Melayu baru	new Malays
memerintah	govern
menteri	minister
Menteri Besar	Chief Minister
Menteri Hal Ehwal Dalam Negeri	Minister for Home Affairs
merdeka	independent/independence
minda	mind
nama	name, reputation, title, denomination
negeri	state
patut	proper, appropriate, fit, suitable, reasonable,
payung negara	National Protector

pelindung	protector
pemerintah	ruler/ ruling authority/government
rakyat	subjects/commoners
sejarah	history
sembah	prostrate/worship
timpa tulah	cursed
perhimpunan	gathering/rally
reformasi	reforms
rezeki	endowment
sakti	magical
sanggah	reject/defy
taat setia	absolute loyalty/submission
takhta	throne
Tanah Melayu	land of the Malays/Malay Peninsula
tauliah	royal commission
Temenggung	Inspector General of Police
ulama	Islamic jurists
ummah	community
Undang	A traditional Chief in the state of Negeri Sembilan
wawasan	vision
Yang di Pertua Negeri	the Governor
Yang di Pertuan Agong	Malaysian monarch
zalim	cruel/mean/tyrant

## ABBREVIATIONS

A.C	Appeal Cases
BERNAMA	Berita Nasional Malaysia
Aliran	Aliran Kesedaran Negara
D.A.P	Democratic Action Party
ISA	Internal Security Act 1960
J.M.B.R.A.S	Journal of Malaya Branch of Royal Asiatic Society
LP	Lord President, the highest judicial officer in Malaysia
MCA	Malayan / Malaysian Chinese Association
MC	Malayan Cases
MIC	Malayan/ Malaysian Indian Congress
MLJ	Malayan Law Journal
NDP	New Development Policy
NEP	New Economic Policy
P.A.S	Party Islam SeMalaysia (Pan Malaysian Islamic Party)
UMNO	United Malay National Organization



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- Aminah v Superintendent of Prisons, Pengkalan Chepa, Kelantan [1968] 1 M.L.J. 92.
- Anchom v Public Prosecutor (1940) 9 M.L.J. 22, 25.
- Berthelsen v the Director General of Immigration, Malaysia & Ors [1987] 1 M.L.J. 134.
- Chia Khin Sze v Menteri Besar of Selangor (1958) 24 M.L.J. 105.
- Dato' Menteri Othman Baginda v Dato' Ombi Syed Alwi bin Syed Idrus [1981] 1 M.L.J. 29.
- Ex Parte Tan Kheng Long (1958) 3 M.C. 205.
- Karam Singh v Menteri Hal Ehwal Dalam Negeri (Minister for Home Affairs) [1969] 2 M.L.J. 129.
- Loh Kooi Choon v Government of Malaysia [1977] 2 M.L.J. 187.
- Melan bin Abdullah v Public Prosecutor [1971] 2 M.L.J. 280.
- Merdeka University Berhad v Government of Malaysia [1981] 2 M.L.J. 356 (H.C).
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- Mighell v Sultan Abu Bakar of Johor [1894] 1 Q.B. 149
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Yeap Hock Seng v Minister for Home Affairs, Malaysia [1975] 2 M.L.J 279.

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**Federation of Malaya Agreement, 1948.**

**Internal Security Act 1960 (ISA).**

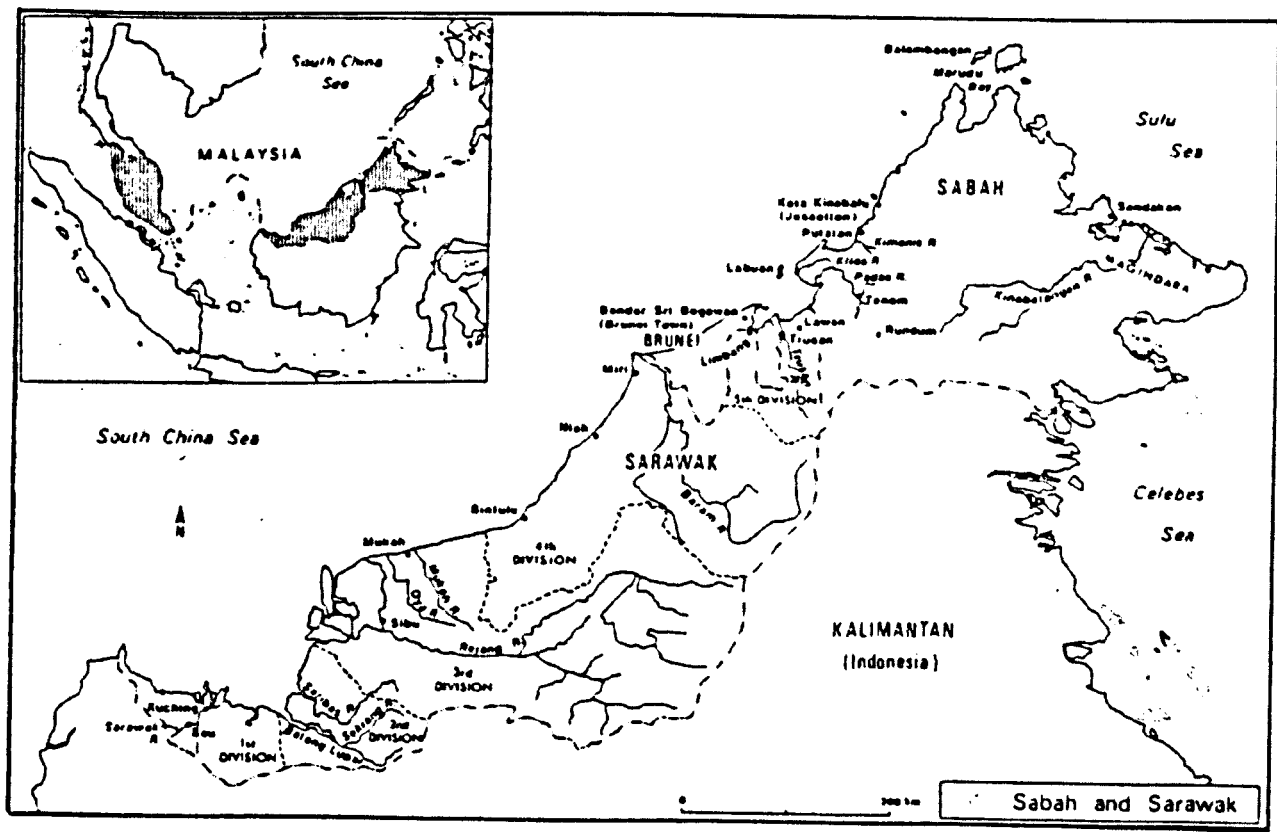
**The Constitution of Johor 1895**

**The Federal Constitution of Malaysia 1957**

# Map of Peninsula Malaysia



# Map of East Malaysia (Sabah & Sarawak)



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# CHAPTER 1

## Introduction

### The 1993 Royal Immunity Crisis: The *Kerajaan*, The Constitution, and the Dilemma of a New *Bangsa*

The breakdown of a feudal system is always a period of upheaval, and often forms a conflict between town and country. Often, too, a foreign influence precipitates the change.<sup>1</sup> Perhaps, the constitutional monarchy (and indeed, the rule of law itself), like a *baju* (Malay dress), should not be too tight in their fitting.<sup>2</sup>

#### 1.1 A Glimpse of Malaysia

##### i. Geographical background

A country in Southeast Asia, Malaysia comprises (a) the Malay Peninsula, bounded in the North by Thailand, surrounded in the east by the South China Sea, and in the west, by the Straits of Malacca; and (b) Sabah and Sarawak in the northern part of the island of Borneo (South Borneo is part of Indonesia). The Malay Peninsula is made up of eleven states, namely, Perlis, Kedah, Penang, Perak, Selangor, Negeri Sembilan, Melaka, Kelantan, Trengganu, Pahang and Johor. Kuala Lumpur (formerly part of Selangor) and Labuan in Sabah became federal territories in 1973 and 1984 respectively.

##### ii. Government

Each of the states has its own constitution, head of state, and an elected assembly, led by a *Menteri Besar* or a Chief Minister and cabinet, which legislates on matters enumerated in the State and Concurrent lists under Schedule Nine to the Federal Constitution. Under the 1957 Federal Constitution, a constitutional monarch, styled

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<sup>1</sup> Hickling, R.H, personal correspondence with the writer, 13 August 1999.

the *Yang di Pertuan Agong* is elected for a five-year term by and from among the Conference of Rulers, comprising of the hereditary rulers of the Malay States of Johor, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Trengganu. The Parliament (the federal legislature) is bicameral, consisting of the *Dewan Negara* (Senate) and the *Dewan Rakyat* (House of Representatives). Elections to the *Dewan Rakyat* are held every five years on the basis of universal adult suffrage, with each constituency returning one member. The Cabinet headed by the Prime Minister consists only of members of the legislature and is collectively responsible to Parliament.

### iii. Population<sup>3</sup>

Malaysia's population was estimated at 21,376,066 million in 1999, that is: 59% of the total population were Malays and other indigenous groups, 32% Chinese and 9% Indian.

### iv. Economy

The resource-rich Malaysian economy had, in the past, been highly dependent on commodity exports to the industrialised countries. During colonial times, the modern Malaysian economy had been founded on rubber and tin exports. But a strong post-independent programme of commodity diversification added such products as palm oil, timber, pepper and cocoa to the country's range of primary commodity exports, which later received further boost in the 1970s with the production and sale of petroleum and natural gas. However after the 1980's recession, resulting in the

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<sup>2</sup> Ibid, An Overview of Constitutional Changes in Malaysia: 1957-1977, in Tun Mohamed Suffian, Lee H.P and Trindade, F.A (eds.) The Constitution of Malaysia – Its Development 1957- 1977, Oxford University Press, 1978, p.3.

<sup>3</sup> See, <http://infoplease.lycos.com/ipa/A0107751.htm> visited on 29/03/00 at 12:24

collapse of commodity prices, the focus was turned to manufacturing and to heavy industry.<sup>4</sup> Malaysia's economy was, and still is, politically characterized by the New Economic Policy (NEP), aimed at restructuring society by eliminating the identification of race with economic function. This objective was meant to be achieved through the restructuring of employment patterns, ownership of share capital in the corporate sector and the creation of Bumiputra Commercial and Industrial Community (BCIC). The policy continues and is expanded under the New Development Policy, launched in the early 1990s upon the expiration of the NEP. The objectives of the NDP may be best summed up by Mahathir Mohamad's (the Prime Minister's) *Wawasan 2020* (Vision 2020) and *Melayu Baru* (New Malays).<sup>5</sup>

#### **v. Culture**

Malaysia is an ethnically, culturally and religiously diversified country. "If racial categories are not what they seem, it seems natural to conclude, with the early anthropologists, that Malaysian ethnicity is not based on race, but on culture..."<sup>6</sup> Attempts at formulating Malaysian national culture incurred a multiplicity of problems, ranging from political to social. The government is committed to promoting Malay culture as Malaysian's national culture and this is manifested through its policy on tourism, increased attention to traditional Malay medicines, the revival of traditional Malay games, highlighting traditional themes in television dramas, national interest in Melaka's traditional mode of transport,<sup>7</sup> et cetra.

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<sup>4</sup> See Khoo, B.T, *The Paradoxes of Mahathirism*,: An Intellectual Biography of Mahathir Mohamad, Oxford University Press, Kuala Lumpur, 1995, p.115.

<sup>5</sup> These concepts are discussed in Chapter 6.

<sup>6</sup> Kahn, J.S, *Class, Ethnicity and Diversity: Some Remarks on Malay Culture in Malaysia*, in Kahn, J.S and Loh, K.W (eds), *Fragmented Vision: Culture and Politics in Contemporary Malaysia*, Asian

## vi. Religion

Islam is the religion of the Federation, but other religions may be practised in peace and harmony in any part of the Federation.<sup>8</sup> Notwithstanding anything in the Constitution, the *Yang di Pertuan Agong* shall be the Head of the religion of Islam in the Federal Territories of Kuala Lumpur and Labuan; and for this purpose Parliament may by law make provisions for regulating Islamic religious affairs and for constituting a Council to advise the *Yang di Pertuan Agong* in matters relating to the religion of Islam.<sup>9</sup> In every state other than states not having a Ruler, the Ruler shall be the Head of the religion of Islam.<sup>10</sup>

## 1.2 Aims and Scope of Study

Constitutional amendment which ends up in crisis is not a new phenomenon in Malaysia. The 1993 amendments which resulted in the removal of the personal royal immunity of the traditional Malay Rulers (Sultans) from the Federal Constitution were not the first to create a crisis, neither were they the first to have dragged the hereditary Malay Rulers to the centre stage of Malaysian politics. Prior to that, in 1983, the *Yang di Pertuan Agong* had been forced to accept a constitutional defeat when the central government managed to impose a limit of a thirty-day period for the King to give his royal assent to Bills passed by the two Houses of Parliament.<sup>11</sup> The idea that a monarch under a constitutional system of government has to be reminded of his limits might sound strange and irrelevant to those who understand the meaning

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Studies Association of Australia in Association with Allen & Unwin, Sydney, Australia, 1992, p.159.

<sup>7</sup> Ibid, pp.166 & 167.

<sup>8</sup> Article 3 (1), Federal Constitution.

<sup>9</sup> Article 3 (5), Federal Constitution.

<sup>10</sup> See Article 3 (2), Federal Constitution.

<sup>11</sup> Constitution (Amendment) Act, 1983 (Act A566/1983) was strongly opposed by the *Yang di Pertuan Agong* and his brother Rulers so that the amendments had to be withdrawn and replaced by the Constitution (Amendment) Act, 1984.

of constitutional monarchy. That this is not indigenously Malay, but an 'imported' system from the United Kingdom, however, makes a world of difference to those who understand the Malay concept of rulership or *kerajaan*.

The word *kerajaan* in the feudal sense means 'being in the condition of having a Raja'.<sup>12</sup> But with the infiltration of foreign ideas of government, notably, those of the British, the phrase *kerajaan* has acquired a somewhat different meaning. From the condition of having a Raja, the Malays have moved into a different political sphere, namely, one which consists of a 'popularly elected Raja' commonly known as Prime Minister, whose *kerajaan* is constitutive of the cabinet ministers who are at the same time members of the legislature. Upon independence on 31 August 1957, the traditional Rulers had to accept the bitter fact that they had now to share the *kerajaan* and their powers with the modern 'raja'. The *daulat* (sovereignty) of a Raja from that moment onwards began to co-exist with that of the *rakyat* (subjects), or, more precisely, with that of their representatives, some of whom, it has been alleged, were, more often than not, busily representing themselves rather than the people they represented.

Though the meaning of *kerajaan* may have changed with the passage of time and under the influence of modernity, some important traits that are inherently 'traditional' remained unaffected for a considerable while in so far as the relationship between the ruler and ruled is concerned. This is reflected in certain provisions of the Federal Constitution and in speeches of the Malay politicians. Absolute or

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<sup>12</sup> Milner, A.C, *Kerajaan: Malay Political Culture On the Eve of Colonial Rule*, University of Arizona Press, Tucson, Arizona, 1982, p. 9.



unquestioning loyalty expected of the *rakyat* to the ruler<sup>13</sup> formed an integral part of Malay political culture until the Anwar-Mahathir saga exploded in September 1998, marking yet another attempt to breach the long-held tradition of '*pantang Melayu menderhaka pada Raja*' (it is not the custom of the Malays to be disloyal to the ruler). This episode has indeed heralded and mirrored the dawning of a *Melayu Baru* (New Malay) era, and the 1993 constitutional crisis can be seen as the penultimate step towards the creation of the *Melayu Baru* (New Malays) political culture. First, the constitutional amendments, and now the new rebellious spirit inculcated in the Malays by the Prime Minister amid the battle over royal immunity, have finally developed and matured into a 'monster' that threatens to destroy its own creator.

A new *bangsa*, the *Melayu Baru* or new Malays – are already here. Nowhere is their presence more strongly felt than in the episode which involves Anwar Ibrahim, the ousted Deputy Prime Minister. But as in most other conflicts where a society is seldom undivided, Malay society in this case is not excluded. This division emphasizes the dilemma that is now dominating the era of this new *bangsa*. The 1993 as well as the 1983 constitutional conflicts between the Rulers and the Mahathir-led government were very much a struggle between the feudal and modern monarchical systems, which left Malay society trapped between the need for a traditional politico-cultural endorsement of their existence and the reality of a changing world; whilst the Anwar-Mahathir saga represents a struggle between the '*kaum muda*' (the younger generation) and '*kaum tua*', (the older generation)<sup>14</sup> a struggle best summed up in the rhetoric of *reformasi* (reforms) and the value of *taat*

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<sup>13</sup> 'Ruler' here denotes both a ruler in the traditional sense and a political leader in the modern sense.

<sup>14</sup> The '*kaum Muda*' and '*kaum tua*' expressions used here are not to be understood as having any reference to those factions, which existed in the early 1900s, although the two may in many ways

*setia* (unquestioning loyalty). Hence, all these elements, the constitutional amendments of 1993, the creation of *Melayu Baru* (and, latterly), the outcry for democratization of the *negara* (nation), are all wrapped up in the one and similar 'package': the Malay perception of *kerajaan* or 'Raja'.

Like other problems, constitutional ones do not exist *in vacuo*, and as such it is relevant to examine those factors that influence the rise of such issues. Thus, as this study seeks to illustrate, the 1993 crisis was actually engendered by an extra-constitutional force, that is the political culture of the Malays which it will be argued, appeared to have shifted from one which emphasized the importance and sacrosanctity of the ruler to that which upholds the will of the *bangsa*. The change here is seen as largely due to the growth of a new middle-class of Malays, consisting of professionals, entrepreneurs and technocrats. This class it will be argued, holds a non-conservative<sup>15</sup> attitude towards the relationship between the Raja and the *rakyat*. Their economic standing is, in some cases, better than that of the Malay Rulers themselves. Arguably, modern middle-class Malays do not find it necessary to relate themselves with the Raja for self-identification. The wealth acquired through their corporate involvement gives them the economic might needed for promoting their own brand of identity.

It might be suggested that the middle-class Malays (whose image was perceived by the UMNO leadership as one which matched Mahathir's *Melayu baru* (new Malays)) do not seem to hold the notion of "there is no *rakyat* if there is no Raja". A good

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represent similar conflicts between the reformist thoughts and those of the 'older' Malay generation, akin to the one that prevailed in that period.

<sup>15</sup> "Non-conservative" in the sense that they do not regard the Raja as of central importance in their political and social existence.

deed is no longer seen in terms of one's service to the Raja: it is much more related to one's own achievements in the professional and corporate world. As corporate success is normally represented by economic might, the race is now not for the purpose of offering service to the Raja for recognition, but targeted on the acquisition of more wealth through the expansion of business empires. This phenomenon creates a problem between the traditional ruling class and the new class of Malays. The Rulers, argued by some political observers<sup>16</sup>, upon finding their political importance and economic position eroded, decided to join in the race for economic wealth in order to preserve and enhance their status quo as people of a prestigious class. The involvement of some of these Rulers in business appears to have caused friction between them and the non-royal entrepreneurs. One might suggest that it was this factor, namely economy, that had been at the root of the perceptual change among the Malays about the feudal institution of the Raja.

The following thesis posits that it is the interaction between the traditional notion of *kerajaan* and modernity<sup>17</sup> that has created a deep conflict over any efforts to make the Malaysian monarchy work in accordance with Western invented principles of

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<sup>16</sup> For instance, see Syed Husin Ali, *Isu Raja dan Pindaan Perlembagaan* (The Raja Issue and Constitutional Amendments), S.Husin Ali, Petaling Jaya, 1993, p.47 & 48.

<sup>17</sup> The process of 'modernization' is largely influenced by British colonialism (British colonial rule was "blessed" by the Malay Rulers in return for "protection" against their external enemies such as Siam, and also against internal rivals from among the ruling circle itself). It was argued (Roff, W.R., *The Origins of Malay Nationalism*), that, with the increase in literacy rate among the Malays since the pre-*Merdeka* days and the awakening of the Malays to the change in their social, economic and political circumstances around them, coupled with their rebellious spirit against what they perceived as colonial oppression (mainly mental or psychological), propelled them to strive for a better future under a better system. Thus, along with modernization there comes sophistication, both in terms of materialism and mentality. However, arguably, due to other demands such as the legitimacy of the Malay claim as indigenous people of the country, which is largely rested on the testimony of history, therefore the *kerajaan*, being the "exhibit" which provides for this historical evidence of their early presence on the Malay Peninsula, has to be preserved together with its legacy, such as those values cherished in the feudal days. Conflict is therefore bound to arise as not many of these values are compatible with modern thinking, *taat setia* (unquestioning loyalty) to the ruler and *derhaka* (treason) are an example of them.

constitutional monarchy. Indeed as some commentators<sup>18</sup> argued that the imported ideas of parliamentary government and constitutional monarchy are not readily and easily workable in the polity. This is highlighted by analysing the background to the 1993 royal immunity crisis and to the Anwar-Mahathir episode. It is argued here that the two crises are reflective of the politico-cultural (and to a significant extent, economic) problems aforementioned. The problems and the constitutional crises also illustrate the complex process of change in perception among Malays about *kerajaan* and the ruling authority. And as this thesis will illustrate, the change in Malay perception of *kerajaan* and ruling authority is the force which mapped the course of direction of the constitutional system of Malaysia.

Since *Merdeka* (independence) in 1957, the reins of government have been primarily in the hands of the United Malay National Organization (UMNO), which is the dominant member of the *Barisan Nasional* (National Front) coalition government, and is the largest as well as the most influential Malay political party, at least until the Anwar-Mahathir saga dominated Malaysian political scene. It is therefore pertinent to speak of Malay political culture, rather than that of other races in Malaysia. In order to understand the argument of the government for the need to amend the immunity provisions of Articles 32 and 181 of the Federal Constitution, one would have to take a step back into history; and for a better understanding of the crisis that ensued not long after the 1993 amendments, it is necessary to look at the agenda of the Mahathir-led government for a future Malaysia. With regard to the latter, some relevant points about the obstacles which, we will suggest, threatened to impede the execution of his agenda will also be discussed with a view to clarifying

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<sup>18</sup> See Shad Faruqi, Parliamentary Democracy and Constitutional Monarchy, Paper presented at the 9<sup>th</sup> Malaysian Law Conference, 10<sup>th</sup>–12<sup>th</sup> October, 1991, Kuala Lumpur, Malaysia, p.3.

the problems which destroyed that special 'father-and-son' relationship (as Anwar himself previously described it) between the Prime Minister and his ousted Deputy; and this is where the issues surrounding the Anwar-Mahathir crisis become relevant.

Although this research essentially focuses on the relationship between the 1993 constitutional change and the Anwar episode, and on contemporary Malay perceptions of *kerajaan*, it is inevitable that a discussion of the manner in which Malays previously perceived this 'traditional' political institution will be required. A retrospective look at their perception will help to explain why attempts at revolutionizing their political outlook vis-à-vis the ruler-and-ruled relationship were not without problems. Since a study of the present will not be complete and meaningful without relating it to the past, this work therefore also examines how *kerajaan* was given a new meaning and dimension in those crucial periods before British rule in Malaya.

Such an exploration will take the reader back to the period of the Melakan empire,<sup>19</sup> the nucleus of the present-day Malay sultanates. Much about the political culture of the Malays has its origin from this particular state and a graphic description of their politico-cultural system is best found in the Malay Annals or *Sejarah Melayu*<sup>20</sup>, a reference to which is made in this work. Indeed, this book, it is argued by some scholars of Malay studies and historians,<sup>21</sup> provides the best source of knowledge for

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<sup>19</sup> 1400-1511 (for the territorial 'borders' of Melakan empire, see Andaya, B.W, and Andaya, L.Y, A History of Malaysia, The MacMillan Press Ltd, London and Basingstoke, England, 1982, p. 50);

<sup>20</sup> The earliest extant version of the *Sejarah Melayu* comes from the seventeenth century, see Andaya and Andaya, *ibid*, p. 44.

<sup>21</sup> Among them are, Chandra Muzaffar, Khoo K.K, Zainal Abidin Wahid, Winstedt, R.O and Wilkinson, R.J.

understanding Malay political culture and its influence on the modern system of Malaysian government.

Thus the aim of this research is, first, to provide an explanation for the complex development of current Malay political thinking and its impact on the constitutional system of Malaysia; and to emphasize that the constitutional crisis which arose in 1993 and also of those others which involved the Raja and *kerajaan* (such as, in 1983) were not simply a constitutional or legal problem per se. They are in essence a set of problems inextricably intertwined with the Malay conception of *kerajaan*, and to explain them without invoking Malay political culture would amount to an inadequate sketch of the whole picture. It will be argued that any change to the constitutional system or to the political system of Malaysia, for that matter, would only become a reality if the Malay perception of the ruling authority (which was traditionally symbolised by the Raja, and in modern days, by *the Barisan Nasional* government, or more accurately, by Mahathir), could be revolutionized.

Second, the thesis seeks to bring to the fore the central issue that lies at the heart of the 1993 crisis, as well as of the present political feud between Anwar and Mahathir. That the Malay perception of *kerajaan* (that is, of ruling authority) is undergoing a remarkable process of change, is a fact that has been omitted from many relevant legal discourses. Constitutional law should not be studied as an isolated subject; neither should it be treated as exclusively the lawyers' domain. The Federal Constitution is, on its own, nothing but a lifeless document. However, its soul is provided by the society, and therefore, it would be mistaken to disregard the latter

and its culture as the determining factors in the shaping, working, interpretation and understanding of the constitution.

Last but not least, it is hoped that by highlighting the fact that at least in Malaysia, cultural forces play a fundamental role in shaping a constitutional system of a country, more sensitivity to local cultural traditions and local conditions should be observed by constitutional lawyers in evaluating problems in making a foreign idea work within a local setting. The fact that perceptions differ from one society to another warrants the modification or adjustments made to a concept which was borrowed or emulated. As such it would be a misconception to believe that an imported system of government, be it constitutional monarchy, parliamentary democracy, federalism, and so on could comfortably work in a society which was culturally, historically, ethnically and economically different. The case of Malaysia is an excellent example. The notion of *kerajaan* together with all those values attached to it, could not be altered or reconstructed overnight.

The problems of accommodating the concept of constitutional monarchy to the then newly-independent Malaya did not cease to exist even after so many decades following *Merdeka*. Undoubtedly, the Malays are aware of the changes that are taking place around them. There are not many monarchies left anymore in this world. Egypt, Iran, Indonesia and Pakistan provide a good illustration of the decreasing importance of monarchy in a changing world. Perhaps one might suggest that an anachronistic institution such as the Raja institution might not be compatible with the needs of a modern government. However, the fact that the traditional *kerajaan* fulfils a significant role in Malay political life is reflected by the special

position, powers and privileges conferred on it by the Federal Constitution.<sup>22</sup> Thus, it may be argued that this traditional political institution is not merely restored for the sake of nostalgia or of reminding the Malays of their glorious past, but for the purpose of providing them with a positive sense of identity and also with political legitimacy as the rightful heir to the country.<sup>23</sup>

The Malays could have overthrown the sultanate during the Malayan Union days in 1946. However, political necessities, as evidenced from the memoir of one of the prominent Malay nationalists, Tan Sri Ghazali Shafie, forced the 'right-wing' group (UMNO) to preserve the traditional *kerajaan* in the fight for Malaya independence.<sup>24</sup> It also proved to be the best strategy then for the UMNO party to win the Malay support in their struggle against the Malayan Union and for freedom from colonial rule.<sup>25</sup> Indeed, based on those events such as the 1990 general election,<sup>26</sup> the Raja

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<sup>22</sup> For instance, Article 38 (5) requires that the Malay Rulers must be consulted before any change in policy affecting matters mentioned under Article 153, which deals with special rights and privileges of the Malays, such as the reservation of certain proportion of places for Malays in institutions of higher learning.

<sup>23</sup> Malays commonly refer to Malaysia, particularly Peninsular Malaysia, as *Semenanjung Tanah Melayu* (Land of the Malays). See also Crouch, H, *Government and Society in Malaysia*, Cornell University Press, Ithaca, 1997, p.157.

<sup>24</sup> It must be remembered that the Malay Sultanates were independent entities subject to their respective protectorate agreements with the British. The legal and constitutional situation was that the British could only return the powers given by the protectorate agreements to the Sultans. Therefore, UMNO as the party that led the elected Alliance party in the negotiation for independence of Malaya in the late 1950s, had to find the right formula to get the Sultans to agree to divest their powers to the people. As a result, an offer was made to the Sultans that the *kerajaan* would be restored on condition that they (the Sultans) were to become constitutional rulers possessing sovereign status with the privileges and immunities befitting of a sovereign (see Wan Hashim Wan Teh & Roosfa Hashim (eds), *Ghazali Shafie's Memoir on the Federation of Malaysia*, Penerbit Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia, 1998, p.20).

<sup>25</sup> The rural Malays who made up the largest section of Malay community at that time were noted for their enchantment and loyalty to the Sultans. Thus, by promoting the image of the 'defender' of the Sultans' sovereignty, UMNO managed to mobilize the Malay *rakyat* to its side vis-à-vis the so-called radical groups such as the MNP (Malayan Nationalist Party), the MCP (Malayan Communist Party), which were viewed by the conservative Malays as a threat to their Malay polity (see Roff, W, *The Origins of Malay Nationalism*, Yale University Press, New Haven and London, 1967, pp. 229- 234).

<sup>26</sup> In 1990, UMNO lost its foothold in Kelantan to the opposition coalition party, *Angkatan Perpaduan Ummah* (Muslim Unity Movement) which consisted of PAS (Pan Malaysian Islamic Party), *Semangat 46* (Spirit of 1946 Party), *Berjasa* and *Hamim*. There were reasonable grounds to believe that the Sultan of Kelantan (especially from his hostile reactions to the former *Menteri Besar*



institution has been instrumental to Malay political leaders as it helps to give them an added or “extra” legitimacy much needed by their parties for securing the Malay *rakyat*’s support even in these days. Thus, it is difficult to see any other reason, apart from the political, why the Raja is so much “wooed”,<sup>27</sup> by both the ruling as well as the opposition Malay parties in their bid to gain the support of the Malay masses.

No doubt it would not be constitutionally proper to attempt to win the Rulers’ support for any political party. However, since ethnic communalism still forms such an integral part of party ideology in Malaysia,<sup>28</sup> and is a determining factor for a possible success in any future general election, the Raja (despite contrary views of some “modern” Malay nationalists, including Mahathir himself), serves as an identity-conferring element to the *bangsa*, which emphasizes the Malayness of the *bangsa Melayu*. To fail in one’s effort in “protecting” the Malays, either by way of endangering their traditional “protector”, the *kerajaan*, or of other elements which identify them, such as the *bahasa Melayu* (Malay language) and also Islam, would be perilous for the party concerned. It might be argued that some room must be permitted to allow the system to work harmoniously with these local peculiarities.

### 1.3 Significance of Research

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(Chief Minister) who was from the UMNO party, in the late 1980s) had played a significant part in ensuring the opposition’s victory.

<sup>27</sup> For instance, prior to the Gomez incident, the Sultan of Johor, who was the then *Yang di Pertuan Agong*, was seen by many as a strong supporter of UMNO. The *Yang di Pertuan Agong* spoke publicly about his support for UMNO and reminded the Malays that the party was first inaugurated at the Johor palace (which means that it had the sultan’s blessing). At this juncture, the UMNO was facing one of its major tests when the party was declared illegal by the High Court in a suit involving the dissident UMNO member, better known as the “UMNO 11”.

<sup>28</sup> For example, UMNO claims itself to be the champion of the Malays, a claim manifested in several of its national policies, such as the NEP (New Economic Policy); apart from that the Party leadership has often mentioned that UMNO is the Malays and the Malays are UMNO. As such if any one of the Malay parties (that is to say, including PAS (Pan Malaysian Islamic Party) tries to ignore the Raja, the result might be politically undesirable.

Although recently there has been an attempt to explain the working of the constitutional system, particularly constitutional monarchy in Malaysia from a “less legalistic and pedantic” perspective,<sup>29</sup> it is felt that more is needed to explain the workability or non-workability of such an imported idea of government in an Asian country like Malaysia. Constitutional lawyers tend to treat the problems relating to constitutionalism or to the modern sense of government in its non-mother country, either with an “unsympathetic” attitude, that is to say, without due regard to the nature, customs and sensitivities of local societies, or in many cases, with cynicism. To fully appreciate the problems, one needs to understand the underlying dynamics of Asian society in general, and Malay society in particular, so that any misconception and prejudices about the manner in which certain ideas are being worked out, interpreted or modified by the local people might be avoided.

Works on the constitutional system of Malaysia are abundant, yet none, or at best, very few of them show any interest in going further beyond the doctrines and theories to explain the nature of and problems pertaining to the working of the Federal Constitution. Matters such as politics and the culture of the Malays, the definitive<sup>30</sup> segment of Malaysian society, have been peripherally treated, so much so that there seems to be a gap between the cause and the presentation of the effect of constitutional changes that have taken place in the country. Of course, issues of Malay political culture have been discussed elsewhere, but they are studied as a rather separate and disconnected subject, with little or very vague legal or constitutional dimension attached to it.

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<sup>29</sup> Aziz Bari, *The Development and Role of Constitutional Monarchy in Malaysia*, Ph.D Thesis, University of Birmingham, England, 1994.

Work by Gullick on the indigenous political system of the Malay States (1988), for instance, is a purely historical study, which employs an “anthropological functionalist” approach<sup>31</sup> to explain the presence of a certain political phenomenon in the western Malay States of Malaya. That study, which is confined to the years just before Malay States came under British rule, focuses on the functions of the traditional institutions “as a means of discovering the meaningful structures by which Malays gave shape to their political experience.”<sup>32</sup> Whilst Milner’s *Kerajaan* (1982) extensively discusses Malay political culture as a branch of historical study, and as a means of understanding political change in Malaya and the Malay world, it does not make any particular reference to the implication of this element on the legal system or constitutional structure of the Malay states.

Using Malay writings, particularly the *hikayats* or epics, such as the *Hikayat Deli* as a basis of his exploration, Milner comes to a conclusion that Raja or *kerajaan* is “not only the key institution, but the only institution”<sup>33</sup> in Malay political thought. However, there is an important implication of this theory on another aspect of the Malay polity, namely, its constitutional aspect, that has yet to be explored. Therefore the present research attempts to fill the gap left by that study.

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<sup>30</sup> “Definitive” here means that the Malays, being the largest ethnic group in the country, and represented by the largest and arguably, most influential and powerful party, UMNO, are those who have played the dominant role in determining the political course of Malaysia.

<sup>31</sup> An approach contested by Milner who posits that it is an out-of-date and inadequate method of explaining Malay motivation in acting the way they did, vis-à-vis their relationship with *kerajaan* (see Milner, A.C, supra., p.viii).

<sup>32</sup> Gullick, J.M, The Condition of Having a Raja: A Review of *Kerajaan*, by Milner, A.C, an article in Review of Indonesian and Malayan Affairs, Volume 16, No.2, 1982, p.109.

<sup>33</sup> Milner, A.C, supra, p.113.

Milner's conclusion invites further exploration into other areas of study including legal study. His cultural anthropological approach to understanding Malay motivation in politics will be found to be useful in grasping the problems that enveloped those landmark cases of constitutional crises such as the 1993 'battle' over the removal of the royal immunity provision from the Federal Constitution. Although, in carrying out this research, the present writer has introduced some aspects of anthropology, she is nonetheless not committed to any specific school of thought in anthropology. But having said that, it must be acknowledged that Milner's work and approach have had a substantial influence on the manner in which the present writer has conducted her investigation and presents her ideas. Therefore, in many instances in this research, one will come across similarities in the analytical approach to certain subjects as that adopted by Milner.

Another important and interesting work by Milner which relates to this particular theme of Malay political culture was published in 1995.<sup>34</sup> This book basically examines the emergence of a "new awareness" within Malay society during the colonial period. The examination was premised on the construction of Malay ideas of politics or political perception as reflected in their (Malay reformists and nationalists) ideological debates, which evolved around the notions, rhetoric and vocabulary relating to *kerajaan*. In tracing the development of this "new awareness", the author suggests that the Malays had only begun to "invent" politics<sup>35</sup> during the

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<sup>34</sup> Milner, A.C, *The Inventions of Politics in Colonial Malaya: Contesting Nationalism and the Expansion of the Public Sphere*, Cambridge University Press, Cambridge, U.K, 1995.

<sup>35</sup> "Certain Malay writers", noted Milner, in his work (ibid, p.2), "have even remarked that until the late colonial period "no politics" existed among the Malays.... There was in the Malay language no specific word for 'politics'. In the twentieth century, Malays have experimented with an Arabic term (*siasat*) as well as '*politik*' and one author of the 1920s went so far as to refer to politics as a new *adat* or 'custom'.

colonial era, a process necessitated and accelerated by their reactions towards British imperialism.

Thus, politics as a term had never entered Malay vocabulary prior to colonial rule in Malaya.<sup>36</sup> As the “new awareness” began to develop and prosper, *kerajaan* was gradually being perceived somewhat differently by the Malays.<sup>37</sup> Moreover, it is to be noted that Malay ideological debates about this matter did not actually cease with the end of colonial rule. They are still actively pursued by both the Malay ruling party, UMNO, and by the Malay opposition party, PAS (Pan Malaysian Islamic Party). This is nowhere more clearly exemplified than in the 1990s, with the royal immunity crisis forming the basic framework within which the issues were debated. Now that a new episode in Malay(sian) politics, characterized by overt and crude rejection of their once highly respected UMNO leader has recently started, with Anwar and Mahathir himself as the primary players, the notion of *kerajaan* (this time with the emphasis more on the modern *kerajaan*, that is to say on the Mahathir-led government) is being reinterpreted.

It might not be too presumptuous to suggest that the ideal of the traditional ruler-ruled relationship advocated by Hang Tuah in the feudal days (and which is presently upheld by Mahathir), had lost its magical appeal among the Malays, particularly among those of the younger generation, as indicated by the anti-Mahathir riots in the wake of Anwar’s arrest recently. The rhetoric of anti-*nepotisme* (nepotism), *kolusi* (collusion) and *kronisme* (cronyism) has now become the

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<sup>36</sup> Ibid, p.2.

<sup>37</sup> At this juncture, it is perhaps better to define the Malays as those constituting Malay intelligentsia who were responsible for stimulating the political awareness of their fellow Malays through their ideas of nationalism which, in some instances, challenged the legitimacy of the *ancien regime*.

conceptual basis upon which another “new awareness” is projected and manufactured. We believe that the changing of perception within Malay society about *kerajaan* serves as a forceful dynamic which will impact upon the working of the Federal Constitution sooner or later. The removal of the ‘traditional’ Malay Rulers’ immunity by the Mahathir regime has indeed paved the way towards a more ‘radical’ and ‘rude’ reaction of the post-post *Merdeka* young ‘Turks’ against what is perceived by them as an oppression by the ruling authority or modern Malay *kerajaan*.

There are also recent works on the Raja and the constitution, such as one by Muhammad Kamil Awang, who writes on the Sultan and the Constitution (1998)<sup>38</sup> This is more a narrative than an argumentative work on the position of the Malay Rulers in the Federal and State Constitutions. His focus is mainly on the effect rather than on the cause of the existing situation. Hussin Mutalib’s Islam and Ethnicity in Malay Politics (1990)<sup>39</sup> provides illuminating reading on the impact of the interaction between those two variables on Malaysian politics during the 1970s and 80s. In so far as political direction and Malay political culture are affected by these variables, his work may be regarded as the closest to the present writer’s thesis in terms of the emphasis given to the factors influencing Malay perceptions of *kerajaan*. For instance in discussing nationalism as a channel through which reformist ideas are disseminated, one cannot avoid mentioning Islam and *bangsa* as powerful forces which determine the way in which *kerajaan* is perceived.

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<sup>38</sup> Muhammad Kamil Awang, *The Sultan and the Constitution*, *Dewan Bahasa Dan Pustaka*, Kuala Lumpur, 1998.

<sup>39</sup> Hussin Mutalib, *Islam and Ethnicity in Malay Politics*, Oxford University Press, Singapore, 1990.

But although his study gives an insight into the dynamics of politics in Malaysia, it has not gone far enough in explaining how the results of the interplay between these two forces are interpreted from the constitutional and legal perspectives. Only a sketchy analysis is made on the 1983 constitutional crisis which involved the federal government and the monarchy,<sup>40</sup> primarily to exemplify the tension between those two forces, Islam and Malay ethnicity. The concerns of the present research, however, go beyond describing the tension arising out of such an interaction. Thus we are seeking to explore whether and how this tension is being reflected in and accommodated by the Federal Constitution, and whether and how it is being manipulated by the ruling regime to suit their political, economic and social agendas by means of legal and constitutional processes.

In reviewing the literature on law and constitutional issues in Malaysia, one cannot ignore the contributions by R.H Hickling. Hickling had worked with and for the government of Malaya before and during the early days of *Merdeka*, and was later appointed to the Commission of Law Revision of Malaysia. Thus in our view, his essays and other works on Malaysian laws and on its constitutional and legal system may be regarded as enlightening and authoritative. Nonetheless, there are certain aspects of the subject, such as the cultural and anthropological aspects, which are not addressed by those excellent works.<sup>41</sup> Understandably, as cultural anthropology is not particularly his domain, it is therefore not a common feature in his writings.

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<sup>40</sup> Ibid, pp.141&142.

<sup>41</sup> Some of Hickling's works referred to in this thesis are to be found in Suffian et al., (eds), op. cit ; and in his *Essays on Malaysian Law*, Pelanduk Publication (M) Sdn.Bhd., Petaling Jaya, Selangor, Malaysia, 1991. Other works of his which are not mentioned or referred to in this thesis include: *The First Five Years of the Federation of Malaya Constitution (1962)* Mal. L.R., *The Development of Malaysian Law: A Historical Perspective*, *The Supreme Court Journal Malaysia*, December 1989, *the Malaysian Judiciary in Crisis*, *Public Law*, 1989 and also *An Introduction to the Federal Constitution*, Government of Federation of Malaya Press, Kuala Lumpur, 1960.

One of the local prolific authors and critics on Malaysian law and politics is Dr.Chandra Muzaffar (who, at the time of writing, is Deputy President of the newly-formed National Justice Party or KeADILan). His analysis<sup>42</sup> of Malay conception of the Raja and *kerajaan* as the “protector” of the Malays provides an insightful study of Malay politico-cultural thinking, and of its relation to the trend of Malay politics in general, and within UMNO in particular. It is in essence a sociological study of Malay political culture, based on an observation of the deeds of the actors, namely, of the Malay political leaders and of their supporters. How these people act and react to each other forms the basis of Chandra’s opinion on the nature of Malay political culture and of the reasons for its “invention”. Primarily, the starting point for his analysis is the Malay perception of *kerajaan as the pelindung* (protector). However, less focus is made on the Rulers’ position and powers in the Federal Constitution and on their impact on the working of the constitutional system in Malaysia, than on the continuity of feudal Malay ideas in Malay politics. Consequently, one crucial dimension is missing from his analysis: the manner in which the continuity of feudal politico-cultural thinking in modern Malaysia affects the working of the Constitution is yet to be explored.

Other writings by prominent local Malaysian law experts and commentators such as the late Professor Datuk Dr.Ahmad Ibrahim<sup>43</sup> (formerly the Dean of the Law faculty at the University of Malaya, and later the Sheihkul Kulliyah of the Law Faculty at the International Islamic University of Malaysia), Datuk Dr. Rais Yatim, Shad Faruqi, Salleh Buang, the late Azmi Khalid, Arif Yusuf and many others,

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<sup>42</sup> See Chandra Muzaffar, *Pelindung* (Protector), *Aliran Kesedaran Negara* (ALIRAN), Penang, Malaysia, 1991.

<sup>43</sup> His works include *The Malaysian Legal System*, of which he was a co-writer; *Towards a History of Law in Malaysia*, and *The Distribution of Estates According to Shafii Law*.



supplement the research hereby undertaken in the sense that they help to provide the background knowledge to the Malaysian legal system and its developments. Needless to say, some of their comments on constitutional issues in Malaysia are illuminating and will serve as a basis for further investigations by the present writer in the course of this thesis.

Bearing in mind that these are all part of the same field or discipline, namely, social science, it is proper that they be discussed conjunctively so as to make sense of the developments in other fields. The significance of this research thus lies in its attempt to provide a more comprehensive understanding of the constitutional developments in Malaysia by means of using an inter-disciplinary approach in evaluating such phenomena. Besides helping to replenish the existing volume of legal literature on the constitutional system of the country, it is hoped that it will widen a narrow avenue towards understanding the problems of applying the western-imported theories of governance within an indigenous political, religious and cultural surrounding.

#### **1.4 Methodology and Problems**

The theme of this study is primarily centred on Malay political culture and its impact on the working of the constitutional system of Malaysia. As such, its major concerns are politics and constitutional law. Arguably, the constitution is as much political as it is a legal document. Given that a country's politics reflects the design of its culture, particularly that of the definitive people (in this context the Malays), the emphasis will be placed on the extent to which the power of Malay political culture shapes or determines the direction of the Malaysian constitutional system. The birth

of the Federal Constitution was prompted by the desire of the Malays to restore the integrity and sovereignty of the Malay Rulers, who were said to be the embodiment of *kerajaan* and of all those values emanating from it. At that juncture, namely, in the 1950s, the idea of preserving the Raja institution or *kerajaan* was for the purpose of asserting the Malay claim that Malaya belonged to them. By the retention of the Raja institution, it was intended that the 'Malayness' of Malaya or of the Malay Peninsula would be further enhanced or emphasized.

From this perspective, *kerajaan* was thought to have served a dual purpose, first, as an identity-conferring element to the Malay land, and second, as an historical testimony in a bid to legitimize the Malay assertion of their lordship over the Malay Peninsula. Such a perception is manifest in several provisions in the Federal and State Constitutions relating to the powers, position, role and functions of the Malay Rulers.<sup>44</sup> In this research, the extent of the influence of the Malay perception of *kerajaan* (which seems to have shifted from one that was parochially Malay and feudal to that which is more liberal and modern) on the Federal Constitution is to be gauged by means of evaluating the 1993 constitutional crisis. This event serves as the main platform from which an investigation of Malay perception of this politico-cultural institution is conducted. In conducting this evaluation, the writer has adopted a discourse analysis method. Materials such as debates by parliamentarians, speeches of politicians, particularly those of the Prime Minister (Dato' Seri Dr. Mahathir Mohamad), editorial as well as public opinion as expressed in the local dailies and weeklies (notably the *Utusan Malaysia*, *Berita Harian*, *Harakah*) and magazines (such as *MASSA*, *Times Magazine*), articles in journals (like *Dewan Bahasa* and

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<sup>44</sup> Among those provisions are Articles 38 and 153 of the Federal Constitution, which deal with the Conference of Rulers and their role as guardian of the special position and privileges of the Malays.

*Dewan Budaya*), and also creative works of literature and plays, are used by the writer in her attempt to explore Malay perceptions of *kerajaan*.

For the purpose of avoiding unnecessary expansion of the framework identified for this study, its emphasis is mainly on the 1993 constitutional crisis and the political events in the late 1990s. However, since some historical setting is necessary against which contemporary events and also developments of the Malay perceptions of *kerajaan* and the implementation-related problems can be analysed, this study also includes selective coverage of the period before the years aforementioned. Thus by highlighting the politico-cultural dimension of the problems relating to the working of the Constitution, the writer is attempting to demonstrate the merits of Malay perception as an analytical tool for explaining the constitutional and political changes that occurred in 1993 and thereafter. It should be stressed that as the approach adopted for this investigation is one which is thematic and dialectical, the tracing of the development of Malay perception is not necessarily perfect in terms of the chronology of events that occurred throughout the whole of the period under investigation.

Given the complexity of the subject matter of this research, especially that which touches on politics, it needs to be emphasized that the writer believes it is not possible to be objective in forming an opinion or interpreting certain situations and actions. The pursuit of such objectivity it is believed, is made the more difficult in view of the highly sensitive, emotive and arguably subjective nature of the factors influencing Malay perception, which in turn shapes the constitution under this

investigation, notably ethnicity and Islam.<sup>45</sup> Problems of “sensitivity”<sup>46</sup> were encountered by the writer, for example, in her unsuccessful attempt to approach the Keeper of Rulers’ Seal for an interview regarding the 1993 crisis. Views coming from a personality so close to the Conference of Rulers could have been very useful for this thesis: but noting his reluctance to agree to a request for an interview by the writer and also his reasons for not co-operating, emphasized the degree and nature of the sensitivity surrounding this subject.

The other main problem facing the writer relates to the final chapter (Chapter 7). A discussion in this chapter is devoted to the present controversy between the Prime Minister and his ousted Deputy. Given the ‘delicate’ and intriguing nature of the Mahathir-Anwar conflict, “The Anwar Factor” causes certain anxiety. It has been the most heated issue in contemporary Malaysia. It is only lately that the controversy surrounding *reformasi* became less intense. Prior to this, that is, at the time when chapter 7 was first written, the word ‘*reformasi*’ was the nation’s greatest taboo. It can be quite risky to discuss the development and sentiments pertaining to this issue. Aware of the nature of such “sensitivity”, the writer is anxious not to raise any more “sensitive” points other than those that are already mentioned in that chapter. While it should be understandable why the present writer declines to cite footnote authority

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<sup>45</sup> It must be understood, and as explained in this thesis, that *kerajaan* is instrumentally of utmost importance in Malay political culture as it confers on the Malays their sense of Malayness for such a considerable period of time. It was until only recently, that is, with the emergence of a powerful Malay middle class or *Melayu baru* (New Malays) in the 1980s and 90s that the identification of the Malays with their Raja became less prominent. The sense of Malayness or the feeling of belonging to the Malay ethnic group has become a subject of sensitivity among the Malays as well as the non-Malays. Its sensitivity is further enhanced by the fact that ethnicity, and to a lesser degree, Islam, are precisely what divide Malaysian society into what we may term the ‘*orang kita*’ (our people) and ‘*orang asing*’ (outsiders) communities. Essentially these interlocking issues have been most prominent in defining Malaysian politics. Political ideology in Malaysia has been mainly characterized by ethnicity until recently when the Anwar-Mahathir saga exploded, thus, blurring to a certain extent this line of communalism or ethno-centricism.

for the following statement, she is desirous of recording that there have been kind words of caution or advice from those who know too well the current political climate and the nature of executive powers in Malaysia.

Hence, a more critical analysis than that provided here of the relevant provisions of the Federal Constitution, such as Article 145 (1)<sup>47</sup> has not been vigorously pursued. Academic or otherwise, an undertaking such as this has to be attempted with great care and tact. Nonetheless, it is hoped that this work will induce further research on the constitutional system of Malaysia, using a technique that is not exclusively legal-doctrinal but one that is more versatile and adaptable to the broad span of the discipline of social science. Taking cognizance of the fact that culture and politics, and even economy, are not subjects that are completely isolated from legal study, with each having its share of influence over the other, it is therefore appropriate to view the constitutional development from a wider perspective.

## 1.5 Arrangement of Chapters

Chapter 2 of this thesis introduces the reader to the events where the 1993 constitutional crisis was triggered. It commences with the background to one incident, in which an ordinary Malaysian citizen was allegedly assaulted by the Ruler of Johor. This chapter is basically narrative and is occasionally punctuated by arguments relating to the manner in which the resultant constitutional amendments were sought. The constitutionality of the amendments is discussed at various point in

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<sup>46</sup> However, it needs to be specifically mentioned here that the “sensitivity” in this regard is not so much related to the issues of ethnicity or Islam, but rather to the “supremacy” of the executive in Malaysia.

<sup>47</sup> This Article provides that the *Yang di Pertuan Agong* shall, on the advice of the Prime Minister, appoint a person who is qualified to be a judge of the Federal Court to be the Attorney General for the Federation.

this chapter. The issue of the sovereignty of a Ruler is also raised, for the purpose of juxtaposing the conflicting views of the proponents and opponents of the amendments in order to shed some light on the problems surrounding the crisis, some of which were conceptual while others were political.

As sovereignty was specifically invoked as the *raison d'être* for the abandonment of the Malayan Union in 1946 and for the establishment of a federation in 1948, arguments relating to the meaning of sovereignty are therefore discussed. The core of the argument against the removal of royal immunity was one that concerned the meaning of sovereignty as an attribute of a sovereign. This is discussed in the light of relevant cases such as Dato' Menteri Othman Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus.<sup>48</sup> The question (raised by the opponents of the amendments) as to whether the sovereignty of the Rulers would be technically or actually destroyed by the amendments of the constitution are also debated in this thesis. Since sovereignty in the Malay sense (*daulat*) is inseparable from the person of the Raja who is the embodiment of *kerajaan*, it is pertinent that a discussion on this aspect of the subject be included.

Chapter 3 is mainly historical. It discusses the origin of the feudal Malay concept of *kerajaan*. This concept, according to the generally accepted theory, originated from Sumatra, and it was only around 1400 that it began to take its new foothold on the Malay Peninsula, to be precise, in Melaka. This was where the history of Malay sultanates or *kerajaan* began. The legacy of the Melakan empire continues in the establishment of the nine sultanates that emerged after the fall of its progenitor to the

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<sup>48</sup> [1981] MLJ 29.

Portuguese in 1511. *Kerajaan* is said to have occupied an utmost central position in Malay political thought. The Malay world-view of politics, power, authority, and their perceptions of what is good or bad seem to have evolved around the Raja, whose person is the embodiment of the whole idea of *kerajaan*.

The influence of the ruling elite on the traditional Malay society was overwhelming and this was achieved through the building of myths and magical stories about the genealogy of the Rulers.<sup>49</sup> The ruled or *rakyat* had been inculcated with the feeling of fear of the Ruler through the concept of *derhaka* (treachery or treason) The duty of the *rakyat* was therefore to submit to the power of the Raja without question, for to do otherwise would tantamount to *derhaka*, the punishment for which was death or sufferings of an 'unusual' character. The term used to describe this blind loyalty is *taat setia* (absolute loyalty). A hero was thus someone who had shown the quality of *taat setia*, and a villain was one who committed an act of *derhaka*. This belief had crystallized into a virtually unalterable and distinctive trait that was uniquely Malay – a feature that was only distorted and shattered by the constitutional crisis in 1993 and the political development of the late 1990s.

Traces of change and a preliminary 'distortion' of the traditional notion are plotted in Chapter 4. It identifies the different stages of what may be called the transition of Malay ideas of *kerajaan*. The periods are broadly divided into two: (a) the colonial era during the pre-, and post-World War II periods just before *Merdeka*, and (b); post-*Merdeka*, that is, since 1957. In discussing the developments of the Malay political perception during colonial times, inevitably the issue of nationalism will be

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<sup>49</sup> The best authority on the history of feudal Malays and their political culture is *Sejarah Melayu* (Malay Annals).

raised. Here, nationalism is seen as one of the forces that contributed to the change in the Malay perception of *kerajaan*. In turn, the process of awareness amongst the Malays was induced and accelerated by colonialism. Thus the impact of colonialism on indigenous Malay political thinking is discussed at length in this chapter. Nationalism and colonialism form the main interrelated themes of Chapter 4. However, it is relevant to mention here that it is not the intention of the writer to engage herself in any discussion on theories relating to colonialism and nationalism in this research. To undertake such a discussion would unnecessarily detain the readers in an area not meant to be explored by the writer.

This chapter argues that although Islam had already arrived in the Malay Peninsula as early as the fifteenth century, the catalyst that prompted such a major change in the Malay perception of *kerajaan* was British colonial rule in Malaya. It was only later that Islam became the platform from which reformist ideas against the *kerajaan* were launched. It was the Malay reaction to colonization that had actually triggered the shift from a parochially Malay political thinking to a more universal one. Nonetheless, the process of revolutionizing Malay thoughts were not without problems. Hence, this chapter also discusses those problems. The prospect of a successful 'revolution' of the minds of the Malays is also examined towards the end of this chapter.

Chapter 5 considers the position of UMNO which has been the main player in bringing about further revolutionary changes among the Malays, particularly in the post-*Merdeka* period. The chapter analyses the nature of the UMNO relationship with the Rulers and how their 'affair' developed throughout the years. The 'ups' and



'downs' in their relationship are critically examined here against the background of a number of crises that occurred before and during Mahathir's ascendancy to power. The issue of legality of some of the government's acts (in this context, 'government' is interchangeably used with UMNO since the latter has come to be identified as synonymous with the former) in relation to the events leading up to the 1993 amendments is also discussed. As mentioned above, another issue which is directly linked to this is the question of the sovereignty of the Rulers, a concept which appears to have acquired a new meaning under the Mahathir regime. Dissenting views on this subject of sovereignty are juxtaposed in order to strike a balanced picture of the change in the Malay perception of *kerajaan*.

Chapter 6 deals with *Melayu Baru* (New Malays) and *Wawasan 2020* (Vision 2020). These two concepts, advocated by the Prime Minister, have become the matrix around which a future Malaysian nation is to be created. A highly industrialized Malaysian society is about to be established. Obviously the changes that are taking place now will affect the way in which the existing constitution operates. Hence, some questions relating to this scenario are raised in this chapter. It is suggested here that the Malays are in a dilemma as to whether to abandon their old ways completely, or to make only some adjustments in order to accommodate themselves with the robust changes that are taking place.

Chapter 7, which is the final chapter, analyses the latest political development in Malaysia, the Anwar episode. This development has brought to a head the views and conflicts discussed earlier. Though it might be more appropriate to describe the Anwar-Mahathir crisis as a power struggle between two power players, in another

sense it might be argued that it is one which symbolizes a conflict between the pro-feudal Malay political culture (that is, with regard to the ruler-ruled relationship) held by Mahathir, who during the 1993 constitutional crisis vowed to end the feudal Malay mentality, and the western-oriented democracy championed by Anwar, who ironically also in 1993 was one of the trusted messengers sent by Mahathir to the Rulers with a message to end their royal immunity.

The conflict is set out against the background of the Asian economic crisis which hit Malaysia and its Asian neighbours in 1997. This is seen as a contributing factor which plunged the two leading Malaysian political figures into the uncharted territory of Malaysian politics. Although Mahathir himself trod a very controversial line in dealing with his 'seniors'<sup>50</sup> in the early years of his political career, nothing comparable to the 1998/99 events had ever occurred before. Anwar's dismissal unleashed an extra-ordinary response from the *rakyat*.<sup>51</sup> It seems that the public desire for a more 'democratic' society and government that lay dormant underneath the complacent and apolitical surface of a large section of Malaysian society had suddenly erupted and shaken the foundation upon which the country's constitutional system was built. That is, a fundamental challenge was launched against the ideals of Asian-style 'guided' democracy, embracing all those paternalistic and traditional values of *derhaka* and *taat setia* that had hitherto moulded Malay political culture in particular, and Malaysian politics in general. That these ideals are now being

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<sup>50</sup> 'Seniors' here refers to (1) the hereditary Malay Rulers who, in terms of the existence of the Raja institution in the history of Malay political system, precede the Prime Minister, whose office was only recently established with the introduction of the Federal Constitution in 1957; and to (2) the earliest Prime Minister, the late Tunku Abdul Rahman whose policies were criticized and blamed by Mahathir as being the underlying cause of the 1969 Malaysian racial riots.

<sup>51</sup> '*Rakyat*' in this context includes the Malays as well as the non-Malays. As the dichotomy between the Malays and non-Malays as *rakyat* of a Raja was made redundant with the introduction of the Federal Constitution in 1957, it is thus accurate to refer to all Malaysians, instead of just to one ethnic group, as *rakyat*.

vigorously challenged by Anwar and the supporters of *reformasi* illustrate the change of politico-cultural perception of *kerajaan* (in this context, the modern Malaysian government) within Malay community in particular and Malaysian society in general

Issues such as *keadilan* and *hak sama-rata* (justice and equality) invoked by Anwar and his followers, now dubbed *penderhaka* (the traitor) by the Prime Minister and his supporters, in their challenge to Mahathir, the UMNO leader and the 'Chief Executive Officer' of 'Malaysia Incorporated'<sup>52</sup> are discussed in the context of their impact on the existing constitutional system. The claim of *ketuanan Melayu* (Malay sovereignty) asserted by the Malays as indigenous people of the Malay Peninsula is analysed against the demand for the creation of a multi-ethnic Malaysian Malaysia, an idea championed by the Chinese-dominated party, the DAP (Democratic Action Party).<sup>53</sup> The rejection of this concept of a Malaysian Malaysia thus reflects the dilemma facing the Malay leadership, particularly UMNO, which is trapped between the need to live with the reality of modern times and the fear of losing what has become part and parcel of Malay political existence, the special rights and privileges of the Malays.

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<sup>52</sup> For this title of 'CEO of Malaysia Inc' see Hng, H.Y, *CEO Malaysia: Strategy in Nation-Building*, Pelanduk Publications and Asian Strategy and Leadership Institute, Malaysia, 1998, p.10.

<sup>53</sup> Ironocally, Mahathir himself has advocated a Malaysian Malaysia, only to reject the idea as threatening Malaysian stability in the wake of the current political crisis. Moreover, he was also championing the issue of creating the *bangsa* Malaysia in his *Wawasan 2020*. Yet, this *bangsa* was later thought to be conflicting with his own vision projected in the *Wawasan*.

## CHAPTER 2

### The 1993 Constitutional Crisis – *Kerajaan v Kerajaan*<sup>1</sup>

#### 2.1 Introduction

The Constitution (Amendment) Bill initiated in the latter part of 1992 by the leadership of UMNO (United Malay National Organization) to remove the personal royal immunity of the hereditary Malay Rulers from Articles 32(1) and 181(2) of the Federal Constitution eventually culminated in an unprecedented battle between the Sultans and the politically elected Malay leaders. The amendments which were finally secured in early 1994 indeed marked a turning point in the history not only of the constitutional system but also of Malay political culture in Malaysia. The initial rejection of the bill by the Conference of Rulers<sup>2</sup> pertaining to the removal of this special constitutional protection momentarily threw the nation into yet another constitutional impasse, which seems to have characterized the climate of the late twentieth century Malaysian politics under the Mahathir regime. The crux of the problem appears to have centred upon two interrelated constitutional provisions: Article 38(4), which reads “No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers” and Article 159(5) which reads, “A

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<sup>1</sup> It should be noted here that contextually, *kerajaan* is a dualistic term. It refers: (1) to the feudal Malay system of kingship and (2) to the modern political system of government

<sup>2</sup> The Conference of Rulers is a body whose constitutional position is hard to pin down. Its functions are miscellaneous and its composition and character protean. It stands outside Parliament, yet can veto certain bills and has legislative powers of its own in relation to certain religious observances in the States of Malaya; it stands outside the federal cabinet system, yet can pass judgment on certain executive appointments; it can make or break a *Yang di Pertuan Agong*; and it can discuss anything. (Commentary notes extracted from Sheridan, L.A and Groves, H.E, *The Constitution of Malaysia*, Malayan Law Journal (Pte)Ltd, Singapore, 1987, p.131. (see also Article 38 of the Federal Constitution )

law making an amendment to Clause (4) of Article 10, any law passed thereunder, the provisions of Part III, Article 38, 63(4), 70, 71(1), 72(4), 152 or to this Clause shall not be passed without the consent of the Conference of Rulers”.

Historically, these provisions are the product of the *Merdeka* (independence) deal transacted between the Anglo-Malayan parties to the 1948 Federation of Malaya Agreement (the basis of the 1957 Federal Constitution of Malaya) which comprised the representatives of the British government, the Representatives of the hereditary Malay Rulers and the Representatives of the Alliance Party (the progenitor of the present *Barisan Nasional* or the National Front Party). This special arrangement was meant to serve as a bulwark against attempts by any party to subvert the constitutional endorsement that recognized the claim of the Malays as the indigenous people of the *Tanah Melayu* or the Malay Peninsula. Since the *kerajaan* or the *Raja* institution is the primary evidence which testifies to the claim, the *Sultans*, or the *Rajas* as they are variably referred to, have been made the guardian of this ‘special’ position of the *Bangsa Melayu* (the Malay race). Consequently, any amendment which seeks to alter in any way what is believed to have been one of the basic structural features of the Constitution (part of which is the *kerajaan*, that is to say, including the position, dignities and privileges of the Malay Rulers), will not be allowed under the law unless prior consent of the Conference of Rulers is duly secured.

Based on the wording of the two provisions, particularly that of Article 38(4), it would be difficult to dispute that the consent of the Conference of Rulers must be obtained

before any bill affecting their position, dignities and privileges could be lawfully legislated. One might argue that as the 1993 constitutional amendments sought to make a variation or an alteration in the 'position' of the Rulers as persons who were 'immune' from legal proceedings, therefore the introduction of any bill to that effect in the *Dewan Rakyat* (House of Representatives) without their prior approval was in essence a violation of that provision. The bill passed by the federal legislature on 19 January 1993 was one which purported to amend Articles 32(1) and 181(2) by removing those words which afforded the *Yang di Pertuan Agong* and the Malay Rulers such 'immunity'.<sup>3</sup> Since the government had failed to follow this extra precautionary constitutional procedure, no amount of votes in the *Dewan Rakyat* would have sufficed to enable the bill to be validly passed. In other words the bill should have been illegal, void and of no effect by reason of its unconstitutionality.

It is worth noting that despite their dissatisfaction over the government's proposal to remove their legal immunity, the Rulers did not go as far as challenging the validity of the bill in the court of law. Failure or reluctance on the part of the Rulers to pursue this course of action was probably due to the fear of further revelation of their misconduct and extravagance by the government.<sup>4</sup>

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<sup>3</sup> The original Articles respectively read:

32(1) There shall be a Supreme Head of the Federation, to be called the *Yang di Pertuan Agong*, who shall take precedence over all persons in the Federation and shall not be liable to any proceedings whatsoever in any court; and 181(2) : No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity.

<sup>4</sup> See Lee, H.P, *Constitutional Conflicts in Contemporary Malaysia*, Oxford University Press, Kuala Lumpur, 1995, p.95.

It is obvious that the nature of the Malaysian constitutional system makes it more difficult to sustain any argument which supports the principles of constitutional monarchy propounded by Western theorists. As the basic tenet of constitutional monarchy is one which requires the monarch to act on the advice of his/her minister(s), it appears to follow that the injunctions imposed by Articles 38(4) and 159(5) if interpreted strictly, conflict with the logic of constitutional monarchy and with the parliamentary system of government in Malaysia. The historical, cultural and political backdrops (see Chapter 3) against which the Westminster model was introduced into Malaya have all contributed to those implementation-related problems that emerged throughout the post independence years; and these are nowhere more visible than in the late twentieth century Malaysia.

It may well be argued that most constitutional deadlocks involving the *Rajas* and the popularly elected government which occurred during the tenures of the four Malaysian premiers had actually originated from this unique political and constitutional legacy bequeathed by the Merdeka nationalists, particularly those within the UMNO circle. The relationship between the royal Malay Rulers and the UMNO leadership is, as will be seen later in this study, one which is mutual or reciprocal. Thus while asserting that the *Rajas* had to act constitutionally, the *Barisan Nasional* government (the main component of which is UMNO) had at the same time to ensure that its action would not jeopardize the existence of this long established political institution; and in the course of it, the government has more often than not found itself embroiled with the complexity of the constitutional web woven by its predecessor.

## 2.2 Background to the crisis

The crisis was ignited by a series of incidents dating back to 10 July 1992. On that day Tunku Majid Idris (the son of the Sultan of Johor) was alleged to have assaulted one Mohamad Jaafar Selvarajah following the defeat of the former's hockey team at the hands of the latter in the national sport competition or SUKMA. Selvarajah had been hailed by the Perak hockey team as a hero for saving three-penalty flick attempted by Johor players, among who was Tunku Majid. The assault was said to have taken place at the Johor Baharu Municipal Town Council Stadium. Tunku Majid was subsequently ordered to appear before the disciplinary committee of the Malaysian Hockey Federation for a hearing scheduled to take place on 18 October 1992. However he failed to attend before the committee and was suspended from hockey for five years. It is thus from this "local" incident that the constitutional saga between the Malay Rulers and the government was launched.

Subsequent to the event, a number of Johor hockey teams, one of which belonged to the Maktab Sultan Abu Bakar (a Johor English college), withdrew from various competitions organized by the Malaysian Hockey Federation. The college's was the third in what was seen as an abrupt consecutive series of withdrawal from prestigious national competition by Johor teams.<sup>5</sup> There had been rumours and speculations that the Johor Education Department might have instructed the withdrawals. However, worse had yet to come. This occurred when the College's hockey coach, Douglas Gomez, told the press about what he believed was a 'forced withdrawal' imposed on his team by

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<sup>5</sup> The Star, 26 November 1992.



“certain quarters” in the State. Apparently, he was referring to the *istana* (the palace). He added that he would not object to ‘putting my neck on the line’ by taking such a stand.<sup>6</sup>

Soon, Gomez was summoned to the Istana Bukit Serene (the residence of the Sultan of Johor) and is believed to have been taken there by some palace officials. It was reported that he was there for four hours.<sup>7</sup> On the same day, that is, on 30 November 1992, but later in the afternoon, the New Straits Times office received a handwritten statement from Gomez stating that “ I, Douglas Gomez, hockey coach of Maktab Sultan Abu Bakar, Johor Baharu, wish to inform you that what has been reported in the press over the last few days is not true and the situation has been blown out of proportion.” On the next day, he received treatment for cuts and bruises. The injuries were, according to some reliable sources, inflicted by the Sultan of Johor on the day Gomez was summoned to the palace. Subsequently Gomez lodged a police report against the Sultan, and from that moment the culture of Malay politics was about to change.

### **2.3 The Government’s Reaction**

There were speculations that the government had in one way or another encouraged Gomez to lodge the report against the Sultan of Johor.<sup>8</sup> Thus, commenting on the

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<sup>6</sup> New Sunday Times, 29 November 1992.

<sup>7</sup> New Straits Times, 1 December 1992.

<sup>8</sup> Lee, H.P, *supra*, p.87.

incident during a press interview, the Prime Minister, Mahathir Mohamad, emphasized that:

“The Sultans or the *Rajas* are not specially exempted from the law if they commit offences as grievous as assault or murder. The idea of being ‘legally immune’ or being ‘above the law’ carries several interpretations. The offences from which they (the Sultans) are legally excused do not include those offences mentioned above. The immunity merely applies to minor cases of wrong doings such as non-payment of debts and the like.”<sup>9</sup>

In effect, what the Prime Minister meant to say is that the government was only willing to acknowledge such immunity if the offences committed were petty in nature. It is interesting to note that by saying so, the Prime Minister was actually reading the limit or extent of the immunity into the Federal Constitution, which as it then stood, was silent on this point. However, as the Gomez case was not the first to have occurred,<sup>10</sup> the government thought it necessary to put an end to this special constitutional protection in order to avoid any similar incidents in the future. The removal of the personal royal immunity from the relevant provisions in the Federal Constitution signified the determination on the part of the government to put an end to the Sultans’ abuse of royal position once and for all.

Although the abolition of this special legal treatment of the Rulers is no doubt in harmony with the principle of ‘equality before the law’ enshrined under Article 8 of the

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<sup>9</sup> *Berita Harian*, 8 December 1992.

<sup>10</sup> There are a number of similar incidents wherein the Sultan of Johor was said to have been involved. Some of these cases were reported though some others were not. Among those which came before the court was the case of Public Prosecutor v Tengku Mahmood Iskandar [1973] 1 M.L.J 128. The defendant

Constitution, there are other aspects of the law which need to be addressed in order to make this principle fully operative. In some spheres, the government too is immune from legal proceedings and this is nowhere more evident than in the Internal Security Act 1960 (widely known as the ISA). For instance, by virtue of section 8(1) of the ISA,<sup>11</sup> a person may be detained without trial if the minister in charge (normally the Minister of Home Affairs) is satisfied that his detention is necessary for the purpose of preventing any action that is 'prejudicial to the security of the Federation'. The absence of any definition for the phrase 'prejudicial to the security' further adds to the difficulty in challenging the executive decision. Thus, where 'prejudicial to the security of the Federation' (in other words 'national security'), is cited as the ground upon which a person is detained under the Act, it is very difficult for the detainee to successfully challenge the validity of the detention order. It should be noted that the ISA is a special legislation made pursuant to Article 149 of the Federal Constitution, which allows the executive to violate some of the constitutional provisions concerning fundamental liberties of a person in certain cases. The Article reads as follows:

"Article 149(1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation –

- (a) to cause or to cause a substantial number of citizens to fear, organized violence against persons or property; or
- (b) to excite disaffection against the *Yang di Pertuan Agong* or any government in the Federation; or

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in that case had pleaded guilty to the charge of culpable homicide not amounting to murder, and was sentenced to six-month imprisonment and a fine of six thousand Ringgit.

<sup>11</sup> S.8 (1) provides that: If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.

- (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or
- (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or
- (e) which is prejudicial to the security of the Federation or any part thereof,

any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, 10, or 13,<sup>12</sup> or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.”

All of the circumstances described in paragraphs (a) to (d) relate in one way or another to the security of the Federation. However, paragraph (e) is too broad a provision in the sense that it may include anything under the sun so long as the Minister is satisfied that it affects ‘the security of the Federation’. Thus an adverse comment or strong criticism against the Prime Minister, for instance, might if the executive so desired, be regarded as one which fell under this category. The possibility of the power under the ISA being abused or misused is not to be over-ruled.<sup>13</sup> Given that mala fide is not always an ideal ground for one to succeed in challenging an executive action or decision, it is difficult to see how this wide discretionary power of the executive can be effectively curbed.<sup>14</sup> The

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<sup>12</sup> Articles 5, 9, 10 and 13 deal with personal liberty, movement, speech, assembly and association and property respectively.

<sup>13</sup> This may be illustrated by the arrest and detention of the leader and followers of the *Al-Arqam* religious sect in September 1994. Included in the arrest were the child and wife of Ashaari, the *Al-Arqam*'s leader. The ground for their detention was ‘prejudicial to the security of the Federation’. The government alleged that the movement was organizing a ‘military’ activity through its ‘military’ unit called *Asykar Badr*, which turned out to be non-existent. Later the charge was amended to ‘a threat to national security’ since the movement was also propagating its own brand of Islam, thus considered a threat also to national security. The true motive for the government’s action might be gauged from the fact that in June 1994, a magazine published by the movement claimed that the Prophet Muhammad had come to Ashaari in a dream and told him that the UMNO’s election was a contest of “thieves and robbers” (see *Newsweek* 14 September 1994).

<sup>14</sup> Since the onus of proving mala fide is much heavier than the onus of proving the legality of the detention, and the Malaysian courts’ ‘positive’ attitude towards executive power under special legislation

chances of invalidating an order made by the executive under such a law are further reduced by Article 151(3) which reads: “This Article<sup>15</sup> does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.”

Karam Singh v Menteri Hal Ehwal Dalam Negeri<sup>16</sup>, is one of those cases in point. This case also illustrates the reluctance of the courts in Malaysia to interfere with the Minister’s decision which involves security issues. The appellant in that case was detained under an order of detention made by the Minister of Home Affairs on the ground that he had acted in a manner prejudicial to the security of Malaysia. The order was based on twelve allegations of facts, purportedly showing that the appellant was a member of the Communist Party. Among the arguments raised by the appellant in that case were, first; he had not been furnished with sufficient grounds for the detention, which showed that the Minister had not given the matter adequate consideration, and second, the allegations of fact supplied to him were vague, insufficient and irrelevant. This rendered the detention order invalid and hence, his detention was unlawful. However, the Federal Court unanimously held inter alia, that:

(1) the detention order was valid on the ground that the defect, if any, in the detention order in setting out the objects and purposes of the detention in the alternative was a defect of form only and not of substance; it did not show that the executive had not adequately

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such as the ISA and the rest of similar legislation, it is less likely that the detainee may succeed in his challenge against the executive. Karam Singh is a classic example of this phenomenon.

<sup>15</sup> Article 151 deals with restrictions on preventive detention. It provides for the right of the detainee to be informed of the grounds of his detention as soon as may be; the right to be informed of the allegations of fact on which the detention order is based; the right to be furnished with a copy of the detention order as soon as possible; and the right to make representations against the order as soon as may be. On the surface, the Article serves as a very useful tool for the detainee to challenge the Minister’s order. However, this restriction on preventive detention is quite meaningless with the presence of Clause (3) thereof.

<sup>16</sup> [1969] 2 MLJ 129.

applied its mind to the desirability of detaining the appellant and therefore did not invalidate the order;

(2) the vagueness, insufficiency or irrelevance of the allegations of facts supplied to the appellant did not relate back to the order of detention and could not render unlawful detention under a valid order of detention; if, however, the appellant thought that the allegations were vague, insufficient or irrelevant he should have asked for particulars.

A detainee could no doubt ask for further particulars of allegations made against him, but such an effort might be frustrated if Article 151(3) was invoked by the Minister. As a result the legal canopies provided by the special legislation and the constitution itself enable the government, particularly its executive arm to act virtually arbitrarily or capriciously. Another problem which obstructs a detainee from succeeding in his challenge against an executive decision is the phrase "if the Minister is satisfied". Except for a very few cases, the Malaysian courts are generally less keen on adopting a subjective approach in reviewing the executive's decision.<sup>17</sup> For instance, in the case of Yeap Hock Seng v Minister for Home Affairs<sup>18</sup>, which involves detention under the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (EPOPCO), the court held that: "It is of course settled law that the subjective determination of the Minister is not justiciable. The court cannot be invited to undertake an investigation into the sufficiency of the matters upon which the satisfaction of the Minister purports to be grounded."

In the light of the decisions in Karam Singh, Yeap Hock Seng and a host of similar cases, the judicial attitude in Malaysia with regard to executive decisions may be best

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<sup>17</sup> See Karpal Singh v Menteri Hal Ehwal Dalam Negeri [1988] 1 MLJ 468.

<sup>18</sup> [1975] 2 MLJ 279, at p.282.

described by Lord Atkin in his dissenting judgment in Liversidge v Anderson<sup>19</sup>, where he said:

“I view with apprehension the attitude of judges who, on a mere question of construction, when face to face with claims involving the liberty of the subject, show themselves more executive-minded than the executive”

The ‘immunity’ of the minister is further enhanced by the insertion of an ouster clause such as the one found in the ISA. Section 8B(1) of the Act reads:

There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the *Yang di Pertuan Agong*<sup>20</sup> or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

Thus except in non-security cases, such as Kannan and Anor v Menteri Buruh dan Tenaga Rakyat and Ors<sup>21</sup>, South East Asia Firebricks Sdn.Bhd. v Non-Metallic Manufacturing Employees Union and Ors<sup>22</sup> and Syarikat Kenderaan Melayu Kelantan Bhd. v Transport Workers Union<sup>23</sup>, the courts are effectively excluded from reviewing the ‘satisfaction’ of the Minister. In the case of Kannan for example, the court has acted quite liberally in interpreting the ouster clause. Syed Othman J, (as he then was), in 1974 held:

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<sup>19</sup> (1941) 3 All ER 338, at p.361.

<sup>20</sup> It should be noted that although the *Yang di Pertuan Agong* is also mentioned in the Act as one of those whose decision shall not be subject to judicial review, one must remember that the King is under Article 40, required to act upon the advice of the cabinet or of a Minister authorized by the cabinet. Therefore, the *Yang di Pertuan Agong*'s decision is actually the Minister's decision.

<sup>21</sup> [1974] 1 MLJ 90.

<sup>22</sup> [1980] 2 MLJ 165.

<sup>23</sup> [1995] CLJTT (17); [1995] 2 MLJ 317.

“I am inclined to think that the better view of the law is that a plea that the Court cannot interfere with a decision by reason of an ouster clause will only be accepted if the decision was reached according to the law. If the decision is not according to law, the Court would invariably interfere with it. To my mind, a decision not according to law is no decision at all.”

However, as far as cases relating to ISA are concerned the courts are not allowed to exercise its power of judicial review over executive decisions. The overwhelming strength and ‘immunity’ afforded to the Ministers by the legislation and the Constitution in this sphere are made the more effective through its two-thirds majority in the *Dewan Rakyat*. So strong is this executive-controlled legislature that it managed to overturn the effect of the Privy Council ruling in cases such as Teh Cheng Poh v. Public Prosecutor.<sup>24</sup> In that particular case, Lord Diplock, delivering their Lordships’ opinion, said:

“But as with all discretions conferred upon the executive by Act of Parliament, this does not exclude the jurisdiction of the court to inquire whether the purported exercise of the discretion was nevertheless ultra vires either because it was done in bad faith.”

This case and a host of other cases demonstrate that the overturning of judicial pronouncements by the executive (through its two-thirds majority in the *Dewan Rakyat*) in Malaysia has become almost a common phenomenon which destroys the purpose of an independent judiciary in the country.

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<sup>24</sup> [1979] 1 M.L.J 55.



Apart from the Prime Minister, there were other members of the Cabinet who commented on the event, Datuk Syed Hamid Albar, the Minister of Law and Justice, for instance, stated that it was in the future interest of the constitutional monarchy itself and of the Malaysian parliamentary democracy that the government felt it necessary to table the motion<sup>25</sup> before the *Dewan Rakyat*. However, aware of the restrictions imposed by the Regulations of the *Dewan Rakyat*,<sup>26</sup> which forbids any discussion relating to the conduct or personalities of the *Yang di Pertuan Agong* and of the Malay Rulers, the minister went on to explain that the debate was not about any individual Raja but about the Raja institution.

Perhaps, it may be useful here to draw a distinction between the Raja as an individual and as an institution. Although the Raja is said to be the embodiment of the *kerajaan*<sup>27</sup> or the *Raja* institution, the Malays in expressing their resentment against royal injustice and ill treatment have preferred to regard the individual *Raja* as separate and distinct from the institution he symbolizes. As illustrated in the history of Malay politics, for

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<sup>25</sup> The motion which led to the abolition of the royal immunity read:

That the House which sits today feels extremely sad and views seriously the incident involving a Malaysian citizen, Douglas Gomez, who was injured at the *Istana Johor* On 30 November 1992 by the Sultan of Johor.

That the House decides that the incident was an abuse of power which goes against the spirit of the Federal Constitution and was contrary to the aspirations of the laws of the country which are based on the system of constitutional monarchy and democracy.

That the House resolves that all necessary action be taken to ensure that similar Incidents do not recur in the future.

<sup>26</sup> Standing Order 36 (8) inter alia provides that the conduct or character of the *Yang di Pertuan Agong* and of the Rulers shall not be referred to except upon a substantive motion moved for that purpose.

<sup>27</sup> The Raja is the embodiment of the Raja institution in the sense that the term *kerajaan* 'connotes little more than being in the condition of having a Raja'. (see Milner, A.C, supra. p.9.)

example, the regicide of Sultan Mahmud Shah (the last Melakan Sultan) in 1699 was not an attempt to destroy the *kerajaan*, but rather the Sultan himself. Thus, after the assassination of Sultan Mahmud Shah, the *Temenggong* (equivalent to the modern day Inspector General of Police) was installed as the new Sultan and the *kerajaan* system continued to survive right up to the present day.

The political heritage left by the 'traditional' Malays had never been abandoned even though there were opportunities for the "modern" Malays to have done so. The 1946 protest against the formation of the Malayan Union proposed by the British provided the Malay *rakyat* (subjects) with what may be regarded as a useful instrument to demolish the *kerajaan* system. The Sultans had been blamed for signing the MacMichael Treaty in 1945 (a document by which the Rulers' consent was obtained by the British for the implementation of the Malayan Union) without due regard for the well being of the Malay *rakyat*.<sup>28</sup> Disappointed though they were with their Sultans, the Malays had not gone far enough in their protests as to endanger the existence of this *ancien regime*. Rather, it was (as was widely accepted by the Malay nationalists) for the sake of the *Raja* that the Malays had adamantly opposed the Union.

Ostensibly, the slogans '*daulat tuanku*' and '*hidup Melayu*' (God bless the King and long live the Malays) uttered by the Malayan Union protesters symbolized the symbiotic

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<sup>28</sup> The Malayan Union purportedly sought among other things to liberalize Malayan citizenship, which means the immigrant races, namely, the Chinese, Indians and others would automatically acquire Malayan citizenship status irrespective of their origins. They would also be eligible to sit as members of the Malayan Union Legislative Council, a proposal seen by the Malays as a threat to their political dominance.

relationship between the Rulers and the ruled. The reason for this absolute loyalty of the *rakyat* may be more than mere sentimentality. Apart from being the symbol of their cultural past, the Sultans were said to have provided the Malays with a sense of political superiority and security. So, as one scholar describes it, the Sultans and the Malays were united by the same ideology, namely, the 'special position' of the Malays as indigenous people of Malaya.<sup>29</sup> The Malay Rulers therefore acted as a validating mechanism for Malay political hegemony and will probably continue to do so for as long as Malay claims to special rights and position remain unaltered.

Presumably it was on the premise of the above argument that the Deputy Prime Minister, En.Ghaffar Baba (as he then was), supported the statement made by his colleague, Syed Hamid Albar. The former asserted that the tabling of the motion was purely for the purpose of protecting the interests and integrity of the *Raja* institution, rather than for anything else. Thus in order to prevent the Malay sultanates from being subject to the same fate as those other monarchies in the world (such as India, Iran and Indonesia, to name a few), the Sultans had to be reminded of the need to succumb to constitutional rules before it was too late. In short, the Sultans were warned that if they did not wish to be phased out they should conform to the rule of modern-day government. Relatively speaking, the Sultans in Malaysia possess more legislative power than other constitutional monarchs elsewhere in the world. For instance, the *Yang di Pertuan Agong* as well as his brother Rulers are conferred with a significant degree of

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<sup>29</sup> Lowe, V, Symbolic Communication in Malaysian Politics – The Case of the Sultanate, South East Asian Journal of Social Science, Vol.10, no.2 (1982), p.77.

legislative powers by the Federal and the State Constitutions respectively.<sup>30</sup> Furthermore, the individual Rulers, particularly, are also capable of exerting a considerable amount of political influence over the Malay masses.<sup>31</sup>

Clearly, where legislative powers are concerned, the *Yang di Pertuan Agong* and the Rulers have both enjoyed the right to participate directly in the legislative process.<sup>32</sup> Under Article 66(4), for example, the *Yang di Pertuan Agong* is allowed a thirty-day period to give his royal assent to bills passed by Parliament. Moreover, the Rulers, acting collectively in their capacity as members of the Conference of Rulers, are endowed with the power to consent to or to withhold consent from, a bill proposed by the government. It may be argued that as the Constitution does not expressly stipulate any time limit within which the Conference of Rulers must give their consent, then the power of these Rulers in respect of certain legislative matters<sup>33</sup> is far greater than that given to the *Yang di Pertuan Agong*. It is with regard to this unique constitutional arrangement that the government believed that they (the Rulers) should be grateful and careful as not to jeopardize the 'luxuries' which they had been so "generously" given under the *Merdeka* constitutional scheme.

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<sup>30</sup> Article 38(4) of the Federal Constitution for instance, provides the Conference of Rulers with the power to veto any legislation which directly affects their privileges, position, honours or dignities; while Article 66(4) (in its unamended version) provided the *Yang di Pertuan Agong* with the power to withhold assent to bills passed by Parliament for an unlimited period of time.

<sup>31</sup> The Sultan of Kelantan, for instance is said to have been responsible for mobilizing the Malay *rakyat* in his state to support the Pan Malaysian Islamic Party (PAS), an opposition party, which ended UMNO's political hegemony in Kelantan in the 1990 general election.

<sup>32</sup> Lee, H.P, *supra*, p.33.

<sup>33</sup> The legislative matters referred to here are as prescribed by Article 38(2)(c) of the Federal Constitution, which reads: "The Conference of Rulers shall exercise its functions of consenting or withholding consent to any law and making or giving advice on any appointment which under this Constitution requires the consent of the Conference or is to be made by or after consultation with the Conference."

The power possessed by the Sultans, argued the Prime Minister, is a far cry from what they used to enjoy during the colonial period. The Rulers were then at the mercy of the British colonial administrators who even had the power to determine the eligibility of a successor to the throne. In short, the Prime Minister was implying that if the Rulers could have endured such a treatment during those periods, then, given their present position, they should not be making any complaints. In Malaysia, though the Rulers are constitutionally required to act on advice of the executive, namely the Chief Minister or the *Menteri Besar* who is also Head of the ruling party at state level, yet in practice, this is not usually the case.

The 'invisible' power (to borrow Lowe's term)<sup>34</sup> of the Sultan is especially prominent in cases which involve state lands. Thus, although most of the decisions are officially made by the *Menteri Besar* or Chief Minister, the Sultan may be the one who indirectly and informally determines the pattern and pace of land developments in his State. The 1991 Kemensah/*Zoo Negara* (the Kemensah/National Zoo) incident<sup>35</sup> illustrates the point in question. The Sultan of Selangor had in this particular case interfered with the decision of the *Menteri Besar* (Chief Minister) to develop a certain area around the national zoo zone. Consequently, this led to friction between the two. Although the Sultan had not successfully forestalled the whole development project, he had nevertheless managed to force the State government to discard a significant part of it. The positive outcome of his interference is that the Sultan had succeeded in his attempt to prevent the adverse impact which the project might have had on the environment.

However, the interference and abuse of position by the Rulers as is evident in many cases have more often than not produced different results. In some states like Pahang, Perak and Johor, the Chief Ministers were required to relinquish their offices because they had fallen out of their Sultans' favour. The Johor case is one of the classic examples. The *Menteri Besar*, Tan Sri Othman Saat, had had literally to vacate his office in 1981 on the instruction of the then newly installed Sultan of Johor, Sultan Mahmood Iskandar. The Sultan, claimed by some political observers, was displeased with the *Menteri Besar* because of the latter's unsupportive reaction to the appointment of the Sultan as the new Ruler.<sup>36</sup>

The *Menteri Besar* appeared to have believed that the appointment was in violation of a provision of the State Constitution relating to royal succession. In Johor, although the power to appoint a successor belongs exclusively to the reigning Sultan, Article 7(1) of the Constitution simultaneously provides that, "it is a normal practice for the *Menteri Besar* to give his advice and opinion about such appointment". Obviously in this case the *Menteri Besar* had not been consulted. A rift was therefore created between the palace and the State government. However, as the issue of the validity of the appointment was not legally pursued, there was no judicial opinion expressed on the status of the new Ruler.

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<sup>34</sup> Lowe, V, supra, p.85.

<sup>35</sup> See Chapter 5.

<sup>36</sup> Chamil Wariya, *Krisis Sultan dan Menteri Besar – Apa Sebenarnya Yang Terjadi?* (The Sultan and the Chief Minister's Crisis – What Actually Happened?), Penerbit Media Indah Sdn.Bhd., Kuala Lumpur, 1992, p.106.

It would be interesting to note that, in this case as well as in other cases which involved a clash between the Ruler and the State government, the problem seems to have revolved around the question of the right of the former versus the power of the latter. The words 'consultation' or 'advice' appear to have played a crucial part in generating the kind of atmosphere which places the two parties in a conflicting situation.<sup>37</sup> Thus normally as the Johor case illustrates, the 'head-on collisions' between the Ruler and the politically elected leader would arise when the demarcating line between the power of the Sultan (especially one which is discretionary in nature) and that of the *Menteri Besar* is blurred by the presence of certain ambiguous constitutional provisions. For example, though the term 'advice' may not create any ambiguity in the mind of the British monarch, it nonetheless carries a different connotation in so far as the Malay Rulers are concerned.

The trend amongst the Malay Rulers had been that beyond the simple meaning of the word 'advice' there was nothing more to be inferred, which means to say that they could only be advised but not instructed. Their Highnesses' understanding of this as well as of other constitutional concepts often led to a bitter confrontation between them and the elected leaders. To aggravate the matter, the Federal Constitution itself contains several provisions which blur the distinction between a constitutional and an absolute monarchy. Articles 38(4),<sup>38</sup> 38(5),<sup>39</sup> 139(4)<sup>40</sup> and 141A(2)<sup>41</sup> for instance, create the

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<sup>37</sup> A clear example of this is the appointment of *Menteri Besar* (Chief Minister) of Selangor and Pahang in the late 1980s and 1970s respectively.

<sup>38</sup> Article 38(4) provides that: No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.

<sup>39</sup> Article 38(5) provides that: The Conference of Rulers shall be consulted before any change in policy affecting administrative action under Article 153 is made (Article 153 deals with the special rights and

impression that the Rulers indeed have an over-riding or veto power in certain matters so much so that they tend to be 'carried away' with the thought that such power is exercisable in other areas as well. Unfortunately, no solution could be had from the vaguely understood constitutional conventions imported from the United Kingdom.

The constitutional rule that the king should not meddle in politics, for instance, may have been well understood and strictly observed by the British monarch. However, until the constitutional crises in 1983 and 1993, the Malay Rulers have been grappling with the fact that they are not absolute rulers anymore since *Merdeka*. There were many occasions on which the Rulers deliberately interfered with politics, particularly, in Pahang, Selangor, Perak and Johor. Most of these cases involved the appointment of the *Menteri Besars*. The way out was usually not an easy one. Rarely had conventions as applied in the United Kingdom been successfully invoked to clothe the bare bones of the Malaysian constitution unless they had been properly incorporated into it.

The best, though not necessarily the right alternative to be taken is to have the constitution amended in order to remove whatever ambiguity there is in that document. Indeed, that is precisely the solution which the federal government took in 1983 when it

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privileges of the Malays and natives of Sabah and Sarawak (East Malaysia), and the legitimate interests of other communities).

<sup>40</sup> Article 139(4) provides that: The Public Services Commission shall consist of the following members appointed by the *Yang di Pertuan Agong* in his discretion but after considering the advice of the Prime Minister and after consultation with the Conference of Rulers, that is to say, a Chairman, a Deputy Chairman and not less than four nor more than thirty other members.

<sup>41</sup> Article 141A(2) provides that: The Education Service Commission shall consist of the following members appointed by the *Yang di Pertuan Agong* in his discretion but after considering the advice of the Prime Minister and after consultation with the Conference of Rulers, that is to say, a Chairman, a Deputy Chairman and not less than four but not more than eight other members.



amended Article 40 of the Federal Constitution. As a result, Clause (1A) was inserted into the Article. It reads: “In the exercise of his functions under this Constitution or federal law, where the *Yang di Pertuan Agong* is to act in accordance with advice, on advice, or after considering advice, the *Yang di Pertuan Agong* shall accept and act in accordance with such advice.”

By drawing clearly the line beyond which the Rulers might not overstep, the nail on the coffin seems to have been securely hammered in. The government, prior to the 1983 amendment, had normally adopted a non-drastring approach by giving in to the wishes of the Sultans. From what transpired throughout those preceding years, the impression is that the submission of the politically elected leaders to the will of the traditional Rulers was ostensibly motivated by political convenience and expediency rather than by genuine deference.<sup>42</sup> But as the years passed, the relationship between the UMNO party and its feudal ally began to acquire a somewhat different dimension. The kind of mutual dependency which markedly characterized their alliance previously had gradually developed into one of open hostility, as evident from the verbal attacks on the Rulers by a number of the UMNO delegates in the party's 1990 General Assembly. The events following the 1983 constitutional crisis testify the radical change in the perception of the UMNO Malay leadership towards the traditional Rulers and their position on the party's political agenda.

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<sup>42</sup> To sever any link with the Rulers in the those days would mean to lose the rural Malays' support upon which the UMNO's strength largely depended (See Singh, H, UMNO Leaders and Malay Rulers: The Erosion of a Special Relationship, Pacific Affairs, October 1994 issue, p. 191).

Given the mood of Malay society and the prevailing political atmosphere in those pre-1993 years, it was not unusual for the party to bear in mind the necessity of securing the Sultan's support and pleasure before submitting the name of its candidate for the office of *Menteri Besar*. Failure to do so would incur the wrath the Sultan, and the refusal to assent to bills passed by the State legislature is one of the royal ways of signifying displeasure with the *Menteri Besar*. The other method is by way of absenting himself from functions at which royal attendance was much desired, for instance, at the opening of a new session of the State Assembly.<sup>43</sup> This kind of behaviour and also the Rulers' participation in what were popularly perceived as immoral activities by the Malay and Islamic standard,<sup>44</sup> are some of the examples which have become common knowledge to the public.

Thus determined to put an end to the kind of unwarranted behaviour of the Rulers (and also of their royal families), the government proceeded to act. The Gomez incident provided a good opportunity and an excuse for the government to act firmly against what was seen by many as a royal abuse of position and power. A warrant of arrest was therefore issued against Tunku Majid arising out of the hockey incident, and the police were instructed to investigate the allegation of assault lodged against the Sultan of Johor.<sup>45</sup>

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<sup>43</sup> A good example is the case where the Sultan of Selangor had purposely failed to attend the opening ceremony of the new session of the State Assembly fixed on 8 November 1991. (See Chamil Wariya, *Suara Bicara Melayu Baru: Minda dan Fikrah Muhammad Taib* (The Voice of the New Malays: The Thought and Ideas of Muhammad Taib), Media Indah Sdn.Bhd., Kuala Lumpur, 1993, p. 126.

<sup>44</sup> The Sultan of Pahang, for instance is well noted by those close to the palace, for his indulgence in gambling; and the Sultan of Johor is widely believed by the public to have caused the death of a caddy (see *Dewan Rakyat* debates 1993).

<sup>45</sup> *Berita Harian*, 12 Disember 1992.

## 2.4 The Legal Obstacles

The government considered that the presence of certain constitutional and statutory provisions had made it impossible to take any legal action against the Sultan of Johor, or against any Rulers who transgressed the law while acting in their personal capacities. The biggest obstacle was Article 181(2)<sup>46</sup> which provided the Rulers with a 'licence' to avoid legal proceedings. Without removing this special legal protection, the government would in this particular case be left powerless vis-a-vis the Rulers. Hence, some kind of justification was considered by the government to be necessary to overcome the prohibitive effect of that constitutional provision. The Attorney General suggested that although it would be impossible to press any charges against the Sultan of Johor, nevertheless the result of the investigation would provide the government with a sound basis for the proposed constitutional amendments.

In line with the motion passed by the *Dewan Rakyat*, the UMNO Supreme Council held an urgent meeting, and a resolution was then passed, supporting the proposed amendment of the relevant articles in the Constitution. Subsequently the resolution was duly adopted by the *Barisan Nasional* (National Front) Supreme Council in their emergency meeting. The Prime Minister later made an announcement that a special session of Parliament would be called to effect changes to the Constitution. The first draft of the Constitution (Amendment) Bill 1993 was prepared by the Attorney General, but only to be rejected unsurprisingly by the Rulers after a series of difficult negotiations.

Legally speaking, the amendment bill could not have been validly passed without the Rulers' consent (see Article 38(4))<sup>47</sup>. On that basis, the bill would have to be approved first by the Conference of Rulers before it could be pushed through the *Dewan Rakyat*. However, acting contrary to the unambiguous wording of the article, the Prime Minister, in what observers might consider a somewhat maverick manner, opined that what the government sought to do was not to push a 'law' through the Parliament, but merely a 'bill'. As the relevant article specifically referred that " No law [emphasis added] directly affecting the privileges, honours or dignities....", therefore the Constitution (Amendment) Bill 1993 did not, according to the Prime Minister, fall within the ambit of the said provision. Contrived though it might have appeared, the Prime Minister's construction of the law had nevertheless raised two interlocking issues: first, whether the interpretive section<sup>48</sup> of the Constitution was sufficiently comprehensive as to include the item 'law' in its embryonic form; second, whether such an inclusion is necessary at all? On this, one might argue that it would be absurd to accept a suggestion that a bill should not be included within the category of 'law' simply because it lacked certain procedural requirement which would make it legally enforceable. Moreover, as Raja Azlan Shah Ag L.P said in the case of Dato' Menteri Othman bin Baginda v Dato' Ombi Syed Alwi bin Syed Idrus<sup>49</sup> that:

"In interpreting a constitution two points must be borne in mind: first, judicial precedence plays a lesser part than is normal in matters of statutory

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<sup>46</sup> The unamended version of Article 181(2) read: "No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity".

<sup>47</sup> Article 38(4) states that: "No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers".

<sup>48</sup> Article 160 states that: "Law 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."

<sup>49</sup> [1981] 1 M.L.J 29 at p.32.

interpretation; and secondly, a constitution being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way 'with less rigidity and more generosity than other Acts'(see Minister of Home Affairs v Fisher)<sup>50</sup>.....”

Based on this argument it would appear that the word 'bill' need not be specifically spelt out in that Article. On the other hand, one could also suggest that being constitutional rulers, the Sultans (including the *Yang di Pertuan Agong*), are bound by the constitution and conventions to accept the government's proposal whether they like it or not. The only question here is whether the conventional rule of 'acting upon advice' as incorporated under clauses (1) and (1A) of Article 40 is overruled by Article 38(4)? Assuming that the latter does actually exclude the word 'bill' from its purview, as suggested by the Prime Minister, then the bill which proposed to remove the royal immunity could still become 'law despite the objection of the Conference of Rulers and of the *Yang Pertuan Agong* by virtue of Clauses (4) and (4A) of Article 66.<sup>51</sup> However, the danger of narrowly interpreting the Federal Constitution in this case is that it might defeat the very purpose of having a provision, which among other things, sought to define the Malay character of the constitutional system of Malaysia. To construe it so narrowly would render the whole of Article 38(4) meaningless for the word 'consent' therein would no longer be relevant in such a case. Moreover if such a strict interpretation would only benefit the government at the expense of the *rakyat*, the likelihood of further abrogation of constitutional principles (such as the rule which

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<sup>50</sup> [1979] 3 All E.R 21 at p.26.

<sup>51</sup> Article 66(4) provides that: "The *Yang di Pertuan Agong* shall within thirty days after a Bill is presented to him assent to the Bill by causing the Public Seal to be affixed thereto"; Clause (4A) provides that: "If a Bill is not assented to by the *Yang di Pertuan Agong* within the time specified in Clause (4), it

requires the government to act within the constitutional framework) by those in power would be increased.

So far, however, this issue had not been judicially resolved since no reference was ever made by the *Yang di Pertuan Agong* to the court for its opinion under Article 130.<sup>52</sup> Notwithstanding that the Prime Minister had at some stage indicated that the government might refer to the Court if the Rulers could not agree to the amendment, no such action had ever been taken. Some observers believed that the lack of serious initiative on the part of the Rulers, in particular, to take the matter up was largely due to the fact that they feared more harm than good would be done to their reputations. This belief was supported by the evidence that one of the ministers had actually warned the Rulers of the 'consequences' that they might have to bear if they decided to challenge the matter in court.<sup>53</sup> Already battered by the media revelations of their misdeeds and extravagance<sup>54</sup>, the Rulers might have thought that it would be wise not to provoke further attacks on their characters and dignities. Unsurprisingly enough, even the *Yang di Pertuan Agong* had not invoked Article 130, under which he could refer disputes to the Federal Court for its opinion. His reluctance led certain observers to speculate that the king had lost faith in the judicial system.<sup>55</sup> Such observation might hold some validity. It had been reported that the Minister of Law and Justice was quoted saying

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shall become law at the expiration of the time specified in that Clause in the like manner as if he had assented thereto".

<sup>52</sup> Article 130 provides: "The *Yang di Pertuan Agong* may refer to the Federal Court for its opinion any question as to the effect of any provision of this Constitution which has arisen or appears to him likely to arise, and the Federal court shall pronounce in open court its opinion on any question so referred to it."

<sup>53</sup> *Utusan Malaysia*, 5 Februari 1993.

<sup>54</sup> For example, see *New Straits Times*, *Utusan Malaysia*, *The Star* and *Berita Harian* (the 14, 16, and 19 January 1993 issues).

that, "...members of the royalty should place their confidence in the judicial system, and that they should not distrust the system."<sup>56</sup> The statement was made by the minister in his response to a report which alleged that certain 'members of the royalty' had told foreign news agencies that the Malaysian judiciary was not independent. Whatever the true reason was, the speculation had been that the Rulers feared that recourse to any judicial proceedings against the government would further damage their relationship with the latter and this could lead to more revelations of their private lives by the government controlled media. On this score, it appeared that the government had won the game.

Thus presumably hoping that the government would not aggressively pursue the matter, the Rulers had asked for a further period to study the draft bill before they could actually come to any conclusion. Based on the premise that the amendment sought to be achieved would radically affect both their sovereignty and the power of the states, the Rulers proposed that "a more detailed study of the principles and mechanisms involved in the proposed amendments incorporated in the bill be made."<sup>57</sup> The issue of sovereignty broached by the Rulers remains one of the twilight areas of constitutional law, at least in Malaysia right up to this date. The leader of *Semangat 46* (the Spirit of 46, a name chosen by the UMNO dissidents for their newly formed party when the UMNO membership split into factions after the 1987 party election) in his parliamentary

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<sup>55</sup> Lee, H.P, p.95.

<sup>56</sup> New Straits Times, 8 February 1993.

<sup>57</sup> The request for further deliberations was made in a statement issued under the authority of the Conference of Rulers which reads inter alia: "Bearing in mind the complex constitutional structure in Malaysia, the Conference of Rulers considers it only desirable that a more detailed study of the principles

speeches about the amendment, argued that the removal of the royal immunity would render the Rulers' sovereignty meaningless. The act of stripping away the Rulers' immunity was contrary to the universally accepted principle regarding the status of the Heads of State. The sovereignty of a State is symbolized by the presence of a sovereign who is immune, and the sovereignty of a Ruler is in turn symbolized by that immunity.<sup>58</sup>

The perplexing question here is whether immunity is essential in determining the sovereignty of a Ruler. In the case of Dato' Menteri Othman Baginda v Dato' Ombi Syed Alwi bin Syed Idrus, the Federal Court was faced with the task of deciding whether an *Undang* (one of the Ruling Chiefs of the state of Negeri Sembilan) was entitled to royal immunity conferred by the Constitution on the Rulers under Article 181(2). Salleh Abas F.J in his judgment said:

“...the immunity under Clause (2) is one of the results or consequences of being a Ruler and not vice-versa....the first question as regards Clause (2) is whether an *Undang* enjoys the immunity, and this question in fact depends upon whether the word ‘Ruler’ in that Clause includes also the Ruling Chiefs...In Clause (1) of Article 181, the Rulers and the Ruling Chiefs are mentioned separately whereas in Clause (2) only the Rulers are mentioned, and not the Ruling Chiefs. Even under Clause (1) itself, there is a difference in that the Ruling Chiefs do not possess sovereignty though they have prerogatives, powers and jurisdiction, whereas the Rulers have all the four attributes..... One therefore could conclude that the framers of the Federal Constitution did not intend to treat an *Undang* to be on equal footing as a Ruler who belongs to a royal ancestry, though an *Undang* is part of the Ruler of Negeri Sembilan. In my view the difference in status between the Rulers and the Ruling Chiefs as stated in Clause (1) is highly relevant in interpreting the word ‘Ruler’ in Clause (2). It is the sovereignty

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and mechanisms involved in the proposed amendments incorporated in the bill be made.”(See the *Dewan Rakyat* Debates, 18 January, 1993).

<sup>58</sup> *Dewan Rakyat* Debates, 18 January, 1993.



possessed by the Rulers which make them immune from judicial proceedings in their personal capacity”.<sup>59</sup>

Whether immunity does actually define the sovereignty of a ruler is not always an easy question to answer. The issue of sovereignty of a Malay Ruler was raised in as early as 1894 in Mighell v Sultan Abu Bakar of Johor.<sup>60</sup> In that case, the Sultan while residing in the United Kingdom under a fictitious name, was sued for breach of contract to marry. He pleaded immunity from the proceedings on the ground that he was a sovereign of a foreign state. The court held that a sovereign or a sovereign state, its government or its property was not subject to the jurisdiction of the Court. The courts in Duff Development Co. v Government of Kelantan<sup>61</sup> and The Pahang Consolidated Co.Ltd. v The State of Pahang<sup>62</sup> upheld the principle in Mighell. As far as those cases are concerned, the question of ‘sovereignty’ was one which centred on the relationship between a ruler of an independent state and that of another. However, the meaning of ‘sovereignty’ referred to by the Conference of Rulers in their letter of objection to the government’s proposal for the constitutional amendment in 1993 might not bear the same meaning with the one envisaged by the courts in Mighell or in the Pahang Consolidated Co. cases.

In the first place what does this word ‘sovereign’ (from which the term ‘sovereignty’ derives) mean? One authority tells us, “it implies a theory of politics which claims that in every system of government there must be some absolute power of final decision

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<sup>59</sup> Supra, at pp.34-36.

<sup>60</sup> [1894] 1 Q.B 149

<sup>61</sup> [1924] AC 797.

<sup>62</sup> [1931-32] FMSLR 390.

exercised by some persons or body recognized both as competent to decide and as able to enforce the decision”<sup>63</sup>. In the light of this definition, the Malay Rulers (including the *Yang di Pertuan Agong*) do not seem to fit into this category of ‘sovereign’, for their powers are no longer absolute. Since *Merdeka* the Malay Rulers are required to act on the advice of the government, a convention which was reinforced and incorporated into the Federal Constitution in 1983. Hence the definition of ‘sovereign’ remains debatable. Should the word be interpreted in the light of local practices or usages (*adat*) and Malay understanding?

Hickling suggests that as far as the Malays are concerned, it is often “more realistic” to define sovereign as *kerajaan*.<sup>64</sup> If such is the case, then it might be argued that ‘sovereignty’ should mean ‘*kedaulatan*’ (the root word of which is ‘*daulat*’), which refers to not only power per se, but also to the cultural and religious aspects of the Malay Raja and *kerajaan*<sup>65</sup>. The term ‘*daulat*’ is, as explained in Chapter 3, derives from the belief that a Raja is of an ‘impeccable’, or, in other words, a flawless lineage, a criteria which determines the legitimacy of a ruler to rule. If this is what is meant by ‘sovereignty’, then arguably, the 1993 constitutional amendments (which among other things, recognize that a Malay Ruler may be sued in a special court for offences committed under the civil or criminal law) have symbolically ‘invalidated’ the *daulat* of the Malay Rulers, and hence their legitimacy to rule. Consequently, since the *Yang*

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<sup>63</sup> International Encyclopedia of the Social Science (1968), Vol.15, 77 article by Bernard Crick.

<sup>64</sup> Hickling, R.H, Malaysian Public Law, Pelanduk Publications (M) Sdn.Bhd., Selangor, Malaysia, p.54.

<sup>65</sup> In the sense that according to some interpretations, the king represents the shadow of god on earth.

*diPertuan Agong* was drawn from among the Rulers of the nine Malay States<sup>66</sup>, he too would have been disqualified as a monarch.

Returning to the case of Dato Menteri Othman Baginda, Suffian L.P, on the other hand, while expressing doubts whether an *Undang*<sup>67</sup> could enjoy the immunity provided under Clause (2), had nonetheless thought that such immunity is usually an attribute of sovereignty.<sup>68</sup> In the light of the above case, the argument that a sovereign without immunity is an 'incomplete' or a 'meaningless' sovereign is not totally unfounded. Since one of the attributes of a Ruler is being immune, it follows that by removing his immunity, one is in actuality removing part of those characteristics which distinguish a sovereign from a non-sovereign. On this point it might be worth quoting Hickling who wrote:" The principle of immunity is regarded as of paramount importance: for without it the essential hierarchy of sovereign authority would be lost, just as without, say, the doctrine of *stare decisis* the common law itself would fade into anarchy."<sup>69</sup> If such is the importance of immunity, it is thus not surprising that the Rulers had put up such a resistance against the constitutional amendments.

Unfortunately, the Malays were very much in a dilemma as the choice which they had to make in this case was not an easy one. The ambivalence of having to choose between

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<sup>66</sup> The office of the *Yang di Peruan Agong* is a rotational one. An *Agong* is elected from among the Rulers of the nine Malay States by the *Majlis Raja-Raja* (Conference of Rulers) as provided by Article 38 of the Federal Constitution.

<sup>67</sup> A traditional ruling chief in the state of Negeri Sembilan.

<sup>68</sup> *Supra*, p.38.

<sup>69</sup> Hickling, R.H, *The Prerogative in Malaysia*, in his *Essays in Malaysian Law*, Pelanduk Publication (M) Bhd. Petaling Jaya, Selangor, 1991, p.207.

the two equally important but competing elements which characterize Malayness was well reflected by PAS in its argument against the amendments. As a party which claims itself as the champion of the Islamic cause, PAS seemed to have some problems in attacking the amendments. The party was actually challenging the bill on two fronts: Malay and Islam. From the Islamic perspective, the abolition of the royal immunity was no doubt applauded (having claimed itself an Islamic party, it therefore supported the idea of treating everybody equal before the law, as required by Islam) But from the Malay point of view, the fact that the abolition was affecting their Malayness<sup>70</sup> was not something they would heartily welcome. Thus, as Islam abhors all kinds of injustice, to exclude the Rulers from any civil or criminal liabilities arising out of their own wrong doings is to go against the basic principles of the religion.

The party, in objecting against the amendments, had to tread on a very fine line when debating this issue. The problem of striking the right balance between the conflicting demands of the *bangsa Melayu* and the religion of Islam is clearly portrayed in the arguments put forward by the party's representatives during the *Dewan Rakyat* debates. It appears that though on the one hand PAS rejected the concept of immunity embodied in the constitution (which it often criticized as secular and 'unIslamic'), it had, on the other, inconsistently suggested that careful and proper considerations be exercised

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<sup>70</sup> The reason for the Malays preferring a federation to a union in 1946, is because the latter would in effect eliminate the Malayness or the character of the Malay States. The transfer of the sovereignty of the Malay Rulers to the British monarch would mean the surrender of Malay rights to the Malay Peninsula.

before one could actually amend Articles 71<sup>71</sup> and 181. Their reason being that these provisions formed the very basis of the federal system that was now in existence.<sup>72</sup>

Judging from that reasoning, one could conclude that what PAS was actually saying is that, in essence the federation – the creature of this secular constitution – would collapse if the government carelessly proceeded to tamper with those Articles by means of the proposed amendments. To oppose any tampering with the constitution was therefore equivalent to upholding the sanctity of the secular document. Even though this was not explicitly mentioned by the PAS representative in his ‘Islamically’ shrouded argument, the implication is nonetheless clear. By invoking the basis upon which the federation was constructed, and also acknowledging the importance of sticking to the agreed terms (one of which was the Rulers’ immunity), it is obvious that the party had either consciously or unconsciously contradicted its earlier call to the adherence of Islamic principles of justice.

The stance of the PAS party on this issue is not very hard to understand, given that the party had allegedly gained the support and blessing of the Sultan of Kelantan in the previous general election of 1990. Thus, while it would be unIslamic not to oppose the amendment, it would nonetheless be ‘un-Malay’ not to defend the Rulers. Presumably it was in the belief that the Malays were not ready to waive their Malayness, part of which

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<sup>71</sup> Article 71(1) states: “ The Federation shall guarantee the right of a Ruler to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State; but any dispute as to the title to the succession as Ruler of any State shall be determined solely by such authorities and in such manner as may be provided by the Constitution of that State.”

is fundamentally characterized by being in the condition of having a Raja, that is, the *kerajaan*, that prompted the Rulers to oppose the amendments. It was in this belief, too, that the government was forced to persuade the Sultan of Johor to cancel his 'perhimpunan bersama rakyat' (a gathering with the *rakyat*), due to be held on 8 January 1993 at his royal compound. Although the Sultan did finally back down, such a gesture on the part of the government had indirectly suggested that the Malay Rulers still held a considerable degree of influence among the *rakyat*; notably those of the state of Johor.

One important point about Johor which is worth noting is that, being the birthplace of Malay nationalism (UMNO was first formed at the Johor palace), the pride of the Johor Malays should never be taken lightly.<sup>73</sup> As the Sultans, too, played a very important role in the anti-Malayan Union protests, it would be an understatement to say that the nostalgia of the 1946 event had easily slipped their memory. To add to its historical significance, Johor had been the very place where the *kerajaan* system was resurrected out of the ruins of the Melaka empire after its downfall at the hands of the Portuguese in 1511. Hence, the birth and the resurrection of two most important political entities which took place in the Johor state had generated a different sense of pride among the Johor Malays.

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<sup>72</sup> See Haji Hadi Awang's speech in the *Dewan Rakyat* debates, 10 December 1992.

<sup>73</sup> *Far Eastern Economic Review*, 21 January 1993.

Indeed, their unique attitude towards the *kerajaan* is well noted in the editorial opinion of one of the leading Malay language newspapers.<sup>74</sup> The editorial reminded its readers that the Johor history, culture and tradition must be clearly understood.

“It [referring to the historical and cultural tradition of the state] is moulded, among other things, by the civilization relevant to the greatness of the Johor-Riau empire of the past. Inevitably, the history of its once glorious *kerajaan* has helped to shape the attitude and determine the values cherished by the Johor Malays”.

The same applies to the concept of *kesetiaan* (loyalty) to the Raja. “Johor”, continues the editorial, “has always been very proud of its monarchical heritage and of the tradition related to the *istana*. The modern Rajas of Johor are still being associated with all kinds of myths and legends, which serve to promote their greatness in the eyes of the *rakyat*.”

Although this is nothing more than a mythical anecdote, it has nevertheless become part of the local folklore which helped to define the psyche of Johor Malays in relation to the Raja institution. The *Utusan* editorial believed that although the present Johorians might have been modernized in their outlook, yet in this particular aspect, they appeared to have retained some of the feudalistic values. Thus, it is not surprising that soon after the Sultan announced the cancellation of the *perhimpunan bersama rakyat*, many of the UMNO leadership publicly sighed with relief.<sup>75</sup> Notwithstanding that no proper sociological survey of opinions of the Johor Malays had ever been conducted in this case, the government was nonetheless reluctant to take any chances; and its fear of the

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<sup>74</sup> *Utusan Malaysia*, 5 Januari 1993.

possibility of the Johorians defending their Sultan was mirrored in the way it reacted to the proposed *perhimpunan*.

Obviously, the removal of the immunity provisions entailed several other obstacles apart from the problem posed by Article 38(4). In order not to be caught by the constitutional provision which prohibits any discussions or utterances which would excite ill feelings against the *Yang di Pertuan Agong* and the Malay Rulers, the government had to legally lift the bans imposed by Articles 63(4) and 72(4).<sup>76</sup> Under these Articles members of Parliament would not be protected by parliamentary privilege pertaining to freedom of speech if their speeches fell within the category prescribed by Section 3(1) of the Sedition Act 1948.<sup>77</sup> The effect of the 1993 constitutional amendment is that it helped to restore the privilege of members of Parliament to discuss those matters, which were previously considered taboo under the old provision. The amendment to these two provisions was easily achieved in view of the government's overwhelming control over the *Dewan Rakyat*. through its two-thirds majority.

What makes it interesting in this case is that the debates about the *Raja* issue had actually occurred before the amendment to Articles 63(4) and 72(4) were effected. Thus,

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<sup>75</sup> Ibid.

<sup>76</sup> Clauses (4) of these Articles were incorporated into the Constitution via the Constitution (Amendment) Act 1971, which was enacted as the aftermath of the 1969 racial riots in Malaysia.

<sup>77</sup> Section 3(1)(a) of the Act describes a seditious tendency as: "to bring into hatred or contempt or to excite disaffection against any Ruler or against any government"; and paragraph (f) of the Section also provides that it is a seditious tendency to "question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III (citizenship) of the Constitution, or Articles 152 (national language), 153 (special rights of the Malays), or 181(saving clause for the Rulers) of the Federal Constitution."



by engaging in these discussions, the members of Parliament were in fact contravening former provisions. In other words, they should have been liable to legal proceedings under the Sedition Act. However, except for a few of the representatives of the opposition party, none had actually complied with the constitutional restrictions, and the government achieved its objective again. As for the Rulers, the only means of protesting was by delaying their decisions. This tactic had annoyed the Prime Minister who retorted by saying that the Rulers had been given enough time to deliberate and that there was no excuse for any extension.<sup>78</sup> The government proceeded with the tabling of the bill on 18 January 1993 in a special sitting, and on the next day it was approved by more than a two-thirds majority of the *Dewan Rakyat*. As expected, the bill was approved by the *Dewan Negara* (the Senate) in its one-day session on 20 January 1993.

However, the battle did not end there. The *Yang di Pertuan Agong* had refused to give his royal assent to the bill. Initially, both parties were not willing to retreat. The *Yang di Pertuan Agong* appeared to have fully exhausted his discretionary power under Article 66 (4).<sup>79</sup> This provision was amended following the 1983 constitutional crisis which ended with the government giving the *Yang di Pertuan Agong* thirty days to signify his assent, instead of fifteen days as originally proposed. As far as this provision is concerned, there was no major obstacle for the government to enforce the bill. Article 66(4A) provides that: “ If a Bill is not assented to by the *Yang di Pertuan Agong* within the time specified in Clause (4), it shall become law at the expiration of the time

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<sup>78</sup> *Utusan Malaysia*, 19 Januari 1993.

specified in that Clause in the like manner as if he had assented thereto.” Thus, in essence, the new Article 66(4) was not as useful to the *Yang di Pertuan Agong* as it might have been prior to the 1984 amendment. The *Yang di Pertuan Agong* could under the old provision withhold his assent for an unlimited time. Though this would not be conventionally correct, the fact remains that rules which lie outside the constitution are not legally enforceable. The Stephen Kalong Ningkan case confirms this. It was therefore for the purpose of effectively dealing with a ‘defiant’ monarch that the government had amended the Constitution in 1983. By inserting Clause (4A), the government finally cleared the doubts about the extent of the *Yang di Pertuan Agong*’s power under Article 66(4), thereby putting an end to any royal maneuvering in respect to the constitutional lacuna.

The next provision to be amended was Article 42, which gave the *Yang di Pertuan Agong* and the Rulers the power to grant pardons.<sup>80</sup> The amendment, for reasons explained above, was not too difficult to achieve and consequently Clause (12) was inserted to exclude the *Yang di Pertuan Agong* or a Ruler from hearing his own appeal. In this way, the removal of their royal immunity would not be defeated, for otherwise, the *Yang di Pertuan Agong* or a Ruler could arguably have used this power to pardon themselves. Under the amended version, the *Yang di Pertuan Agong*, or a Ruler in the

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<sup>79</sup> Article 66(4) was amended by the Constitution (Amendment) Act 1984. It now reads: “The *Yang di Pertuan Agong* shall within thirty days after a Bill is presented to him assent to the Bill by causing the Public Seal to be affixed thereto”.

<sup>80</sup> Article 42(1) in its unamended form read: “The *Yang di Pertuan Agong* has the power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial and all offences committed in the Federal Territories of Kuala Lumpur and Labuan; and the Ruler or the *Yang di Pertua Negeri* has the power to grant pardons, reprieves and respites in respect of all other offences committed in his State.”

relevant circumstances, will be heard and adjudged by the Conference of Rulers. However, the latter is bound to consider a written opinion of the Attorney-General. In hindsight, the whole precaution (namely, the exclusion of the *Yang di Pertuan Agong* and the Ruler in a case where they are the appellants) appears redundant, as the monarch or the Ruler is obliged to act upon the advice of the Pardon Board constituted for that matter;<sup>81</sup> and the Pardon Board shall have to consider the written opinion of the Attorney General.<sup>82</sup>

## 2.5 The Loss

The greatest loss suffered by the Rulers as a result of the amendments is obviously that of the privilege of being above the law. Perhaps they are in a less fortunate position than the commoners in terms of the right of appeal against the decision of the trial court. While the latter are able to appeal to a higher jurisdiction, the Rulers are not allowed to appeal against the decision of the Special Court<sup>83</sup>. Article 182 (6) states that:

“ The proceedings in the Special Court shall be decided in accordance with the opinion of the majority of the members and its decision shall be final and conclusive and shall not be challenged or called into question in any court on any ground.”

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<sup>81</sup> Article 42(4)(a) provides that: “ The powers mentioned in this Article are, so far as they are exercisable by the *Yang di Pertuan Agong*, among functions with respect to which federal law may make provision under Clause (3) of Article 40.” Clause 4(b) of the Article states that: “ the powers mentioned in this Article shall so far as they are exercisable by the Ruler or the *Yang di Pertua Negeri* (the Governor) of a State, be exercised on the advice of a Pardon Board constituted for that State in accordance with Clause (5).”

<sup>82</sup> Article 42(9) of the Federal Constitution.

<sup>83</sup> The name given to the court created by the constitutional amendment of 1993.

The only avenue left for a Ruler who is convicted and sentenced by the Special Court is therefore to hope for a free pardon from the Pardon Board constituted under Article 42(5).

Apart from the legal immunity, the Rulers had also lost several other 'non-constitutional' privileges such as the exclusive use of the royal hospital wards, and the services of government nurses who are especially attached to the palace. The Deputy Health Minister revealed that the government nurses attached to the palaces would be re-deployed if their services were deemed unnecessary.<sup>84</sup> Perks such as services provided by the Malaysian Royal Air Force for royal flights and maintenance of royal aircraft had been terminated.<sup>85</sup> There would be no more free postage facilities for the Rulers. They could also no longer exercise the unauthorized power to order or instruct government officers as they used to do before the amendment.<sup>86</sup>

There is also an invisible loss suffered by the Rulers. The traditional sense of respect shown by the *rakyat* to the Raja (due to their deeply embedded belief in the Raja's extraordinary origin) has finally been eroded. The fact that excruciating details of the Rulers' extravagance and self-indulgence had been splashed all over the pages of the leading Malay newspapers, namely, the *Utusan Malaysia* and *Berita Harian*, and the

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<sup>84</sup> New Straits Times, 8 February 1993.

<sup>85</sup> New Straits Times, 5 February 1993.

<sup>86</sup> The Sultan of Kelantan was said to have instructed the transfer of certain State Government officers who were suspected as UMNO sympathizers to PAS strong-holds in a bid to undermine the chances of UMNO winning the 1990 general election. (See Chamil Wariya, *Krisis Sultan – Menteri Besar* (The Sultan-Menteri Besar crisis) Media Indah Sdn.Bhd., Kuala Lumpur, 1992, pp.86 & 87; see also Shad Faruqi, supra, note 26, p.20.

supportive reaction shown by the readers (except those who subscribed to the views of PAS) to these revelations, demonstrated the degree of such erosion. Evidence of the changing attitude of the Malays towards the 'impeccability' of the Rajas may also be gathered from the readers' columns, not only of the *Utusan* and *Berita Harian*, but also of the leading English language newspaper, namely the New Straits Times.<sup>87</sup> It should be noted that the manner and the tone in which these opinions were expressed were sometimes abrasive. The deluge of criticisms directed against the Rulers exemplify a new departure from the 'traditional' Malay ways of expressing anger and frustration at the Rajas.<sup>88</sup>

One might say that the Malays had eventually found a different sense of courage to speak out their minds about the perceived injustices inflicted on them by the once highly revered and uncriticisable class of Rulers. In a way, one could conclude that the twin concepts of *taat setia and derhaka* (unswerving loyalty and treachery) championed by the legendary Malay paladin, Hang Tuah, which had so pervaded Malay society previously were now being replaced by the principle advocated by his antithetical character, Jebat, namely, *Raja adil Raja disembah, Raja zalim Raja disanggah* (a just Raja shall be obeyed, an unjust Raja shall be rejected). It was this principle which had been used repeatedly by the government in their bid to win the support of the Malay masses in the crisis; hence, by a stroke of the legislator's pen, the rebel (Jebat) was effectively recreated as a hero of the post-post *Merdeka* Malays.

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<sup>87</sup> The weekly 'Saturday Forum', *New Straits Times*, 30 January 1993.

<sup>88</sup> This traditional Malay expression of anger is discussed in Chapter 3.

As the impeccability of lineage culturally and politically plays an utmost important role in determining the eligibility of a Ruler to rule,<sup>89</sup> it might be argued that the loss of faith by the *rakyat* in a Ruler's claim would indirectly mean the loss of his legitimacy to be in power. However, this argument may not be of much relevance in the light of the modern-day constitutional arrangement since the Ruler's actual position is also partly determined by the constitution. This lineage doctrine might nonetheless still be tenable were one to judge it from the traditional perspective. Traditional or otherwise, the fact that the *rakyat* (probably with the exception of the Johor Malays) are no longer paying the kind of respect that they used to offer to their Raja in the days prior to the 1993 crisis so far remains undisputed. Thus as if to reinforce this lack of deference, the government proceeded to eliminate most of those elements which were formerly used to emphasize the 'exalted' position of the Rulers. The *grandeur*, the court etiquette and certain protocols relating to the manner in which one may address a Raja had been abolished.<sup>90</sup> Thus, words such as *hamba* (servant), *sembah* (worship), *patik* (that is 'I', but in Sanskrit it means dog) are among the terms which the *rakyat* were not encouraged to use when interacting with the Rulers, although a full survey of the number of those who complied with the suggestion has yet to be conducted.

## 2.6 The Concessions

Although all the necessary provisions had been amended, the government had no intention of giving them any retrospective effect. No Ruler was therefore charged for breaching law in the past. This has spared the Sultan of Johor, whose conduct was said

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<sup>89</sup> Sharifah Maznah Syed Omar, *Myths and the Malay Ruling Class*, Times Academic Press, Singapore, 1993, p. 43.

<sup>90</sup> *New Straits Times*, 27 January, 1993 .

to have provided the government with the last straw that broke the camel's back, the necessity of having to face any trial. In addition, the government had also agreed to some modifications proposed by the Conference of Rulers. The bill (with these modifications) was finally passed by the *Dewan Rakyat* on 9 March 1993.<sup>91</sup> Among the most significant proposals was the establishment of a Special Court. The Rulers requested that they should not be tried in the ordinary courts of law. Hence, Article 182 was incorporated into the Constitution to provide the mechanism by which the *Yang di Pertuan Agong* and the Rulers could be tried when the case arose. Article 182(1) reads:

“There shall be a court which shall be known as the Special Court and shall consist of the Chief Justice of the Federal Court, who shall be the Chairman, the Chief Judges of the High Courts, and two other persons who hold or have held office as judge of the Federal Court or a High Court appointed by the Conference of Rulers.”

The Special Court shall have exclusive jurisdiction to try all offences committed in the Federation by the *Yang di Pertuan Agong* or the Ruler, and all civil cases by or against the *Yang di Pertuan Agong* or the Rulers shall be heard in this Court irrespective of where the cause of action arises.<sup>92</sup> The same rules of procedures which apply to the ordinary courts (namely, the subordinate court, the High Court and the Federal Court) shall apply to the Special Court unless Parliament provides otherwise.<sup>93</sup> In addition, if the *Yang di Pertuan Agong* or the Ruler is charged with an offence under any law in the Special Court, he shall cease to exercise his functions as such.<sup>94</sup> The rationale for this provision is that the king or the Ruler shall not be allowed to remain in their position

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<sup>91</sup> New Straits Times, 10 March 1993.

<sup>92</sup> Article 181(3) Federal Constitution.

<sup>93</sup> Article 182 (5) Federal Constitution.

while their credibility as a person of high reputation is being questioned or tarnished. In the event that a Ruler is found guilty of the offence charged and sentenced to imprisonment for more than one day, he shall cease being a Ruler until and unless he obtains a free pardon.<sup>95</sup> As if to provide further consolation to the Rulers, it was also provided that no legal action shall be instituted against the *Yang di Pertuan Agong* or the Ruler without prior consent of the Attorney General.<sup>96</sup>

Perhaps, the biggest consolation for the Rulers and the *Yang di Pertuan Agong* is the proviso incorporated in the amended Article 63(5), which reads: "Notwithstanding Clause (4) no person shall be liable to any proceedings in any court in respect of anything said by him against the *Yang di Pertuan Agong* or a Ruler when taking part in any proceedings of either House of Parliament or any committee thereof except where he advocates the abolition of the constitutional position of the *Yang di Pertuan Agong* as the Supreme Head of the Federation or the constitutional position of the Ruler of a State, as the case may be." One might say that this proviso was inserted as a token of good faith on the part of the government who had many a time to reassure the public, especially the Malay community, that it had no intention to abolish the monarchy. Thus in terms of easing the tension and reducing the growing skepticism among certain quarters of the Malay community about the future of the *kerajaan*, this proviso (at least for the time being) seems to have been an achievement.

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<sup>94</sup> Article 33A(2) and Section 1A, Part 1 of the Eighth Schedule to the Federal Constitution respectively.

<sup>95</sup> Section 1A (3) of the Eighth Schedule to the Federal Constitution.

<sup>96</sup> Article 183 Federal Constitution.



## 2.7 Conclusion

As in most conflicts, where there are bound to be winners and losers, it is the government in this particular case that emerged victorious. Obviously, the Rulers had underestimated the extent to which the Mahathir-led government would go in order to 'constitutionalise' the monarchy. In the 1983 constitutional crisis, the Rulers seemed to have partly won the 'battle royal', in that they had managed to force the government to retract from its original proposal to allow only fifteen days for the *Yang di Pertuan Agong* to signify his royal assent to bills passed by Parliament. The king, supported by his brother Rulers was able to forestall what was seen by the opposition parties such as PAS and DAP (Democratic Action Party) as a reckless act of the government in amending the Constitution. The late Tunku Abdul Rahman (the first Prime Minister, and also an instrumental figure in the drafting of the Federal Constitution of 1957), wrote:

“Without any warning or proper notice, the Prime Minister has found it fit to introduce this amendment. Some favour it while others oppose it on the ground of rashness. As I have pointed out, if this kind of power can be exercised by the Prime Minister, Malaysia could be turned into a republic in as many days as it had taken to amend the bill.”<sup>97</sup> [sic: possibly what is meant here is “to amend the Constitution”]

In addition, the government also abandoned its intention of transferring permanently the power to declare a state of emergency from the *Yang di Pertuan Agong* to the Prime Minister.<sup>98</sup> The Constitution (Amendment) Act 1983 which effected that temporary shift of emergency power was repealed in 1984, thus restoring the discretion to the *Yang di Pertuan Agong*. Had this amendment not been retracted, the Prime Minister might have

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<sup>97</sup> Das, K.S, A Ruler's Compromise, Far Eastern Economic Review, 27 October 1983.

<sup>98</sup> Article 150 of the Federal Constitution provides that: “ If the *Yang di Pertuan Agong* is satisfied that a grave emergency exists whereby the security or the economic life, or public order in the Federation or any

been the most powerful premier in the world, for he would merely have to act on 'satisfaction' that a grave emergency existed. His action would not be reviewable as the Privy Council decision in the case of Teh Cheng Poh v Public Prosecutor<sup>99</sup> had already illustrated. In the words of their Lordships:

“ ...It is not for their Lordships to criticize or comment upon the wisdom or expediency of the steps taken by the government of Malaysia in dealing with the constitutional situation.....or to enquire whether that situation could have been avoided by a different approach.....These were essentially matters to be determined according to the judgment of the responsible Ministers....”.

Thus, politicians who lack genuine concern for the *rakyat* might at the end of the day exploit the non-justiciability of the issue in order to serve their personal and political interests. The 1983 constitutional crisis had not obviously produced the result desired by the government.

As some analysts<sup>100</sup> say, the case of 1993 had indeed provided the government with the best opportunity to cover the loopholes that was left unplugged by previous amendments. If it was the Rulers who came out triumphantly in the 1983 constitutional crisis, the government had in their best endeavour determined not to let the 1993 crisis turn out as an anti-climax to the whole political drama. The Rulers were trapped by their own extravagant life-styles and misdemeanours. Except for a very few of them, the Rulers had no doubt partly contributed to their own misfortunes. They had nonetheless been quite fortunate that the old Malay sentiments about their Rajas and the *kerajaan*

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part thereof is threatened, he may issue a Proclamation of Emergency making therein a declaration to that effect.”

<sup>99</sup> [1968] 2 M.L.J 238

<sup>100</sup> See Lee, H.P, supra p. 95.

still persist among certain quarters of the Malay community.<sup>101</sup> Rather than facing the risk of losing the support of its potentially vital Malay supporters in future elections, the government had thought it wise not to aggravate the anger of this section of the electorate. Hence, the proviso to Article 63(5)<sup>102</sup> found its way into the Constitution.

The Sultans' confidence might also have been bolstered by the fact that even the opposition parties such as (PAS) and DAP, whose membership is predominantly Chinese), had lent their support. Although they had all concurred in the need to curb the extravagance and indulgences of the Rulers, they did not, however, agree with the way the whole issue was being manipulated by the government. It is as if to say that these parties could not accept the philosophy, which propounds that the ends must always justify the means. The DAP leader, for example, argued that since all members of Parliament had vowed to uphold the Constitution, it would therefore be their duty to ensure that the bill be passed in accordance with the procedures as laid down by the Constitution. One must give effect to the natural meaning of Article 38(4), which requires that prior consent of the Conference of Rulers be obtained before the tabling or passing of the bill in question.<sup>103</sup>

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<sup>101</sup> It was reported in the *Far Eastern Economic Review* (21 January 1993), that in the district of Parit Bakar in Johor, for instance, the Sultan still commands a considerable degree of respect and loyalty. As one Johorian commented: "Hitting a person is wrong, but it is a small matter. There was no need to blow it out of proportion. The issue could have been resolved in a better way."; and in Johor Baharu, some believe the police persuaded the Sultan to call off his mass rally, for fear that fiercely loyal supporters of Bugis descent would descend on the town from the north in a show of support for the Sultan.

<sup>102</sup> This provision prohibits any person taking part in the proceedings of either House of Parliament from advocating the abolition of the constitutional position of the *Yang di Pertuan Agong* as the Supreme Head of the Federation or the constitutional position of the Malay Rulers as Heads of their states.

<sup>103</sup> *Dewan Rakyat* Debates, 18 January 1993.

PAS, on the other hand, took a rather holistic view by calling for a more comprehensive treatment (in the sense that the party wanted the government to review also those constitutional provisions which protect the executive from legal proceedings, such as Article 149, a provision under which the infamous Internal Security Act 1960 is enacted) of the constitutional amendments. The PAS leadership did not quite agree with the double-standard attitude of the government<sup>104</sup> whom it accused of insincerity. By quoting several precedents in Islamic law, the party demanded that the amendment should also be extended to curb the overwhelming power of the executive. Fairness for all should therefore be the essence of the proposed amendments.<sup>105</sup> To their mind, the Internal Security Act, the Official Secrets Act and several other statutes which provide legal 'immunity' for the government should be reviewed to bring them into line with accepted principles of justice, such as equality before the law.

Judging from the split of opinion among the Malay community, and more importantly within the UMNO party itself, it may well be said that the fate of the Malay Rulers had not been absolutely sealed. With the latest developments in Malay politics which at the time of writing are taking place in Malaysia, it would not be too presumptuous to conclude that the Rulers might have a very useful and highly significant role to play in this new allegedly politically-tainted 'drama'.<sup>106</sup> On this point, it may be worth recalling

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<sup>104</sup> Double-standard in the sense that the government was only concerned about the extravagance and misbehaviour of the Malay Rulers whilst at the same time it was silent about the extravagance and misconduct of its Ministers. The case of the rape charges involving the former Chief Minister of Melaka, Tan Sri Rahim Thamby Chik, is one example.

<sup>105</sup> See Haji Hadi Awang's speech, *Dewan Rakyat* Debates, supra.

<sup>106</sup> The arrest of Anwar Ibrahim was considered by the opposition parties as one which was politically motivated. There were allegations that Mahathir feared that his position as the longest serving Prime

the case of the dismissal of the former Lord President of the Federal Court of Malaysia, Tun Salleh Abbas in 1988. The 1988 dispute between the judiciary and the Prime Minister exemplifies the tense relationship between the executive and the judiciary in Malaysia. According to some political observers (such as Lee, H.P and Rais Yatim) the Prime Minister was dissatisfied with a series of judicial decisions affecting the government and since then seemed to have harboured deep resentment against the judiciary. The Prime Minister in his reaction to the decision of the Supreme Court in the Berthelsen case <sup>107</sup> had clearly indicated his dissatisfaction with that decision when he said:

“..... the laws clearly stated that the Minister could decide how long a foreigner could stay in the country and that his decision was final. But the Judge overruled this. That was a well known case. The person was allowed to stay here and the Minister could not do anything.”<sup>108</sup>

But, the tension between the judiciary and the executive had only culminated amid the political developments which threatened to ruin not only the UMNO party, but also the political life of the Prime Minister himself. Indeed, this period had undoubtedly witnessed the most traumatic factionalism among the party membership. A declaration by the High Court, which nullified the UMNO general assembly elections, granted at the

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Minister in Southeast Asia was threatened by Anwar's rising influence among the younger Malaysian generation.

<sup>107</sup> Berthelsen v Director-General of Immigration, Malaysia & Ors [1987] 1 M.L.J 134. The appellant, an American staff correspondent of the Asian Wall Street Journal, had applied to the High Court for certiorari to quash the decision of the Immigration authority which summarily cancelled his employment pass under the Immigration Regulations 1963. The authority was satisfied that his presence in the country would be prejudicial to the security of Malaysia. His application was rejected by the High Court. But his appeal to the Supreme Court was successful and certiorari was issued in his favour. The Court decided that there had been a breach of natural justice and therefore the cancellation order of his employment pass was invalid.

<sup>108</sup> New Straits Times, 19 March 1988.

instance of certain UMNO members had almost cost Mahathir his political career.<sup>109</sup> The decision of the High Court in that particular case had an obviously far-reaching effect when, by virtue of the Societies' Act 1966, the party itself was made unlawful and had forced its President to re-register the old UMNO as UMNO (*Baru*).<sup>110</sup> The case went to the Supreme Court for appeal. The hearing was fixed by the Lord President where the entire nine-member panel of the Supreme Court was to deliberate on the matter. Unfortunately, the government had very little confidence in the Lord President who was fiercely independent in his views. It was while the case was pending appeal that the unprecedented 'duel' between the two organs of government began to occupy its place in the political, legal and constitutional history of Malaysia.

After a series of executive criticisms of the judiciary, the Lord President, acting on behalf of his brethren judges, wrote a letter to the *Yang di Pertuan Agong* (the present Sultan of Johor), making known their grievances against the executive interference (that is with regard the Prime Minister's comments on judicial decisions which were not in favour of the government) with the independence of the judiciary. In the event, the letter backfired, for the king seemed to have no sympathy for them. The events which followed are well known. But what was interesting is the fact that the Conference of Rulers had taken the initiative to intervene. The Rulers had held a meeting with the Lord President and decided that what the government was doing to him was wrong and

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<sup>109</sup> See Mohamad Noor bin Othman & Ors v Mohd. Yusof Jaafar (1988) 1 M.L.J Supreme Court Report 219; (1988) 2 M.L.J 129.

<sup>110</sup> For further reading on this episode, see Tun Mohamed Salleh Abas & Das, S.K, *May Day For Justice*, Magnus Books, Kuala Lumpur, 1989, p.57.

suggested that the matter be resolved amicably.<sup>111</sup> Although Tun Salleh was quite unlucky in the sense that he did not win the *Yang di Pertuan Agong*'s sympathy, the fact that the Rulers could act as a mediator in times of such a crisis must never be ignored. This is because as a non-partisan body, the Conference of Rulers could at least play the role of a peace-broker between the executive and the judiciary. The battle between the judiciary and the executive in 1988 became a *cause celebre* both within and outside Malaysia. But, due to the complexity of the case, a thorough discussion of the same would not be possible here lest the scope of this thesis would be uncontrollably expanded.<sup>112</sup>

Drawing some lessons from history, one might conclude that the Rulers' 'unofficial' and 'unconventional' role could have been invoked if matters proved to be beyond the grasp of the ordinary legal and constitutional dispute settling-machinery. Indeed, the final curtain to the political scenes of late twentieth-century Malaysia might well have been drawn, not by the principal political players, but by the royal personalities who sat among the audience. As will be discussed more elaborately towards the end of this thesis, the Malays (and, more surprisingly, the non-Malays, too) irrespective of their different political ideologies,<sup>113</sup> seem to have displayed some hope and confidence in the Rulers as peace-broker, when their newly formed non-political association, called *Gerak* (Action), presented to the *Yang di Pertuan Agong* a memorandum calling for his intervention in the 1999 political turmoil. Quite obviously, the dissatisfied Malays are

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<sup>111</sup> *Harakah*, 21 Disember 1992.

<sup>112</sup> For further readings on this issue see Hickling, R.H, *The Malaysian Judiciary in Crisis*, Public Law, Spring 1989, p. 20; Harding, A.J, *The 1988 Malaysian Judiciary Crisis*, (1988) 1 ICLQ Vol.39 at p.68.

turning to their *Raja*, their traditional 'protector' whom they trust to put 'Humpty Dumpty' back on the wall again. This is not difficult to comprehend, for, as the forthcoming chapters will illustrate, the bond between the Rulers and the Malay *rakyat* has never actually been severed. Both appeared to have weathered the political storms in the mid-1940s, and it was quite likely that they would use the experience to endure the more turbulent episodes awaiting them on the threshold of the new century.

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<sup>113</sup> *Memorandum di Raja*, <http://members.tripod.com/-Anwar-Ibrahim/memoraja.htn> (visited on 27/10/98)



## CHAPTER 3

### Understanding the Feudal Malay Concept of *Kerajaan* (the Condition of Having a Raja)

#### 3.1 Introduction

Since the central issue of this study deals with the traditional Malay notion of *kerajaan* on the working of a modern Malaysian constitution, and how the change in this perception affects Malay society in particular and the Malaysians in general, it is necessary that the conventional or 'traditional' Malay concept of kingship or rulership first be discussed. It is hoped that an understanding of this long established concept will help to provide an insight into other aspects of the underlying problems of the 1993 constitutional crisis and the political debacle that ensued in later years. As this study seeks to explain, this notion of *kerajaan* has helped to shape Malay political culture, which in turn influences the direction in which the nation is moving constitutionally.

Indeed, this notion appears to have acquired such a strong foothold in the value system of the Malays for a very significant period, that any attempt to cause a shift in the belief that a ruler should never be challenged has created a political havoc. Thus, the problems of amending the relevant constitutional provisions<sup>1</sup> in 1993 and those surrounding the latest (1999) political developments in Malaysia were not merely legal but also cultural in nature. Unlike legal procedures, cultural beliefs and practices are relatively far more

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<sup>1</sup> The main provisions which the government sought to amend were Articles 32 (1), 42 and 181(2) of the Federal Constitution.

difficult to make and unmake, for they have become part and parcel of the society's existence. They determine the psyche, thoughts and patterns of behaviour of a particular society to the extent that any attempt to alter or revolutionise them might lead to a crisis. Indeed, it was the task of revolutionising a particular aspect of Malay culture, with which the federal government had to struggle when it announced its intention to remove the royal immunity-conferring provisions enshrined in the Federal Constitution for the past thirty years or so. 'Immunity', though not explicitly spelt out in any of the Malay traditions or *adat* (in the sense that the concept was only incorporated into the *Merdeka* Constitution in 1957) has nevertheless helped to reinforce the feudal Malay idea of the impeccability of the Raja's descent, and hence strengthened the belief in the sacrosanctness of the Raja and of the *kerajaan*. The task which confronted the government in its attempt to remove the personal royal immunity was thus double-faceted: that is to say, not only did it seek to reform the vital aspects of Malay monarchy, such as the limits of its power but it also sought to revolutionize the minds of the Malays in regard to the *kerajaan*. The Malays, as will be further elaborated in the forthcoming chapters, have long held the notion that their identity as *bangsa* Melayu is so inextricably woven with the *kerajaan* that any questions raised against the institution is tantamount to an attack against their own integrity as the *bangsa*, which politically dominates the Malay Peninsula.

One may therefore argue that it was as much a matter of politics as it was of culture that had subtly underlined the battle-royal of 1993. The battle was in essence a struggle between two sets of conflicting politico-cultural values, namely, the modern versus the

traditional; the *kerajaan* representing the former, and the Mahathir regime, the latter. Given the fact that the present constitution is a product of 'modern' political agenda,<sup>2</sup> it is not therefore difficult to imagine the problem of reconstructing an *ancien regime* such as the *kerajaan* within the framework of the existing constitutional system, especially if the institution is one upon which the legitimacy of one's political assertion (that is, the Malays are the indigenous people of the country) is rested. An understanding of how the Malay monarchy was perceived prior to the infiltration of western ideas of government into the Malay Peninsula (West Malaysia) will hopefully help to facilitate an evaluation of the 1993 constitutional crisis.

### 3.2 The *Kerajaan* – An Historical Perspective

From available historical resources, the prevailing type of government in the Malay world up to the period before the Second World War appears to have been the sultanate system, be it in Melaka, Perak, Brunei, Mataram, Aceh, Bone, Pernate, Sulu or Patani.<sup>3</sup> The apex of the political system in each of these states was the ruler called either the *Yang di Pertuan* (he who is made Lord), Raja or Sultan as he is differently styled. In theory, he was omnipotent and his words were law. Like all ancient kingships on the Southeast Asian mainland, the Malay sultanate was and is greatly influenced by Hinduism. Despite the fact that Islam had gained a strong foothold in the Malay

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<sup>2</sup> This agenda was propelled by the desire to liberate the Malay Peninsula from colonial rule in the aftermath of the World War II. Prior to that period, the Malay States had fallen into the hands of British colonial government as a result of a series of negotiations between the *kerajaan* regime and the British colonial administrators. Hence in order to regain independence and self-government, the Malay nationalists thought that the Rulers should not be allowed to determine the fate of the *rakyat* without consultation without the latter. In consequence, the Federal Constitution was drawn and implemented, whereby the powers, role and position of the Rulers were stipulated.

Peninsula by the early fifteenth century, many of the features of the Malay sultanates extant today illustrate the intensity of Hindu influence. The rites and ceremonies pertaining to the installation of a Raja, for instance, are examples of the legacies from the Hindu past.

The Malays who had been animists<sup>4</sup> prior to the coming of Hinduism<sup>5</sup> found no difficulty in adapting themselves to the teachings of the new religion. As animists they used to worship their gods on a high place such as a mountain top. When states came to be set up after their Indian pattern, the gods from many sites came to be united under one supreme god who was usually identified with the great Hindu god Siva, who was believed to have incarnated himself in kings or to engender dynasties. Kings therefore may either be the god himself or a descendant from god or both.<sup>6</sup> In ancient Champa (which is now the country of Vietnam), for example, the king was considered to be the manifestation of the divine power of the Devaraja (the God King).<sup>7</sup> Similar principles of belief applied to the Peninsula Malays whose exposure to Hinduism occurred as early as in the fifth and sixth centuries A.D. when the Malay states of Langkasuka and P'an-p'an became Indianized. The mountains being the residence of the deity, this helps to explain the importance of Mount Meru in Malay classical literature such as *Sejarah Melayu* (Malay Annals) in which the *Bukit Siguntang Maha Meru* (Mount Siguntang) plays a

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<sup>3</sup> Datuk Zainal Abidin bin Abdul Wahid, *Power and Authority in the Melaka Sultanate: The Traditional View* (in Sandhu and Wheatley, *Melaka Volume 1*, 1983, Oxford University Press, Petaling Jaya, Selangor, Malaysia, p.101).

<sup>4</sup> Ryan, N.J, *The Making of Modern Malaya*, Oxford University Press, London, 1963, p.6

<sup>5</sup> For further readings on Malaya in Hindu times, see, Wales, Q, *The Malay Peninsula in Hindu Times*, Bernard Quaritch, Ltd., London, 1976; Wheatley, P, *Impressions of the Malay Peninsula in Ancient Times*, Eastern Universities Press Ltd., Singapore, 1964.

<sup>6</sup> Heine Geldern, R., *Conception of Kingship and State in Southeast Asia*, Data paper No.18, Southeast Asian Programme, Department of Asian Studies, Cornell University, Ithaca, New York, April 1956, p. 10.

significant part in the genealogy of the Malay Rajas, especially those of the Melakan sultanate.<sup>8</sup>

Although there had been in existence Malay kingdoms on the Malay Peninsula prior to the Melakan dynasty, such as the Gangga-Negara in the Bruas-Dinding area in the state of Perak,<sup>9</sup> it is Melaka that serves as the nucleus of the present Malay sultanates. Therefore it is of relevance here to mention briefly the history of this once great Malay dynasty before examining the pre-colonial<sup>10</sup> Malay perception of the *kerajaan*. The *Sejarah Melayu* (see above), a work which was begun in Melaka in the fifteenth century but which contains later interpolations, including the early history of Johor, is one of the principal Malay sources for the history of the Melakan sultanate.<sup>11</sup> It is a melange of different elements: genealogies of royal and ministerial families, accounts of memorable events, anecdotes of incidents and personalities, and functional myths which serve to explain and legitimate the origins of the royal line.<sup>12</sup>

### 3.3 The Seat of Malay Political Culture on the Malay Peninsula

Although there are different versions of *Sejarah Melayu*, the episodes described therein are basically the same. Despite that, it does not fulfil the accepted standard of

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<sup>7</sup> Ibid.

<sup>8</sup> *Bukit Siguntang* functions as the centre of the world where heavens and earth converge (see Sharifah Maznah Syed Omar, *Myths and the Malay Ruling Class*, Times Academic Press, Singapore, 1993, p. 2)

<sup>9</sup> Khoo, K.K, *Malay Society: Transformation and Democratization*, Pelanduk Publication (M) Sdn.Bhd., Petaling Jaya, Selangor, Malaysia, 1991, p.7.

<sup>10</sup> For the purpose of this study the term 'pre-colonial' shall be interchangeably used with the word 'traditional'.

<sup>11</sup> Andaya, L.Y, *The Structure of Power in 17<sup>th</sup> Century Johor*, MBRAS Monographs No.6, 1975, p.1.

<sup>12</sup> Wake, C.H, *Malacca in the 15<sup>th</sup> Century: Malay Historical Traditions and the Politics of Islamization*, Sandhu and Wheatley (eds), Malacca, Volume 1, Oxford University Press, Kuala Lumpur, 1983, p.129.

historiographical writing, that is, in terms of accuracy of dates and chronology of events, nonetheless, much of the account contained therein is broadly confirmed by writers and travellers such as the Portuguese writer, Tom Pires, who wrote about Melaka in its heyday. For instance, he wrote : “Malacca is of such importance and profit that it seems to me that it has no equal in the world.... It is a city made for merchandise fitter than any other in the world.” The *Sejarah Melayu* does not only speak of the power and extent of this Malay empire, it also gives a vivid account of court life under the successors of the earliest Melakan Rulers. The text was written on the instruction of the *istana* (palace) so that, “ their descendants may be acquainted and mindful of them and may derive profit from them”.<sup>13</sup>

Despite speculations as to the puzzling character of the founder of medieval Melaka, both the Malay traditions as well as the Chinese and Portuguese records agree that Parameswara was responsible for the establishment of the Melaka Dynasty.<sup>14</sup> The year is widely accepted to have been around 1403. Who was this Parameswara? D' Albuquerque (a Portuguese official) and Tom Pires make him a prince from Palembang (Sri Vijaya), who married a Javanese princess, a daughter ( or according to Pires, a niece) of Bhatara Tumapel; worsted in a revolt against his father-in-law, he fled to Tumasik (Singapore) where he later killed the governor after he was made a guest on the island.<sup>15</sup> He was later forced out of the island by the king of Patani (a brother of the murdered governor). Parameswara then fled to Muar, in Johor, but subsequently moved

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<sup>13</sup> Brown, C.C, (translation), *The Malay Annals*, Oxford University Press, London, 1970,[42], p.1.

<sup>14</sup> Bastin, J and Winks, R.W, *Malaysia : Selected Historical Readings*, KTO Press, Nendell/Liechtenstein, 1979, p. 4.

to Melaka where he set up the Malay empire. Although the *Sejarah Melayu* prefers the Muslim designation of Sultan Iskandar Shah to Parameswara, it is nevertheless in agreement with the Portuguese account with regard to his place of origin, namely Palembang.

### 3.4 The Myths and Legend of the Malay Rulers

Typical of all other Malay tradition, *Sejarah Melayu* describes the origin of the Malay Raja in a mythical manner by having Sultan Iskandar Shah descended from the line of princes who appeared on *Bukit Siguntang Mahameru* in central Sumatra.<sup>16</sup> According to the story, the presence of these princes in the area where they first appeared, had miraculously turned the padi grains on the hilltop where they appeared into gold, their leaves silver and stalks golden brass. When asked by the maidens who encountered them, “ Whence come you, sirs? Are you sons of genies or sons of fairies?”, the three princes replied, “Not from the breed of genies or fairies are we. We are descended from Raja Iskandar D’Zulkarnain (Alexander the Great); of the lineage of Raja Nushirwan, Lord of the East and the West, are we”.<sup>17</sup> One of the princes called Sang Sapurba then descended downwards from the hill into the great plain watered by the Palembang river, where he married the daughter of Demang Lebar Daun (the local chief).

The two men were said to have entered into a sacred pact which outlined the relationship between the Malay Ruler and the *rakyat* (Malay subjects). Demang Lebar Daun (personifying the *rakyat*), on setting a term of the marriage, had said to Sang

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<sup>15</sup> P.V van Stein Callenfels, *The Founder of Malacca*, JMBRAS, Vol.42, Part 1, August 1969, p. 63.

<sup>16</sup> *Sejarah Melayu* (Shellabear’s version), p.13.

Sapurba (purportedly representing the Ruler) , “Your Highness, the descendants of your humble servant shall be the subjects of your throne, but they must be well treated by your descendants. If they offend, they shall not, however grave be their offence, be disgraced or reviled with evil words; if their offence is grave, let them be put to death if that is in accordance with the Mohammedan law”. In answer to that, Sang Sapurba said, “ I agree to give the undertaking for which you ask: but I in my turn require an undertaking from you, sir....that your descendants shall never for the rest of time be disloyal to my descendants, even if my descendants oppress them and behave evilly”. Demang Lebar Daun then replied, “ Very well, your Highness. But if your descendants depart from the terms of this covenant, then so will mine”. Both the parties agreed and took their solemn oath to the effect that whoever depart from the agreed terms, “...let his house be overturned by Almighty God so that its roof be laid on the ground and its pillars be inverted”.<sup>18</sup>

Indeed, the terms of the covenant reflected the unequal bargaining power between the ruler and ruled. Although there was a term which allowed the *rakyat* to depart from the covenant, or, in other words, to rescind it, that term had never actually been highlighted, nor had it been applied by the *rakyat* for fear that it might incur the wrath of the Raja.<sup>19</sup> Thus notwithstanding that both parties recognized that a breach of the covenant by either of them might result in “his house being overturned by the Almighty God so that its roof be laid on the ground and its pillars be inverted”, it did not deter the rulers from

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<sup>17</sup> Ibid, p.14.

<sup>18</sup> Ibid, p.16.

<sup>19</sup> Since the Raja was regarded by the Malays as a semi-divine being who possessed that super natural quality called *daulat*, they believed that they would suffer ill-fate if they were to go against the Raja.



honouring their obligations. It appears that the *daulat* of a Raja had a far greater influence than the wrath of the Almighty God, on the minds of the traditional Malays.

It might be suggested that this legendary covenant, had, until the 1993 constitutional crisis, become an unofficial “code of conduct” which governed the relationship between the rulers and the *rakyat*. This traditional belief that a Raja or a ruler should never be challenged was reinforced by the modern *Merdeka* constitution under the old Articles 63 and 32, and 181. As criticisms were regarded by Malay society as *tidak patut* (improper) since they might result in loss of ‘face’, a humiliation which could destroy one’s social standing or *nama* therefore, it is not surprising that such provisions were incorporated into the Constitution.

### **3.5 The Domination of Minds Through Legends**

Indeed, the one thing which baffles those who are not accustomed to Malay culture is the fact that though the covenant provides a leeway for the *rakyat* to repudiate the agreement in the event of a breach by the Ruler, there is no evidence which shows that the ordinary *rakyat* had ever exercised such right. This complacency continued to dominate the *rakyat* class of modern Malay society until this tradition of silence was finally broken by Mahathir in 1993 by means of constitutional amendments. Their reluctance to challenge the Ruler could have been caused by the overemphasis laid on their obligations to the Raja, instead of on their rights. In the *Sejarah Melayu* as well as in other Malay *hikayats*, rarely would one find the faults of the rulers highlighted, and the main theme which pervaded the *hikayats* and other traditional literature was

*derhaka*, for obviously this would best serve the interest of the ruling class. That being so, the *rakyat*'s rights have been made to appear secondary and unimportant.

The legendary covenant had persistently dominated the minds of the feudal Malays to the point that all virtues and moral values revolved around the idea of the absolute authority of the Ruler and unquestioning loyalty of the *rakyat*. So strong was the impact of this indoctrination that one can still trace the aura of the contractual sanctity among some modern Malays of the late twentieth century, as exemplified in their debates about the removal of the royal immunity. Thus, until the 1993 constitutional amendment was legally effected, and the Anwar-Mahathir episode erupted, the covenant remained an unofficial code of conduct for the Malays vis-à-vis their Raja.

In describing the origin of the Malay Rulers, the author of *Sejarah Melayu* had woven together several mythical elements for the purpose of enhancing the majestic character of the incumbent, thus giving him the image of someone superior and sacred, over and above the commoners and in order to be worthy of their reverence. As the strategy of *Sejarah Melayu* is to command reverence and absolute loyalty of the *rakyat*, it is not surprising that most of the historical facts are missing from the text. However, since the concern of this study is not with the historical accuracy of this classical Malay literature, no attention shall be paid to this particular issue. Whoever is the character who founded the Melaka dynasty shall, in the minds of the feudal Malays, be the descendants of

Iskandar D'Zulkarnain<sup>20</sup> or Alexander the Great. Without any attachment to this lineage, a ruler shall have no legitimate claim to rule.

The legitimacy to rule is further emphasized by the concept of *daulat* (loosely translated as sovereignty in the western sense). In Malay culture, it refers to a magical quality, which is said to be inherent in a Raja belonging to this line of descent. A Raja with a *daulat* is believed to have possessed supernatural qualities and abilities. For instance, Raja Tengah (the grandson of Sultan Iskandar Shah of Melaka), was narrated as having been converted to Islam in his dream. When asked by his *Bendahara* (equivalent to modern-day Prime Minister) if there was any proof that his dream was true, Raja Tengah said, “ The fact that I am circumcised. That is the proof of my dream about the Apostle of God (peace be upon him)”.<sup>21</sup> This means that he was no ordinary Raja, for only the descendants of Iskandar D'Zulkarnain could have experienced such a unique event. It has also been narrated that on that same afternoon, a ship, as visioned by the Ruler in his dream, arrived from Jeddah. A *Makhdum* (a Muslim religious man) by the name of Sayyid Abdul Aziz then disembarked from the ship and prayed on the shore. Raja Tengah took the *Makhdum* to his palace and there he (Raja Tengah) and all his chiefs, including the *Bendahara*, embraced Islam. Every citizen of Melaka, upon the instruction of Raja Tengah embraced Islam from that particular day. From a Hindu kingdom, Melaka was now transformed into an Islamic sultanate.

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<sup>20</sup> Iskandar D'Zulkarnain was a name of a great personality mentioned in the Holy Quran, therefore by associating the ruler's lineage with a Quranic character, the nobility of the ruler was supposed to be enhanced.

<sup>21</sup> *Sejarah Melayu*, supra, p.43.

### 3.6 The Perpetuation of Mythical Past as the Basis Malay Political Ideology

The belief in myths and legends continued to dominate feudal Malay society despite the state's conversion to Islam. The perpetuation of these non-Islamic elements was encouraged and upheld by the ruling elite in order to facilitate their political agenda, namely, to safeguard and to strengthen the ruler's position as the apex of the *kerajaan* system. The Raja was aggrandized through the invention of what was known as '*adat Raja dahulu kala* or 'tradition', such as elaborate court ceremonies, the use of special musical instruments such as the *nobat*,<sup>22</sup> the wearing of yellow colour<sup>23</sup> (only the royal families could wear yellow) and the creation of an elaborate code of conduct for the state. All of these inventions resulted in the widening of the gap between the ruler and ruled, and it was through this social division of class that the prestige of the Raja was further enhanced. The symbolic assertion of power, such as the wearing of special colour helped the ruler to legitimize his position as the most important element in the culture of Malay politics. Their genealogical 'history' was used as the basis for their claim that the *rakyat* needed a Raja (namely, a Raja of the Bukit Siguntang origin only) in order to establish a *kerajaan*, and not vice-versa. By weaving together the myths and Islamic beliefs, the Malay ruling class managed to exploit the faithful nature of Malay subjects.

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<sup>22</sup> Malay *nobat*, a court music genre originating in the Malay Peninsula from the days of the Melaka sultanate. Essentially, a secular form it is the music of the rites of passage of the sultans and *anak gahara* of Kedah, Perak, Selangor, Pahang, Trengganu and Kelantan. It is played by six musical instruments to accompany religious as well as royal ceremonies (see, <http://www.music.upm.edu.my/malaysia/classical/nobat.html>, visited on 27/2/00 at 14.36)

<sup>23</sup> The commoners were not allowed to wear yellow and it was an offence to do so.

Thus as Melaka grew from a simple fishing village into a trading emporium and an empire, the status of the Raja was further elevated. However, it should be noted that it was not the material or economic success of the state that was used as the basis upon which the greatness of the ruler was constructed. The ruling elite continued to assert the importance of the ruler's mythical origin as the key and the only element which determined the fate of the kingdom. Administrative skills and policies of the *kerajaan* were of secondary importance. The episode of the *Sejarah Melayu*, it was narrated that the *Bendahara*'s followers had asked him why he would not travel in his litter (a kind of vehicle containing a couch shut in by curtains and carried on men's shoulders or by beasts of burden), and allow his followers to escort him where ever he went, the *Bendahara* replied:

“Well then, if I go out in my litter, equally people will ask, “ Is he a great man, this *Bendahara*?, and the answer will come, “Yes, he is”. Then they will ask, “ Is there anyone greater than he? “No, there is not”. Assuredly, those who do not know the real position will take me for the Raja himself, for our Raja is yet but a boy. And there is another thing. If the Raja goes out in his litter, all of you escort the litter. That being so, I am likely to be confused with the Raja, and where would be his superiority over me?”<sup>24</sup>

From the above dialogue, it is quite clear that although the *Bendahara* knew that in reality it was he who was more effective than the Sultan, he nevertheless buried all signs of self-importance so that the raja would appear superior to him. To act otherwise would by the feudal etiquette amount to *derhaka* or treason. *Derhaka* is not only confined to acts which are intentionally committed, but it also includes acts which are not deliberately done. *Mens rea* is therefore irrelevant in cases of *derhaka*. By merely

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<sup>24</sup> *Sejarah Melayu*, supra, pp.56 &57.

failing to make known to the sultan that one had a beautiful marriageable daughter is sufficiently criminal to constitute an act of *derhaka*.<sup>25</sup>

### 3.7 The Feudal Concept of *Derhaka* (Treason)

This concept was heavily laced with a political motive. It was invented for the purpose of strengthening the position and power of the ruling class. “*Derhaka*” was endowed with not only a religious, but also a legal status by the author of *Sejarah Melayu* in his description of the legendary covenant. The term which stipulates the obligation of the *rakyat* not to be disloyal to the ruler “for the rest of time” was portrayed as the most fundamental aspect of the relationship between the ruler and ruled. “*Derhaka*” has therefore become the core of the whole agreement. As Mosca puts it, “the ruling class does not justify their power exclusively by de facto possession of it, but try to find a moral and legal basis for it, representing it as the logical and necessary consequence of doctrines and beliefs that are generally recognized and accepted”<sup>26</sup>. No doubt that the *Sejarah Melayu* seeks to glorify the *bangsa Melayu*, but such glorification is based on the glory of the *kerajaan* itself.<sup>27</sup> The Raja is therefore presented as the greatest of all rulers, and that his reign was the most peaceful and full of achievements. To maintain this glory, the *rakyat* must therefore be deterred from revolting against the ruler. To this end a concomitant concept of *taat setia* (absolute loyalty) was invented and embedded into the minds of the Malay subjects for centuries. Together, they formed an ideology that pervaded not only the feudal Malay society, but to a significant extent, the post-

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<sup>25</sup> Ibid, p.157 (an episode which describes the sultan giving his blessing to the assassination of his *Bendahara* merely because the latter had failed to inform the former that he had a beautiful daughter.)

<sup>26</sup> Mosca, G, *The Ruling Class*, MacGraw Hill, Livingston, New York, 1939, p.70 (cited in Sharifah Maznah Syed Omar, supra, p. 47).

colonial Malay generation as well.<sup>28</sup> This is best summed up in the maxim of “*pantang Melayu derhaka pada Raja*” (it is not the custom of the Malays to act treacherously against their Raja).<sup>29</sup>

The Malays were taught to believe that to invoke the wrath of the sultan meant to invite destruction, which was mostly unnatural in character. *Sejarah Melayu* gives ample examples of those who suffered as a result of violating this custom. Sang Rajuna Tapa, for instance, was said to have turned into stone because he betrayed Singapura to Majapahit.<sup>30</sup> In other instances, the offender would be put to death, a fate which befell one of the great Malay warriors, Hang Jebat (or Hang Kesturi, as the character is sometimes referred to). Hang Jebat was killed by his one-time closest friend, Hang Tuah, upon the Raja's order. The offence committed by Jebat was one which, by the standard of modern constitutional values, would amount to an exercise of one's right or freedom of speech. He criticized the Raja's way of handling the allegation of moral scandals lodged against Hang Tuah by some jealous court officials, and condemned the death sentence imposed on the latter as unjust and unwarranted. To his surprise, Hang Tuah, who was secretly spared execution by the *Bendahara*, came back from his 'grave' only to defend the Sultan and to uphold the custom of anti-*derhaka*, and to eliminate Jebat for his 'crime'. Not only was Jebat killed, but his whole family was also destroyed

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<sup>27</sup> Abdul Rahman Ismail, *Sejarah Melayu: Antara Sejarah dan Dakwah* (Malay Annals: A History or a Propaganda?), *Kajian Malaysia*, Vol.III, No.2, 1985, p. 26.

<sup>28</sup> These twin concepts had continuously been invoked, and more importantly extended to the non-royal ruling elites of UMNO. See Chandra Muzaffar, *Pelindung? (Protector?)*, *Aliran Kesedaran Negara* (ALIRAN), Penang, Malaysia, 1991, p.106.

<sup>29</sup> It should be noted that after independence in 1957, the Raja ceased to be the de facto protector of the Malays, and his role was practically taken over by the UMNO, which claimed itself as the substantive defender of the *rakyat*. That being the case, loyalty to the Raja had been, albeit unilaterally, shifted from the royal rulers to the politically elected leaders.

and his house pulled to the ground; even the soil in which its upright stood was dug up and cast into the sea.<sup>31</sup> The punishment for *derhaka* was therefore undoubtedly severe as it sought to affirm the superiority of the ruler, and to deter any potential breach of a custom designed to protect the power, position and status of the incumbent, all of which were bound up in the quality of *daulat* (loosely translated as sovereignty).

*Derhaka* and *taat setia* had for a long time become compulsory themes of the classical Malay court literature. Texts such as *Hikayat Hang Tuah* are typical. All good moral values reflected in those texts are essentially associated with deeds such as blindly obeying the Raja's order, good service to the Raja and conforming to the Raja's whims and fancies. To add to the nobility of such acts, some Islamic elements were, according to certain writers,<sup>32</sup> unfaithfully and inappropriately injected into the twin concepts of *derhaka* and *taat setia* so that an aura of religiosity could be created around it. Justification for a Raja's legitimacy to rule is therefore firmly based on the myth of the ruler's power to bring about magical consequences to offenders through the possession of the *daulat* quality.

Indeed, in another episode of the *Sejarah Melayu*, Tun Perak was said to have warned the subjects that it was a sin to commit an act of *derhaka*. Thus, when his own son was killed by Raja Muhammad (the heir to the Melaka throne), Tun Perak, defying the protests of his followers, adamantly refused to take any revenge. He said to his men, "You can't be disloyal to the mound without being disloyal to the hill! For shame,

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<sup>30</sup> A. Samad Ahmad (ed), *Sulalatus Salatin*, Dewan Bahasa dan Pustaka, Kuala Lumpur, 1979, p.66.

<sup>31</sup> *Sejarah Melayu*, supra, p.157



all of you, for shame! For it is the custom of the Malays never to be disloyal to their master – never!<sup>33</sup> It appears that the concept of *derhaka* was also extended to the princes. Not only was the ruling Raja who had to be obeyed or served loyally, but his sons too, enjoyed this privilege of unquestioning loyalty. In relation to the Gomez incident, one might therefore suggest that it was perhaps based on this understanding of the application of the *derhaka* concept that drove the Sultan of Johor to allegedly instruct the withdrawal of the Sultan Abu Bakar College hockey team from national competitions, as a retaliation against the act of “*derhaka*” committed by the Perak player, Selvarajah.

### 3.8 The Daulat Concept

*Daulat* is therefore reinforced by the total submission of the *rakyat* to the Raja, and such submission was secured by the indoctrination of the twin concepts aforementioned. All these notions eventually crystallized into culture, and one which makes it unique and essentially Malay in character. One may notice that *daulat* is not merely a legal concept, but it also embraces something wider. It is a cultural and a religious one as well. It lies in the person of the ruler. The *daulat* endows him with many rights and privileges, places him over and above his society, and shelters him from reproach and criticisms.<sup>34</sup> This quality of *daulat* was believed to have been present only in the descendants of Iskandar D’Zulkarnain, hence it was hereditary in nature. That being so, it is inseparable from the person of the ruler.

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<sup>32</sup> See Abdul Rahman Ismail, *supra*, pp.25-33.

<sup>33</sup> *Sejarah Melayu*, *supra*, p.89.

Indeed, the protest by certain quarters of the Malay community against the removal of the Rulers' immunity from the Federal Constitution in 1993<sup>35</sup> was couched in an argument that immunity was part of the *daulat* of a Raja. To abolish it would mean to destroy the Rulers symbolically. However, such an argument was countered by the reformers of the Federal Constitution by saying that *daulat* was not dependent on the immunity of the ruler, but on the sanction of the ruled. The Raja and the *kerajaan* would continue to exist so long as the *rakyat* were willing to accept them. Thus for a Raja to be accepted by the *rakyat*, he must observe the limits imposed on them by the constitution. Sovereignty of a raja, in this sense was not one which could be inherited but gained from the public.<sup>36</sup>

### 3.9 The Centrality of a Raja in Malay Political Thought

Like its counterparts in other regions of the Malay world, in Java for instance, the attitude towards a Raja is stereotyped. He is regarded as the most essential ingredient in the perpetuation of a kingdom. Without his presence to justify all activity and to reward the labours of the people with titles and robes of honours, the kingdom would be indistinguishable from any other riverine settlements in the Malay world. He enhanced the status of the particular Malay community in which he lived, and his glory and splendour were shared by it.<sup>37</sup> On that basis, nothing was more important to the Malays than their Raja. This point is illustrated in the *Sejarah Melayu* in an episode where the last Sultan, who, having had to flee Melaka, was assured by his minister that, "ten

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<sup>34</sup> See Zainal Abidin bin Abd.Wahid, Melaka, supra, p. 102.

<sup>35</sup> See Tengku Razaleigh's (the President of the *Semangat 46* Party) speech at the fast -breaking function held on 4 March, 1993 in Kuala Lumpur.

<sup>36</sup> For example, see Haji Ibrahim Ali's speech in the *Dewan Rakyat debate*, 10 December 1992.

countries could be found for him, land and people were always available but not rulers with an illustrious and impeccable lineage".<sup>38</sup>

The centrality of a Raja was confirmed both by Milner and by another scholar, Drakard,<sup>39</sup> who explain that the Malay Raja is the idiom through which man experienced the world. Milner, using the *Hikayats* (Malay epics and romances) such as *Hikayat Deli*, argues that the most immediately apparent exposition of the centrality of the Raja is couched in negative terms, by means of description of the Raja-less state. So, just after the Raja of Kemuja was killed, it is related that:

"The thunder sounds, rumbling and groaning, and hot rain descends, drizzling in ribbons; the wind rises blowing gently, and all the leaves of the trees droop like dead princes. The chickens do not cluck, a sign that a great Raja was about to die."<sup>40</sup>

Despite Milner's reliance on these *hikayats* (which has consequently raised some doubts as to their capability of arriving at a balanced and complete picture of Malay political activity in Malay terms) nonetheless, given the fact that the Malay conception of political dominance is so much hinged upon the existence of the Raja institution,<sup>41</sup> it is rather difficult to disagree totally with his proposition. So, as Milner has pointed out, the

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<sup>37</sup> Andaya, L.Y, MBRAS Monographs No.6, 1975, p.1.

<sup>38</sup> Ibid, p.2.

<sup>39</sup> Drakard, J, A Malay Frontier: Unity and Duality in a Sumatran Kingdom, SEAP, Cornell University, Ithaca, New York, 1990, p.17.

<sup>40</sup> Milner, A.C, *Kerajaan: Malay Political Culture on the Eve of Colonial Rule*, The University of Arizona Press, Tucson, Arizona, 1982, p.94.

<sup>41</sup> This deduction is made on the basis that even up to this date, despite the drastic constitutional amendments initiated by the UMNO-led *Barisan* government in 1993 to put an end to the abuse of royal status by the Rulers, a new clause (Article 63 (5)) was inserted in the Federal Constitution to reemphasize the continuous existence of the monarchy, hence its significance in the polity.

loss of a Raja was dramatically portrayed by the images of sadness and restlessness of Nature as found in the *Hikayat Deli*. The intensity of such grief was again pictured in an episode where the Raja of Bangkahulu was kidnapped by Mohamad Dalek. The atmosphere therein was described in the following terms:

“ The people in the palace were stiffed with fear, there is a din of cries and frightened shouting, a sound of wailing and weeping, all proclaiming that the Raja has been captured. The din is heard as far as the market place. Then all is in disturbance”.

Judging from the manner in which the loss of a Raja was described in the *hikayat*, it appears that the absence of a Raja spelled out disaster for the feudal Malays. Even nature seemed to have ceased functioning properly on the death of a Raja. His demise was likened to the death of the head of a family, namely, the father. Indeed, this sense of paternal loss or sense of paternalism perceived by the feudal Malays in a Raja is also discernable in a Javanese poem, Arjunawijaya. Tantular, a fourteenth-century Javanese poet, wrote, “that a king is truly the parent of the three worlds, the life of all people”. In the royal edicts of the Muslim Mataram rulers of the eighteenth and nineteenth centuries, the subjects are often referred to as *momongan*, that is, “children to be taken care of with love”. The Javanese civil servants are called *pamomg praja*, meaning, “those who look after the country and the people”. This term is now used in the Indonesian administration. That the late President Sukarno and the ex-President Suharto, are better known as *Bung* (that is elder brother), Karno, and *Pak* (father) Suharto respectively, is a clear indication that the idea of paternalistic government was, still very

much alive in Indonesia, at least until the economic crisis hit the nation and when the anti-government riots broke out in 1998/9 in Jakarta.

Although similar expressions are not generally in use within the Malay Peninsula, the same kind of attitude nonetheless exists among a significant section of Malay society, and interestingly the term '*Pak*' (father) is in fact currently being applied to certain ministers in Malaysia.<sup>42</sup> Thus the idea of a paternal ruler runs deep through the psyche of the Malay *rakyat*. In the feudal days, the attitude that a Raja was the father of the *rakyat* was codified into what is called the *Undang-Undang Pahang* (Pahang Legal Digest). The Digest was compiled during the reign of Sultan Abdul Ghaffur Muhaiyuddin Shah (1592-1614). It envisaged that kings would care for the welfare of their subjects and protect them. Without kings the affairs of the people would be in disorder; they might be likened to "sheep without shepherds and the strong would devour the weak".<sup>43</sup> For the purpose of protecting the masses, the Raja was therefore a necessity. To further legitimate this belief, an Islamic flavour was added to it. Thus, it is claimed by the traditional court writers (such as Tun Sri Lanang), that the very need for a Raja was justified on the ground that Allah had deemed it fit that there should be kings. A verse in the Quran has been interpreted as having this meaning: "I would like to appoint kings on earth as my representatives". The interpretation, however, casts some doubt on the sincerity of its purpose.<sup>44</sup>

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<sup>42</sup> The Deputy Prime Minister, Datuk Abdullah Ahmad Badawi, for instance, is widely referred to as 'Pak Lah' among the UMNO members.

<sup>43</sup> Kemp, J.E, and Winstedt, W.O, A Malay Legal Digest compiled for Abd al-Ghaffur Muhaiyuddin Shah, Sultan of Pahang, 1592-1616 AD, JMBRAS, Volume XXI, 1948, p.25.

Thus the term *Khalifah* mentioned in the Quran may not necessarily be referring to kings, according to some Muslim jurists. They are of the opinion that Islam censures royal authority only if this form of superiority was achieved by reprehensible methods and if it were used to indulge in selfish purposes and desires; conversely it approves of royal authority so long as it is fair and just, and if the ruler is faithful to the religion of Islam.<sup>45</sup> On this issue, it is interesting to note the more cynical view which asserts that the Malay ruling class had purposely and unfaithfully injected Islamic elements in order to legitimize the Raja's authority and to justify their morality. It was in other words, done with the aim of deluding the minds of the subjects into servility.<sup>46</sup> The tale of Prophet Khidir sanctioning the marriage between Raja Iskandar and the daughter of the conquered Raj Khinda Hindi as narrated in *Sejarah Melayu*, is, argues the writer, intended to legitimize the Ruler's claim to rule as God's representative on earth. Thus divine commission and mythical origin are invoked by the Malay rulers to strengthen their positions within the Malay polity.

A more sympathetic view, however, eliminates any form of malice from such an injection of Islamic elements. The argument in support of this view equates a just king with the prophet, and as such one performs good deeds for God (as prophets always did), so should he (the ruled) for the Ruler.<sup>47</sup> A Raja's illustrious and impeccable lineage bestows upon him that quality of *daulat*, which was further mystified by tales of his magical characteristics. This view obviously seeks to bring about some moderation to

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<sup>44</sup> Some modern writers believe that such an interpretation was meant to provide the Raja with an aura of religiosity and therefore this would add to his legitimacy to rule.

<sup>45</sup> See *Harakah*, 18 December 1992.

<sup>46</sup> Sharifah Maznah Syed Omar, *supra*, p.43.

the hostile and uncompromising approach adopted by some scholars in Malay studies towards the Raja. The extraordinary descent of the Rajas is, according to the more lenient and sympathetic writers, meant to emphasize merely the nobility and majesty of the Rulers. Hence, every king would insist that he belonged to the Iskandar D'Zulkarnain's lineage. The ruler of Perak, for instance, in refusing to send tribute to the King of Siam, said that, " I am the King of the ancient race. I am he who holds the royal sword and the dragon Betel Stand and the shellfish which came out of the sea which came down from Bukit Siguntang....."<sup>48</sup>

So long as the Rulers, especially of the Melaka-Johor kingdoms could relate themselves to the prince from Bukit Siguntang, whether referring to the mythologized Sri Tri Buana from court literature or to some remote historical figure whose memory remained among the Malays, or to the *Orang laut* (Cellates or coastal people who were faithful to Parameswara), they could continue to enjoy the privileges and powers of kingship.<sup>49</sup> Without possessing this lineage, a self-made raja would not enjoy a lasting and peaceful reign. The Johor Bendahara dynasty which came to power after the regicide of Sultan Mahmud Shah of Melaka in 1699, and which broke the chain of Melakan rulership, found itself in a vulnerable position without the support of the Cellates whose total devotion to the Melakan Rulers was rooted in the belief of the latter's *daulat*. Thus, when the Minangkabau adventurer, Raja Kecil claimed himself to be the last male heir of the Melakan dynasty (and therefore a descendant of the Bukit Si Guntang rulers), he

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<sup>47</sup> Zainal Abidin bin Abd.Wahid., *supra*, p.102.

<sup>48</sup> Andaya, B.W, *The Nature of State in Nineteenth Century Perak*, MBRAS Monograph No.6, p. p.25.

<sup>49</sup> Andaya, L.Y, *supra*, p. 9.

quickly gained the support of almost the entire population of the Cellates of Johor, and succeeded in dislodging the new dynasty by becoming the Sultan himself.

Similar vulnerability was also described in the *Hikayat Banjar* where the son of an Indian merchant who installed himself as Raja at Hujung Tanah had to build two statues in the shape of a man and a woman. These statues were then placed in a shrine and proclaimed king and queen of the country, because, as he said, “ I myself am not of royal descent, and I fear I may be stricken by a curse and perish. Then you will all likewise perish because you would have recognized someone who is not of royal descent”. In this way, it was believed that a misfortune, which would have been brought about by the *daulat* of the royal ruler, could be avoided. The possession of an illustrious and impeccable genealogy is therefore an essential criterion for the establishment of a ruler’s sovereignty. In this manner, too, the ruler’s monolithic quality is enhanced and as such any contest to succession may be easily eliminated. The Ninety-Nine Laws of Perak, for example, provides that when a sultan dies, only one of fully royal blood (*gahara*) can succeed.<sup>50</sup>

### **3.10 The Reluctance to Part With *Kerajaan***

It should be noted that although there had been regicides, such as the one in 1699, there had hardly been any revolt by the *rakyat* at large. In extreme cases of oppressive rule, protests were merely in the form of non-aggressive actions, such as migrating to other states. Although, in general, the *rakyat* were not considered as a part of the political structure of the Malay States, and were regarded by British observers as a very passive



and uncomplaining class, there was, however, an exception to this rule. There is considerable evidence that in the state of Kedah, the *rakyat* were not quite as passive as one might have thought. They were very quick to complain even to the Sultan himself when they felt injured.<sup>51</sup> But having said that, one would not expect them to react more aggressively than by merely migrating to the neighbouring states. Revolt was thus out of the question, as migrating seemed to be the only kind of protest acceptable to feudal Malay society. It is what they thought as proper or *patut*. Indeed, this particular value is clearly reflected in *Hikayat Banjar*. When Mohamad Dalek learns that his wife is the object of the Sultan's affections, he is portrayed as thinking, "If I wished to destroy this land of Aceh, certainly I could do so; but it is not *patut* (proper) to commit treason (*derhaka*) to a Raja because the ruling of the elders is that if a Raja is unjust.....leave him."<sup>52</sup>

Given the *rakyat*'s refusal to engage in any serious form of aggression, one might conclude that no matter the circumstances, the Raja must be left unharmed. The state of having a Raja is thus portrayed as the 'essential' concomitant of a Malay polity. Despite the view that most observers believe that the real power lay not with the Raja but rather with his ministers, it is suggested that the importance of the Raja to the Malays lay in those aspects of government, which colonial administrators and scholars often took to be the mere trappings of authority; that is to say, his ceremonial role.<sup>53</sup> In a world where *patut* (proper) behaviour and custom (*adat*) were crucial, the Ruler's role was to

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<sup>50</sup> Andaya, B.W, supra, p. 25.

<sup>51</sup> Lewis, D, Kedah : The Development of Malaya State in the Eighteenth and Nineteenth Centuries, MBRAS Monograph No.6, 1975, p.38.

<sup>52</sup> Milner, A.C, supra, p. 100.

confirm a subject's identity by means of conferment of titles (*gelar* or *nama*) and the observance of proper ceremonial form. *Nama* or *gelar* could only be obtained by loyally serving the Raja and to die with a good *nama* is, remarked by the legendary Malay hero, Hang Tuah, good and noble.<sup>54</sup>

### 3.11 The nature of Rulership and the *Rakyat*-Ruler Relationship

Milner suggests that the Raja and the *rakyat* were bound together in a system where the Ruler's *nama* was enhanced by the possession of numerous subjects, and the latter achieved *nama* by means of serving the former with unquestioning loyalty. It is this kind of relationship that lies at the centre of the Malay notion of a political system, that is, of living under a *kerajaan* or being in the condition of having a Raja.<sup>55</sup> In relation to having a *kerajaan*, it is worth noting that the *kerajaan* must have only one Raja. In other words, the Malay concept of a Raja is one that is non-divisible. Each *negeri* (state) could only have one Raja and a divided state is anathema.<sup>56</sup> The state of having two Rajas is perceived as being as disastrous as not having any. In the *Hikayat Merong Mahawangsa*, a Kedah text, the impropriety of dual kingship is clearly emphasized. It is related that the Sultan of Kedah was advised by a Syeikh to abdicate and to leave the *kerajaan* to his son.

As the story is told, the Syeikh said, " Now, since there is a Sultan for that country, and your Majesty is old, it would be proper that your Majesty should abdicate in his favour

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<sup>53</sup> Drakard, J, supra, p.18.

<sup>54</sup> Kassim Ahmad (ed), *Hikayat Hang Tuah*, Kuala Lumpur, 1958, p.319.

<sup>55</sup> Drakard, J, supra, p.18.

<sup>56</sup> Andaya, B.W, supra, p.24.

[his son's] and assume the dignity of Marhum". "Very true", replied the King, "aged rulers should retire into the dignified state you have mentioned. There cannot safely be two princes in authority at the same time". "True", replied the other, "for such is written in the book". The fact that the true royal genealogy must be established before one could claim succession to a Malay throne stresses the Malay rejection of dual kingship. The possibility of having two Rajas is equated by all Malay *hikayats* with calamity or state of *huru-hara* (chaos). In another traditional Malay epic, *Tuhfat al-Nafis*, for instance, *huru-hara* is associated with the dislocation caused by the existence of more than one ruler.<sup>57</sup>

For example, the hero of Aceh is said in the *Hikayat Potjut Muhamat* to have departed the state since he was ashamed of the presence of two rulers there. Based on these *hikayats*, it appears that the duality of kingship was considered by the Malays in the feudal days as contrary to *adat* (custom) and therefore culturally improper. However, reality often contradicts the ideal. In Perak as well as in Johor, for instance, there had been times when the states were ruled by two Rajas. In the former, the dissension between the rulers of the *Ulu* and the *Hilir* (upstream and downstream) had caused considerable problems that beset the politics of the state in the years between 1773 and 1788.<sup>58</sup> In Johor a similar situation had also existed, where there were the Sultan and the *Yang di Pertuan Muda*. The former was a Malay while the latter was a Bugis (a migrant from Celebes). One writer describes the state of Johor then as having a dual court system, a situation which could only be rectified by a *sumpah-setia* (an oath of mutual

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<sup>57</sup> Drakard, J, *supra*, p.20.

<sup>58</sup> *Ibid*, p.21.

loyalty and friendship), which was sworn between the two rulers. This *sumpah-setia* was said to have a binding effect on all Malays and Bugis.<sup>59</sup>

One might relate this problem of duality of rulership to the constitutional crisis of 1993. The Malays were placed at a crossroad in the wake of the battle over immunity of the Rulers. To support the *Barisan* (the National Front coalition party) government's crusade against the traditional Malay Rulers would amount to an act of *tidak patut* (inappropriate), or, worse still, to an act of *derhaka* against the latter. In essence, the dilemma was about a choice between the demands of *adat* (that is, the tradition of *pantang Melayu menderhaka pada Raja* (it is not the custom of the Malays to be disloyal to the Raja)) and modern constitutional requirements, such as equality before the law. What the Malays were urged to support in 1993 was the eradication of the traditional belief that a Ruler should never be challenged. But as the Rulers were also at the same time heads of the Islamic religion in their individual states, it would be more difficult for the Malays to deviate from the traditional path. The image of the "God's shadow on earth" which was integrated in the person of a Ruler since time immemorial caused some ambivalence on the part of Malay subjects in making such a choice. Thus the co-existence of the traditional *kerajaan* and the modern government in a polity where *adat* was still dearly cherished might cause a considerable problem, an instance of which was demonstrated by the 1993 constitutional crisis.

### 3.12 A Brief Description of the Structure of the *Kerajaan* System in Melakan Time

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<sup>59</sup> Matheson, V, Concepts of States in the *Tuhfat al-Nafis* (The Precious Gift), an article in the Pre-Colonial State System in Southeast Asia, MBRAS Monographs No.6, 1975, p.14.

Again, where reality is concerned, many a writer confirms that the illustrious lineage of the ruler is not the sole factor which determines the power of the incumbent. The actual power behind the throne was normally in the hands of the *Bendahara* who was assisted by several other officers of the court. As in the case of the Melakan dynasty, it was the *Bendahara* Tun Perak who masterminded and led the expansion programmes of the empire. He determined the successor to the throne (as illustrated in an episode where he forced the Sultan to send his heir into exile in Pahang, thereby causing the heir to lose his right to succeed his father). In short, the *Bendahara* was the kingmaker. In some matters, he could even make decisions without prior consultation with the Sultan. It is narrated, for example, in *Sejarah Melayu* that the *Bendahara* had at one time refused to install Sultan Zainal Abidin as the ruler of Pasai because the latter had arrogantly declined to pay obeisance to the Sultan of Melaka. The *Bendahara* was the Sultan's chief adviser, the army's commander-in-chief, the Chief Justice and also the Premier Noble of the state.<sup>60</sup>

In view of all the important positions held by the *Bendahara*, one may therefore equate him with the present-day Prime Minister. They only differ in the sense that the *Bendahara* was appointed by the Sultan, while the latter is elected by the *rakyat*. Nonetheless, in certain trivial ways, the Sultan was still the more important. Tun Mutahir, one of the Melakan *Bendaharas*, suffered death at the hands of the Sultan merely because he had erred in a very small manner, that is, in his failure to inform the Raja that he had a beautiful marriageable daughter.<sup>61</sup> By marrying off his daughter to

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<sup>60</sup> Zainal Abidin bin Abd.Wahid, supra, p.105.

<sup>61</sup> Kennedy, J, supra, p.15.

another person, Tun Mutahir was viewed as having by-passed the ruler, and as such had invoked his wrath by committing *derhaka*, a crime punishable by death. Therefore, the power of governance could not in all circumstances override the status of the ruler whose impeccability of origin was believed to have conferred on him the right to be supreme over the *rakyat* in terms of preference.

The next important position after the *Bendahara* was the *Temenggong*, who was responsible for the maintenance of law and order. He was equivalent to the present-day Chief of Police. Although the *Temenggong* had an exclusive jurisdiction in the maintenance of law and peace in the country, at times it was the Sultan who carried out the *Temenggong*'s duty. Sultan Alauddin Riayat Shah, for instance, used to disguise himself to patrol the streets at night when thieves were rife in the city of Melaka. Thus one could conclude that although there was a division of power and duties, overlapping did occur between the ruler and the ministers, especially if the former was exceptionally strong in character. After the *Temenggong*, it was the *Penghulu Bendahari* who occupied the next important office. He was the State Treasurer and under him were all servants and clerks of the Sultan, including the *Shahbandar* (the Harbour Master and Collector of Customs).

Apparently, even though it was the Sultan who occupied the most important position in the hierarchy of powers mentioned above, the ministers were nonetheless indispensable for the day-to-day administration of the state. The *Undang-Undang Melaka*, for instance, categorically mentions that:

“....even if the ruler be just, if he has no ministers to carry out his orders, his justice cannot be carried out. Even if the ruler is brave and wise but the ministers and subjects do not agree among themselves, the country will not be at peace. It is like fire, if there is no firewood, the fire cannot burn. And so it is with the rulers”.<sup>62</sup>

There were apart from those officials aforementioned, governors who were appointed by the Sultan to govern the outlying districts. An example of such districts was Klang (a district in Selangor) whose governor was Tun Perak, who was later to become the most important *Bendahara* of Melaka. These outlying districts were important insofar as they contributed to the glory of the court and of the ruler in the centre.<sup>63</sup> In fact, the ruler was not concerned with the manner in which these governors administered their districts as long as there was peace and stability in the kingdom and wealth continued to flow into the ruler's coffers. To the Sultan, the ministers were the guardians of his well being and of the state's. This pattern of centralized government was later followed by every *kerajaan* which emerged after the demise of the Melakan empire. In Pahang, for instance, the Pahang Legal Digest mentions that:

“.....like a gardener, a ruler arranges and discards,.....A Raja and his ministers are as flame and fuel. His subjects are as the ground (to support) the ruler, or as a Persian has said, “His people are the roots and the ruler”.<sup>64</sup>

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<sup>62</sup> See Khoo, K.K, supra, p.24.

<sup>63</sup> Andaya, L.Y, supra, p.2.

<sup>64</sup> Ibid, p.4.

Despite the abundance of power possessed by the ministers, they were in the final analysis dependent on the Raja whose sanction was required for their political survival. The case of *Bendahara* Tun Mutahir of Melaka and also the fate of the *Bendahara* of Johor (in the seventeenth century) illustrate the importance of having a good patron-client relationship with the ruler. Their reliance on the ruler is further illustrated when the *Bendahara* of Johor had had to regain the support of the young ruler amid a threat of the rising popularity of the *Laksamana* (Admiral) another court official. When the *Bendahara* Tun Habib Abdul Majid again took his rightful place within the kingdom, he preserved his position by maintaining that kind of rapport with the Sultan. The diplomacy between the two is evident in an incident in 1691 when the *Bendahara* refused to commit himself and the kingdom to any written agreements with the Dutch until the ruler had attained the age of majority, and could understand the implications of such documents. In the *Bendahara's* letter to the Dutch, he wrote:

“According to *adat* I have no right in the disposition of the kingdom, so how much less have I the right to give it to others. If I were to do so, I would be cheating my own king”.<sup>65</sup>

### **3.13 The influence of Economic Wealth on the Position of a Ruler**

Although in the cultural sense, the Raja's position as a ruler was fortified by the myth of his magical origin, yet beyond that mythical world, he had also had to rely on economic power for his political strength. Hence, material wealth, too, played a very important part in keeping a Raja in his position. In eighteenth-century Perak, for instance, it determined his political strength vis-à-vis the district chiefs. By having full control of the economy of his state, the ruler was able to impose a brake on the escalating power of

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<sup>65</sup> Andaya, L.Y, supra, p.7



the chieftains.<sup>66</sup> The struggle over the state economic wealth between the chiefs and the rulers as experienced in the state of Selangor in as late as the nineteenth century, exemplifies the fact that political prestige and power depended on the control of revenue.<sup>67</sup> The importance of wealth to the Malay Rajas is also confirmed by Milner, although the approach he adopted in analyzing the attitude of the Raja towards wealth is somewhat different from that undertaken by Gullick<sup>68</sup>. Milner posits that “the concern of the Malay Rulers as reflected in Malay writings was not with commerce but with wealth. The way in which wealth was obtained, be it by force, “legitimate trade”, monopoly, or even gambling or magic, was a relatively unimportant matter”.<sup>69</sup>

Based on such a premise, one could safely conclude that without the material resources, it would be very difficult for a Raja to command the loyalty of his subjects, especially as personages like the great *Bendahara* Tun Perak and Tun Habib had now become an endangered species awaiting extinction. No doubt royal descent still played a significant role in securing the loyalty of his followings in those periods, nevertheless the Raja needed also to have a strong personality before he could actually generate loyalty and exert effective control over his ministers and their followers. Although the Sultan was still the apex of the *kerajaan* system, yet his political importance in terms of practical effectiveness began to wane towards the end of the nineteenth century in some of the Malay States. His inability to control the vast number of districts within his realm made

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<sup>66</sup> Andaya, B.W, supra, p. 26.

<sup>67</sup> Gullick, J, The Role of the Malay Rulers Between 1850 and 1950, *Kajian Malaysia*, Jil.IX, No.2, December, 1991, pp 1&2.

<sup>68</sup> Gullick adopts the functionalist’s approach in his analysis of the Malay *kerajaan*, whereby the role of the Raja was explained in terms of the function of the *kerajaan* within the political system rather than the motive which prompted the *rakyat* to behave in the way they did in their relation with the Raja.

<sup>69</sup> Milner, supra, p.20.

him heavily dependent on those chiefs whom he had appointed to govern the districts. In all states, the existence of district chiefs constituted foci of purely local power and influence.<sup>70</sup>

In the case of Pahang, because of the strong personality of the Ruler, he was able to mobilize forces from among the followers of certain chiefs who would accept his leadership, whenever there was a conflict between him (the Ruler) and other chiefs. In that matter, those chiefs who allied with the Sultan would often boast about their power and influence as might be seen in the following dialogue between *Nakhoda* Trang and the Chief of Larut (a district in Perak) in about 1873 in Perak:

“The *Menteri* (Chief) replied, ‘the custom of Perak is that the most powerful man, no matter what his claims may be according to his birth, is always in the end acknowledged the Sultan’. I (*Nakhoda* Trang) said, “If that is the case, that whoever is the strongest can become Sultan, there is no longer any Malay *adat* in Perak and you may as well do away with all such offices as *Bendahara*, *Laksamana* and *Menteri*”. The *Menteri* replied, “According to Perak custom, if I were a common lamp lighter and had only men to back me, I might be made Sultan tomorrow”.<sup>71</sup>

It would appear that unlike their predecessors of the Melakan era, the Sultans were in no position to support any chief, and even in the appointment of a successor to the chieftainship, the power to appoint was left entirely in the hands of the chiefs themselves or of their lineages. Unless the Sultan was overwhelmingly powerful and influential, any candidate named as the successor by these chiefs would be acknowledged.<sup>72</sup>

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<sup>70</sup> Gullick, J, *Indigenous Political System of Western Malaya*, The Athlone Press, 1988, p.44.

<sup>71</sup> Andaya, B.W, *supra*, p.44.

It should also be noted that the chiefs and their forces were not only useful to the reigning Sultan, they could make their services available to the Sultan's successor, especially when there was a dispute over the throne. In 1871 in Perak, for example, when Raja Bendahara Ismail and Raja Muda Abdullah were contending for the throne, both were being supported by their own group of chiefs. Again, economic benefits were basic in such a dispute. The main figure who supported Ismail was the *Menteri* of Larut who, it was believed, was intriguing for his own ultimate succession to the sultanate when the elderly Ismail would pass away. But later he was forced to accept Abdullah as a condition of being allowed to hold his district of Larut.<sup>73</sup> It is worth noting that the dispute was not over until 1874 when the British had already established their influence in Perak. Thus, the chiefs played an important role in determining the position of a Raja as a ruler and this is best summed up by Sultan Mansyur Shah's (a Perak Ruler's) request for British assistance to provide him with troops in the year 1816 in order to force the country's inhabitants "great or small, everywhere", to acknowledge his authority.<sup>74</sup>

Apart from helping the potential contenders to the throne, the power and influence of the chiefs were also felt in the day-to-day running of the state. The Assembly of Nobles in Perak, for instance, was often monopolized by influential chiefs who were able to dictate to other members against the wishes of the Sultan. This is evident in the case where, in 1651, the Assembly, having been instigated by the *Bendahara* had decided to murder the Dutch representative. They could exert their influence on decisions

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<sup>72</sup> Gullick, J, *supra*, p. 70.

<sup>73</sup> *Ibid*, p.13.

concerning state matters and rarely would the Sultan go against the concerted feelings of the chiefs.<sup>75</sup> On the other hand, if the Sultan was exceptionally strong in character, he could in turn exercise his power over the chiefs by dismissing those who in his opinion posed a threat, though he would not impose his will on those members of the Assembly who were from the royal line and whose privileges came as a right of birth.<sup>76</sup>

The conflicts between the Sultan and his chiefs had therefore become a common phenomenon, which pervaded most of the Malay States in the past centuries. Interestingly though, despite these rivalries, the two sides had to accept that neither could independently survive politically without the other's support. Thus although some powerful chiefs might find it irritating to pay obeisance to the Sultan (a ceremony which they were required to attend regularly)<sup>77</sup> they could not but conform to it since their titles and authority derived from the ruler. The Ruler, in turn, needed the support (manifested in the form of obeisance) of these chiefs, for without it he would not be regarded as an acknowledged Sultan vis-à-vis a particular chief.<sup>78</sup> Both the chiefs and the Sultan would therefore find themselves intimately intertwined in this special constitutional web which bound them together in their quest for power and acknowledgement.

### **3.14 The case of Johor**

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<sup>74</sup> Andaya, B.W, *supra*, p. 29.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> Gullick, J.M, *supra*, p.48.

<sup>78</sup> *Ibid.*

A different situation existed in the southern state of Johor. Unlike the Sultan of Perak, the Ruler of Johor was fortunate to have been able to control his ministers. His position at the apex of the political system was more secure with the support of the Cellates (the coastal people who are also referred to as *Orang laut*) whose unswerving loyalty to the Sultan was indisputable. The Sultan did not have to dominate the state economy in order to command the faith and support of these people, for it was not wealth that bound them to the ruler, but his lineage. Despite chests of rials and gold which the *Paduka Tun Abdul Jamil* (the *Bendahara*) possessed, he could not bribe the Cellates to abandon their loyalty for the child ruler.<sup>79</sup> Their support had not only ensured the secure position of the Sultan, but also the strength of the kingdom. Like Perak, Johor had its own Assembly of Nobles called the Council of *Orang Kaya*. In contrast to Perak, however, the Council of *Orang kaya* functioned mainly as a force for righting any imbalance in the exercise of power as a result of any usurpation of power, or of an excessive accumulation of wealth by any chief minister or by any *Orang kaya*. The *Orang Kaya Paduka Raja* was the case in point.

The *Paduka Raja*, being a very capable man who had brought prestige to Johor, soon began to accumulate his own wealth and power to the extent that the Dutch, who were then trading with Johor, believed that he had usurped the kingship in everything but name. The *Paduka Raja* exercised his power to the fullest and enjoyed those privileges which were the sole preserve of the reigning monarch, and together with his sons, ruled Johor like a family enterprise. Threatened by his overwhelming influence, the other

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<sup>79</sup> Andaya, L.Y, supra, p.8

*Orang Kaya*, led by the *Bendahara* and sanctioned by the Sultan, plotted to kill the *Paduka Raja*. Hence, following the custom in the feudal days, the *Paduka Raja* and his family were finally put to death, while his wife was sent into exile to a place decided by the Council.

It should be noted that in their struggle for power and influence, these chiefs needed the support of the Sultan, without whose sanction their attempt to rise to the top position within the hierarchy would prove fatal. Only with the blessing of the ruler would these chiefs be recognized by the Cellates whose military strength had provided such an impenetrable 'dyke' for the kingdom. The Cellates' loyalty to the person of the ruler was well known among the chiefs and it was reported that the *Bendahara* had at one time gambled on a desperate move to abduct the young ruler from the clutches of his rival, the *Laksmāna* for he knew that even the regalia could not attract the Cellates to his side without the person of the ruler.<sup>80</sup> The unshakeable belief in the *daulat* of a Raja among people such as the Cellates, illustrates that although the real power of government lay not with the ruler, the Sultan was nevertheless 'invisibly' powerful in the sense that he could subtly maintain the balance of power within his kingdom.

Realizing the loyalty of the Cellates to the ruler, and the importance of collaborating with the *Orang Kaya*, the *Bendahara* had throughout his government demonstrated his adherence to all the accepted principles of governing and to proper behaviour in his relationship with them. He had been wise and cautious not to control or overshadow his Sultan, and his moderate influence was especially felt after his death, when the

whimsical and untoward behaviour of the Sultan (who had already reached the age of majority) could no longer be checked by the lesser chief ministers.<sup>81</sup> With the death of such able ministers like the *Bendahara* Tun Habib Abdul Majid, the ruler had become more assertive in exercising his powers in the government. This was illustrated in an incident where, in defiance of the new *Bendahara*'s advice, he refused to surrender the Melaka slaves who had fled Johor to the Dutch, as stipulated in their contract concerning the mutual exchange of runaway slaves.

The Sultan demonstrated his power of control over the government by dispatching representatives to Melaka, announcing arrogantly that he had reached the age of majority and had already assumed the governing of the kingdom for quite some time.<sup>82</sup> However, Malay society was about to witness yet another breach of the anti-*derhaka* tradition when a faction within the government, led by Megat Seri Rama (one of the *Orang Kayas*), with the sanction of the *Bendahara*, plotted to assassinate the Sultan.<sup>83</sup> The regicide, which took place in 1699, was unprecedented and for the first time since the Melakan era, the *rakyat* had been exposed to an act which disrupted the conventional code of etiquette of '*Pantang Melayu Derhaka Pada Raja*'. While the Jebat episode (where he avenged the 'death' of Hang Tuah) was the first to demonstrate a departure from what was considered a *patut* behaviour, the 1699 incident overshadowed it. For Jebat had not gone to the extent of killing the Raja; and his revolt was more personal than political, and the rest of the court circle was not part of the *derhaka* scheme. One

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<sup>80</sup> Andaya, L.Y, *supra*, p.181.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid*, p.187.

might wonder, then had not his closest friend, Hang Tuah, been sentenced to death, whether Jebat would have rebelled against his Raja.

Thus it is interesting to note that all these acts of *derhaka* did not emanate from the *rakyat* class, but rather from within the *istana* (palace) circle itself. Even the treacherous Jebat was a high-ranking court official at the time when he took the law into his own hands. Similarly, in the case of Johor, it was the chiefs who spearheaded the 1699 regicide. The allegation that Bengkalis and all the Johor dependencies in the area, and indeed, the Malay *rakyat* in Johor as a whole (not to mention the Cellates) were “stunned and regretted the tragedy” seems to show that notwithstanding all his flaws, the Sultan had not lost that special appeal and continued to command the kind of deference accorded by the *rakyat* to the Iskandar D’Zulkarnain lineage. The impact of the regicide was far reaching for it did not only mean the death of a ruler, but the end of the ancient dynastic line of the Melakan Sultans. It was said that the *rakyat* of Johor understood that they would now become the victims of the *daulat* curse,<sup>84</sup> such as famine or other disaster.

With the break up of the Melaka-Palembang line of kingship, it is argued that the ‘traditional’ set of feudal Malay values (that is, the sacredness of the ruler, the unswerving loyalty that would be accorded to him and the idea of a ruler as a semi-divine figure, whose alleged right was to commit wrongs without any sense of guilt) would gradually diminish. Whether such an argument is indeed tenable will be discussed in the latter part of this study. Perhaps, the juxtaposing of the Melakan



dynasty with the less ancient sultanate of Kelantan which emerged after the fall of the former to the Portuguese may provide an interesting contrast with regard the notion of *kerajaan* perceived by the Malays in this eastern coastal state of the Malay Peninsula.

### 3.15 The Kelantan Case

The *daulat* of a Raja which distinguished the ruler from the ruled does not appear to have strongly characterized the feature of the Kelantan Sultanate. The Kelantan delta which remained on the margins of the early Southeast Asian empires had kept it away from the domination of Sri Vijaya, Majapahit and the Melakan sultanate.<sup>85</sup> Being isolated from their influence, it is understandable that there is scarcely any emphasis laid on the sanctity of the ruler of Kelantan, despite the fact that he is undoubtedly the apex of the political system in his state. Nevertheless, the ruler was said to have commanded respect from one end to the other.<sup>86</sup> This, however, was not attributed to belief in the Sultan's sacred lineage but rather to his ability to circumscribe the powers of his officers and also of his relatives. Hence, a weak sultan may find himself in a situation described by W.A Graham, a Siamese Resident and Adviser who arrived in Kelantan in 1903:

“Another matter which at once commanded attention was the peculiar situation of His Highness [Sultan Muhammad IV, 1900-1902] with reference to his relatives and the extent to which these latter had managed to circumscribe his authority to their own great advantage. It appeared that when, in accordance with the dying wish of the late Sultan [Sultan Mansor, 1890-1900], the present Raja was appointed by His Majesty [the King of Siam] to the succession, seven of the most powerful of his uncles formed a league, by the strength of which combination they extracted from him privileges to which, without such cohesion, they could never

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<sup>84</sup> Ibid, p.189.

<sup>85</sup> Kessler, C, Islam and Malay Politics in a Malay State of Kelantan 1838-1969, Cornell University Press, Ithaca & London, 1978, p.36.

<sup>86</sup> Shahril Talib, A History of Kelantan 1890-1940, MBRAS Monograph No.21, 1995, p.17.

have aspired, prominent among which was the right to be consulted on all matters of State and to veto the orders of His Highness if they thought fit....”<sup>87</sup>

By contrast, a sultan with a stronger character would leave his officers with no right of revenue at all from their own districts except such sums as were granted to them from time to time. The revenue of the state would all flow into the royal coffers. But setting aside the difference between the ruler’s position in Kelantan and that of the Melakan dynasty (that is with regard to matters relating to the *daulat* of the Raja), one will notice that there is one common factor which equates the former with the latter. The Kelantan rulers were just like their Melakan counterparts when it came to the practical problem of succession to the royal throne. Both appeared to rely heavily on the support of their chiefs. For instance, the Sultan Tuan Long Mansor (1891-1899) of Kelantan was strongly backed by two most powerful chiefs, the *Datuk Maha Menteri* and *Datuk Sri paduka Nik Soh*, in his struggle for the throne.<sup>88</sup>

What makes it more interesting in the case of Kelantan, however, is that the chiefs were not under an obligation to pay obeisance to the Sultan, although their titles, designations and districts derived from the latter. In fact, one might say that the chiefs were more independent in the sense that they could openly oppose their Ruler.<sup>89</sup> Moreover, the sultan’s reign was often interrupted by their opposition and many a time the power of the sultan was eclipsed by the dominating chiefs. The manner in which the ruler succumbed to these aristocrats leads us to assume that those values like *derhaka*, *patut*, and blind loyalty had never entered the cultural lexicon of the Kelantan Malays. No

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<sup>87</sup> Khoo, K., K, supra, p.40.

<sup>88</sup> Kessler, C, supra, p.48.

doubt the ruler was acknowledged as the unifying factor, but this was overshadowed by the chiefs' political intrigues and personal interests. Personalities like the *Bendahara Tun Perak* of Melaka or *Sri Paduka Raja* of Johor therefore appeared somewhat a rare species in Kelantan. There was no dedication on the part of the chiefs to put the interest of the state above their own pursuit of power and personal gains, and more often than not the sultan would find himself threatened by members of his *istana*.

The kind of men who in the outlying districts became independent chiefs could no doubt be his (the Sultan's) intermediaries with the villagers outside his royal capital, but they could also be his advisors whom he badly needed but could not trust. Thus, as one writer describes it:

“To be a Malay in those days required a very strong hand and a hard character. Conspiracies by minor chiefs continually involved the ruler in an atmosphere of suspicion towards almost everybody at court where the air was boiling with intrigue. The conspiring chiefs were merely acting according to old custom, and as soon as one ruler left his treacherous world for a more peaceful life on the other side of the grave, the wheel of intrigue immediately turned against the newly appointed ruler. This was, however, only one of the troubles, a family matter, so to speak, inside the palisades. On top of that, the ruler had to deal with revolting minor chiefs in the more remote corners of the country who, on occasions, tried to obtain more power by conspiring in company with neighbouring states”.<sup>90</sup>

### 3.16 Conclusion

Although blind loyalty and unswerving devotion to the ruler was not a quality to be found among the Kelantan chiefs, one common denominator seemed to have bound

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<sup>89</sup> Ibid, p.49.

<sup>90</sup> Rentse, A, A History of Kelantan, JMBRAS 12 part 1 (1934), p.60.

them together with those of other states such as their counterparts of the Melakan era. This is the absence of any attempt to overthrow the sultanate. The only point on which they differed is the manner in which they perceived the person of the ruler, namely, the Melakan Malays viewed the Raja as some kind of a semi-divine figure, whilst the Kelantan chiefs saw him as nothing more than any mortal character. Apart from that, the sultanate is still regarded in Kelantan as well in other Malay states as the most essential part of their political system, and perhaps Milner has a point when he posits that the Malays, on the eve of the colonial days, visualized no other system than the *kerajaan*; that is, “being in the condition of having a Raja”.

## CHAPTER 4

### Reconceptualizing *Kerajaan* : Problems and Prospects

#### 4.1 Introduction

In the last chapter, we noted that the pre-colonial Malays, as mirrored in *Sejarah Melayu* and *hikayats*, seemed to have professed nothing but unswerving loyalty to their Raja. On the basis of this classical Malay literature, one might agree with Milner that on the eve of colonial rule, the *kerajaan* was not only the key institution, but the only institution in Malay political thought.<sup>1</sup> The Raja as the embodiment of the *kerajaan* system was the focus of what we may today call the political life of the Malays in pre-colonial days.<sup>2</sup> He was the source of authority, the fount of justice, and the giver of honorary robes and gifts. His role in the lives of his subjects transcended the temporal world, since the Malays, it was submitted, "...believed that their position (that is, their reputation) in this life and the next depended on their Raja."<sup>3</sup> Reputation or position, in this context is also referred to as *nama* or 'good name'. The way to achieve *nama* was by means of serving one's Raja.

Many of the traditional Malay writings from Sumatra and the Malay Peninsula suggest that the Malays' sense of identity, that is, their reputation, position or *nama*, revolved around the *kerajaan*.<sup>4</sup> Their identity was not in any way associated with the state to which they belonged, but rather with their Raja. Territorial units or settlements played a

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<sup>1</sup> Milner, A.C, *supra*, p.113

<sup>2</sup> Ariffin Omar, *Bangsa Melayu : Malay Concepts of Democracy and Community, 1945 – 1950*, Oxford University Press, Kuala Lumpur, Malaysia, 1993, p.1.

<sup>3</sup> *Ibid.*

very insignificant part in their political existence. There was no concept of 'state' as understood in the western sense; and the Malay conceptualization of authority was directly linked to the presence of a Raja.<sup>5</sup> When asked about their (the Malays) identity in an interview regarding piracy in 1836, their response was, "I am the subject of Sultan Muhammad of Lingga."<sup>6</sup> These writings suggest that the Malay *rakyat* viewed their political existence exclusively through the idiom of a Raja. This leads to the belief that the only political system envisaged by the Malays prior to the infiltration of western political ideas was the *kerajaan* and nothing else. Hence terms such as 'republic', 'federation' and 'union' were as alien as the Europeans themselves to the Malays in pre-colonial days.

Although the *rakyat* also formed part of the necessary components of a political entity in the Malay world, their role was significantly marginalised by the ruling elite. The Malay subjects were consistently indoctrinated with the idea that it was the Raja who was indispensable for the *kerajaan* establishment or the sultanate. The *Sejarah Melayu*, for instance, is illustrative of such indoctrination. Historical evidence shows that the prestige and power of a Raja were symbolized by the number of followers they possessed.<sup>7</sup> However, it is argued by some historians<sup>8</sup> that as a result of a long process of indoctrination by the *istana* (palace) and its advocates, the Malays believed that there was no other figure who was more indispensable than the Raja. In Malay historical

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<sup>4</sup> Ibid.

<sup>5</sup> Khoo K.K, Malay Society : Transformation and Democratization, Pelanduk Publications (M) Sdn.Bhd., Petaling Jaya, Selangor, Malaysia, 1991, p.20.

<sup>6</sup> Milner, A.C, supra, p.2.

<sup>7</sup> Gullick, J.M, Indigenous Political System, p.97

<sup>8</sup> See Abdul Rahman Ismail, *Sejarah Melayu: Antara Sejarah dan Dakyah* (The Malay Annals: Between History and Propaganda), *Kajian Malaysia*, Volume III, No.2, 1985, p.28.

narratives, the assertions of the Ruler's superiority, sanctity and magical power are meant to serve the purpose of deluding the minds of the subjects into servility.<sup>9</sup> Thus to the Malays, the Raja was a necessity. In other words, without a Raja of an impeccable lineage there would be no *kerajaan*, and consequently their political world would be void of meaning.

This belief was reinforced by myths and legends deliberately created by court writers for the purpose of asserting the Ruler's right to rule. The legitimacy of *kerajaan* was therefore based not on the consensus of popular will obtained through any secret ballot, but on the mythical origin of the royal ancestry. The legitimacy of the Ruler's position was bolstered by lengthy lists of his illustrious predecessors and perorations, which linked sovereignty in the traditional sense with sovereignty in the Islamic sense.<sup>10</sup> By affiliating the royal ancestry to Iskandar D'Zulkarnain, a noble and religious personality mentioned in the Holy Quran, the aura of royalty and majestic quality of a Raja is further enhanced, thus emphasizing his legitimacy to rule. However, it should also be noted that Islam was mainly used here for the purpose of giving the Ruler a religious dimension while at the same time creating the impression that Islam condoned the mythical beliefs and unIslamic practices, when in reality it does not in many respects (such as those relating to magical powers of the king and other rituals which are mostly regarded as *adat*) recognize them.<sup>11</sup>

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<sup>9</sup> Sharifah Maznah Syed Omar, *Myths and the Malay Ruling Class*, Times Academic Press, Singapore, 1993, p.43.

<sup>10</sup> Harding, A.J, *Constitutional Evolution of the Malaysian Monarchy*, SOAS Law Department, University of London, Working Papers No.4, August 3, 1993, p.4.

However, did external forces such as colonial expansion, economic challenges and foreign cultural influences which penetrated Malay society in the ensuing years change their world-view of the Raja and the *kerajaan*? Gullick argues that unlike other traditional societies sharing similar experiences of western influence, Malay society (in as late as 19<sup>th</sup> century) still remained intact in terms of its character and institutional structure.<sup>12</sup> The institution referred to here necessarily includes the *kerajaan*. But the questions which need to be addressed are (a) whether the preservation of this traditional political institution means that the Malay perception of the *ancien regime* remains static? (b) If there has been any change at all, what are those changes? and (c) in what way were these changes reflected by the 1993 constitutional development? This chapter therefore seeks to examine the extent to which the indigenous perception of the *ancien regime* has been affected, if at all, by one of the most important external forces, namely, British colonial rule. In so doing, the writer will seek to unravel the latent cause of the 1993 constitutional crisis, which is believed to have been deeply rooted in the political culture of the Malays.

It must be mentioned that, as the central theme of this study deals mainly with the perceptual development of the Malays vis-à-vis their relationship with the Ruler (in this context the term 'ruler' is not strictly confined to traditional Ruler or to the *kerajaan* only, but covers also the modern ruling authority, in other words the government)<sup>13</sup> and

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<sup>11</sup> The Holy Quran, 102: 1

<sup>12</sup> Gullick, J.M, *Malay Society in the Late Nineteenth Century*, Oxford University Press, Singapore, 1989, p.363.

<sup>13</sup> It must be understood that the term 'government' more often than not refers to UMNO. Though *Barisan Nasional* is the more appropriate reference, the fact that UMNO has been a dominant influence within the coalition for so long, that is, since independence, it means that the term government is used



with its impact on the working of the Federal Constitution, less emphasis therefore shall be paid to other aspects of the subject. Thus detailed historical accounts of developments throughout the years of colonization will not be covered. Consequently, in analyzing the changes in Malay perception of the *kerajaan* at this stage, it is sufficient to cite only certain instances from the colonial period, which are reflective of such changes. In relation to this period, two phases of British rule will be covered: the pre- and the post-World War II years. As the process of perceptual change is a continuing one, a study of such developments in the post-*Merdeka* time is also crucial in order to plot the underlying causes of the 1993 crisis.

The first phase may be regarded as an initial transitional stage of Malay political culture, that is, from one which was more traditionally and parochially 'Malay' to one which was more modern and universal.<sup>14</sup> The second phase represents a period when the Malays, after being exposed to a different kind of political experience (the Japanese invasion of Malaya, which symbolically ended the Malays' long-held belief in white (British) superiority or military invincibility), discovered a new kind of strength and spirit which gradually distanced them from the British-controlled traditional regime. Non-aristocratic Malays were given a number of important posts by the Japanese during their military occupation of Malaya in 1941-1945.<sup>15</sup> Indeed, the period between the forties and mid-fifties may be correctly regarded as a watershed in the Malay political

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interchangeably with the party. It should also be noted that 'government' in the modern sense is also called '*kerajaan*' in Malay.

<sup>14</sup> For instance, in the early 1900s, discourses about the *kerajaan* had begun to adopt a slightly different idiom of expression. The *Al-Imam* reformists spoke of *kerajaan* in the Islamic rather than in the Malay perspective.

<sup>15</sup> Firdaus Haji Abdullah, *Radical Malay Politics: Its Origin and early Development*, Pelanduk Publications, Petaling Jaya, Selangor, Malaysia, 1985, p.75.

history of the pre-*Merdeka* time. It marks the end of an era and the beginning of another. It was an era in which the more well-educated Malays were beginning to re-appraise the culture of blind loyalty to the Raja or *kerajaan* in a more hostile sense.<sup>16</sup>

Although there had been other colonial powers<sup>17</sup> in Malaya prior to the British intervention<sup>18</sup> in the Malay States in the late nineteenth century, it was the latter which served as a major dynamic of the political, psychological and perceptual development of the Malays in the transitional period aforementioned. For that reason therefore, no attention shall be paid to the non-British colonial regimes. It will be argued in this chapter that any impact on the way the Malays perceived the *kerajaan*, particularly in the intervening period prior to *Merdeka* (independence) and after *Merdeka*, is in part due to their reaction to British rule in the Malay Peninsula.

Though the conversion of the Malay Rajas to Islam (in the early fifteenth century) played an important role in marking the different phases of Malay political experience, it could not for our analysis be appropriately called the first phase of such a transition. This is simply because at that particular period of time, Islam had not yet been an effective agent of change in the sense that many of the features of the pre-Islamic

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<sup>16</sup> Some 'left-wing' reformists such as the KMM, for instance, even looked upon the *kerajaan* as a conspirator with the British colonial power.

<sup>17</sup> The Portuguese (1511) and the Dutch (1824).

<sup>18</sup> The word 'intervention' is used instead of rule because it was claimed that the British had been 'invited' by the Malay Rulers to intervene in the domestic disputes of the Malay States. On this point, Sir Frank Swettenham, in his speech at the Conference of Rulers in 1903, said: "I take this opportunity to emphasize a fact which the British Government has not forgotten and is not likely to forget. It is that though the circumstances demanded intervention, we came in to the Malay States at the invitation of the Rulers to teach them a better form of government". It was on this pretext that the British were said to have established their influence in the Malay States in the late nineteenth century. (see also Loh F. S, *Malay Precedence and the Federal Formula in the Federated Malay States 1909 to 1939*, JMBRAS, vol.45, Part II, 1972, p.30).

*kerajaan* were maintained, albeit under different names. For instance, the Hindu title of Raja had been made to appear Islamic merely by replacing it with 'Sultan', and the word 'sakti' (magical power attributed to the Hindu divine kings) replaced with 'daulat'. Furthermore, beneath this 'Islamic make-up', the practices, observances and perception relating to the institution remained substantially unaffected.

As some scholars have already noted,<sup>19</sup> Islam had not yet by then radically changed the way in which the Malays perceived *kerajaan*, especially in terms of the centrality of the Raja in their political lives. Neither had it successfully removed the relics of Hindu beliefs associated with the institution and the Raja,<sup>20</sup> and whose person is said to have been the embodiment of the *kerajaan*. It is only with the advent of British influence in the Malay States that Islam began to assume an active role in this part of the Melayu-Muslim world. As a result of what was seen as an intrusion by alien power into the Melayu-Muslim territory, Islam began to be seriously revived, invoked and applied as a platform upon which mind-reforming agendas were launched by those labelled as *Kaum Muda* (the Young Faction). This 'sharia-minded' group of Islamic activists saw Islam as the only way out of the dire economic and social conditions which beset Malay society under the *kerajaan* system, and which continued to exist under the *kerajaan*-blessed colonial regime.<sup>21</sup>

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<sup>19</sup> See Milner, A.C, *Islam and Malay Kingship, Readings On Islam in Southeast Asia*, compiled by Ahmad Ibrahim, Sharon Siddique and Yasmin Hussain, Institute of Southeast Asian Studies, Singapore, 1985, p. 25.

<sup>20</sup> Mahayudin Haji Yahaya, *Kesan dan Pengaruh Agama Terhadap Pemikiran Melayu Tradisional* (The Impact of Religion on Traditional Malay Thinking), *Jebat*, 12 (1983/84) 89-102, p.99.

<sup>21</sup> For instance, despite the economic progress of the country under British rule, Malay subjects were still living in poverty compared to those of the immigrant races. Wages offered to the Malay coolies, for example were much lower than those offered to the Chinese. Malay teachers were paid lower salaries than

Thus, in spite of Islam being used as a medium through which changes in the Malay perception were sought, it was the resentment against British colonialism that had stirred such consciousness among the Malay-Muslim reformists.<sup>22</sup> The Rulers were seen as collaborators of colonial power who were interested only in securing their own positions rather than the well-being of the *rakyat*.

It is also interesting to note that as a result, of, or rather as a reaction to, British colonial rule, the *kerajaan* was by now being exposed to two incompatible influences, namely, secular nationalistic ideals<sup>23</sup> on the one hand and Islamic political reformism on the other. In the preliminary period of Malay opposition to the British-planned Malayan Union (1945-46) it is evident that Malay nationalism was characterized by two sets of political trends. The first was, one that was susceptible to 'purely Malay'<sup>24</sup> nationalistic thinking, and the second was, Islamic 'fundamentalism'.<sup>25</sup> In the light of this argument, the present chapter will examine how British colonialism affected the way in which the Malays perceived the *kerajaan* and will argue that its impact on their lives continue to remould the Malay thinking of this *ancien regime* right up to the late twentieth century.

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Tamil peons (see Stoney, B.O, The Malays of British Malaya, Wright and Cartwright (eds), Twentieth Century Impressions of British Malaya, p.228).

<sup>22</sup> See Lanman, I.L, The Fabric of Malay Nationalism on the Malay Peninsula, Ph.D Thesis, University of California, Los Angeles, 1988, p.43.

<sup>23</sup> The word 'secular' forces of influence used here to denote the more parochial Malay ideas of nationalism, which gave preference not to the survival of 'ummah' ('community' as understood in Islam) but rather to the 'bangsa Melayu' (Malay race); and also to the western ideals of government, such as constitutionalism, democracy and other doctrines associated with them.

<sup>24</sup> The term 'purely Malay' here denotes the predominantly and narrowly Malay-oriented ideas of nationalism, such as those advocated by Kajai, which are explained and discussed in the latter part of this chapter.

<sup>25</sup> The term 'fundamentalism' used in this context refers to the teachings of "true" Islam as opposed to Islam that has been tainted with non-Islamic elements inherited by Malay culture from the Hindu past, or Islam that has been marred, in the view of some, by certain teachings of the Sufi religious teachers, such as an emphasis on magic and other principles which are not rooted in the Quran and the *Sunnah* (Prophet's traditions).

## 4.2 Interaction with British Rule: The Malay Experience and Its Impact on Indigenous Political Thinking.

The first step towards British rule in the Malay States began with the conclusion of the Pangkor Engagement in 1874, signed by the Sultan of Perak and the British representatives. This engagement or treaty opened up the way for British political control over a Malay kingdom through what was called the Residential System. By virtue of the Engagement, the Sultan of Perak was bound to seek and accept the advice of a British officer, styled 'Resident', on all matters except those which concerned Malay adat (customs) and the Islamic religion. Similar engagements were later established in Selangor, Negeri Sembilan and Pahang. These four states were subsequently forced by the British to form the Federated Malay States,<sup>26</sup> a 'loose' federation created for the purpose of British administrative convenience.<sup>27</sup> The term 'advice' (see above) is in actuality a euphemism for indirect rule. In short, it is a 'fiction' which disguised British intervention in the government of the state.<sup>28</sup>

Under this scheme the British found it necessary to rely on the support of the Malay Rulers in order to successfully carry out their policies in the Malay States'.<sup>29</sup> The blessing of the Rulers was an essential element by which the colonial administration

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<sup>26</sup> Aziz Bari, *The Development and Role of Constitutional Monarchy in Malaysia*, unpublished Ph.D Thesis, University of Birmingham, 1994, p.75. (see also Sidhu, J. S, *Administration in the Federated Malay States, 1896-1920*, Oxford University Press, Kuala Lumpur, 1980, p.40.)

<sup>27</sup> *Ibid* (see also Allen, Stockwell and Wright (eds), *A Collection of Treaties and Other Documents Affecting the States of Malaysia 1761-1963*, Vol.1, 1981, p.50).

<sup>28</sup> Gullick, J.M, *Rulers and Residents: Influence and Power in the Malay States 1870-1920*, Oxford University Press, Singapore, 1992, p. 32.

<sup>29</sup> Smith, S.C, *British Relations With the Malay Rulers: From Decentralization to Independence 1930-1957*, Oxford University Press, Kuala Lumpur, 1995, p.1.

sought to secure the support of the *rakyat*. This policy of ruling the Malays through the Rulers proved highly successful on the whole and to that end the traditional social ties between the Raja and the *rakyat* were maintained.<sup>30</sup> Indeed, as one official of the Colonial Office wrote, "...the loyalty and support of the Rulers has been valuable in the past and may well be equally valuable in the future".<sup>31</sup> To maintain that support, the *kerajaan* was further made to appear dignified and exalted through the increase of royal pomposity and *grandeur*.<sup>32</sup> As Cheah<sup>33</sup> has also noted, at that very early stage of their rule, the British might have learnt of the sacredness attached by the Malays to the position of their Rulers as expressed in the term *daulat*. They therefore used such sentiment to exert their political influence and this is nowhere more evident than in the cases of the Kelantan, Trengganu and Pahang rebellions, where the British ingeniously used the Rulers to suppress the rebels.<sup>34</sup> Even uprisings led by the traditional chiefs were to a large extent nullified by coercing the Rulers into promulgating decrees stigmatizing such anti-British uprisings as *derhaka*.<sup>35</sup>

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<sup>30</sup> Khoo, K.K, supra, 162.

<sup>31</sup> Low to Robinson, 28 May 1878, quoted in the Journal of the Historical Society, University of Malaya, Kuala Lumpur, Volume III, 1964/65, p.94. (Low was the Resident of Perak who first came to use the term of Rulers ruling on Advice).

<sup>32</sup> For instance the Rulers lived in elaborate palaces erected at state expense (see Roff, W.R, The Origins of Malay Nationalism, New Haven and London, Yale University Press, 1967, p.15. However, it should be noted that not all Malay Rajas were pampered by the British. For instance, Raja Muda (Crown Prince) of Selangor, lived in about the same class of house as a young British official of six or seven years' service (see Sidhu, J.S, Administration in the Federated Malay States 1896-1920, Oxford University Press, Kuala Lumpur, 1980, p.124).

<sup>33</sup> Cheah B.K, The Erosion of Ideological Hegemony and Royal Power and the Rise of Malay Nationalism 1945-1946, Journal of Southeast Asia Studies, Volume XIX, No.1, March, 1988, p.14.(see also Lanman, I.L, The Fabric of Malay Nationalism on the Malay Peninsula, 1920 – 1940, Ph.D Thesis, submitted to the University of California, Los Angeles, 1988, p.103).

<sup>34</sup> Ibid, p.14.

<sup>35</sup> Khoo, K.K, supra, p.162.

With the aggrandizement of ceremonial aspects of the *kerajaan*, the Rulers were meant to be seen as exalted as they had been traditionally perceived. By the same token, one historian has also commented that:

“In general, the Malay ruling families found little difficulty in reconciling themselves to their loss of political powers. Acceptance was eased by the fact that the British administration, eager to sustain the fiction of Malay rule with British advice, not only maintained the full splendour of Malay court ceremonial but also treated the Malay Rulers in public with the deference due to royalty”.<sup>36</sup>

In this way the Rulers purportedly remained ‘illustrious’ in the eyes of the *rakyat*. And the British, by making Malay customs<sup>37</sup> and Islamic matters an exclusive domain of the Rulers, had further strengthened the aura of sanctity and supernatural power of the *kerajaan*.<sup>38</sup>

The myth underpinning the *kerajaan* seemed to have persisted in the minds of the less educated *rakyat*. Indeed, it is suggested that, as late as the 1950s, the Sultan of Johor was still revered as God’s shadow on earth. According to one historical account, the Rulers of Malaya

“.....enjoy not only religious status but there is no doubt that there still persists, among their less educated subjects, a feeling (which in some cases is strong enough to be called a belief) that the Ruler is an emanation or incarnation of the Deity”.<sup>39</sup>

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<sup>36</sup> Brown, I, *Malaysian History, The Far East Asia and Australasia*, 1994, 25<sup>th</sup> edition, Europa Public Ltd., London, 1993, p. 519.

<sup>37</sup> Although matters which fell within the ambit of ‘custom’ had always been the subject of disputes between the British and the Malay Rulers (for instance, debt-slavery and tax-collection).

<sup>38</sup> Gullick, J. M, *Indigenous Political System*, p.44 & 45.

<sup>39</sup> Smith, S, *supra*, p.3.

However, there are other instances which reflect a somewhat different attitude of the *rakyat*, notably of those who were better informed, towards their Raja. Just as the Rulers began to realize the facade of the system of 'Rulers ruling on advice', so did the average *rakyat* who began to appreciate the fiction surrounding the *kerajaan*, such as its potency vis-à-vis the colonial regime.<sup>40</sup>

One could reasonably suspect that towards the end of the nineteenth century, the *rakyat's* faith in the Rulers started to wane as a result of the latter's failure to defend the Malay *adat* against British intervention. Revenue collection, searching the boats of the *Datos*' (the Malay Chiefs) and royal succession were among those matters considered by the Malays to be within the purview of *adat*. Thus when reform of revenue collecting was introduced by the British into the Malay States in the late 19th century (under this new system, all taxes and revenues were placed entirely in the hands of the Governor and his Residents)<sup>41</sup>, this was regarded as an invasion of the Malay *adat*.

Though under Article IX of the Engagement, the Rulers were promised allowances in lieu of the loss of their customary rights and powers to the British, such a settlement was far from satisfactory. They were left at the whim of the Residents and the Governor who would arbitrarily withhold the payments if they thought the Rulers were less supportive and recalcitrant. Thus money was doled out to buy support and obedience.<sup>42</sup> The failure

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<sup>40</sup> For instance, in 1896 Sultan Idris of Perak expressed his concerns over the transfer of the right of appeal to the Sultan-in-Council to the Judicial Commissioner for the Federation, and a prominent member of Council regarded the Order as an infringement on the powers of the Malay Rulers. So far as general administration of the States was concerned, the Sultans soon discovered that scant respect was accorded to their opinions (see Sidhu, J.S, supra, pp.110 &111).

<sup>41</sup> Sadka, E, supra, p.83.

<sup>42</sup> Ibid, p.84.



of the Rulers to resist this kind of manipulation and their inability to defend the Malay *adat* was seen by the *rakyat* as an act of abandoning their (the Rulers') traditional duties. For that reason, so far as the Malay subjects were concerned, the Sultans and the *kerajaan* were no longer entitled to the respect in which they had been held.<sup>43</sup> Indeed, there was even a suggestion that the Rulers might have abhorred the fact that the *rakyat* did not squat on the ground when a Raja passed before them.<sup>44</sup> This silent expression of disillusionment (or defiance?) with the *kerajaan*, in a sense exemplifies the *rakyat's* symbolic opposition to the flaws of traditional rulership. Thus, as some writers cogently argue, "the docility of the *rakyat* class cannot be assumed just because they have not arisen to wage a rebellion or a revolution".<sup>45</sup>

The muteness of the Malay *rakyat* with respect to expressing their dissatisfaction against the ruling authority (especially the Raja) had since "time immemorial" become a dominant part of their personality until the "post-post" *Merdeka* time.<sup>46</sup> Thus it is not surprising that any attempt to revolutionize their minds into reacting otherwise was met with a failure. Relevant to this, one may refer to the work of Abdullah Munshi (Abdullah was a mixed Arab-Tamil writer), such as *Kisah Pelayaran Abdullah* (The

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<sup>43</sup> Sidhu, J.S, *supra*, p.119.

<sup>44</sup> Cheah, B.K, *supra*, p.109.

<sup>45</sup> Zawawi Ibrahim and Shaharil Talib, Neither Rebellions nor Revolutions: Everyday Resistance of the Malay Peasantry Under British Capitalist Domination, *Ilmu Masyarakat* 2, April-Jun, 1983, p.25. (a paper originally presented to the "Seminar on Everyday Forms of Peasantry Resistance in Southeast Asia", The Hague, Netherlands, December 9-10, 1982, Social Science Research Council, New York).

<sup>46</sup> The writer considers the "post-post" *Merdeka* period as one which started from the moment Dr.Mahathir Mohamad assumed office as the fourth Prime Minister of Malaysia (1981). His style of leadership, political, social and religious outlooks have stirred a significant section of the Malays, especially the professionals and the *ulamas* (Islamic jurists) to adopt a more critical view of leadership.

Voyage of Abdullah Munshi)<sup>47</sup> and *Hikayat Abdullah* (The Account of Abdullah)<sup>48</sup> attempted, albeit unsuccessfully, to open up the minds of Malay subjects of his time (1830s) to challenge what he believed to be the 'ills and evils' of the *kerajaan* system.

But understandably, since the impetus for reforms like modern education, economic and other challenging forces<sup>49</sup> had yet to penetrate society, Abdullah's criticisms failed to provoke the thoughts of the Malay *rakyat* of his generation. It was only years after his death that similar critical analyses of the *kerajaan* began to resurface. The emergence of innovative ideas, particularly those advocated by Muslim reformists through their periodical, *Al-Imam* (The Leader), and also by Eunus<sup>50</sup> of *Utusan Melayu* (one of the leading Malay newspapers during the first two decades of the twentieth century) marked the re-opening of Abdullah's 'critical chapter' on the *kerajaan*. Although *Al Imam* and *Utusan Melayu* did not attribute all the 'ills' and 'evils' to the old regime in the way Abdullah did, they were nevertheless critical of the shortcomings of the Malay subjects living under the old system. It might therefore be suggested that both *Al Imam* and *Utusan* had not totally ruled the *kerajaan* out of the equation.

### 4.3 The Dawning of a New Era

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<sup>47</sup> For the romanized text of the account, see Kassim Ahmad, (ed) *Kisah Pelayaran Abdullah*, Oxford University Press, Kuala Lumpur, 1964; for an English translation, see A.E Coope (ed. & trans.), *The Story of the Voyage of Abdullah bin Abd.Kadir Munshi*, Singapore, Donald Moore, 1949.

<sup>48</sup> Hill, A.H, *Hikayat Abdullah*, *Journal of the Malayan Royal Asiatic Society*, 28, 3 June 1955, 1-345.

<sup>49</sup> Such as threats posed by the influx of immigrants into Malaya in the latter part of British rule.

<sup>50</sup> Eunus was an editor of the 'Malay edition' of the *Free Press* (Singapore's oldest English newspaper) in 1907. Later he joined the *Utusan Melayu* (a secular Malay newspaper which was contemporaneous with the celebrated religious reform journal, *Al-Imam*) as its editor. In 1914, he was appointed editor of *Lembaga Melayu*, a new paper, which until 1936 became the voice of progressive Malay opinion. Eunus with his critical and innovative ideas of Malay reforms later earned the reputation of 'the father of Malay journalism'. (see Roff, supra, p.159).

Calls for shift towards the reconceptualization of the *kerajaan* had actually begun to have some impact<sup>51</sup> on the Malay *rakyat* as early as 1906 when *Al Imam* made its debut in Singapore. In spite of not having originated from a Malay state,<sup>52</sup> its message was well received by the Malay intelligentsia in the Malay States of the peninsula. Correspondents, mostly from among the religiously educated Malays, were listed for most parts of the Malay States such as Johor, Pahang and Perak.<sup>53</sup> Its critical outlook on social and political issues as well as its Islamic-reformist approach<sup>54</sup> caused considerable alarm to the traditional ruling elite, so that special legislation<sup>55</sup> had to be enacted by the traditional establishment in order to curb the growing influence of its teachings.

It is interesting to note that despite its rather short life span (1906-08), *Al-Imam's* views did not disappear upon its demise. Its ideas of *kerajaan*, of Malay society and of social reforms continued to survive right into the latter part of the twentieth century. Indeed, its

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<sup>51</sup> This is clearly evident in the way the traditional elites (namely, the Malay Rulers and their conservative religious officials who supported the *kerajaan*) reacted to the increasing influence of *Al Imam* whose disciples were labelled as *Kaum Muda*. The *Kaum Muda* (the Young Faction) was accused by the *Kaum Tua*, (the old or the conservative faction) as having a communist tendency, an allegation used to deter the Malays from sympathizing with the former.

<sup>52</sup> Unlike those states with Sultans, Singapore (together with Penang and Melaka, collectively known as Straits Settlements) was subject to a different style of administration. There was no Resident and the fiction of 'Rulers ruling upon advice' did not apply here. It was considered as a Crown Colony. This Settlement was governed by a Governor and therefore was directly controlled by the British. It was also different from the rest of the states on the Peninsula (with the exception of Melaka) in the sense that there was no sultan. Without sultans, Singapore lacked that vital characteristic, which gave the state a sense of Malayness.

<sup>53</sup> Roff, W, *The Origins of Malay Nationalism*, Yale Universtiy Press, New Haven & London, 1967, p.66.

<sup>54</sup> For instance, *Al-Imam* firmly believed that the *rakyat* should not confine themselves to personal salvation alone. Islam, argued *Al-Imam*, encompassed all matters, including politics. Therefore, the Muslims should participate in it for the sake of human progress (see Abu Bakar Hamzah, *Al-Imam and Politics, Islamika II*, Sarjana Enterprise, Kuala Lumpur, 1982, p.141).

<sup>55</sup> The Muhammadan Laws Enactment 1904 of Selangor had to be amended in 1925-26 (similar enactments in Perak and Negeri Sembilan had also to be amended ) to provide severe penalties for anyone printing or publishing literature concerning the Islamic religion without the written consent of the Sultan in Council. (see also Roff, W, *supra*, p.80).

views were reiterated not only by some of the Malay political leaders during the 1993 constitutional debates on the royal immunity issues, but also by those Malay intelligentsia who supported the constitutional amendments. In view of the continuity of its impact on the political thought of present-day Malay political leaders and intelligentsia, it would therefore be relevant to highlight some of its reformist ideas in this study.

#### **4.4 *Al-Imam*'s Islamic Ideas of Reforming the Kerajaan**

Although it would be more realistic to suggest that the process of redefining *kerajaan* only began to gain momentum after World War II, especially towards the end of colonial rule in Malaya, it would be doing an injustice to disregard the period preceding it as unimportant. As early as 1906, ideas which ran counter to the conventional perception of *kerajaan* had already found expression in *Al-Imam*. *Al-Imam* was noted for its controversial ideas of reforms. Despite its early demise, the periodical managed to attract a significant readership, particularly among those religious zealots from the new-style *madrasahs* (Islamic religious schools) in Malaya.<sup>56</sup> It was among this group of Malays who had been labelled by the conservative Malay *ulamas* (traditional Malay religious teachers and jurists) as *Kaum Muda* (Young Faction), that *kerajaan* had begun to take on a different appearance. *Al-Imam* severely criticized in the following words, the *ancien regime*, for what it viewed as the latter's ignorance and fallacy:

“If the king is one who is ignorant, of bad character, low ambition, greedy, and covetous, narrow minded, stupid, of bad motive, his ways crooked, then without doubt, such

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<sup>56</sup> Roff, W, *supra*, p.66.

action will lead to the fall of his *ummah* (nation) into the pit of loss due to the great deviation from the right path....”<sup>57</sup>

Although the criticism was hurled at the Raja as an individual, the fact that the Raja was the embodiment of the *kerajaan* system, suggests that it was actually aimed at the whole institution. To *Al-Imam*, the prosperity of the *ummah* depended not on the *daulat* of a Raja, but rather on the practical qualities of rulership and good governance. Hence its idea of good deeds contradicted those propounded by the court writers such as Tun Sri Lanang of *Sejarah Melayu*. *Al-Imam*'s hero was therefore one who served the *ummah* as a whole instead of serving blindly the Raja.<sup>58</sup> Thus, the nucleus of social and political existence was now being shifted from the Raja to the *ummah*.

Given that the editor of *Al-Imam* was a staunch advocate of *sharia*-mindedness<sup>59</sup>, it is not surprising that its editorial keenly supported the concept of the 'neutral' Sovereign, believed by the Muslims to be Allah, the sole and mighty Creator of the whole universe. Sovereignty, stressed the editor, resided only in Allah, thus making all others subservient to Him, and to Him alone. Hence, the Rulers should be no higher in status than the *rakyat* or subjects. As mentioned above, *Al-Imam*'s criticisms were not confined only to the Raja but to the whole of the Raja institution. This means it included also the chiefs and ministers who formed part of the *kerajaan* system, who were held responsible by *Al-Imam* for the backwardness of Malay communities.

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<sup>57</sup> Quoted by Abu Bakar Hamzah, in *Al-Imam and Politics*, supra, p.133.

<sup>58</sup> Ibid, p.135.

<sup>59</sup> *Sharia*-mindedness here refers to those who assert the importance of adhering to the fundamentals of the Islamic religion, that is the 'pure' Islam which is free of myth and superstitions.

Unlike *Sejarah Melayu*, *Al-Imam* was unapologetic, direct and open in its criticisms. But despite its sharpness in criticizing the *kerajaan*, *Al-Imam* did not advocate a complete abandonment of this *ancien regime*. On the contrary, the periodical instead encouraged that “a child be taught to love the king.”<sup>60</sup> It was not so much the condition of having a Raja that was abhorred by this periodical, but the condition in which the Raja had placed his *rakyat* which was the subject of its criticisms. As such, *kerajaan*, subject to the conditions aforementioned, was not unacceptable to *Al-Imam*. This helps to explain why despite its condemnation of *kerajaan*, the periodical proceeded to praise Sultan Abu Bakar of Johor, whose name, it said, would be “written in the hearts of everyone in his community and of all the people of his country” for all the good deeds he had done.<sup>61</sup> It is worthy of note that the reluctance to eliminate the *kerajaan* completely was, moreover, not the intention of the Malays in general, both in the pre- and post-*Merdeka* times.

Thus even in the heat of argument and debate in the *Dewan Rakyat* over the immunity issue in 1993, not one Malay representative suggested that the *kerajaan* be abolished. The nearest they came to this was to remind the Rulers to act within the constitutional bounds so that they would not have to suffer the fate of other Rulers such as the Shah of Iran.<sup>62</sup> Shahidan Kassim (an MP from Kedah), for instance, argued that the Raja system would not be abolished so long as the *rakyat* wanted it. The *rakyat* would continue to support the institution if the Rulers could provide the ‘shade’ (meaning ‘protection)

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<sup>60</sup> Abu Bakar Hamzah, *supra*, p.135.

<sup>61</sup> Milner, A.C, *The Invention of Politics*, *supra*, p.143.

<sup>62</sup> *Dewan Rakyat* Debates 19 January 1993.

needed by the *rakyat*, and so long as they (the Rulers) could behave constitutionally.<sup>63</sup> A member from Melaka added that it was the UMNO which had saved the Rulers from losing their sovereignty, and as such there had been no intention on the part of UMNO to destroy the Raja institution.<sup>64</sup>

#### 4.5 The 'Roaring' Twenties and Thirties

With the infiltration of new and innovative ideas of reforms, educated Malay society began to nurture the seeds of disenchantment with the *kerajaan* and its colonial sponsored regime in a more vigorous fashion.<sup>65</sup> The erosion of faith in this *ancien regime* continued to manifest itself in the 1920s, which was reflected in the increase in the number of publications imbued with anti-*kerajaan* and anti-colonial attitudes. This political awareness was most evident amongst the educated class of Malays, notably, teachers who graduated from the Sultan Idris Training College (S.I.T.C). A new sense of political existence was developing, it is claimed by Roff<sup>66</sup>, among the Malay intelligentsia within this period, right down to the 1930s. The focus on the Raja as an essential element in their political existence was gradually shifting to the *bangsa*.

In the light of the developments which occurred during those years, the Malays seem to have crossed that traditional boundary which delimited their perception of identity as the '*rakyat* of Raja so and so' (a common way of identifying oneself in the pre-colonial

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<sup>63</sup> Ibid.

<sup>64</sup> *Dewan Rakyat* Debates, 18 January 1993.

<sup>65</sup> Although there was no statistical evidence to support the view that the *rakyat*'s feelings of resentment against the traditional elites were being nurtured at this point of time (1920s-30s), the fact that the Malays called up past grievances and misrule of their Rulers in later years gives us an indication that such a feeling had not totally been absent from their minds.

<sup>66</sup> Roff, W, *supra*, p. 149.

days), as they gradually began to liberate themselves from the 'orthodox' notion of the *kerajaan*.<sup>67</sup> In place of this old perception of 'no Raja, no *rakyat*' was the sense of "oneness" which emphasized the importance and survival of the *rakyat* rather than that of the *kerajaan*. This newly discovered concept was, as we shall see later in this chapter, couched in two conflicting terms: *bangsa* (race) on the one hand, and *ummah* (community or nation) on the other. It is of absorbing interest to note that these very terms were resurrected, especially by Malay political leaders, in discourses relating to the 1993 royal immunity issue.

Organizations such as *Jamiah-al-Khairiah* (The Welfare Society, formed in 1922) which combined the Malays of the Malay Peninsula and Indonesia<sup>68</sup> were amongst those which advocated the new concept. Although the concept of '*ummah*' had already emerged in 1906 through the publication of *Al-Imam*, it was not until in 1922 that it finally acquired its organizational form. The *Jamiah-al-Khairiah* represented a somewhat aggressive and overt political movement, which envisioned a new form of Malay community that was basically centred upon these three ideals: Pan-Islamism, Pan-Malayanism (union between Indonesia and Malaya (*Melayu Raya*) or the Greater Indonesia) and anti-colonialism. The drive to transform what was formerly an 'imagined' Malay community (to use Anderson's term)<sup>69</sup> or, to borrow Lamont's term,

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<sup>67</sup> The shift from the orthodox feudal notion of *kerajaan* to one that was modern and democratic was most visibly displayed in *Majlis*, one of the radical journals of its time. For instance, it highlighted the point that 'The aura of *daulat* is not just the Raja's, but the *rakyat's daulat* (people's sovereignty) is even higher. If there is no *rakyat*, there will be no Raja, but if there is no Raja, the *rakyat* can become Raja.' (see Ariffin Omar, *Bangsa Melayu: Malay Concepts of Democracy and Community: 1945-50*, Oxford University Press, Kuala Lumpur, 1993, p.54.

<sup>68</sup> Firdaus, Abdullah, *supra*, p.54.

<sup>69</sup> Anderson, Benedict, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, Verso Editions, 1983.



an 'invisible *kampong*' (village) into a real, common and more tangible political entity was further intensified in the years that followed.

Consequently, the change in the political, economic and social landscape induced by British colonialism brought to the fore ideas that challenged the traditional doctrine of 'no Raja, no *rakyat*'. Given such developments in the Malay Peninsula, one might therefore concur with the view that colonialism, is in fact, "..... a dialectical catalyst. While it tore apart the fabric of the traditional societies, it released the people from the traditional servitude, and unified them against it (colonialism)".<sup>70</sup> The growth of new classes of Malays, notably, those who received modern forms of education, and the emergence of urban-based Malay communities in the first few decades of the twentieth century further accelerated the process of reconceptualizing the *kerajaan*.

#### 4.6 Malay Nationalist Thought In Full Bloom

The period between 1930s and the 1940s was marked by a flurry of nationalist activities that came to full bloom with the emergence of a variety of Malay nationalist movements in Malaya. It witnessed the birth of some of the radical groups such as the *Kesatuan Melayu Muda* (KMM) or Young Malay Union (1938) which had its origin in the Sultan Idris Training College in Perak. Drawing its inspiration from the experience<sup>71</sup> of their neighbouring land, Indonesia, the Malay nationalists had not only turned more vocal, but also more militant in their approach towards the later years. The KMM, for example,

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<sup>70</sup> Cheah, B.K, supra, p.109.

<sup>71</sup> Ahmat Adam, *Gerakan Kebangsaan Awal di Tanah Melayu: Antara Harapan dan Kenyataan, Ilmu Masyarakat*, ( Early Nationalist Movement in the Malay Peninsula: Between Hope and Reality) July - September 1983, p. 61.

was directly modelled upon the Jong Java and Jong Sumatra leagues of the Netherlands Indies. It was vaguely Marxist in inclination and displayed a strong anti-colonial spirit and opposition to the 'bourgeois-feudalist' leadership of the traditional elite.<sup>72</sup> The KMM refused to profess loyalty to the Sultans and though it had never spoken of non-cooperation with the existing regime, the leadership vigorously worked to promote nationalist feelings and teachings among its members, whose strength lay among the lower class.<sup>73</sup>

The Malay Peninsula was by now dominated by a new wave of political activists who shared one common denominator, peasant and non-aristocratic social origin.<sup>74</sup> Their views were vigorously disseminated mostly through such vernacular journals and newspapers such as *Idaran Zaman*, *Majlis*, and *Warta Malaya* which mushroomed throughout the period. These publications played a major role in changing the shape of Malay thinking vis-à-vis the *kerajaan*, that is, from mute retaliation<sup>75</sup> to express condemnation. Though these periodicals and newspapers found their readership mainly in the urban areas, the rural Malays were not totally excluded in the sense that the messages contained therein were delivered through the efforts of those Malay teachers who were posted to teach in the *kampong* schools.<sup>76</sup>

In explaining the impact of British rule on Malay political thinking, one cannot avoid mentioning the paradox of British policy on Malay education in Malaya. It was not the

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<sup>72</sup> Roff, W, supra, p.222.

<sup>73</sup> Ibid.

<sup>74</sup> Firdaus Abdullah, supra, p.66.

<sup>75</sup> Such as migrating to other villages as a mark of protest against a tyrant ruler.

intention of the British to provide ordinary Malays with the level of education that would make them highly educated people. This was clearly expressed in 1915 by R.H Kenion, an Unofficial member in the Federal Council of the Federated Malay States. He remarked:

“The great object of education is to train a man to make his living...You can teach Malays so that they do not lose their skill and craft in fishing and jungle work. Teach them the dignity of manual labour, so that they do not all become kranies (clerks) and I am sure you will not have the trouble which has arisen in India through over-education”.<sup>77</sup>

In 1920 this view was translated into policy which, inter alia, read:

The aim of the Government is not to turn out a few well educated youths, nor a number of less well educated boys; rather it is to improve the bulk of the people, and to make the son of a fisherman or peasant a more intelligent fisherman or peasant than his father had been, and a man whose education will enable him to understand how his lot in life fits in with the scheme of life around him.<sup>78</sup>

Although some efforts were made by the British to improve the state of vernacular Malay education, the underlying policy remained unchanged. Thus in 1917, when R.O Winstedt was appointed Assistant Director of Education in Malaya, he made sure that “the Malay peasants did not get too grandiose ideas and had a distinctly rural slant”.<sup>79</sup> While there was already a school which catered for teachers’ training in Perak by 1898, but the quality of instruction was very poor, and as a result the teachers who graduated therefrom were inefficient and of low standard.<sup>80</sup> Pressures were mounting from the Malays, especially those from the developed areas, for access to English medium of

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<sup>76</sup> Lanman, I.L, *supra*, p.35.

<sup>77</sup> Roff, W, *supra*, p.136.

<sup>78</sup> FMS Government Gazette, 1921, cited in Sidhu, J.S, *supra*, p.142.

<sup>79</sup> Sidhu, J.S, *ibid*, p.144.

education. But the British were not too keen on meeting this demand and argued that an increase in English educational opportunities would 'disrupt the peasant society'.<sup>81</sup>

Educating the Malay *rakyat* to become better peasants therefore had always been at the forefront of the colonial administrators' minds. Having said that, it must nevertheless be conceded that as the years progressed, some steps were nonetheless taken to further improve vernacular Malay education. The policy was now somewhat altered in the sense that the standards of schools were raised by means of replacing the formerly unsuitable books with better reading materials dealing with much wider areas of knowledge, such as geography, hygiene, arithmetic and agricultural science.<sup>82</sup> In addition, a central training college for teachers was set up in 1922 at Tanjong Malim, Perak. Yet, on the whole, the course of education so far mapped for ordinary Malays was not in itself adequate to prepare them for modern challenges that existed beyond the boundaries of their rural world.

Paradoxically, however, it was at this vernacular Malay college in Perak that Malays of the 'lower' background began to obtain the kind of education,<sup>83</sup> which the British colonial government had tried so hard to deny them.<sup>84</sup> Contrary to the British

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<sup>80</sup> Ibid, p.143.

<sup>81</sup> Roff, W, *supra*, p.138.

<sup>82</sup> Ibid, p.141.

<sup>83</sup> That is to say, the kind of higher education provided for the aristocratic elite by the English school.

<sup>84</sup> It had always been the policy of the British to provide what they termed 'safe-education' for the Malays. Frank Swettenham wrote in the Perak Government Gazette, 6 July 1894, p. 17:

"I am not in favour of extending the number of "English" schools except where there is some palpable desire that English should be taught. Whilst we teach children to read and write and count in their own languages, or in Malay .....we are safe. Beyond that, I should like to see the boys taught useful industries and the girls weaving, embroidery and mat-making, all profitable

expectation, it was the result of their 'under-education' which led those young Malay teachers to sow the seeds of nationalism among ordinary members of Malay society, and which was later nurtured and developed throughout the whole of the Malay Peninsula. With English education mainly confined to the sons of the traditional ruling *elite* (who carried on the tradition of collaborating with the colonial rulers)<sup>85</sup>, the educated ordinary Malay *rakyat* were forced to turn to other sources of knowledge that matched their level of competency. The only alternative available at this time were literary works of some of the most influential Malay intelligentsia in Indonesia.

Indonesian magazines, articles, and journals found their way into Malaya through subscriptions by the S.I.T.C and other circulating libraries set up by the Indonesian *Balai Pustaka* (Hall of Literature), and continued to do so in the period after the First World War.<sup>86</sup> These publications played a major role in stimulating the spirit of Malay nationalism among Peninsula Malay intelligentsia, the majority of whom were teachers. Themes which dealt with social and political reforms ran pervasively through most of these imported magazines and journals. Inevitably, the door to the 'new' world was thrown wide open for these young Malay zealots, whose pursuits now lay in an area where their forefathers had never trodden before.

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and all practised with a high degree of excellence in different states of the Peninsula”.

<sup>85</sup> It should be noted that U.M.N.O (United Malay National Organization) which led the way to independence was the only political movement that received the blessing of the colonial government and of the Sultans. Its leadership was made up of those Malay nationalists of aristocratic background and who obviously received English education. Their struggle was not so much against the colonial power but rather against retaining the status quo of the Sultans and continuing the British system of government in Malaya even after Merdeka (Independence). In this respect, one might say that the aim of the British to make 'the sons of Rajas and Chiefs useful future British allies' via their education policy was undoubtedly successful. (On the issue of this preferential treatment conducted by the British, see also Loh F. S, *Seeds of Separatism: Educational Policy in Malaya 1874 – 1940*, Oxford University Press, Kuala Lumpur, 1975, p.19).

Having shared similar political, intellectual and social experiences with their Indonesian counterparts, the Malay intelligentsia found themselves increasingly aware of the fact that they were being marginalized by the colonial government from participating in the process of change that was taking place in Malaya.<sup>87</sup> Thus, on 10 March 1937, the Straits Times editorial articulately expressed Malay grievances in the following words:

One of the greatest grievances of people born and bred in this country is that their sons are not eligible for the Malayan Civil Service, which is open only to persons of pure British European descent on both sides. The creation of the Straits Settlements Civil Service [or the MAS], the racial exclusiveness of the senior civil service is now more sharply emphasized than before....<sup>88</sup>

Apart from racial discrimination, there was also in practice class discrimination in the recruitment of Malay subjects to the administration of the Federated Malay States (FMS). As far as the Malayan Civil Service was concerned, only Malays of aristocratic background (who were necessarily English-educated) were allowed to serve in the colonial bureaucracy.<sup>89</sup> The alienation of non-aristocratic Malays from the mainstream of governmental activities by means of a 'second-class' type of education ultimately forced them to be critical not only of the state of their own society, but also of the whole governmental system under colonial power and of its ally, the *kerajaan*.

With the apparent lack of enthusiasm (or perhaps reluctance)<sup>90</sup> on the part of the *kerajaan* to remedy the existing condition of ordinary Malay society, the

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<sup>86</sup> Roff, W, *supra*, p.153.

<sup>87</sup> Straits Times, 10 March 1937.

<sup>88</sup> Cited by Lanman, I.L, *supra*, p.117.

<sup>89</sup> Roff, W, *supra*, p.231.

<sup>90</sup> The fact that the traditional ruling *elites* (with the exception of the Sultan and Raja Muda (the Crown Prince) of Selangor) favoured only the sons of 'good family' (which means the sons of the ruling class and aristocrats) to be enrolled at the Malay College of Kuala Kangsar, dubbed as the Eton of Malaya,

disenchantment with the traditional regime became more prominent than before.<sup>91</sup> Though, generally, the Peninsula Malay reformists lacked the kind of militant revolutionary spirit possessed by Indonesian nationalists,<sup>92</sup> they were nonetheless capable of channeling their thoughts through journals and other literary outlets to revolutionize the way in which the traditional political system was perceived, to quite a significant degree. Their views might be considered 'revolutionary' in the sense that they deviated from other conventional Malay writings, which were normally uncritical of the ruling authority and of the social and economic conditions created by its system.

#### 4.7 Artistic Dissemination of Nationalist Thoughts and Ideas

Consequently, the *hikayats* and other literary works of its genre had by this period become out of vogue and a rarity. In place of these traditional styles of literature were writings such as those produced by Harun Aminurrashid (*Melor Kuala Lumpur* (Jasmine of Kuala Lumpur)), Ahmad Kotot (*Perchintaan Kaseh Kemudaan* (Young Love's Sorrows)) and Ahmad Rashid Talu (*Iakah Salmah* (Is that Salmah)), Ishak Haji Muhammad (*Istana Berembun* (The Morning Dew Palace)). Of the four names mentioned, Ishak was the most prominent and versatile among them. As an editor, fiction writer, satirist and a politician, he had been very influential in stimulating the

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indicated their reluctance to provide those opportunities available through good English education to the ordinary Malays. (see an excerpt from Memoir Mustapha Hussein: *Kebangkitan Nasionalisme Melayu sebelum UMNO* (Memoir of Mustapha Hussein: The Rise of Malay Nationalism before UMNO), in *Berita Harian Online*, <http://www.jaring.my/bharian/tue/mu> 18.htn, visited on 28/08/99 16.10).

<sup>91</sup> The formation of state associations which claimed to represent Malay interests was in fact a sign of the *rakyat's* fading trust in the *kerajaan*, their protector. (for this view, see also Ariffin Omar, supra, p. 12).

<sup>92</sup> The Peninsula Malay nationalists, in general, were relatively less anti-colonial than their Dutch colonized- Indonesians. The Indonesians were also far more aggressive and communist in inclination. Except for the prominent few such as Ibrahim Yaakob (a well-known figure of the radical or left-wing Malay nationalist movement, the KMM), Hassan Manan, Abdul Karim Rashid and Isa Mohd. bin Mahmud, the rest showed little or no interest in their style of struggle (see also Roff, W, supra, p.115).

Malay nationalists' minds in the 1930s. His sharp and critical views of the traditional Rulers were reflected in his *cerpen* (short story), *Istana Berembun* (Morning Dew Palace)<sup>93</sup>

This *cerpen* is worth mentioning in the sense that its tone and manner of criticism (that is, in terms of its crudeness), bear some similarities with the currently controversial satirical novel, SHIT.<sup>94</sup> In *Istana Berembun*, the Raja was depicted as intellectually shallow and suspicious of the religiously educated. Ishak had also criticized the Malays for being overly respectful to the Raja, who in the author's opinion did not deserve such respect. This over-deference by the *rakyat* was satirically and cynically expressed in the following passage:

*"Ampun Tuanku bermillion-million ampun, sembah patik pacal yang hina dina ini harapkan diampun. Adapun kedatangan patik ini ialah berkenaan dengan anakanda pacal Tengku Yahaya yang sudah besar panjang dan sedang remaja itu...."*

(Forgive me, your Highness, a million forgiveness, as my most humble presence here is about my son, Tengku Yahaya, who is already a grown-up...).

By depicting the ruler as intellectually shallow and less respectful of the religious Muslims, the writer was actually debunking the myth of the Raja's 'impeccable lineage'.

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<sup>93</sup> This *cerpen* was published in *Warta Ahad*, 10 April 1938).

<sup>94</sup> The novel SHIT was written by the Malaysian national laureate, Dato' Haji Shanon Ahmad, who is well known for his sharp criticism of Malay society and politics. The blunt, rustic and sort-of-crude way of presenting his views is almost unparalleled among Malaysian novelists. His latest work aroused mixed reactions from a wide range of Malaysian communities.. While the UMNO leadership considers it the most vulgar political novel ever written by a Malay novelist, PAS nonetheless, supports it for its 'appropriateness' (PAS leadership dismisses UMNO's allegation of vulgarity of the novel on the basis that though the words employed (such as '*PukiMak*', which was obviously directed to the Prime Minister)) were abusive and 'unethical' by Malay standard, in Islam, the use of 'strong' words in admonishing wrongdoers or sinners was said to be permissible). Although SHIT is not concerned with the traditional ruling class, but rather with the modern UMNO leaders, it is nonetheless still about Malay rulership, which in the eyes of the novelist has transgressed the boundaries of political propriety and has violated Islamic principles.



He was thus trying to 'detraditionalize' (to use the anthropological term) traditional Malay thoughts about the Malay Rulers. 'Detraditionalizing' Malay thought has, indeed, as we shall see later in this study, become an obsession of the present Malay political leaders, notably, the Prime Minister, as exemplified in his vigorous 'constitutional' attacks on the Rulers in 1993 and in those years preceding it.

Though ideas in these works were normally presented against fictionalized settings, they nevertheless helped to instill in the more informed and educated Malays a spirit, self-determination and confidence real enough to pursue social and political reforms. Indeed, more and more writers, playwrights and other Malay intelligentsia were persuaded to follow the footsteps of their compatriots such as Ishak in the years that followed. For instance, a theatrical drama called *Laksmana Bentan*, produced in 1940, bore almost the same theme. One of the dialogues therein reflected the misdemeanours of the Sultans and of their princes in the following manner:

*Beginilah pekerti anak-anak Raja. Bermaharajalela berbuat sesuka hati. Merampas, menyamun dan menyakiti hati rakyat, itulah amalan mereka.*

(Such is the behaviour of our princes. They act as they like. Plundering, looting and hurting the *rakyat* have indeed become their habits)

The above criticism is many a time echoed by modern Malay leaders, as is evident in the 1993 *Dewan Rakyat* Debates. A member from Gua Musang, Kelantan, though not referring to any dialogues in the above play, coincidentally mentioned that:

*"Warganegara mahukan Raja yang bersih, Raja yang tidak berkubang dalam soal-soal yang boleh menjatuhkan darjat mereka. Raja yang tidak terjun mencari kekayaan dengan menggunakan jari-jemari dan sengat-sengatnya, Raja yang tidak*

*membuka mata sambil membilang batang-batang kayu balak untuk ditebang.....Rakyat menuntut supaya Raja menjadi bersih, bermaruah, berhemah tinggi dan berpandangan jauh....”*<sup>95</sup>

(The citizens want a ‘clean’ Raja, that is, one who is not indulged in matters that will relegate his status (or tarnish his image), and a Raja who does not use his influence whilst counting the number of trees in the timber concession area [meaning using their influence and status in applying for the timber concessions]...The *rakyat* demand the Raja be clean in deeds and moral behaviour, respectable and have a far vision....)

One could argue that since the above opinion is one which came from a *wakil* (representative) of the *rakyat*, it therefore represented the latter’s opinion as well. Thus, although no direct reference was made to the dialogues in *Laksamana Bentan*, it nevertheless carried the same message.

#### **4. 8 The Shift from Raja to *Bangsa* in Malay Political Discourse**

The shift in the traditional Malay perception of the *kerajaan* and of the values representative of it, such as *taat setia* and *derhaka*, was also, as mentioned earlier, facilitated by the growth of vernacular Malay newspapers among which *Majlis* appeared to be the most prominent. The editorials, led by Abdul Rahim Kajai (who served as its editor from 1931-1935) adopted a significantly new idiom of expression in describing Malay political existence. In contrast to traditional Malay discourse on ‘*Melayu*’, such as *Sejarah Melayu*, *Hikayat Hang Tuah* and the like (which necessarily emphasized the ‘centrality’ of the *kerajaan*), *Majlis*’s central theme was the *bangsa* (race) rather than the Raja. Perhaps, in this respect one could suggest that the idea of *bangsa* perceived by

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<sup>95</sup> See Ibrahim Ali’s speech in the *Dewan Rakyat* Debates, 18 January 1993.

*Majlis* was one that was quite detached from the *kerajaan*. In effect, the notion was rejected that it was only through the connection with a 'true' Malay (that is, one of royal descent), that the common people (*rakyat*) could themselves acquire Malay status<sup>96</sup> (*bangsa Melayu*).

*Majlis*'s rejection of the notion of Raja's centrality may be gauged from its editorial opinion which stated:

*"Kalimah 'Melayu' .....iaitu kalimah bangsa kita yang utama sekali yang boleh menyatukan anggota kita di dalam semenanjung ini dan kalimah 'Melayu' itulah kelak yang akan memperkokohkan pendirian kita di dalam siasah dan ekonomi negeri kita dan dengan lain-lain perkataan bahawa dengan keunggulan kalimah 'Melayu' itulah kita akan mempersisihkan bangsa asing yang datang berketurunan ke negeri kita ini dan dengannyalah kelak kita serta mempertahankan dia".<sup>97</sup>*

(" 'Melayu' .....that is, the phrase of our *bangsa*, is of utmost importance for it will bind us together in this Peninsula and will help us to strengthen our social and economic positions in this nation of ours or in other words it is with the uniqueness of 'Melayu' that we shall alienate those foreigners who come to settle in our homeland and with it shall we defend this nation").

On reading this passage, one would sense that the words Raja and '*kerajaan*' had been somewhat deliberately omitted by the editorial. The emphasis was more on *Melayu*, which in this context referred to the *bangsa*, than on anything else. It might be suggested that in the editorial's opinion, the Raja or the *kerajaan* had ceased to serve any purpose, least of all a central one, in the survival of the *bangsa*. Unity and even progress were now being perceived from quite a different perspective, one which had nothing to do

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<sup>96</sup> Nagata, J, *The Reflowering of Malaysian Islam: Modern Religious Radicals And Their Roots*, University Of British Columbia Press, Vancouver, 1984, pp.2-4.

<sup>97</sup> *Majlis*, 17 Disember, 1931 (cited by Md.Salleh Md.Gaus, in his article, Abdul Rahim Kajai and his Ideal of Malay Politics and Malay Economic Progress, *Jebat*, Bil.3/4, 1973/4/1974/75, p.2).

with the *kerajaan*<sup>98</sup>. In other words it urged the Malay *rakyat* to liberate themselves from the *ancien regime* and to start working things out on their own.

Although the message of liberating oneself from the old order was not explicitly spelt out in the editorial, the intention was not ambiguous; those who knew Kajai would have understood his meaning. The *Majlis* under Kajai's editorship seemed to give Malay political existence a fresh interpretation by taking the Raja out of the equation. Thus, by substituting the Raja idiom with the '*kalimah Melayu*', *Majlis* was actually introducing a rather radical concept, obviously one that was born out of the less feudal days. The new meaning may be interpreted from its slogan '*Perkhabaran, Fikiran, Perniagaan Melayu*' (News, Ideas and Malay Business).<sup>99</sup>

The employment of such innovative words for its slogan signifies an attempt by *Majlis* to break away from the *kerajaan*-based political system and the peasantry image of the Malay society. Through '*perkhabaran*' (news) there would be the exchanging of '*fikiran*' (ideas), which would inevitably open up more avenues for the then 'new' Malays to explore, one of which was '*perniagaan*' (business). Indeed, the poor economic condition of the *rakyat* was an issue close to the newspaper's heart. Colonial economic policy, which aimed at confining the Malay *rakyat* to their 'traditional' occupation, namely agriculture, had effectively excluded them from the robust economic

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<sup>98</sup> In the pre-colonial *kerajaan* days, the Malay perception of achievement or progress was entirely centred around the Raja or the Raja institution. Serving the Raja with blind loyalty would bring oneself a good *nama* (name or reputation). Therefore progress was never associated with the intellectual or economic improvement of the *rakyat* or their community.

<sup>99</sup> Note that these slogans are being echoed, albeit in more sophisticated terms, by the present UMNO leaders, especially by its President, Mahathir Mohamad in articulating his vision for the future generation of Malays or *Melayu baru* (see Mahathir's speech delivered at the party's General Assembly in 1991)

changes that swept the country.<sup>100</sup> By keeping the Malays on lands which they could not avoid but sell to the immigrant speculators, and by encouraging them to stick to the occupation that could not enable them to compete with the more rewarding jobs and enterprises held by the non-Malays, and by not providing the technical know-how for them to venture into promising new fields of life, the British had, notwithstanding their so-called pro-Malay policies, deprived the Malays of the opportunities to participate in the modern world.<sup>101</sup>

The failure of the colonial government to provide schemes for improving the agricultural sector had further worsened the already weak economic position of the Malay *rakyat*. Although apparently there had been some efforts taken to protect Malay land rights by introducing the Malay Reservation Enactment in 1913, it was not sufficient to prevent their lands from being sold to “shrewd” and “unscrupulous” Chinese and Indian land speculators<sup>102</sup> who took advantage of those Malay peasants who were badly in need of cash. As a result of colonial economic and education policies, the Malays were getting poorer and poorer while the Chinese and other foreign races were getting richer and richer.<sup>103</sup> This state of unequal opportunity and economic imbalance was graphically described and lamented by *Majlis* in its editorial, which read:

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<sup>100</sup> This was confirmed in a somewhat implicit manner by the Director of Agriculture in 1934:

“Our trusteeship for the Malay people demands that we administer the country on lines consistent with their welfare and happiness, not only for today but for the future ages. That end will be attained rather by building up a sturdy and thrifty peasantry living on lands they own and living by the food they grow than by causing them to forsake the life of their fathers for the glamour of new ways which put money in their pockets today but leave them empty tomorrow, and to abandon their rice-fields for new crops which they cannot themselves utilize and the market for which depends on outside world conditions beyond their orbit” (see Roff, W, supra, p.125).

<sup>101</sup> Sidhu, J.S, supra, p.174. (see also Roff, ibid, p.124).

<sup>102</sup> Sidhu, J.S, ibid, p.190.

<sup>103</sup> See Stockwell, A.J, supra, p.xii.

“.....orang-orang Melayu terpaksa hidup tidak bermodal, kampung halaman datuk neneknya tergadai, terjual dan terlelong, sengatnya majal, lidahnya tawar, maruahnya hilang dan terlebih menyedihkan sekali ialah melihatkan keadaan orang Melayu pada masa ini umpamanya menumpang di rumah yang dipunyainya semalam dan terpaksa menampi dedak orang nak mengisi periok.”<sup>104</sup>

(“.....The Malays have had to live without any capital, their ancestral lands are either mortgaged, sold or auctioned, their ‘sting’ is blunt, their tongues are not sharp, their dignity lost, and what is more appalling is that the Malays are forced to seek shelter in houses which are no longer theirs, and are forced to winnow the chaff from the grain for others to feed.”)

Although the editorial did not attribute all the ‘ills’ and ‘evils’ directly to the *kerajaan* in the manner which Munshi Abdullah did, nonetheless phrasing the plight and the helplessness of the *rakyat* in such a way was sufficient to provoke any intelligent mind to question the effectiveness of the traditional Malay ruling *elite* in alleviating the *rakyat’s* destitution. That having said though, one might forgive the Sultans for not doing anything or enough to help the *rakyat*, as their own hands were effectively tied by the colonial government which held the purse strings; and also that their voices were rarely heard or at best ignored in the legislative councils.<sup>105</sup>

However their impotence was in many ways self-inflicted for they were the ones who ‘invited’ the British in the first place ‘to rule their country on advice’. The editorial instead blamed the lowest rank of the traditional ruling *elite*, the *Penghulus* (village headmen), for the economic backwardness of the Malay *rakyat*. The *Penghulus*, by declaring those who set up co-operatives as ‘*kumpulan menderhaka dan melawan adat raja*’ (a group of traitors who defied the Raja’s custom) were accused by the Majlis as

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<sup>104</sup> Quoted by Md.Salleh Md.Gaus, *supra*, p.53.

<sup>105</sup> Sidhu, J.S, *supra*, pp.99 and 110.

obstructing the *rakyat* from improving their economic status.<sup>106</sup> It might be suggested that the concepts of *derhaka* and *adat* were invoked by the ruling authority, as it had always done before, for the purpose of preserving the State's peasantry, thereby eliminating any possibility of the emergence of a competent middle class of Malays which would disturb the seemingly peaceful and contented Malay society and the interests of the *kerajaan*.

Comments made by *Majlis* under the editorship of Kajai were sharp and clever, no doubt. But more radical views and ideas which challenged the traditional perception of *kerajaan* were yet to appear after Kajai's departure from *Majlis* in 1935. Towards the end of 1937, this paper had become even bolder and harsher in its opinion. For instance, it was daring enough to have published a parody in a prayer-style, which insinuated that the Sultans and their noblemen as well as their traditional *ulamas* would go to Hell. The poem read inter alia:

Oh, save the  
Sultans  
and the noblemen  
and the wealthy  
ones  
save the Malay  
*Muftis*  
and the *ulamas*  
oh, pray that  
they are saved from  
going to hell  
because of their  
negligence  
in protecting

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<sup>106</sup> *Majlis* 19 April, 1934 (cited also by Md.Salleh Md.Gaus, in his article 'Abdul Rahim Kajai Dengan Keunggulan Politik Melayu dan Kemajuan Orang Melayu, Satu Tinjauan Ringkas Tentang Rencana Pengarang Akhbar Majlis', (Abdul Rahim Kajai : His Unique Idea of Malay Politics and Malay Progress), Jebat Bil.3/4, 1973/4/1974/5, p.54).

the welfare and the  
security  
of the *rakyat*.

The years between 1939 and 1941 marked a new style of *Majlis* editorship under Ibrahim Yaakob. Another product of the S.I.T.C, Ibrahim differed from his previous editors in terms of his temper and visions for the Malays and the Malay Peninsula.<sup>107</sup> A year prior to joining *Majlis*, he was already a distinguished figure in the circle of those who struggled for the Malay cause and for that of Malaya. He was responsible for the formation of the nucleus of Malaya's first leftwing Malay political organization (KMM),<sup>108</sup> with an ideology strongly influenced by the Indonesian nationalist movement.<sup>109</sup>

#### 4.9 The Post-War Malay Political Ideologies

The more radical political group formed on 17 October 1945, the Malayan Nationalist Party (MNP), was born out of the pre-war KMM. Its chairman, Mokhtaruddin, was a member of the Malayan Communist Party who had spent eighteen months in Moscow. Other leaders were reported to be "admirers" of the Indonesian nationalist leader, Dr.Sukarno, and had close connections with the Indonesian nationalist movement through an "exchange of representatives" between Malaya and the Dutch East Indies. In

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<sup>107</sup> Ibrahim was irritated by the fact that some Malays who spoke for Malay interests and the future of Malaya were not as overtly political and anti-colonial as he was.(see Roff, supra, p.226.)

<sup>108</sup> Ibid, p. 173.

<sup>109</sup> Although the KMM meant different things to different people, its leadership's strong inclination to emulate the Indonesian nationalist movement in one way or another demonstrates the latter's influence over this Malay organization (see Roff, W, ibid, pp.232 & 233).



contrast to the aristocrats and civil servants in UMNO, the leaders of the MNP were from the lower stratum, mainly school teachers and journalists.<sup>110</sup>

As opposed to the rightwing Malay nationalist party, UMNO, the MNP's political inclination was republican. Whilst the former was in favour of retaining to some extent the status quo of the Sultans as Heads of State, the MNP did not see any need for the retention of this feudal regime. It was less concerned with the sovereignty of the Malay Rulers than it was with the sovereignty of the people. The deprivation of the Rulers' sovereignty was not seen by the party as a threat to Malay survival.<sup>111</sup> In other words, the MNP did not need the Sultans for any political purpose, nor for its identification with Malay social existence. Thus its campaign against the Malayan Union was propelled not by the desire to save the Rulers' sovereignty, but by that of the *rakyat*'s.

An attempt to redefine something that has acquired the status of 'belief' or 'tradition' is normally viewed as radical and process of change is one that is time-consuming. The Malays could not change overnight. The well-entrenched elements in traditional Malay society, such as the *kerajaan* and the orthodox Malay religious community or *ulamas*, formed a formidable barrier to 'radicalism'. The majority of the Malays had always been suspicious of the radical groups such as the KMM and the MNP.<sup>112</sup> Such groups reminded the Malays of the *Kaum Muda* movement, which advanced unconventional notions of Islam, leadership and progress. Since radicalism had at times been identified

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<sup>110</sup> Khong, K H, *Merdeka: British Rule and the Struggle For Independence in Malaya, 1945 – 1957*, Institute for Social Analysis (INSAN), Petaling Jaya, Selangor, 1984, p.87.

<sup>111</sup> *Ibid*, p.91.

<sup>112</sup> Roff, W, *supra*, p.255.

with militancy, revolutions and communism,<sup>113</sup> the Malays in general found those ideas advocated by the leftwing groups despicable, as they deviated from traditional perception which had dominated Malay peasantry through the ages. A more familiar and near-conventional form of leadership, argued Roff, was what the Malays were looking for.<sup>114</sup> It was a recognition of such sentiment among the Malays at this time that had caused the newly formed UMNO to choose the path it had thus taken, by affiliating with the *kerajaan*.

Even so, this rightwing Malay party was not committed to maintaining the full status of the Sultans as absolute Rulers. No doubt they would remain as Heads of States, but in exercising their powers, the Rulers would have to subject themselves to the demands of the *rakyat*. Hence, in an effort to build a rapport between the Rulers and the people in order to forestall misunderstandings between the ruler and ruled, the party's leadership, particularly Dato' Onn bin Jaafar, advocated a new concept – '*Raja Jadi Rakyat dan Rakyat Jadi Raja*' (The Raja is the People, and the People are the Raja), which identified the Rulers with the *rakyat* as one people.<sup>115</sup> Onn said in his speech that :

I hope that in a short time, there will be one desire and one aim because that is important to demonstrate not only the unity between the Raja and the *rakyat*, but also between the *rakyat* and raja. I would like to say that the *rakyat* has become the raja and the raja has become the *rakyat*. The aim is that together in the ongoing struggle I believe that the rajas in the Malay States will no longer ignore the *rakyat* as in the past. But the rajas will be sincere and love the *rakyat* more.<sup>116</sup>

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<sup>113</sup> Communism, being opposed by Islam, has never been able to win the support of the Malays who are largely Muslims. Any attempt at changing the society through this means or others which resembled it is bound to fail.

<sup>114</sup> Roff, W, supra, p.234.

While on the one hand the speech was focussed on the co-operation between the ruler and ruled, on the other, one might nonetheless suggest that the UMNO leadership was subtly and politely reminding the Rulers that they were no longer absolute Rulers, and must now act only after consultation with the people through their elected representatives. By saying “the *rakyat* has become the raja”, Dato’ Onn could have meant that it was the people who were sovereign. The phrase “the raja has become the *rakyat*” connotes that the position of the Rulers was now equivalent to that of ordinary subjects. The idea of a Ruler having an absolute say was thus being ruled out, albeit in a gentle fashion.

The focus was obviously now on the *rakyat*. In envisioning a future independent Malaya, Dato’ Onn had on another occasion<sup>117</sup> said that the Rulers should never forget that it was the *rakyat* (through the UMNO party) who fought against the Malayan Union, which, had it been implemented could have destroyed the Rulers’ sovereignty.<sup>118</sup> In other words, he was saying that without the *rakyat* there would have been no more Raja. For that reason, the Raja ought to be grateful to the *rakyat*.<sup>119</sup> Thus, contrary to traditional Malay belief, it was the *rakyat* who determined the survival of the Raja and of *kerajaan*.

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<sup>115</sup> Quoted by Ariffin Omar, *supra*, p.178.

<sup>116</sup> *Ibid*.

<sup>117</sup> The occasion was the UMNO General Assembly held on 24<sup>th</sup> and 25<sup>th</sup> January 1948, at the *Istana Besar* (Grand Palace) of the Sultan of Johor (See Ibrahim Mahmood, *Sejarah Perjuangan Bangsa Melayu: Suatu Penyingkapan Kembali Sejarah Perjuangan Bangsa* (A History of Malay Struggle), Pustaka Antara, Kuala Lumpur, 1978, pp.176-177).

<sup>118</sup> New treaties signed by the Sultans and the British government under the Malayan Union scheme would give the Crown full jurisdiction in the Malay States, which means that the sovereignty of the Sultans would be transferred to the British monarch (see Stockwell, A.J, *British Policy and Malay Politics During The Malayan Union Experience 1942 – 1948*; Malaysian Branch of the Royal Asiatic Society Monograph No:8, 1979, p.36.

It is worth noting that the same issue (that is, the indebtedness of the Rulers to the *rakyat*)<sup>120</sup> was raised by the Prime Minister, Mahathir Mohamad, in his speech during the *Dewan Rakyat* debates in 1993.<sup>121</sup> Thus, the emphatic reference to the *rakyat* in these two instances reflects the desire among the influential Malay leadership within UMNO to perceive Malay political existence as one which is detached from the *kerajaan* notion. Despite the shift in their perception, the Malay leaders are cognizance of the fact that the *kerajaan* is still an integral part of Malay political system, albeit within the bounds permitted by the Federal Constitution.

#### 4.10 The Relevance of *Bangsa* to Malay Political Discourse in the 1990's

However, the discourses on *bangsa* in the 1990s are further detached, if not totally 'divorced', from the traditional notion of *kerajaan*.<sup>122</sup> In envisioning the future of a modern and industrialized Malaysian nation, Mahathir, for instance, made no reference to the need for having a Raja, though he did not rule out its significance altogether. This gives the impression that the present *bangsa* does not have to rely on the Raja for its identity as it had done in the past. It is as if the *bangsa* has firmly acquired its own image so that there is no need for a Raja to provide the *bangsa* with its dimensions of Malayness. What is more important than this is that the *bangsa Melayu* is being encouraged to assimilate itself with the wider community of advanced races through hard work, diligence and economic progress, as to enable it to be on par with other

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<sup>119</sup> As a matter of fact, the very same reminder was echoed by Mahathir Mohamad in the *Dewan Rakyat* debates on 18 January 1993.

<sup>120</sup> The term *rakyat* here refers to the Malays in particular, rather than to the Malayan or Malaysian subjects in general..

advanced races in the world. The central focus is now on the ability of the *bangsa* to promote itself not through any affiliation with the *kerajaan* but through its own effort and self-determination.

The identity, existence and survival of the *bangsa*, it seems now, are being expressed not through the idiom of the Raja, but rather in terms more familiar to the economists and the capitalists,<sup>123</sup> or to be precise, in the NEP (New Economic Policy) terms.<sup>124</sup> The greatness and the identity of a *bangsa* is therefore not dependent on one's service to the Raja but on one's own achievements, particularly in the economic field and on modern knowledge. However, it may be argued that a ruler may indirectly be associated with his subjects in terms of providing them with a sense of belonging. In the United Kingdom, for instance, a ruler's reign is often used in marking the different generations of the British. Thus, those who lived during the reign of Queen Victoria would be referred to as Victorians. Nonetheless, such an identification is no longer relevant after 1960.

However, although a discussion on the issue of *bangsa* may not strictly place us within the ambit of what one calls 'constitutional discourse', it is nonetheless significant to the present analysis in the sense that *bangsa* has become a persistent theme in Malay

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<sup>121</sup> *Dewan Rakyat* debates, 18 January 1993.

<sup>122</sup> Detached in the sense that the Sultan was no longer considered as an indispensable part of the *bangsa*.

<sup>123</sup> The identity and survival of the Malays could only be realized through economic success, according to Mahathir. Hence, one may find that such an issue is usually discussed through the employment of economic idioms and measurements such as 'income per capita', percentage of shares ownership, et cetera.

<sup>124</sup> For example, Mahathir opines that the identity of a *bangsa* is not determined by its ethnic origin or citizenship. It is identified by the culture (example culture of work, including attitude to life, progress et cetera). Therefore one need not have to look elsewhere for one's own identity except by creating it through good values, economic achievements, knowledge and so forth.(see also the Second Outline Perspective Plan 1991-2000, p.17. for instance)

political thought since the time of Abdullah Munshi (in the late nineteenth century) right up to the post-*Merdeka* era. Thus, in the process of reconceptualizing the *kerajaan*, the notion of *bangsa* itself had been used, re-used and often redefined time and again by the past as well as by the present generation of Malay leaders.

In relation to the above, just before the 1993 constitutional amendments were mooted and later executed, debates and discourses relating to *bangsa* had already been taking place among the UMNO leadership. Thus the idea of creating a *bangsa Melayu baru* and *bangsa Malaysia* which would (whether one is aware of it or not), in the long-run, have a far-reaching impact on the present constitutional structure of Malaysia. Coincidentally, and quite ironically, the Gomez case emerged at the most opportune moment, providing an opportunity for the implementation of the UMNO-proposed political agenda.<sup>125</sup> Subsequently in 1993, as debates within and without the parliamentary building proceeded, and as further developments of the crisis unfolded, one noticed that justifications for and against the constitutional amendments contained reference to the *bangsa*.<sup>126</sup> The very similar points, problems and prospects relating to this issue, once raised in the past, were now echoed, albeit in a wider perspective, in a more vigorous tone and using a more sophisticated Malay language, by politicians and by non-politicians alike.

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<sup>125</sup> That is, turning Malaysia into a fully developed nation, leaving behind all the vestiges of the feudal-past, or, in other words transforming Malaysians into a highly industrial and modern-thinking society.

<sup>126</sup> See Dato' Mohd. Tajol Rosli bin Mohd. Ghazali's speech in the *Dewan Rakyat* Debates, 19 January 1993.

Indeed, while UMNO, in arguing its case for the removal of the royal immunity of the Rulers, articulated its views in a manner reminiscent of that of the *Utusan*'s (which, to some sounded more 'secular' in tone), PAS argument, on the other hand, reminded us of the *Al-Imam*'s. Thus, if UMNO's *bangsa* was articulated from a less religious perspective (like the one adopted by Eunos/*Utusan*), PAS was replete with Islamic idioms, such as *ummah*, *ulil-amri* (Rulers); and more often than not, its arguments were particularly laced with the relevant Quranic verses, reminiscent of the method adopted by *Al-Imam*.

Therefore the constitutional debates of 1993 were as much about *bangsa* as they were about *kerajaan*. The amendments to Article 181 and other ancillary provisions were not simply a reaction to some quarrels over a hockey match between an ordinary *rakyat* and an *anak Raja* (prince), or to a Sultan's assault on a subject. The crisis was not just a constitutional crisis per se, but more importantly, it was one that went beyond the Constitution. It was a politico-cultural crisis couched and expressed in constitutional terms. Of course there were arguments over the constitutional impropriety of the manner in which the amendments were achieved, namely regarding the violation of Article 38(4). However, outside the legal sphere, a somewhat different kind of debate was indeed taking place. The newspaper columns, a variety of journals, notably those dealing with politics and culture, provided their own forum for debates, which had nothing to do with the law. Their discourses revealed to us the other side of the coin, which to a very significant extent helped to elucidate on the 'invisible' yet 'fundamental' cause of the constitutional problem.

#### 4.11 Contemporary Thoughts on Certain Concepts Relating to *Kerajaan*

The shift in the Malay perception of *kerajaan* and of its significance was well illustrated by an article in *Dewan Masyarakat*,<sup>127</sup> which resurrected Jebat's (the Melakan traditional 'traitor') concept of '*Raja adil Raja disembah, Raja zalim Raja disanggah*' (a just Ruler shall be obeyed, but a tyrant Ruler shall be discarded). Jebat '*penderhaka*' (traitor) is now being transformed into a hero by modern Malays. Hence, the more a person is critical of the ruling authority, the more heroic he shall be in the eyes of the *rakyat*. A '*pembela bangsa*' (champion or defender of the *bangsa*) is presently perceived as one who is willing to put the *bangsa* above the Ruler. It might be suggested that at the time of the 1993 crisis Mahathir had indeed enjoyed the status of this '*pembela*', though perhaps not so much among the *bangsa Melayu*<sup>128</sup> as among the *bangsa Malaysia*.<sup>129</sup> This is evidenced by the fact that he was able to mobilize the support not only of those in his coalition government, but also of the Opposition in his 'crusade' to end the immunity of the Rulers.<sup>130</sup>

The article also quoted a declaration (the so-called 'Declaration of 10 January 1993') drawn up by a group of Malay intellectuals, among whom were journalists and writers,

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<sup>127</sup> *Dewan Masyarakat*, February Issue, 1993

<sup>128</sup> Because to some Malays (especially the Malays of *Semangat 46* party), Mahathir was actually betraying the *bangsa Melayu* by removing the Rulers' immunity, the symbol not only of the Rulers but also of Malay sovereignty as indigenous people of Malaysia.

<sup>129</sup> In view of the fact that the victim of the alleged assault is a Malaysian instead of a Malay, Mahathir and his government, in defending Gomez's right, were actually defending the right of a Malaysian; or, in other words, of a person who might rightly be called a *bangsa Malaysia*.

<sup>130</sup> The opposition parties including the DAP and PAS were in principle agreeable to the proposed amendments although they disagreed with the manner in which the amendments were passed. The DAP objected to the government's disregard of Article 38(4) (a provision which prohibits any law directly affecting the privileges, position, honours or dignities of the Rulers from being passed without the Rulers' consent and whilst PAS opposed what its leaders called an 'unIslamic approach of the government in handling the whole issue, such as the flagrant revelation of royal misconduct in the mass media.



urging the government to review the functions and position of the Raja institution.<sup>131</sup> The signatories expressed their condemnation against any form of injustice, tyranny, ignorance, superstitious beliefs and practices, and idol-worshipping of individuals and institution, such as the *kerajaan*. Here the issue of *bangsa* was again resurrected during the group's conference. In one of its passages, the declaration read:

*Perhimpunan ini menegaskan bahawa survival bangsa sebenarnya bergantung pada umat Melayu yang berkualiti, yang berkeperibadian unggul, yang menguasai ilmu, teknologi dan ekonomi, yang berlandaskan keimanan dan ketakwaan kepada Allah.*

(This conference wish to reiterate that the survival of the *bangsa Melayu* is dependent on the Malay *ummah* (Malay community) which has outstanding qualities, excellent personality, and whose acquisition and possession of knowledge, technological and economic power is based on the Islamic principles and faith in Allah)

One might say that the change in Malay perception of *kerajaan* in the late nineteenth century manifests itself in a more vocal fashion. Although ideas articulated by ideologues of *kerajaan* and *bangsa* in the early nineteenth century did not differ much from the present ones (that is, both generations of Malays wanted to see some reforms in the values attached to *kerajaan*), the latter have nevertheless acquired a more definite and formal position. Contemporary thoughts on *kerajaan* (such as the Raja should not be above the law) were clearly spelt out in the national document, the Federal Constitution via the Constitution (Amendment) Act 1994. Indeed, by indiscreetly criticising the Rulers, the modern Malay leaders have gone a step further in confronting the *kerajaan*,

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<sup>131</sup> The list of signatories to this Declaration of 10 January 1993 was published by *Utusan Malaysia*, 11 January 1993. The declaration was drawn up on the initiative of a group, calling themselves the Malay intellectual group, comprising literary figures, educationists, politicians and also journalists.

thus crossing that formidable boundary of *adat*, namely, *pantang Melayu menderhaka pada Raja*.

#### 4.12 The Rulers' Sacrifice: A Royalist's Thoughts on the Claim over Sovereignty

The culture of looking to the Raja as a source of pride and dignity among the Malays has considerably changed, though of course to every generalization there is an exception. There are the hard-core royalists and traditionalistic-nationalists who did not agree with the government, nor with those who supported the 1993 amendments. One of them, Tan Sri Dato' Seri Haji Muhammad Ghazali bin Shafie, a very prominent figure among the earlier UMNO nationalist leaders <sup>132</sup> was of the opinion that the Rulers had made a substantial sacrifice for the *rakyat* when they agreed to divest part of their power to the people at the time of *Merdeka*, in return for a promise that their sovereignty would not be jeopardized.<sup>133</sup>

If one were to read between the lines, one might find that Ghazali was in fact saying that the promise had been breached in 1993 with a stroke of the legislator's pen. It is therefore not surprising if the present Rulers, who are the descendants of those who had 'sacrificed' for the *rakyat*, felt that they had the right to insist on the government of the people adhering to the promise which their (the *rakyat's*) forefathers had previously

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<sup>132</sup> Tan Sri Dato' Seri Haji Muhammad Ghazali bin Shafie was a senior Cabinet Minister during the premiership of Tunku Abdul Rahman, was one of the influential figures in the formation of Malaysia.

<sup>133</sup> This was related to the writer by Tan Sri Dato' Seri Haji Muhammad Ghazali bin Shafie in an interview at his residence on 18 March 1998. In response to a question which attempted to blame the Rulers for signing the MacMichael Treaty in late 1945, he defensively argued that it was not the fault of the Rulers on the ground that they had no better choice as their signatures were all acquired through duress and coercion and misrepresentation on the part of the British (for more historical details on this MacMichael episode, see Ibrahim Mahmood, *supra*, pp. 61-64; Simon, S, *British Relations with the Malay Rulers*, Oxford University Press, London, 1995, p.201).

made to them as sovereigns of the Malay States. From this perspective, one might argue that the immunity provision of Article 181 had as a matter of fact formed the core of the constitutional system of Malaysia, and that the elimination of immunity destabilized the existing power structure.

#### **4.13 The Rulers' Sovereignty and the Federal Factor**

If immunity is essentially an attribute of a Ruler, and does indeed symbolize the sovereignty of a sovereign, then the removal of such an attribute from the Malay Rulers was in essence a symbolic destruction of the Raja institution. Understandably, then, the 1993 amendments were perceived by the Sultans as an attempt to thwart the very foundation of their political existence. Thus sovereignty viewed from whichever way, whether from a traditional Malay belief,<sup>134</sup> or, from a Western perspective, an abolition of the immunity would create the same impression (that is, as a threat not only to their position as Rulers of the Malay States, but also to their role as a buffer against federal encroachment of state powers) on the minds of these traditional leaders. It should be remembered that the formation of the Federation of Malaya in 1948 was based on the premise that to a certain degree, the States would be autonomous entities within the Federation.<sup>135</sup> Their autonomy would be represented not only by the number of Senators nominated by each of the eleven States but also by the existence of sovereign Rulers, in whose names the administration of the States was to be carried out. In view of the fact that a majority of the Senators are now federal appointees, it is not difficult for the federal government to encroach over states' jurisdiction. Thus in reconceptualizing the

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<sup>134</sup> That is, '*daulat*'.

*kerajaan* by means of diminishing the Rulers' powers and by demoting their status from a 'sovereign' (that is, assuming that sovereignty is symbolized by royal immunity), to a 'non-sovereign' position, the Mahathir regime might have ridiculed the effort of those Malay nationalists who fought to destroy the Malayan Union by restoring the Rulers' sovereignty some fifty years ago.

Hence, with the already overwhelming legislative and executive powers possessed by the central government, plus the fact that almost all of the *Menteris Besar* (Chief Ministers) were, and still are, from the ruling coalition party, notably from UMNO, it is not surprising that the Rulers were nervous at the thought of the 1993 amendments. Viewed from this perspective, one might say that the federal structure proposed at the inception of the Malaysian federation had somewhat been distorted not only by the 1993 constitutional changes but also by previous (1983) constitutional amendment affecting the Rulers. The irony is that the struggle to restore and to preserve the sovereignty of the Malay Rulers in 1946 was rendered futile not by the Malayan Union proponents but by the so-called Malay nationalists of the post-*Merdeka* era.

What is significant, perhaps, is that the very purpose of having a federation (despite the small size of the country) was to accommodate the legacy of the Malay States and the accompanying institution of the sultanate or *kerajaan*.<sup>136</sup> Unlike other nations such as India, Switzerland, the United States, Canada and Australia, where communal demands and ethnicity played an important role in creating a federation, in Malaysia it was Malay

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<sup>135</sup> B.H Sharifuddin, *The Federal Factor in the Government and Politics of Peninsular Malaysia*, Oxford University Press, Singapore, 1987, p.6.

political culture that forced the birth of this political entity. However, this structure is now 'disfigured' by the very hands of those whose forefathers had fought against the Union. While the Malayan Union is long dead, its ghost is still haunting the Rulers. Indeed, where the British had failed before, the central government of Mahathir era has been successful.

#### 4.14 'Sovereign' Means 'Sovereign'

The reluctance of the Conference of Rulers to concede to the government's proposal to remove the Rulers' legal immunity thus reflects the conviction held among these traditional Rulers that 'sovereign' means 'sovereign', and attached to it is its attribute, namely, sovereignty. That their acts should never be called into question or challenged (by the *rakyat*, who obviously formed the *bangsa*) was not only derivative of the Malay *adat* but something that had been nurtured and preserved by the so-called 'modern' British colonial government. Thus to challenge a Sultan or Raja was in the pre- as well as in the colonial days tantamount to *derhaka*, an *adat* which had not only benefited the Malay Rulers but also the British colonial administrators.<sup>137</sup> The fear of challenging a Ruler or his sovereignty had been perpetuated as late as the 1950s. As Hickling recalls:

I remember Dato' Haji Mohd.Noah, who later became Speaker, as leader of the local politicians after the 1956 elections. The Sultan overruled the decision of EXCO, made by the elected politicians, and they were upset. "Then go and tell His Royal Highness," said the British Advisor (he and I were the only expatriates left on the Council at the time). "No, no," said dear old Haji Noah, "you go."<sup>138</sup>

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<sup>136</sup> Ibid.

<sup>137</sup> Smith, S, *British Relations*, supra, p.200.

<sup>138</sup> This was mentioned by Hickling to the writer in a personal correspondence on 11 July 1999.

Since the meaning of 'sovereignty' for the Malays goes beyond that of mere political or constitutional jargon (that is to one which has a deeper meaning, something spiritual, cultural, traditional and also magical), it is not surprising that a violation or an attempt to distort it would bring about repercussions. This was what precisely happened when the removal of the royal immunity, regarded by some as a mark of sovereignty, was proposed by the federal government, or, more accurately, by UMNO. However, the resistance by the Malay Rulers might not only be explained in terms of the Malay understanding of 'sovereignty', but probably also in terms of modern political language. If one were to take the modern meaning, 'sovereignty' means "the supreme authority in an independent political society. It is essential, indivisible and illimitable. Externally however, sovereignty is limited by the possibility of a general resistance, internal sovereignty is paramount power over all actions within, and is limited only by the power itself."<sup>139</sup>

A ruler being sovereign, therefore, his power to act or not to act, in this or in whichever way, could logically be limited only by his own power. But logic, tradition and culture do not always coincide with the realpolitik of a modern nation. Thus when constitutional rules dictate the manner and extent to which the sovereign may act, a conflict is normally the result of such an interaction. The 1993 crisis was indeed a manifestation of a forced reconciliation of these incompatible concepts. It was a process in which modern values of government and traditional political perceptions and understandings reacted

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<sup>139</sup> Austin, J, *The Province of Jurisprudence Determined*, 1954, quoted in Muhammad Kamil Awang, *The Sultan and The Constitution, Dewan Bahasa dan Pustaka*, Kuala Lumpur, 1998, p.55.

and counter-reacted against each other, hence producing one of the most awkward constitutional conflicts in Malaysian history.<sup>140</sup>

#### 4.15 Redefining the Malay Tradition

Indeed tradition dies hard, but the 1993 amendments were meant to put an end to this old tradition by removing that very element, immunity, which, arguably, gave the sovereigns their sovereignty, and which also gave them precedence over everyone else in the country. With the immunity removed, the Rulers were meant to be treated equally with their subjects (though the majestic air may still hover around some royal heads). By demoting the status of a Ruler to an ordinary citizen, it was hoped by the government that the Malays would stop having the *jiwa hamba* (servile attitude) which had for a long time dominated the Malay minds. The result may be gauged from the New Straits Times article entitled 'Malay Rulers Must Wake up to the Realities of Today'.<sup>141</sup>

Further, the article reminded the Rulers of the fate which befell the infamous Sultan of Johor (Sultan Mahmud Shah) in 1699, who was assassinated for his tyranny. The choice of words used in the article reflected the attitude of its author, a Malay, who explained that he deliberately employed terms such as '*baginda*' (a pronoun 'he', referring to someone of a noble status, such as Rulers, Prophets and Caliphs), instead of '*tuanku*'

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<sup>140</sup> For instance, the government in trying to maintain the so-called dignity of the Rulers had to establish a special court in which a Ruler might be tried if he violated the law. The decision of this court shall not be questioned or appealed against on any ground. Thus, while the idea of subjecting a Ruler to the law should be lauded as it fell in line with the constitutional and democratic ideal of equality, nonetheless the fact that there was no right of appeal for the Rulers contradicted the rule of natural justice. Another instance of this awkwardness lies also in the fact that despite the constitutional requirement for the Rulers to act upon advice, yet there are provisions in the Constitution which give the Conference of Rulers the power to veto the government's decision with respect to legislating certain laws (see Article 38 (4) Federal Constitution).

<sup>141</sup> New Straits Times, 30 January 1993.

(my lord) for its “brevity, sweetness and simplicity”. Apart from that, it was said that such a term reflected the intimacy (in the sense that there was no gap between the addresser and the addressee) between the Ruler and ruled.

In the past, this kind of writing would normally come from those who might be classified as Malay intelligentsia, such as men of literature, and ardent nationalists from among the teachers and journalists. However, since the issue of Rulers behaving badly was made public by the mainstream media, allegedly,<sup>142</sup> with the support of the government, similar criticisms had also come from other sources, which were not necessarily from the highly-educated section of the Malay community. Hence, one would come across a statement by the Malay-dominated National Movement of United Artists and Cultural Organization, urging the government not to budge from its decision to amend the Constitution. The organization bluntly criticized the Rulers for their ignorance and greed. Thus by saying that the Rulers had not contributed anything to the people, it meant that the Raja institution was functionless, and, as such, was of no relevance to the Malay society.<sup>143</sup>

#### 4. 16 Conclusion

All the ingredients necessary for this unprecedented change in Malay attitude towards *kerajaan* were provided by the economic and political atmosphere created by Mahathir and his administration in the late 1980s and early 1990s. The Prime Minister’s attitude towards feudalism and the Malay Rulers’ misbehaviour during this period had conspired

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<sup>142</sup> As most leading newspapers were owned by component parties of the *Barisan* government, it was not surprising when such news became headlines.



to bring about the shift in the Malay politico-cultural paradigm. While the end-product was one that had been constitutionally formulated, the truth is, the Malays of the 1990s are gearing up to a new social, political, economic and cultural environment. This phenomenon is not only reflected by the 1993 constitutional crisis but also by the political developments which have later ensued.

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<sup>143</sup> New Straits Times, 20 January 1993.

## CHAPTER 5

### The UMNO-Malay Rulers' Alliance – A Relationship that Turned Sour

#### 5.1 Introduction

The UMNO-Malay Rulers' relationship may be described as a 'love-hate' affair. Their 'love' seemed to blossom in early 1946 in the wake of the proposed implementation of the British Malayan Union plan. The Union, among other things,<sup>1</sup> was aimed at simplifying the complicated pre-World War II constitutional arrangements in Malaya which divided the Malay States and the Straits Settlements into separate systems of administration. The first major change under the new plan was that all nine Malay States together with the Straits Settlements of Penang and Melaka (Singapore would for the time being be excluded) were merged in a British colony, namely the Malayan Union, which was intended to prepare Malaya for eventual self-government.<sup>2</sup> The second major proposal lay in the creation of a Malayan Union citizenship, designed to create a broad base of citizenship which would include all those who could establish a claim by birth or by a suitable period of residence to belong to the country.<sup>3</sup>

The immediate impact of the Union was that it would have enfranchised the large proportion of, among others, the two million or more Chinese in Malaya and that the

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<sup>1</sup> There is ample literature on the formation of the Malayan Union. For further readings, see Stockwell, A.J, *supra*; Mohamed Noordin Sopiee, *From Malayan Union to Singapore Separation: Political Unification in the Malaysia Region, 1945-65*, Penerbit Universiti Malaya, Kuala Lumpur, 1974; Lau, A, *The Malayan Union Controversy, 1942-48*, Oxford University Press, Singapore, 1991.

<sup>2</sup> Stockwell, A.J, *British Policy and Malay Politics During The Malayan Union Experiment, 1942-1948*, Malaysian Branch of the Royal Asiatic Society Monograph No:8, Kuala Lumpur, 1979, p.17.

<sup>3</sup> Hickling, R.H, *Essays in Malaysian Law*, A Paper presented at the *ALIRAN* Constitution Conference, Kuala Lumpur, 15 August 1987, p.86.

Sultans would lose virtually all of their powers and sovereignty to His Britannic Majesty.<sup>4</sup> It was against this post-war political backdrop that the Malay Rulers and the UMNO decided to tie the knot of a 'marriage' that never was (as evinced by the 1993 crisis and by a few other preceding constitutional crises). The perceived threat to Malay political hegemony posed by the British post-war policy in Malaya forced both the Rulers and the *rakyat* to co-operate as a united front against what they saw as an act of betrayal by their former ally.<sup>5</sup> Alarmed at the prospect of having to share their homeland with the immigrant races and of losing to some extent the integrity of the *bangsa* (in the sense that the *bangsa Melayu*' would be 'diluted' by the creation of a 'bangsa Malayan' or by a Malayan race), both parties thought that for the purpose of Malay political survival, they needed each other more than they had ever imagined before. It was out of this necessity that the 'marriage contract' between the UMNO and the Malay Rulers was ultimately sealed. One might therefore suggest that the relationship was one that had been carved out of political convenience rather than out of genuine affection.

Fuelled by patriotic sentiments and compelled by the circumstances at that particular moment, the Malays were galvanized into a concerted action when more than half of the newly emerged nationalist organizations were consolidated into a single political movement called UMNO (United Malay National Organization). UMNO, which was conceived on 11 May 1946, received full blessing from the Sultans who were

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<sup>4</sup> Ibid, pp.86 &87.

<sup>5</sup> The pre-war policy was one that was pro-Malay. It had three pillars, namely: the sovereignty of the Malay Rulers, the autonomy of the Malay States and the privileged position of the Malay community (see Stockwell, A.J, supra, p.17).

reportedly taken aback by the massive amount of support shown by the *rakyat* in an unprecedented public display of emotion.<sup>6</sup> The cries of '*daulat Tuanku*' (an expression of the *rakyat*'s support for the Rajas and an acknowledgement of their lordship) and '*hidup Melayu*' (long live the Malays) which interrupted the solemnity of the first day of April 1946 (the day on which the Malayan Union Governor was sworn into office), seemed to have captured the hearts of the Rulers who were then gathering at the Station Hotel in Kuala Lumpur, preparing themselves for the inauguration ceremony.<sup>7</sup>

The gathering outside the hotel was orchestrated by the Pan-Malay National Congress (UMNO in its embryonic form), aimed at demonstrating to the British the solidarity of the Malay *rakyat* and their support for the Rulers, but most importantly, of their will to destroy the Malayan Union plan. Although there had been some divisions among the *rakyat* with regard to the principles and form of struggle, and to the attitude toward the Rajas as a result of the signing of the MacMichael Treaty, the majority of them would "never throw the Sultan overboard".<sup>8</sup> The protest against the Malayan Union exemplified the degree of Malay loyalty to the Rajas, albeit for reasons subject to

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<sup>6</sup> Ibrahim Mahmood, *Sejarah Perjuangan Bangsa Melayu* (A History of Malay Struggle), Penerbitan Pustaka Antara, Kuala Lumpur, 1981, p.101.

<sup>7</sup> The manner in which the 'consent' to the MacMichael Treaty was obtained from the Rulers gave the impression that there had been some kind of coercion used against them by the British emissary. The lack of consultation and the secrecy with which the MacMichael mission was conducted added to the Malay suspicion of the whole scheme. (see Stockwell, A.J, supra, p.36 and also MacMichael Papers: a Memorandum headed "HAM June 1945 (En Route for Malaya)". Given the fact that MacMichael had also the power to confirm a Ruler in his position or replace him with a candidate whose relation with the Japanese was less close, or who was in other ways more acceptable to the British government (see Hickling, R.H, supra, p.86), it was not surprising that the Rulers felt compelled to attend the inauguration ceremony of 1 April 1946.

<sup>8</sup> RCJ no 61/46:OC Malayan Security Service, Johore to Resident Commissioner, Johore, reporting the views of a "Malay of good birth and some standing and of sensibly advanced ideas..." (cited in Stockwell, A.J, supra, p.77).

various interpretations.<sup>9</sup> The 1946 event saw the beginning of a close relationship between the UMNO-represented *rakyat* and the Rulers, and the end of the Union scheme. Their relationship had hitherto been a commodious one despite some occasional hiccups, which did not effectively tarnish the comfort they had so far enjoyed. For the first few decades after *Merdeka*, the pair seemed to have shared a blissfully happy life together under the new Federal Constitution, and there was nothing to indicate that the 'marriage' would ever in the future be on the rocks.

In the first few years after independence, the Sultans were content with their new role as Constitutional Rulers within the new polity and there was no major incident (at least none of which the *rakyat* were aware in those times) to mar the relationship so far established. Outwardly, both the Rulers and the UMNO leaders were satisfied with the scheme of things to which they had agreed at the time when the new Federation of Independent Malaya was first envisioned. However, beneath the calm surface there lay an undercurrent which later emerged and which almost destroyed the special relationship between the two allies, as the 1993 constitutional crisis clearly demonstrated. As with other cases of power transfer, the surrender of the Rulers' power to the political leaders who represented the *rakyat* was not as easy as one could imagine. Given that the Rulers were once independent sovereigns of their states, it took an extraordinary effort by the UMNO leadership to persuade and convince their

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<sup>9</sup> There had been suggestions that support for the Sultan was an act not of self-sacrifice but of self-preservation. The fear of the Malays that the essential "Malayness" of the country was under threat forced them to reject the Malayan Union scheme and to demand the return of the Sultans' sovereignty. This implies that the Sultans were needed to preserve the essential criteria of a Malay country and therefore they had to be supported (see also Stockwell, A.J, *ibid*, p.76).

Highnesses of the rationale for and the benefits of the proposed federal constitutional arrangement.

Finally, after a series of negotiations, the Rulers were guaranteed by the late Tunku Abdul Rahman, who was then the President of the UMNO party, that as constitutional rulers the Sultans would not lose their sovereignty. Furthermore, the new Federal Constitution would confer on them such rights and privileges due to a sovereign ruler, including protection against legal proceedings, or in other words, legal immunity, which during the later 1993 constitutional crisis had become the buzz words among Malaysian communities. After much persuasion and conviction, the powers of the Rulers were finally transferred to the UMNO and its allies (the Malayan Chinese Association or MCA and the Malayan Indian Congress or MIC),<sup>10</sup> on 31 August 1957. But the intricacies and difficulties which accompanied the process of transforming the Rulers from absolute into constitutional monarchs did not cease to exist even years after the conclusion of the Federation of Malaya Agreement in 1948.<sup>11</sup> As the major constitutional developments of the 1980s and 1990s illustrated, these intricacies and difficulties had indeed become part and parcel of the UMNO-Malay Rulers' partnership until the day when the Prime Minister, Dr. Mahathir Mohamad, finally brought them to a halt by means of constitutional amendments.

## 5.2 The Taming of the Rulers: The Mahathir Style.

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<sup>10</sup> These trio later formed a coalition party called *Parti Perikatan* (The Alliance Party), which served as the progenitor of the present *Barisan Nasional* or the National Front party, of which UMNO was a dominant member.

The style with which Dr.Mahathir's predecessors dealt with those difficulties was comparatively 'traditional', that is to say, non-confrontational, as opposed to the one adopted by him. The previous Prime Ministers had always resorted to the 'Malay ways' of settling disputes and disagreements, that is, in camera and with the utmost politeness affordable. The Tunku, for instance, had to humbly plead to the Sultans to agree to the Alliance's proposal to have sixty of the members of the then impending Federal Legislative Council to be democratically elected by the *rakyat*.<sup>12</sup> However, the Rulers had neither immediately nor unanimously agreed to the demand, and as a sign of reluctance, they deliberately delayed giving their decisions.<sup>13</sup> The Rulers' silent protest was very loud and clear to the UMNO leadership so that it forced the Tunku to send delegates (including its allied representatives) to explain to the Sultans the urgency of the matter. The level of diplomacy exercised by the UMNO and its allies in dealing with the Rulers indicates that the liaison between them has not always been a smooth and easy one.

Indeed as the events of later years unfolded, all the persuasion, the diplomatic efforts on the part of the UMNO-led government, and suspicion on the part of the Rulers with regard to the constitutional arrangement developed into a feature that came to

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<sup>11</sup> The 1948 Agreement was in fact more than an agreement. It was a formal federal constitution for the new federation, which like the Malayan Union, consisted of the nine Malay States and the two Settlements (see Hickling, R.H, supra, p.89).

<sup>12</sup> Ibrahim Mahmood, *Sejarah Perjuangan Melayu* (The History of Malay Struggle), Penerbitan Pustaka Antara, Kuala Lumpur, 1981, p.389 (the contents and the language of Tunku's letters to the Rulers illustrated some sort of self-humiliation and extreme expression of loyalty to the Rajas. The repetition of such expressions signified UMNO's awareness of the Rulers' apprehension and prejudices. Thus in order to alleviate their suspicions, the Rulers had to be reassured of their position and of the *rakyat*'s support for the Raja institution).

<sup>13</sup> The Sultan of Perak, for instance, refused to grant an audience to the Alliance's delegates and turned a deaf ear to the plea of the *rakyat* who had by then rallied to convey to him their message (see Ibrahim Mahmood, *ibid*, p.425).

characterize their political marriage right up to the mid-1990s. Thus as one politician remarked, the reluctance of the Rulers could have stemmed from the suspicion that their interests would be greatly prejudiced by the new political re-adjustment.<sup>14</sup> As in most relationships, there has to be a lot of give and take between the pair involved. However in the case of the UMNO and the Rulers, it was claimed by the party that it was the one which had, more often than not, to give in to the demands and idiosyncracies of the Sultans. There were allegations that there had been several incidents in which the Sultans had 'misbehaved'. The alleged self-indulgences and misconduct had been going on behind the political scene so regularly that many a time the Rulers had to be advised and reminded, albeit politely and quietly by the UMNO leaders, of the consequences they might bring to the Raja institution and the country as a whole if this persisted.

Despite all the reminders and advice, the Rulers, claimed the Prime Minister, never seemed to have stopped misbehaving themselves (such as abusing their position and status to acquire timber concessions from the State government), and the problem persisted until the federal government under Dr.Mahathir Mohamad decided to act more effectively, and this time by means of amending the Federal Constitution in 1993. To this so-called radical measure, there arose a question as to why the federal government, particularly the UMNO, had not acted sooner to stop royal misconduct. The justification given by the leadership was that the government had not thought it proper and timely to act in the way it now did, for they thought that the Sultans would be wise and reasonable enough not to repeat their mistakes. In 1993 the matter

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<sup>14</sup> Ibid, p.414.



obviously got out of hand and the only means of stopping it was by destroying what had so far been the Rulers' shield, the legal immunity provided by Article 181(2) of the Federal Constitution

### **5.3 The Early Signs of a Crack in UMNO-Malay Rulers' Relationship**

What actually caused the reversal of UMNO's attitude toward the Rulers was a matter of dispute. Some observers suggested that the answer was to be found in the economy, whilst others looked to politics. Most probably, it was a combination of both, and looking at the circumstances which surrounded the case one might say that indeed, it was as much political as it was economic reasons.<sup>15</sup> As history has repeatedly shown us, most vividly in the collapse of communism in Eastern Europe, political power has to be backed by economic strength and therefore it is imperative for one to have some kind of control over the economy before one may actually exercise political supremacy. Thus the change in UMNO's policy and the conflict between the traditional Malay Rulers and the modern Malay political leaders in 1993 can only be fully explained in terms of the interplay of these two co-existing forces in human society.

The robust economic developments that swept across the country in the late 1980s and the early part of 1990s had created a dynamic middle-class Malay society, to which the traditional past might have very little or no relevance in their modern life. The memories of the Melakan sultanate were probably to their minds like a mythical past, the glory of

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<sup>15</sup> UMNO of the early 1990s was infiltrated with members from the Malay business-community and it is understandable that in view of the patronage system (that is where political support is rewarded with economic opportunities) which existed within UMNO, this section of UMNO supporters felt threatened by the Rulers' participation in commercial undertakings. The party had either to accommodate to the

which was meaningful only to those Malays of previous generations. Now there was a new and 'different' generation of Malays (or *Melayu baru* as the UMNO politicians were so fond of declaring), with new outlooks and aspirations visible in their manner of speaking, in the occupations which they are engaged and in the lifestyles they pursue. These are the Malays 'created' by the NEP (New Economic Policy) whose participation in the corporate sector, in the ownership of shares for instance, influences the success or failure of the government's economic strategy. This is the very set of people who seemed to have been dominating the UMNO party's membership during the Mahathir era, and whose dreams mapped the course of the party's direction. This is also the set of people who felt threatened by the Rulers' enthusiasm and participation in the corporate sector, and under the guise of constitutional concern<sup>16</sup> they (delegates of the UMNO Selangor branch)) urged the party to take a stern action (by amending the Federal Constitution) against the Rulers for competing in the economic race.<sup>17</sup>

The fact that the Sultans were actively engaged in commercial enterprises was not new to the ruling party, to the opposition and to certain quarters of the *rakyat*. Between 1988 and 1992, for instance, the Sultan of Pahang was reported to have obtained a timber concession over an area of 45,165.58 hectares of state land, which was worth of

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demands of its supporters to curb the Rulers' economic activities, or, risk losing their support (see also *Harakah*, 18 January 1993)

<sup>16</sup> For instance Article 34 (3) of the Federal Constitution provides that "The *Yang di Pertuan Agong* shall not actively engage in any commercial enterprise". Similar provision is also found in the State Constitutions, whereby the Rulers are prohibited from participating actively in commercial enterprises. This particular provision was invoked by certain quarters within UMNO in their bid to eliminate the competition posed by the Rulers and their royal families.

<sup>17</sup> *Berita Harian* 10 November, 1991.

RM250 million.<sup>18</sup> The Sultan would not have secured the concession without the approval of the State government, or more precisely, the *Menteri Besar* (Chief Minister) who coincidentally belonged to the UMNO party. Apart from this, the Rulers had also been offered some hundred thousand units of Telecom shares,<sup>19</sup> a company in which the federal government had a vested interest. The reason for this offer was not at all clear but one might get the impression that the gesture was politically motivated. This state of affairs had been going on for years and it was not a secret to those who had access to the government and to the circle of people around it. However, to many, especially the opposition, the fact that the government and the UMNO leadership had allowed it to continue was a mystery. But whatever motive there could have been for the government's and for the UMNO's generosity, one thing is certain, that is, their relationship with the Rajas had clearly taken a new turn. This was reflected in the manner in which the UMNO leadership treated the Gomez episode and converted it into one of the most memorable sagas in Malay political history.

The Gomez case indeed marked the climax of the turbulent UMNO-Malay Rulers relationship. But it was the only case that had actually prompted the UMNO to act openly and effectively against the Rulers. There were several other incidents which had placed the UMNO's highest state representative, the *Menteri Besar*, in an awkward position.<sup>20</sup> But such incidents did not seem to disturb the party leadership as much as the

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<sup>18</sup> An allegation made by one of the Cabinet Ministers (see Tarmizi Mohd.Jam, *Mengapa Sultan di Tentang?* (Why were the Sultans attacked?), Pengeluaran Minda TMJ, Kuala Lumpur, 1993, p.115.

<sup>19</sup> Ibid, p.121.

<sup>20</sup> For instance, in 1991 the Selangor state government under the leadership of Muhammad bin Haji Muhammad Taib had to reject the Sultan's application for twenty million Ringgit for the renovation of the latter's palace (see Mokhtar Petah, *Kerajaan Mansuh Kekebalan Raja-Raja Melayu* (The Government Abolished the Royal Immunity of the Malay Rulers), ART Media, Kuala Lumpur, 1991, p.103).

Gomez case did. The cases of Pahang, Johor, Kelantan and Perak illustrate the point. Soon after the general election of 1978, the Sultan of Pahang was said to have intimated to one of the Federal Ministers, who was also the Chairman of the UMNO liaison committee, that he wished to have more than one name submitted to him for the appointment of a *Menteri Besar*.<sup>21</sup> In other words, the Sultan was not pleased with the person (Abdul Rahim Bakar) nominated by the UMNO for the appointment, and therefore hoped to exercise what he believed to be his discretionary power in selecting other nominees if his request were to be accepted.

However, the Sultan's request was turned down by the then Prime Minister, Dato' Hussein Onn (as he then was), who insisted that Rahim should fill the post irrespective of whether the Sultan liked it or not. Reluctantly, Rahim was appointed the *Menteri Besar* but only at the expense of his being made the subject of humiliation<sup>22</sup> by the Sultan and the palace. From then onwards, friction between the *Menteri Besar* and the Sultan was no longer a secret. The uncompromising attitude showed by Abdul Rahim toward the Sultan further aggravated a situation that was already hostile. There was an occasion when the Sultan applied for a timber concession in Pahang, only to be turned down by the State EXCO meeting chaired by the *Menteri Besar*. In retaliation, the Sultan refused to grant an audience with him although it was customary for the two to meet for the purpose of keeping the Sultan abreast of matters affecting the State. Such a refusal may be construed as the Sultan's way of communicating his displeasure with the state leadership to the UMNO party. Undoubtedly, the latter understood the message

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<sup>21</sup> Chamil Wariya, *Krisis Sultan dan Menteri Besar* (The Sultan and the *Menteri Besar* Crisis), Media Indah Sdn.Bhd., Kuala Lumpur, 1992, p. 91.

well and clear, but apparently did little to ease the tense atmosphere. Rahim continued with his post as an 'estranged' *Menteri Besar* despite the prolonged hostility displayed by the *istana*.<sup>23</sup> By the time a new election was about to be held, which was in late 1981, he was asked by the new party president (Mahathir Mohamad) to resign, and thus making the Sultan a victor in this Ruler-*Menteri Besar* dispute.

Many might have predicted that under the new leadership of UMNO, the Sultans would not be allowed to have their own way whenever there was a clash between the *istana* and the *Menteri Besar*. But contrary to the opinion of most political observers<sup>24</sup> in Malaysia, and defying all logic associated with the nature of his character,<sup>25</sup> Mahathir adopted a rather compromising approach in dealing with the Sultan-*Menteri Besar* issue. Thus instead of using his no-nonsense style of tackling the matter, the Prime Minister chose to submit to the Sultan's demand, while simultaneously pretending to be less concerned with the fact that the party had to bow yet again to the Rulers' wishes.

As to the reasons for his reaction to the Pahang dispute, one might speculate that it reflected Mahathir's political wisdom. To assume that it was primarily for the sake of the Sultan's interest that the Prime Minister had given way to monarchical dictates,

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<sup>22</sup> Humiliation is normally signified by the Sultan's refusal to grant an audience with the *Menetri Besar*.

<sup>23</sup> The Sultan never ceased to show his animosity to the *Menteri Besar* and on a few occasions refused to assent to bills passed by the State legislature (see Chamil Wariya, *supra*, p.99).

<sup>24</sup> *Ibid*, *supra*, pp.96 & 97.

<sup>25</sup> Mahathir has been described as "...a politician whose blunt, no-nonsense style clashes oddly with a political culture that is essentially consensual. More than anything else, according to his friends, he is a shy, reticent individual and yet his combative public image barely hints at this. And in an occupation where public relations is, to say the least, important, this man, much to the despair of many of his aides, simply does not bother." (see Khoo B. T, *Paradoxes of Mahathirism: An Intellectual Biography of Mahathir Mohamad*, Oxford University Press, Kuala Lumpur, 1995, p. 4. See also Jayasankaran, S, *Mahathir, The Man and the P.M*, Malaysian Business, 1 January 1988, p.12.)

would be to misread Mahathir's political philosophy and to misjudge his personality. As later episodes in recent Malaysian constitutional history reveal, it would be rather naïve for anyone to think that his submission to the Rulers had nothing to do with personal political gains.<sup>26</sup> Thus in order to avoid any probable collision with the then *Yang di Pertuan Agong* (the Sultan of Pahang), Mahathir was willing to sacrifice his own man at the state level rather than uphold the principle of constitutional monarchy. In hindsight, one might suggest that it was much easier for the Prime Minister to tolerate the monarch than to incur unnecessary constitutional problems<sup>27</sup> later in the day. Political convenience therefore became the principle which underlined the relationship between Mahathir's UMNO and the Malay Rulers at this stage.

#### 5.4 The Rulers and Mahathir's Ideas of Loyalty and *Bangsa*

This overt initial display of 'loyalty' by Mahathir to the Rulers in his early years as the UMNO President and Malaysian Prime Minister could not nonetheless match the kind of loyalty shown by the ex-Pahang *Menteri Besar* to his Sultan. Rahim, in an interview with one journalist, adamantly stated that despite his difficult experience with the Sultan of Pahang, he did not wish to see the *kerajaan* destroyed.<sup>28</sup> Reiterating and reliving the tradition of Malay political culture, he said that it was not the system that one should go

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<sup>26</sup> The case of the dismissal of the Lord President in 1988 illustrates the point in question. At that time, the *Yang di Pertuan Agong* (the Sultan of Johor) was the closest of colleagues the UMNO could have. In fact the king had been somewhat instrumental in creating a cause for the Lord President's dismissal (for a more comprehensive account of the incident, see Lee, H.P, *Constitutional Conflicts in Contemporary Malaysia*, Oxford University Press, Kuala Lumpur, 1995, p.53).

<sup>27</sup> For example, by 'taming' the monarch, the Prime Minister would not have to worry about having to go through unnecessary tussles with the *Yang di Pertuan Agong*, who has had a record of disagreements with his *Menteri Besar* while he was the Sultan in his state. Thus, blessed with the two-thirds majority which Mahathir's coalition government possesses in the *Dewan Rakyat* and given the rubber-stamp nature of the *Dewan Negara*, the Prime Minister could have easily secured any legislation if all the three components of Parliament were comfortable with him.

<sup>28</sup> Chamil Wariya, *supra*, p. 189.

against, but the individual Ruler. However, Mahathir, on the other hand, was rather inconsistent in his speech and action. At a mass rally in Melaka in 1983, he had declared that he wanted the 'feudal system to be over'.<sup>29</sup> Yet five years later, as if professing his support for the King, he claimed to be equally 'disturbed' by the *Yang di Pertuan Agung's* 'displeasure' with the Lord President's letter to His Majesty, which complained about executive interference with the judiciary.

The inconsistency in his attitude towards the Ruler could only be explained in terms of the Rulers' ability and willingness to facilitate UMNO's, or rather Mahathir's, political ambitions. The difference between Rahim's and Mahathir's perception of the *kerajaan* might also be gauged from their perception of the Rulers' politico-cultural function vis-à-vis the *bangsa*. To Rahim, the definition of *bangsa Melayu* must necessarily include the *kerajaan*, for the Sultanate was, and still is, an integral part of the *bangsa*. In other words, it is for him an identity-defining element without which Malay social and political existence would be hollow and meaningless. Although in terms of political practicality, that is, in respect to his role in actual political decision-making, the Raja is not as important as the democratically elected leaders are, yet, judging from the persistent presence of that special feudal sentiment for the Raja among certain quarters of the Malay communities, his influence should never be underestimated.<sup>30</sup>

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<sup>29</sup> New Straits Times, 20 December 1983.

<sup>30</sup> For instance, even the government felt compelled to persuade the Sultan of Johor to call off his plan to organize the '*perhimpunan bersama rakyat*' (an audience with the *rakyat*) in Johor Baharu amidst the 1993 constitutional crisis. One of the reasons given by some political observers was that the government did not wish to take any chances by allowing such a rally to be held by the Sultan for fear that he would gather enough support against the amendments. Rumours that there was a substantial number of Malay *rakyat* coming to the gathering was sufficient to cause alarm to the government.

But Mahathir has quite a different idea of *bangsa* and its existence. To him, the survival of the *bangsa* relies not on the Raja or the *kerajaan*, but on the strength (and in this context, the political and economic strength) of the Malay people themselves. Taking the Malayan Union episode (1946) as an example, the Prime Minister reminded his allies and opponents in the *Dewan Rakyat*, that it was not the Rajas but the Malay *rakyat* who rose and fought against the British plan.<sup>31</sup> What he meant to say was that, were it not for their struggle, the Malays, and indeed, the Sultans themselves would not have been where they are now. In short, he was insinuating that it was erroneous to think of the *kerajaan* as a protector, whereas it was not. It was the Malays who had to protect themselves from social, economic and political destruction. It was they who had to create their own identity and it must be based on something real and tangible, not something which was abstract or mythical. They should not live in the glory of the distant past but strive to succeed in the not-so-distant future. Thus his argument is that the destiny of the *bangsa* should not be in the past, and should never in the future be intertwined with that of the *kerajaan*. Hence, the suggestion by the opposition (*Semangat* (Spirit) 46 Party) that the *kerajaan* must be defended for the sake of the *bangsa* was strongly refuted by the Prime Minister in the parliamentary debates regarding the immunity issue.

In retrospect, it is ironic that the 'slogan *daulat tuanku, hidup Melayu*' (our Rajas the sovereigns, and long live the Malays) coined by the UMNO in their bid to mobilize the Malay masses against the British in 1946, now ceased to mean anything to the current

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<sup>31</sup> *Dewan Rakyat* Debates, 18 January 1993.



(1999) party leadership. The twin principles of their former struggle, namely, the upholding of the Rulers' sovereignty and dignity, the survival of the *bangsa*, and the symbiosis of their purpose mirrored in the 1946 slogan, seems to have been invalidated by UMNO in the wake of the Gomez episode. The political ideal that had once brought the modern Malay leaders and the traditional Malay Rulers together was slowly crumbling, thus leaving Malay society divided yet again into two conflicting groups, namely, that which supported Mahathir's UMNO and his vision, and that which opposed.

### 5.5 Regrets, The Rulers Might Have a Few

One might suspect that in the light of subsequent constitutional developments, particularly those of 1983 and 1993, the Rulers may have regretted the blessing that they had so enthusiastically given to the UMNO party as Malaya was moving towards self-government in the late 1940's. The subsequent pact<sup>32</sup> which was originally meant to liberate the Rulers from the control of British colonial manipulators does however, appear to have imprisoned them in the 'cage' of UMNO leaders. As if to show his anger and frustration with the party leadership, the *Yang di Pertuan Agong* refused to assent to a Constitutional (Amendment) Bill 1983, which sought, among other things, to shift the constitutional power to declare a state of emergency from the King to the Prime Minister, and to revoke the *Yang di Pertuan Agong's* legislative power to assent to

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<sup>32</sup> The 1948 Federation of Malaya Agreement which later formed the basis of the Federal Constitution of Malaysia had among other things institutionalized the *kerajaan* within the new polity, and this institutionalization was, alleged by UMNO, the Rulers' greatest debt to the party.

Bills.<sup>33</sup> This was the first major open conflict between the *kerajaan* and the government at the national level since *Merdeka*. The refusal to grant assent resulted in a constitutional impasse when neither side agreed to retreat.

The *Yang di Pertuan Agong* (Sultan Ahmad Shah of Pahang) and his brother Rulers did not try to conceal their displeasure at the Prime Minister's attempt to 'usurp' the legislative power of the monarch, and the alliance between the two now turned into a rivalry, with one party determined to carry out the amendment whilst the other was determined to block it. The Prime Minister organized several mass rallies aimed at explaining to the public why the government had to amend the provisions. To give the impression that the unprecedented move to take away the residual powers of the Rulers was well received by the *rakyat*, the government-controlled media is, claimed by Means, to have exaggerated the number of people attending the rallies. On the other hand, little or no coverage was given to the Rulers' organized rallies.<sup>34</sup>

Although the constitutional stalemate and the controversy between the Rulers and the Prime Minister were finally brought to an end after a series of negotiations,<sup>35</sup> and although the wound was partially healed, nevertheless, the political scar caused by the

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<sup>33</sup> The two key constitutional provisions relating to this matter were Articles 150(1) and 66(4). The first one in its original form provided that "If the *Yang di Pertuan Agong* is satisfied that a grave emergency exist whereby the security or economic life of the Federation or of any part thereof is threatened, he may issue a Proclamation of Emergency". The second provided that "the *Yang di Pertuan Agong* shall signify his assent to a Bill by causing the Public Seal to be affixed thereto, and after assenting to a Bill he shall cause it to be published as a law".

<sup>34</sup> Means, G.P, *Malaysian Politics: The Second Generation*, Oxford University Press, Kuala Lumpur, 1991, p.116.

<sup>35</sup> As a result of the negotiations, the government had to restore the *Yang di Pertuan Agong's* power to proclaim a state of emergency and also the period within which the royal assent must be given was extended to thirty days instead of fifteen days.

conflict did not actually vanish. At this juncture, the relationship had already suffered significant damage. It was obvious that the UMNO under its new leadership by attempting to remove the power conferred on the *Yang di Pertuan Agong* by the constitution was not reluctant to break tradition<sup>36</sup>. The Rulers' perceived apprehension of the government's effort to marginalize their role within the constitutional framework was therefore not unfounded. The relationship had inevitably become more sensitive than previously and the destiny of the *kerajaan* from that moment on was at the disposal of the UMNO leadership more clearly than before.

#### **5.6 The States' Firm Approach Against Rulers' Intervention**

The strong 'play-by-the-rule' approach adopted initially at the federal level by the Prime Minister was closely emulated at the State level. The 1990 Selangor constitutional crisis which involved the former *Menteri Besar*, Tan Sri Muhammad bin Muhammad Taib and the Sultan illustrates this point. Sultan Salehuddin Abdul Aziz Shah is considered by some to be a very determined Ruler who believes that some of the powers conferred on him as the sovereign of the state by the Selangor constitution are absolute<sup>37</sup>. The disputes between the Sultan and his *Menteri Besar* in the past were largely due to the former's conception (or rather, in the view of some, misconception) of the discretionary powers vested in him by the constitution. The giving of honorary titles, for instance, is perceived by the Sultan as an absolute discretion of the Ruler: an area in which not even the UMNO may interfere. It is quite a coincidence that it is this sort of petty conflict

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<sup>36</sup> The tradition of '*pantang Melayu derhaka pada Raja*' (it is not a custom of the Malays to be disloyal or to disobey the Raja).

<sup>37</sup> *Utusan Malaysia*, 16 February 1992.

which has more often than not triggered major constitutional crisis<sup>38</sup> involving the Ruler and the government.

Normally the crack in the relationship between the head of state and the head of government in Malaysia commences with the former signifying his displeasure either by refusing to assent to Bills passed by the state legislature, or by refusing to grant an audience with the *Menteri Besar*. But in the case of Selangor, the rift began when the Sultan refused to re-appoint Muhammad as the *Menteri Besar* immediately after the general election in 1990. The Sultan was reportedly on holiday abroad and had used the occasion as an excuse not to assent to the re-appointment of Muhammad as duly required. UMNO, on the other hand, was determined to have him re-appointed and for that purpose negotiations were held between the Ruler and the party representative. A bargain was struck. The Sultan demanded that a Deputy Chief Minister or *Timbalan Menteri Besar* be appointed as a condition for his assent to the re-appointment of Muhammad and that condition was accepted by the UMNO.

However the appointment of a Deputy Chief Minister did not guarantee that there would be no future conflict between the state government and the Sultan. Barely a year later, there arose another controversy, over a certain housing project, referred as the Kemensah project. It was proposed to be built within an area next to the Hulu Gombak Forest Reserve. Environmentally, it was an ill-proposed site and the project drew severe criticism and protests from several quarters, especially from the *Pencinta Alam* (an

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<sup>38</sup> For instance although the 1993 constitutional crisis was triggered by the assault incidence involving the Sultan of Johor and Gomez, but the initial cause of the whole episode was the hockey match in which the

environmentalist group) and also from the *Zoo Negara* (National Zoo) authority. The State government which had earlier approved the project was forced to review it when an effort to quell the protests failed. But it transpired that the Sultan himself had taken a keen interest in the matter and his gesture was viewed by the government as a show of sympathy for the *rakyat* who protested the project. He went further by making statements in the newspapers which reflected his views against the government's decision, thus making clear of his stance in the matter.

The controversy dragged on further when the Sultan, in his show of support for the protesters, invited all those involved to his palace for a discussion. He also indicated that "a decision" from the reaction of the *Menteri Besar* with regard to the Sultan's statement, would follow and this sent a clear message to the *Menteri Besar* that the Ruler was trespassing upon the Minister's territory.<sup>39</sup> Nonetheless the latter (*Menteri Besar*) attended the meeting at the palace but strongly made his point there that the decision to approve or disapprove a project belonged to the State government and not to the Sultan. The net result of the discussion was that the project was allowed to resume but with certain significant modifications, while the relationship between the Ruler and the *Menteri Besar* predictably deteriorated further.

The Sultan, as though taking his vengeance on the State government, employed the usual tactic of delaying the government's business. On the appointed date for the State Assembly's new session, the Sultan was (presumably deliberately) absent from the

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Sultan's son was defeated.

officiating ceremony. This was taken by the Selangor UMNO as a snub, for it was the Sultan himself who requested that date. This is notwithstanding that he knew that the day had previously been fixed for the party's annual general assembly which as a result, had to be postponed.<sup>40</sup> Thus UMNO's patience was again tested though the matter was not pursued any further. Nevertheless, beneath the calm atmosphere, there lay a more complicated political equation. Thus while some delegates had openly and critically debated the issue of Malaysian constitutional monarchy during the party's annual general meeting in 1990, specifically referring to Sultans who had, it was alleged, violated the principle, a response on the part of the Rulers was lacking.

### 5.7 UMNO's Patience Was Running Out

Hence, as a result of the Rulers' indifference to the matter, the party once again, in an annual general meeting in 1991, permitted its delegates to discuss the issue, only this time their criticisms were much more severe and sharper. The tradition of '*pantang Melayu menderhaka pada Raja*' was again broken and despite the prohibition contained in the Sedition Act of 1948,<sup>41</sup> the party proceeded with its debates about the Raja issue. The UMNO party appeared to have gained new confidence while breaking the taboo and the source of this newly found strength was none other than the Prime Minister himself. The latter had openly criticized the Sultans during the meeting and this inevitably led the way to more criticisms against the Rulers.<sup>42</sup>

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<sup>39</sup> It was not clear as to whose 'decision' the Sultan was referring to, but from the reaction of the *Menteri Besar* with regard to the Sultan's statement it may be inferred that it was the latter's.

<sup>40</sup> Chamil Wariya, *supra*, p.63.

Their complaints about the Sultans included, among other things, the abuse of royal status in procuring government projects, the application for state lands and timber logging concessions without due regard to the rules and procedure governing them, and a host of other alleged misconduct. The public was by now exposed to a variety of the Rulers' faults and weaknesses, and the Sultans had for the first time in Malay political history been transformed into vulnerable figures. The meeting had indeed left a deep scar on the sultanate and the rift that was already existing between the two former allies became more visible than before. This was nowhere better exemplified than in the 1993 constitutional episode. The early 1990s therefore witnessed several historic moments which heralded the beginning of a new era in the UMNO-Malay Rulers' relationship, namely, one which was characterized by a different kind of Malay political culture.

### 5.8 The Kelantan Episode

In discussing the turning point in Malay political culture, it would be incomplete not to refer to the Kelantan Ruler-*Menteri Besar* crisis. The enmity between the Sultan and the UMNO *Menteri Besar* in the late 1980s was not a secret to the Kelantan public in particular and to the Malaysians in general. The initial 'father-and-son' relationship between Datuk Mohammed Yaakob (that is, the 'father') and the Sultan (that is, the 'son') had turned sour after the 1987 General Assembly which held an historic election for the post of party's President (this post determines who will be the Prime Minister). The challenge mounted by Mahathir's opponent, Tengku Razaleigh Hamzah, a prince

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<sup>41</sup> The Act prohibits any discussion which may bring into hatred or contempt, or to excite disaffection against, any Ruler or against any government.

<sup>42</sup> See Mahathir's speech during the UMNO General Assembly, 10 November 1991.

from Kelantan, was unprecedented.<sup>43</sup> At this juncture, UMNO was split into two rival factions (popularly referred to by Malaysians as “A” and “B” teams, with the former supporting Mahathir and the latter, Tengku Razaleigh). In the contest, Mahathir emerged the winner, and subsequently the Team B supporters filed a suit at the High Court, seeking declarations that the party’s election was unlawful and invalid under Section 12(3) of the Societies Act 1966.<sup>44</sup>

The election had not only divided UMNO into two factions but had also led to the formation of a splinter party, naming itself as *Parti Semangat 46*. The relationship between the Sultan of Kelantan and his *Menteri Besar* began to crack in the wake of what was alleged to be the Sultan’s involvement in politics. He was reportedly taking side with *Semangat 46* whose leader was related to the Sultan. Mohammed, on the other hand, strongly supported Mahathir, thus leaving him sandwiched between loyalty to the party leader and the demands of the Sultan who displayed no support for UMNO.

Mohammed, it is alleged, experienced humiliation at the hands of the *istana*. This took different forms, ranging from ostracization by the royal residence and to exclusion from making public speeches at gatherings attended by the Sultan. In other words, he was a pariah as far as the palace was concerned. Of all the conflicts between the Sultan and the *Menteri Besar*, the Kelantan event perhaps provides the most interesting example, in the

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<sup>43</sup>This is because UMNO had generally changed its leadership, in accordance with Malay tradition, by process of adoption and consensus rather than conflict and confrontation. In fact this was the first occasion on which incumbent leaders had been challenged (for further readings, see Kershaw, R, *Within the Family: The Limits of Doctrinal Differentiation in the Malaysian Ruling Party Election of 1987*, RIMA, Vol.23, 1989, pp.125 -159; Harding, A.J, *The 1988 Constitutional Crisis in Malaysia*, *International and Comparative Law Quarterly*, Vol.39, 1990, pp. 57- 81).



sense that no other Ruler has displayed such a strong political inclination, and a hostile one at that, in the history of Malaysian politics. UMNO's fury was understandable as the Sultan happened to be supporting its rival. However, there might have been no problem had the Sultan supported the ruling party, as the case of the Sultan of Johor showed us. There was a time when the Sultan of Johor while he was the *Yang di Pertuan Agong* had publicly called upon the Malays to unite by supporting the UMNO in 1988, when the latter was facing the toughest legal challenge in late twentieth century Malaysia.

### **5.9 The UMNO Split, the Humiliating Loss and the *Istana* Factor**

1988 had undoubtedly witnessed an extraordinary political and legal drama when the UMNO rival faction (Razaleigh's supporters), calling themselves 'UMNO 11' sought a judicial declaration that the party leadership election held in 1987 was void due to irregularities. The question of whether delegates who were nominated at divisional level by members of unregistered UMNO branches to attend the party's general assembly could validly vote in the party leadership election, lay at the centre of the dispute. A confusion arose when the High Court decided that by virtue of the unregistered branches, the whole of the UMNO party was illegal under the Societies Act 1966, but at the same time held that the office-bearers prior to the 1987 election were lawful. Unfortunately, however, his Lordship did not explain how these office-bearers could validly function under an unlawful society. He also held that the plaintiffs could not get

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<sup>44</sup> This section provides that a society which establishes a branch without being registered or without prior approval of the Registrar of Societies renders such society and the branch so established unlawful.

any remedy on the ground that as members of UMNO, “they cannot acquire any right which is founded upon that which is unlawful.”<sup>45</sup>

In the meantime, the eleven petitioners filed an appeal to the Supreme Court,<sup>46</sup> and the prospect of a decision being made in their favour might perhaps be gauged from the reaction of the Mahathir-led government and his faction within the UMNO to the arrangement fixed by the Supreme Court for the appeal.<sup>47</sup> The appeal, if allowed, would have jeopardized the Prime Minister’s political life, for a fresh election could not guarantee him another victory as the party’s President,<sup>48</sup> given the fact that his previous mandate to rule was obtained with such a “miniscule majority”.<sup>49</sup> It was amid this so-called ‘legal-political chaos’ that the then *Yang di Pertuan Agong* (the Sultan of Johor) was said by some political observers to have been instrumental (to the advantage of the executive or rather of the Prime Minister) in the process of dismissing the Lord President, whose idea of judicial independence was seen by the Prime Minister as a threat to the government and the party.<sup>50</sup>

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<sup>45</sup> *Mohd Noor bin Othman & Ors v Mohd. Yusof Jaafar* (1988) 2 MLJ 129 at p.134.

<sup>46</sup> The petitioners appealed to have only the party leadership election declared invalid and not the whole party, which would thereby enable a fresh party election to be held.

<sup>47</sup> For the first time in Malaysian legal history, the appeal was fixed to be heard by the entire panel of nine judges. The panel was fixed by Tun Salleh, the Lord President, who was well known for his independence of mind, and this had made him the focus of concern among the Mahathir-led faction and his government. It was believed by those who sympathized with the Lord President that it was for this reason that the executive contrived a scenario which later led to his dismissal.

<sup>48</sup> The UMNO’s tradition has been that whoever sits as the party’s President, he shall automatically be the Prime Minister.

<sup>49</sup> In the 1987 contest for the posts of Deputy President and President of UMNO, Mahathir narrowly defeated his opponent, Tengku Razaleigh Hamzah. But the majority of votes won by Mahathir was so small that it raised a question among his critics as to whether Mahathir should resign as a matter of honour (see Tun Salleh Abas with Das, K, *May Day for Justice*, Mognus Books, Kuala Lumpur, 1989, p.55).

<sup>50</sup> *Harakah*, 12 Mac 1993.

The government's reaction to the King's interference with political issues was as equally confusing as the High Court's decision in the 'UMNO 11' case. The *Yang di Pertuan Agong's* active participation in the political-legal saga between the politicians and the judges in Tun Salleh's case was not viewed by the government as a violation of any constitutional principle.<sup>51</sup> No adverse comment was ever made by the ruling party with regard the king's political involvement, simply because he was on its side. Thus, had the Sultan of Kelantan, by contrast, supported the *Barisan* or more precisely, the UMNO, no question of constitutionality might have been raised by the government. Although it would be a violation of the principle of constitutional monarchy for a monarch to support any political party, it looked like the nature of the relationship between the Sultan and the UMNO was undoubtedly hinged upon the Ruler's willingness or refusal to support the party. This criterion which has come to define the meaning of their relationship in the late twentieth century, may not however be as new as one may have thought.

#### 5.10 *Habis Manis Sepah DiBuang*<sup>52</sup>

Looking to the past, one might recall that it was this very criterion (that is, of mutual support) which had held the two allies together in their pursuit of *Merdeka* in the mid-twentieth century. Given the occupational structure of Malay society at that time<sup>53</sup> it may be suggested that the power and influence of the Sultans among the Malay *rakyat* were comparatively much stronger then than now. In the past, the Sultans were seen as a

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<sup>51</sup> For a full account of the story, see Tun Salleh Abas and .Das, K, supra, from beginning to end.

<sup>52</sup> This Malay proverb means to say that once a person's service has been exhausted, he will be treated as useless.

vital force which could sway the direction in which the Malay *rakyat* might vote. In this context, there was no doubt that the UMNO, while in its infant and adolescent stages, needed the Sultans as badly as the British needed them during their years of colonial rule. The doctrine of '*pantang Melayu derhaka pada Raja*' (it is not the custom of the Malays to be disloyal or to disobey the Raja) which permeated almost every layer of Malay life was thus exploited not only by the British colonial government in their bid to secure Malay support, and hence its legitimacy to rule, but also by the UMNO which foresaw the usefulness of the Rulers in their political agenda. The relationship was one of instrumental and to a significant degree reciprocal in nature.<sup>54</sup> It was only later that the presence of the Rulers was perceived as a 'nuisance' by the more matured UMNO party, particularly when the former were not sympathetic to the latter.

A "nuisance" is precisely what the Sultan of Kelantan is to the party leadership. Beginning with the 1983 constitutional crisis, later the 1990 general election, and lastly, the 1993 battle over royal immunity, the Sultan was like 'a thorn in the UMNO's flesh'. Although the power and influence of the Rulers may not be as strong as they were in the previous few decades, nonetheless, one must not underestimate the power and influence of the Sultan of Kelantan. This is what UMNO found rather difficult to digest. At this juncture, the 'love' which had initially brought the traditional and the modern ruling

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<sup>53</sup> The majority of the Malays in those days were peasants and there was no competent middle-class Malay society that was strong enough to disassociate itself from the belief in the Raja as '*pelindung*' (protector).

<sup>54</sup> It was reciprocal in the sense that since UMNO was the only party which had, as one of the aims in its struggle for independence, the restoration of the Malay Rulers, the latter was therefore in debt to the party for their continuing existence within the modern political and constitutional frameworks of independent Malaysia.

*elite* together in the early years of *Merdeka* had now turned into hatred which caused their relationship to become sour.

### 5.11 The Code of Ethics – A Prelude to Radical Control of the Royals

The rift grew wider when, in the 1990 general election, UMNO lost Kelantan (described as the most Malay of the Malay States)<sup>55</sup> to the opposition coalition front called *Angkatan Perpaduan Ummah* (Muslim Unity Movement or APU), which combined the PAS, *Semangat 46* and two small Islamic parties, *Berjasa* and *Hamim*. UMNO accused the Sultan of being partly responsible for the loss because of his alleged support for the opposition, especially for *Semangat 46*, which had induced the Malay masses to abandon UMNO.<sup>56</sup> As a result of the defeat and of UMNO's conviction of the Sultan's involvement in helping the opposition win the election, the Prime Minister was determined to put an end to royal interference with politics. The Sultans needed to be kept within constitutional bounds, thought the Mahathir government. A mechanism for 'constitutionalizing' the monarchs was devised, and in 1992, the Rulers' Code of Ethics came into existence.<sup>57</sup>

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<sup>55</sup> UMNO lost every single state and parliamentary contest in Kelantan which led to the restoration of PAS government (after almost thirteen years thrown out of power) the victory of which to a significant degree was assisted by *Semangat 46* which became PAS junior partner in the coalition State government (see Crouch, H, *Authoritarian Trends, the UMNO Split and the Limits to State Power*, in *Fragmented Vision: Culture and Politics in Contemporary Malaysia*, Kahn, J.S & Loh, K.W (eds), 1992, p.37).

<sup>56</sup> The Sultan was said to have manipulated certain state government machinery such as the *Majlis Agama Islam* of Kelantan (Kelantan Islamic Religious Council) and the State Civil Service Commission as a means of sabotaging the UMNO candidates.

<sup>57</sup> The full contents of the Code are set out in Appendix A. It needs also be mentioned here that the Rulers have preferred to call the document, 'Proclamation of Constitutional Principles, instead of Code of Ethics. This document was a result of the Rulers' reaction to UMNO's memorandum which was presented to them on 24 February 1992, reiterating complaints made by UMNO delegates at the party's general assembly in 1990, regarding the Rulers' alleged misconduct and interference in politics. It had been speculated (see Chamil Wariya, *Krisis Sultan & Menteri Besar, Apa Sebenarnya Terjadi* (The Sultan-Menteri Besar Crisis: What had Actually Happened?) that in an effort to avoid more serious actions from being taken by the government (such as amending the constitution), the Rulers had to concede, though not

For the first time in Malay political history, the Sultans were not only advised by but were openly dictated to by Malay political leaders regarding what they must and must not do. Although at a glance the Code might amount to nothing more than a reiteration of the constitutional principles which were already incorporated in the constitution (such as those which relate to Rulers acting upon advice, active engagement in commercial enterprises and acceptance of emoluments as Ruler of his State) yet on the basis that the government was ready to act thus far, it did send a message to the Rulers that the former was quite capable of acting further and possibly harshly should the Rulers fail to comply with the 'guidelines' prescribed therein. In the light of the 1993 constitutional crisis, the 1992 Code was indeed a prelude to a more drastic form of 'disciplinary' action taken by the Mahathir government against the Rulers.

In spite of the government's preference to call it a Code of Ethics (arguably, suggestive of its intention to consider it as some sort of a legal instrument, such as a contract, for instance), it contained nothing which could legally bind the subscribing Rulers to its terms. The wording and the layout of the document may resemble that of a contractual agreement. However, lacking other vital elements necessary to establish a contract (such as consideration and intention to enter into a legal relationship), the Code is nothing more than a simple statement acknowledging what have already been codified in the Federal and State Constitutions (see above). As if to emphasize this point, the saving

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necessarily to admit their 'guilt', to the demands of UMNO to have the Code drafted and duly signed. However, it is not certain what the status of the document is in relation to the Rulers who did and those who did not subscribe to it.

clause<sup>58</sup> in the document was formulated in such a way as to give the impression that the Rulers were not willing to do or to abstain from doing anything, apart from those responsibilities already incorporated in the Federal and the State Constitutions, and in existing conventions and prerogatives. Arguably, the hidden message of the Rulers' proclamation was that they did not wish to be pushed around by some ambitious politicians, who themselves were not quite observant of the constitutional principles.

From the manner in which their statement of understanding of the principles of constitutional monarchy was worded, one could sense that the Rulers were being cautious about the whole matter. For instance, in one of the clauses, the Rulers did not clearly commit themselves to the rule which requires them to stay away from politics.

Hence, clause 1.1 merely states:

In accordance with established practice and convention, we are not directly or indirectly involved in party politics.

There is nothing in the clause which indicates that the Rulers will not in future participate in party politics. Neither did they acknowledge that they had in the past been politically involved. In view of this loosely structured clause, it might be suggested that the Rulers were not ruling out absolutely the possibility of their becoming involved either directly or indirectly in political activities in times to come. Similarly, clause 2.3, states that:

When we have any reservation as to the suitability of any person nominated as *Menteri Besar*, we may refer the nomination for

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<sup>58</sup> The saving clause reads: "This Proclamation is made for the purpose of clarification and assurance and is made without prejudice to the provisions of the Federal Constitution, and the State Constitutions and existing conventions and prerogatives."

reconsideration by the leader of the appropriate party for a final decision.

Upon reading this clause, it is worth recalling the incident when the Sultan of Pahang had asked for several other names to be nominated for the post of *Menteri Besar* other than the one presented by UMNO in 1978. The then Prime Minister, Dato' Hussein Onn, responded by effectively saying that the Sultan must accept any person nominated by the party whether he (the Sultan) liked it or not. In other words, the Sultan had no choice but to agree. There was no provision, previously, which allowed the Ruler to refer the nominee for reconsideration by the party leadership.

However, with the 'clarification' made in the Proclamation of Constitutional Principles 1992, the matter appeared to have been resolved with the consequence that the Rulers would now have the discretion to ask the party to reconsider its nominee if the Sultan were not comfortable with the nomination. On the other hand, allowing the Sultan to refer the matter back to the party for reconsideration would be a breach of the constitutional principle which forbids a Ruler from participating in political decision-making. From this perspective, it is difficult to see how the Proclamation may achieve its object, namely, to 'clear misinterpretations concerning the position, status, power and special privileges of the Rulers'.

In addition, the Proclamation was also meant to make clear the meaning of 'acting upon advice'. This particular expression seems to have been one of the main causes of the Ruler-*Menteri Besar* disputes. Hence, clause 4.2 seeks to 'clarify' its meaning in the following manner:



We recognize that in accordance with established constitutional practice, the terms “acting on advice” or Ruler in Council” and other similar terms mean that we shall accept the advice of the Government of the State as tendered by the *Menteri Besar* and the State Executive Council.

### **5.12 The Idea of Constitutional Monarchy v Traditional Notion of *Kerajaan*.**

As far as the phrase ‘acting on advice’ is concerned, the Rulers (except the Sultans of Kedah, Johor and Kelantan, who refused to subscribe to the Proclamation) have now come to terms with the fact that as constitutional monarchs, their power to make decisions is limited. However, the Rulers should not be made to bear all the blame for failing to observe this constitutional principle in the first place. It must be remembered that although the constitutional system of Malaysia is basically fashioned after the Westminster model (that is, in terms of its parliamentary democracy and constitutional monarchy), it is one that was carved out of circumstances, which rendered it peculiarly different from the country of the model which it sought to emulate. The political, economic, social, cultural and historical landscapes which surrounded the creation of the Federal Constitution of Malaysia some fifty years ago explain why certain principles of constitutional monarchy had not worked out as well as they have in the United Kingdom.

Prior to British rule in Malaya, the system had always been that the Rajas were the ones who issued orders. Advisers merely advised and they did not dictate. In other words the Rajas had the choice of following or rejecting the advice tendered to him by his appointed officers. One must bear in mind that it is culturally Malay for the

ruled not to override the orders or decisions of a Ruler. To do otherwise would amount to an act of *derhaka*. That the concept permeates and dominates Malay political thought is confirmed by many writers. Taib Othman, for instance, writes:

*Dia (Raja dan anak-anak Raja) mempunyai daulat tidak kira sama ada dia seorang Raja atau Tengku dan kedaulatan tersebut menjadi hak kuasa baginya untuk memerintah orang lain, mentadbir negeri serta disembah.....*

*Ketulahan menimpa sekiranya kita mencabar daulat Raja.....Memang menjadi kepantasan bagi kita menderhaka kepada orang-orang yang berkuasa atau terhadap mereka-mereka yang kedudukan taraf hidupnya lebih tinggi daripada kita. Inilah asal perhubungan di antara Raja dengan rakyat dan telah melahirkan pepatah zaman berzaman "pantang Melayu derhaka pada Rajanya."<sup>59</sup>*

(That they (the Raja and the princes) and it matters not whether they are called Raja or Tengku (another royal title), because of the *daulat*, they are entitled to rule over others, to govern states, and to be obeyed...

If we were to challenge their *daulat*, we would be cursed..... It has been a taboo for us to commit *derhaka* against those in power or against those who are above our rank. This is the origin of our *Raja-rakyat* relationship, and it is out of this that the old adage of 'it is not a custom of the Malays to act treacherously against the Ruler' was invented).

It was against this long existing tradition and political culture that the Westminster system of government was introduced and the result is what we are now witnessing today. The superimposition of the new system since *Merdeka* has not fundamentally changed the attitude of the traditional Rulers (in the sense that they must be loyally obeyed) nor of the modern UMNO leaders (who imposed a similar taboo of *derhaka* on party members vis-à-vis the party leadership). The aura of importance or of indispensability still pervades the palace as a result of the image conferred on the Rulers by the 1957 Federal Constitution.

As a measure of maintaining the supremacy of Malay rule or political hegemony, the *kerajaan* was thought by the UMNO leaders as an institution that must be preserved within the diverse cultural, 'plural' Malaysian society. Although the position of the Sultans were dramatically reduced from absolute monarchs to constitutional rulers upon *Merdeka*, paradoxically, their powers (particularly in the legislative sphere) were enhanced and strengthened as they were recast into a new role, namely as guardians of the Malays' special rights and position <sup>60</sup> as indigenous people of the country. In addition, the unique rotational system of federal constitutional monarchy, the *Yang di Pertuan Agong* (who is drawn temporarily from the rank of these Malay Rulers) presumably creates the impression among the latter that the Rulers are 'the' elements without which the government cannot function. One might argue that the "invention of tradition" <sup>61</sup> which resulted in the creation of rituals and ceremonies accompanying this modern created "traditional" political institution, reemphasizes the sense of royal importance, nobility and "sovereignty" among the Rulers. Thus, as the sociologist, Kessler, notes in his work:

The first [the phase of traditionalization] from 1957 to 1970, witnessed the establishment, inter alia, as the symbolic and ceremonial apex of the new political order, of a unique system of elective constitutional monarchy. As arguably, is insufficiently recognized, under this uniquely

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<sup>59</sup> Mohd.Taib Othman, *Pandangan Dunia Sosiopolitik Melayu Tradisi* (Traditional Malay Sociopolitical Worldview) *Dewan Budaya*, Jil.5, Bil.10, Kuala Lumpur, 1983, p.53.

<sup>60</sup> The status of the Rulers as guardians of the special position, rights and privileges of the Malays was further enhanced by the existence of Article 38 (4) and (5) of the Federal Constitution. Article 153(1) emphasizes the role of the *Yang di Pertuan Agong* as the guardian of special rights, position and privileges of the Malays, and the natives of Sabah and Sarawak. The unamended version of Article 181(2) on the other hand guaranteed the 'unassailable' status of the Rulers as persons above the law, thus in a sense it helped to reaffirm the traditional notion that 'a Raja should never be challenged'. Formerly, prior to 1993, the presence of Section 3(1) of the Sedition Act 1948, had also kept the Rulers beyond the touch of critical discussions which might have assisted the Rulers to realize that they, like other human beings, were not flawless.

<sup>61</sup> Although the office of the *Yang diPertuan Agong* is a creation of a modern Malaysian constitution (the *Merdeka* Constitution), it is nonetheless created out of the "traditional" Malay political institution, *kerajaan*.

Malaysian arrangement the powers of the monarch or *Agong* are not simply (as in some more familiar systems of “constitutional monarchy”) the embodiment of the power of the constitution itself and thus also indirectly of popular sovereignty, nor are the Ruler’s powers simply those that are granted, delimited, and institutionalized by the constitution. Rather the constitution in effect recognizes that the *Agong*, and behind him the Sultans from whose ranks the *Agong* is temporarily drawn, enjoy powers that are not simply created by or based within but exist prior to and outside of constitutional authority and the constitution itself.<sup>62</sup>

Indeed, the attitude of the Rulers with regard to certain matters, such as the conferring of national titles and honours (for instance, *Tun* and *Tan Sri* and *Datuk*) affirms the above analysis. The power to award such titles often leads to conflicts between the Rulers and the *Menteris Besar* as evident in the case of Selangor in 1992. Traditionally, it was the Sultans who determined those who were eligible for the titles. However, in modern day Malaysia it is the political leaders who are responsible for selecting relevant individuals for the award. Such an exercise might appear trivial but since historically and culturally it symbolizes the dignity and power of the giver of these titles, any ‘usurpation’ of this function, or, “right” as the Sultan of Selangor defined it, would understandably result in crisis.<sup>63</sup> Thus the “right” to confer national titles, like the sultanate itself, pre-exists the constitution and any attempt to deny it may be interpreted as a breach of *adat*.

As if having understood and hence having utilized the knowledge that the powers of the Rulers pre-exist the constitution, and therefore are independent of it, and that the latter is ‘subordinate’ to them in terms of time, the Sultan of Kelantan paid no heed to UMNO’s

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<sup>62</sup>Kessler, C.S *Archaism and Modernity*, in Kahn, J.S & Loh, K.W (eds), *Fragmented Vision*, supra, pp. 143 -144. (for further discussion of the powers of the constitutional monarchy in Malaysia, see Hickling, *Malaysian law*, Professional Law Book Publishers, Kuala Lumpur, 1987, pp.55 &57).

<sup>63</sup> *Utusan Malaysia* 16 February 1992.

proposal to establish the Code. In his speech at the Muhammadi mosque in Kelantan,<sup>64</sup> the Sultan stated that:

“.....as Heads of the Islamic religion in their States, the Rulers were not bound to abide by any code of ethics other than the Holy Quran and the Prophet’s Traditions (*Sunnah*). These are the only codes of ethics which bind each and every Muslim, irrespective of whether they are Rulers, Heads of states, Prime Minister, Cabinet Ministers, government servants or ordinary *rakyat*”.

His determination not to bow to the wishes of UMNO and of the *Barisan* government continued, and their strained relationship was further exacerbated amid the 1993 constitutional crisis.

### 5.13 Enough Is Enough

Though there had been numerous occasions on which UMNO’s patience was repeatedly tested by its traditional ally, the Rulers, nothing had quite provoked its leadership to react as harshly as the Gomez incident had. The assault at the Istana Bukit Serene (the residence of the Sultan of Johor), allegedly involving Sultan Mahmood Iskandar and a Johor college hockey coach, was seen as the last straw that broke the camel’s back. The assault inflicted by the Sultan on Gomez was used by the government as an excuse to “tame” the Rulers by eliminating the constitutional shield that had been protecting them from legal consequences.

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<sup>64</sup> The speech was made on 27 March 1992 in an effort by the Sultan to dismiss allegations of his misconduct. It was made at a mosque during the month of *Ramadhan* on Friday, and presumably after the Friday prayers. Given the fact that Kelantan is ruled by the Islamic party, PAS (the manifesto of which is to establish an Islamic State, and that the issue of its being more Islamic than the Mahathir-led UMNO has always kept the two parties apart), the Sultan, by deliberately choosing the date, the occasion and the venue for his speech was symbolically projecting the Islamic dimension of himself as a Ruler, and indirectly hinting at the UMNO party leadership that he just could not be bothered with their threats. To emphasize his ‘couldn’t be bothered attitude’, the Sultan ended his speech by saying that “it is the

There had been other instances involving the Sultan of Johor,<sup>65</sup> which could have prompted the government, especially the UMNO leadership, to react in the same manner as it did in this particular case. In 1973, for instance, the Sultan, who at the time of the incident was a Raja Muda, and hence an heir to the throne, had been bound over by the Sessions Court for a criminal offence, but was later given a more severe sentence by the High Court on appeal by the prosecution.<sup>66</sup> Later, while he was the *Yang di Pertuan Agong*, there were rumours that he was responsible for the death of a caddy boy, an incident which led to the victim's brother running amuck in the capital city, seeking revenge for his death. None of these instances matched the political fallout following Gomez's case.

It might be suggested that the 1992 hockey-related incident provided an invaluable opportunity for the Prime Minister to settle for good his unaccomplished mission of 1983 with regard to the constitutional amendments which sought to transfer the power of declaring an emergency from the *Yang di Pertuan Agong* to the Prime Minister, and to delimit the discretionary power of the *Yang di Pertuan Agong* to grant royal assent to Bills passed by the two Houses of Parliament. The compromise<sup>67</sup> reached between the party and the Rulers in that episode could be construed as an acknowledgement by the government of the nature and strength of the Rulers' powers which were, to use

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Almighty Allah alone who has the right to bestow power upon whom He chooses and to revoke it from whom He chooses".

<sup>65</sup> See Karpal Singh's speech in the *Dewan Rakyat* Debates, 10 December 1992.

<sup>66</sup> *Public Prosecutor v Tengku Mahmood Iskandar & Anor* [1973] 1 MLJ 128.

<sup>67</sup> In his attempt to trim the powers of the *Yang di Pertuan Agong* in 1983, the Prime Minister was forced to compromise, (though the exact terms of their settlement remain unknown to this date), which means that the *Agong's* power to declare a state of emergency was not transferred to the Prime Minister as proposed in the Constitutional Amendment Bill 1983. Apart from that, the period within which royal

Kessler's term,<sup>68</sup> of an 'extra-constitutional' origin. To accept the strength of others would mean to acknowledge one's own weakness. The concessions agreed to by the government in the 1983 constitutional bargain would possibly have been interpreted by the Prime Minister as an admission of defeat (or at least only a half-victory) on the part of his party and of the government.<sup>69</sup>

It may be noted that even if UMNO and the Mahathir-led government were to be seen as winners, the losers (the Rulers) however, did not lose all. To make good whatever the government had lost or partially won in the 1983 battle, the Prime Minister and his government needed to have a good reason to redeem the "loss", and Gomez laid the path to yet another duel. The 1993 episode indeed marked a turning point in the UMNO-Malay Rulers' relationship, and this time the Rulers lost what they had treasured most, their dignity, and arguably, their sovereignty,<sup>70</sup> both of which were formerly couched in that special concept called 'immunity'. The year had not only witnessed the end of royal misdemeanours and the termination of the Sultan of Johor's 'reign of terror' (at least in the state of Johor, as perceived by certain quarters of the *rakyat*), but most importantly, the erosion of the so-called special relationship between the Malay Rulers and the UMNO party.

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assent must be given to Bills passed by the two Houses of Parliament was increased to thirty days, that is fifteen days more than what was originally proposed by the Prime Minister.

<sup>68</sup> Kessler, C, *supra*, footnote 61, at pp.144 &145.

<sup>69</sup> See comments by Lee, H.P, *supra*, p.95.

<sup>70</sup> New Straits Times, 19 January 1993.

The obvious breach of constitutional requirements relating to the amendments of the 'royal immunity' provisions by the government,<sup>71</sup> the UMNO's flagrant abuse of media influence and the merciless attacks and character assassinations launched by the party leadership against the Sultans, had all left a strong reminder on the latter's minds as to what sort of a relationship theirs could have been after the crisis. Certainly, it would not be as commodious as it used to be, and given the fact that the government was willing to go beyond the unthinkable,<sup>72</sup> the Rulers' destiny was now hanging loosely on the edge of UMNO's, or rather, of Mahathir's, supremacy.<sup>73</sup>

Needless to say while it was the idiosyncrasies and eccentricities of the individual Sultans which had contributed to the new episode in their relationship with UMNO, it also took the latter's attitude towards the *kerajaan* to complete the whole scene. Therefore it is pertinent to examine what exactly caused such a frantic shift in the mood and perception of the present UMNO leadership about this traditional Malay regime.

#### 5.14 New UMNO, New Sense of Partnership

Though it may be difficult to draw a clear dividing line between the end of an era and the beginning of another, the constitutional developments which ensued in consequence

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<sup>71</sup> Articles 38(4) and 159 of the Federal Constitution (concerning prior consent of the Conference of Rulers) had been deliberately ignored by the government, and no reason was ever given for this violation (see also Rais Yatim, *supra*, p.112).

<sup>72</sup> For instance, the 1983 and 1993 amendments were all unprecedented in the sense that no previous Prime Minister had ever gone to the extent of tampering with what were considered the traditional elements of the Malaysian Federal Constitution, namely, the Raja institution.

<sup>73</sup> Mahathir, when he initiated action to amend the Constitution, was able to carry the whole party and government with him. And as Kershaw, R, observes, 'The fact that it was [Mahathir] alone who was able to unleash public criticism and launch the constitutional reform shows the unique concentration of power in his hands' (see Lee, H.P, *supra*, p.96 and Kershaw, R, (cited by Lee), *Shattered Symbiosis: The Road to Conflict between Malay Nationalism and Monarchy*. Internationales Asienforum, 24 (1993): 283).



of the Gomez incident in 1992 indeed marked a watershed not only in Malay political culture but also in Malaysian constitutional history. The reaction of the UMNO leadership and the support shown by its members to the amendments to the Federal Constitution regarding the removal of royal immunity heralded a new culture (a culture of open confrontation against a ruler or leader) in Malay politics. The Malays were set on a journey to a 'different' kind of Malay society, where the repressive images of the feudal past would be replaced with the more dynamic and progressive values that would make them a people *par excellence* vis-à-vis other advanced peoples in the world.

To create a Malay society that was non-submissive, and unafraid of expressing thoughts and ideas was part of the grand agenda of Mahathir's Vision 2020. Hence the groundbreaking speeches made by the delegates at the UMNO general assembly on 1 December 1990 that echoed throughout the Putra World Trade Centre in Kuala Lumpur mirrored the rebellious spirit of the new Malays of the Mahathir regime. The size of the crowd attending the assembly might have been reminiscent of the one which gathered in protest against the Malayan Union outside the Station Hotel some fifty years ago, but the atmosphere now was different.<sup>74</sup> Whereas the old scene was one filled with the cheer of support for the Sultans, the new was filled with criticisms, complaints, disappointment and resentment against their successors. The change in the UMNO perception of the Raja institution was obviously reflected in the manner in which the

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<sup>74</sup> The UMNO members attending the 1990 assembly, were preoccupied with issues relating to the Rulers' misconduct. The tone which accompanied the delegates' speech was one of protest against the Rulers rather than of support for Their Highnesses.

delegates spoke their minds.<sup>75</sup> In contravention with the statutory restrictions imposed by the Sedition Act, the delegates poured out their grievances against the Sultans, listing all their faults and stripping them bare of those 'magic clothes' which had once shielded them from the eyes of the *rakyat*. For the first time since the Sedition Act was amended after the 13 May 1969 race riots, the Rulers became the subject of public debate and criticism by the UMNO leaders and members alike. Thus, unofficially, Section 3(1) of the Act was amended to suit the needs of modern Malaysians in general, and of the new generation of UMNO-represented Malays, in particular.

Significantly, there were no more cries of '*daulat tuanku' hidup Melayu*' (our Ruler is the sovereign and long live the Malays) at the party's assembly despite previous repeated assurances by the Prime Minister that the party upheld and would continue to uphold the sultanate system.<sup>76</sup> But to what extent would the words be reflected in the deeds, and how genuinely was the party in favour of the *kerajaan*? The powerful message of Mahathir's UMNO was that unless the Rulers changed their behaviour and stopped meddling in politics and business, there was no guarantee that the system would continue to survive. Thus using the usual disclaimer, UMNO, in its letter (24 February 1992) to the *Yang di Pertuan Agong* stated that it had no choice but to concede to the

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<sup>75</sup> The speech of Zainal Sakom (a Selangor delegate) which severely criticized the Sultan of Selangor for his interference with the powers of the State government. The speaker ended his speech by submitting his Selangor branch's resolution to the UMNO's Deputy President, which recommended, among other things, the setting up of a special committee to investigate the amount of real property owned by the Sultan and his followers, and that the Federal and the State Constitution be amended to enable the Prime Minister to appoint the *Menteri Besar* and other important State officials in order to avoid future interference by the Rulers.

<sup>76</sup> For instance, some years prior to the 1990 general assembly, the Prime Minister had, in his speech at a rally in Bagan Datuh, Perak, on 27 November 1983 (concerning the 1983 constitutional amendment issue), avowed that UMNO had no desire to establish a republic and that it would maintain the existing system of constitutional monarchy (see *Utusan Malaysia*, 28 November 1983).

wishes of the *rakyat* who might want to have a change in the system if such a need arose.

Apart from the outpouring of complaints and criticisms by the UMNO delegates, by the editorial opinions of mostly government-backed newspapers, and also by public views that were sporadically published in the dailies, there was no thorough and independent survey which might reflect the actual perception of the Malays in general about the Raja institution. However, one might suggest that at least the middle-class Malays (notably the Malay capitalists) welcomed the government's effort in the 1993 constitutional episode in view of the fact that they were the main recipients of the benefits of the New Economic Policy (NEP). The struggle for the economic cake between the commoner-business elite (who uses the intra-party influence within UMNO to persuade the government to eliminate business rivalry) and the royal families (who use their status and position as the "exalted" figures to acquire business opportunities, such as government projects) created an atmosphere for hostile competition between the two classes of Malays. The maxim of '*no raja no rakyat*' was perhaps less meaningful to the Malay entrepreneurs than to the *Kampong* (village) Malays, for instance. However, it is difficult to judge precisely how many of the *kampong* folks still cherish the traditional perception about their Raja, in the absence of any statistic<sup>77</sup>. Nonetheless, it might be said that the slogan of '*daulat tuanku, hidup Melayu*' had been substituted with '*daulat*

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<sup>77</sup> Although it was reported that 60% of the Malay *rakyat* disagreed with the manner in which the government handled the immunity issue (see Far Eastern Economic Review, 4 February 1993), it did not necessarily mean that they supported the Rulers' extravagant life-style and other alleged misconduct.

*rakyat, hidup tuanku*' (the people are the sovereign, and long live the Ruler) by the 1990s Malay political leaders.<sup>78</sup>

### 5.15 The End of A Special Political Affair

As the nation progressed towards the new millennium, the UMNO-Rulers' symbiotic relationship was slowly being eroded by the process of modernizing Malay society which accelerated under the leadership of the new generation of UMNO. What were perceived as fundamental pillars of the constitutional system of Malaya in 1957 turned out to be some sort of a 'national accessory' in the 1990s.<sup>79</sup> The big question mark in this crisis was, what gave the UMNO and its *Barisan* government the strength or courage to caution the Rulers about their fate if they failed to adhere to the rule of law now?<sup>80</sup> Perhaps a political scientist's view below might cast some light on this issue:

The Malays are said to have traditionally perceived their political condition and identity in terms of the *kerajaan* (government) through the rajas and sultans who are supposed to be their protector. As Malay society modernized and became more cosmopolitan, and as a new class of urban and educated Malay elites consolidated in UMNO, the excessive and extravagant lifestyle of their Rulers was viewed differently, and their credibility and legitimacy began to be questioned. The Prime Minister's own antipathy to the royalty is of long standing and was never

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<sup>78</sup> It means that it is the people who are sovereign here and it is they who decide whether the *kerajaan* will cease to exist or continue to live.

<sup>79</sup> Time and again, the Rulers had been reminded by the UMNO leaders, albeit indirectly, that if they wished to remain as part of the constitutional system they would have to bow to the wishes of the *rakyat*, and as UMNO sees itself as the *rakyat*'s (particularly of the majority of the Malays) spokesmen, the party leadership said that it would be best for the Rulers to pay heed to their 'warning'. The probable assumption which one could make from the party's reiteration of such a warning, is that the Raja institution was no longer seen as indispensable except for its role as a symbol of Malay political heritage (see the then Deputy Prime Minister's speech during the tabling of the motion to amend the immunity provisions of the Federal Constitution, in the *Dewan Rakyat* Debates, 10 December 1992).

<sup>80</sup> The government, in its debates about the amendment emphasized that no one, including the Rulers, should be above the law. However in doing so, it seemed to have ignored the existence of certain statutory provisions such as the ISA, which gives protection to the Minister concerned from judicial review with regard his decision in detaining a person without trial (see the oppositions' speech in their parliamentary debates (especially PAS and DAP), 8 March 1993.)

concealed: in his book *The Malay Dilemma*, written in 1970 when he was still in the political wilderness, signs of dissatisfaction with the royalty were already apparent.<sup>81</sup>

The Prime Minister's antipathy to the royalty might have been long standing and overt, but never had it been so obvious as in the 1990s. The fact that he was able to mobilize the whole party to support the 1993 constitutional amendment gave him a sense of conviction that the 'peasant' mentality within his party had diminished or had almost ceased to exist, and what was in place now was a new generation of Malays whose mindset was more attuned to the prevailing robust economic and social developments that were taking place in the country.<sup>82</sup> These were the people who found themselves to be living in an astoundingly different economic, political and social milieu. The economic policy, commonly referred to as the NEP (New Economic Policy), pursued by the ruling regime since the 1970s had contributed to the creation of a new and strong Malay middle class, consisting mainly of entrepreneurs and technocrats. Their membership in UMNO appeared to have given the party its new, sophisticated and confident image, the 'corporate image',<sup>83</sup> which helped to boost its claim as the alternative 'protector' or *pelindung* of the Malays.

The Malays, particularly those who were lured by the attractions of the then impressive economic developments under the UMNO-led *Barisan* government, have now found a

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<sup>81</sup> Ho, K.L, *Malaysia: The Emergence of a New Generation of UMNO Leadership*, Southeast Asian Affairs, 1994, Institute of Southeast Asian Studies, Singapore, p.180.

<sup>82</sup> One of the UMNO Supreme Council members (Tun Daim Zainuddin) is also a prominent Malay entrepreneur. The younger ones at this particular point of time include Dato'Zahid Hamidi, the Leader of UMNO Youth Wing, who is also a well known corporate leader (Zahid is the Director of the Bank Simpanan Nasional (The National Savings Bank)).

<sup>83</sup> During the early 1990s, UMNO was one of the country's most important corporate players (see Gomez, Edmund T, *Politics in Business: UMNO's Corporate Investments*, Kuala Lumpur: Forum, 1990 (quoted

new source of 'protection'.<sup>84</sup> The traditional 'protector' (the Rulers) had been forced to play second fiddle, because a new champion had just been born. The implementation of the NEP under Mahathir's administration witnessed the influx of Malay capitalists into the UMNO circle, and at the same time the party's economic status was gradually elevated. The process of transforming the financially weak political organization into a 'giant' political-cum-commercial enterprise began in the days of the former financial minister, Tengku Razaleigh Hamzah, but reached its peak during the tenure of Tun Daim Zainuddin.<sup>85</sup> The wealth of the party was obviously accumulated through its active engagements in the corporate sector,<sup>86</sup> and its success was structurally manifested in the Putra World Trade Centre which was built in the centre of Kuala Lumpur.

As a result of the robust economic changes not only at the national but also at party level, UMNO grew more and more confident as to enable its President, the Prime Minister, to debunk the myth (that the Raja was invulnerable) that had long dominated Malay political culture. The old era of Malay nationalism seemed to have ended with the emergence of the capitalist UMNO. The struggle was no longer focussed on defending the sovereignty of the Rulers but on the building and strengthening of a particular stratum of the *rakyat*, namely, the Malay capitalists. To achieve this aim, the Prime Minister devised stratagems and attacked what he saw as false values in Malay tradition,

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by Khoo K. J, *The Grand Vision: Mahathir and Modernization*, in Joel S. Kahn and Loh K. W (eds) supra, p.60).

<sup>84</sup> In an article published in commemoration of UMNO's Fiftieth Anniversary, Ahmad Fawzi Mohd. Basri writes, "UMNO shall continue to be a party that is compatible with changes, for it is a party which is relevant to the survival of the Malays (see *Dewan Masyarakat*, Jun 1996, p.7). This is one of the many opinions which stresses the relevance of UMNO as the linchpin of Malay survival.

<sup>85</sup> Ibid, *Dewan Masyarakat*, Oktober 1995, p.22.

<sup>86</sup> For more useful insights into the UMNO economic empire, see *Far Eastern Economic Review* 10 October 1988.

which included, among other things, the '*jiwa hamba*' mentality (that is, the feudal perception of oneself vis-à-vis the Ruler or, in other words, the slavish attitude). All these were summed-up in his *Wawasan 2020*<sup>87</sup> (Vision 2020) which is an extension of his 1970s '*Malay Dilemma*'.<sup>88</sup>

In the light of the above discussion, it may be concluded that economic wealth has indeed changed many aspects of this once peasant-based political organization. It was against this new economic background that the *kerajaan* was renegotiated and redefined by the government.<sup>89</sup> By implication, the meaning of sovereignty was reinterpreted as the *kerajaan* was forced to take on a different dimension. Prior to the 1993 constitutional amendments, the issue of 'sovereignty' had been raised in several court cases, one of which, a century previously, was the case of Mighell v Sultan Abu Bakar of Johor.<sup>90</sup> It involved a claim for breach of a contract to marry. The key issue which came before the English court of Appeal was whether the respondent, the Sultan of Johor, was liable to legal proceedings for his breach of contract to marry the appellant. The Court held that ".....the English courts had no jurisdiction over the Sultan, who was an independent foreign sovereign, unless he consented to submit to the jurisdiction of the English courts...." Thus, being an independent sovereign, the Sultan was not

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<sup>87</sup> The Vision 2020 is critically examined in the next chapter.

<sup>88</sup> The Malay Dilemma (Asia Pacific Press, Singapore, 1970 ) was a book written by Mahathir in the aftermath of the 1969 race riots. In this book, he put forth his ideas and criticisms against what he thought as the fallacy of the Malay perception of life etc. and he also laid out therein his visions for the Malays and ways in which they could attain a better future.

<sup>89</sup> It will be recalled that the term government has been interchangeably used with UMNO in various parts of this study, the reason being that since the party has been in power for such a long time, it is commonplace for it to be synonymously referred to with government.

<sup>90</sup> [1894] 1QB 149.

liable to be sued for breach of contract, or in other words, he was 'immune' from such legal proceedings.

Mighell cannot, of course be taken as authority for the proposition that sovereignty shall, in all circumstances, go hand in hand with immunity. However, as far as Malaysia is concerned, such an argument might be advanced. The broadly phrased Articles 32(1) and 181(2) of the Federal Constitution, in their original form, could be construed as providing that so long as the person in question is a Ruler, which means sovereign, he will be protected by the law from any legal proceedings. The words "...the *Yang di Pertuan Agong*...shall not be liable to any proceedings whatsoever in any court", as found in the old Article 32(1), stated beyond doubt that the monarch was free from any legal actions, or in other words, he was legally immune.<sup>91</sup> The only thing which he needs to prove is whether he is indeed a Ruler.

The case of Dato' Menteri Othman Baginda v Dato' Ombi Syed Alwi bin Syed Idrus<sup>92</sup> illustrates the point in question. The Federal Court judge, Salleh Abas F.J (as he then was), noted that:

“....the definition of a Ruler is a composite one....for the exercise of functions under the Federal Constitution only the *Yang di*

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<sup>91</sup> Originally, prior to the case of Stephen Kalong Ningkan v Tun Abang Haji Openg & Tawi Sli (No.2) [1967] MLJ 46, the legal interpretation has been that the *Yang di Pertuan Agong* was immune from legal proceedings both in his private as well as in his official capacities. However, thereafter, the position has been redefined and it was decided that the *Yang di Pertuan Agong* is only immune only if he acts in his personal capacity (see also Trindade, F.A, *The Constitutional Position of the Yang di Pertuan Agong*, in *The Constitution of Malaysia – Its Development: 1957 – 1977*, (1978) Penerbit Fajar Bakti Sdn.Bhd., Petaling Jaya, Malaysia, p. 125). Thus applying this redefinition, the *Yang di Pertuan Agong* would be immune from legal proceedings of whatever nature, civil or criminal, if he acted in his personal capacity. As for the Rulers, the position was very clear under Article 181(2) where it specifically stated that “No proceedings shall be brought in any court against the Ruler of a State in his personal capacity”.

<sup>92</sup> [1981] 1 MLJ 29.



*Pertuan Besar* [of Negeri Sembilan] is required to perform them, although in performing those functions, His Highness is regarded as acting not only on his own behalf but also on behalf of the Ruling Chiefs as well.....An *Undang* [the Ruling Chief]<sup>93</sup> is a Ruler as regards performance of functions and power but not a Ruler for the purpose of judicial immunity under Article 181(2).”

Relevant also to this is the observation made by the then Lord President, Tun Mohd.Suffian, who says, “...such immunity is usually an attribute of sovereignty.” Based on this observation, one might argue that if sovereignty and legal immunity were two overlapping concepts which were so closely intertwined, therefore, an elimination of one would mean an elimination of another.

#### 5.16 The Opposition’s Argument

Indeed, this was the argument put forward by the opposition party, the *Semangat* 46. The party’s leader, Tengku Razaleigh Hamzah, argued that Article 181(2) was in essence concerned not so much with the legal immunity of the Rulers but rather with the sovereignty of Their Highnesses. In fact, the word ‘immunity’ never appeared anywhere in the Federal Constitution. The provision merely provided that “No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity.” To Tengku Razaleigh’s mind, the exclusion of Rulers from legal proceedings symbolizes the sacrosanctness as well as the sovereignty of the Raja institution. To him, without this exclusive protection sovereignty would be nothing more than a hollow

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<sup>93</sup> For further readings on this issue, see Hooker, M.B, Negeri Sembilan: *Adat*, The Constitution, and the Federal Court, a Note on Dato’ Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] MLJ cxc.

concept, and that there would be no difference between a Raja (Ruler) and a Rajagopal or Rajaratnam (these are names commonly given to males of Indian origin).<sup>94</sup>

The above argument might not be tenable in the light of the proposition that sovereignty, unlike power, “cannot be gained, lost or transferred”.<sup>95</sup> But that goes as far as the modern sense of sovereignty is in question. What about sovereignty as understood in the Malay politico-cultural vocabulary (that is, *daulat*)? Would a Ruler lose his *daulat* if the constitutional immunity-conferring provision were removed? One might argue that since the *daulat* of a Raja did not derive from the constitution, but from elsewhere, namely *adat kepercayaan/konvensi*<sup>96</sup> (approximately means, conventions) which pre-exists the Federal Constitution, therefore, the removal would not affect him at all. So long as the *rakyat* believe in the notion and support the sultanate, it would not matter whether the immunity-conferring provision was retained or otherwise.

The argument went further by questioning the logic of the constitutional provision which assigns to the *Yang di Pertuan Agong* the role of a ‘protector’ of the Malays and of other races in Malaysia. Having been stripped of their immunity and arguably of their sovereignty, the Rulers are now relegated to the status of an ordinary *rakyat*, and like

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<sup>94</sup> This is a cynical way of analogizing the Rajas with commoners. The analogy was made in such a way as to emphasize the pejorative treatment given by the UMNO to the Rulers throughout the last seventeen years of Mahathir’s ascendancy to power. As Rajagopal and Rajaratnam are merely names of ordinary Indian males which happen to start with the word Raja (though ‘Raja’ as far as these names are concerned does not serve as a root to any word such as ‘*ke-raja-an*’), they have come to be used as a pun by the oppositions in criticizing the government. Thus, a Raja without immunity would be a Raja without a *kerajaan*, or in other words he is simply a nonentity, for his status is only equivalent to that of Rajagopal or Rajaratnam, a mere commoner.

<sup>95</sup> Hisley, F.H, *Sovereignty*, Watts, London, 1966, p.1.

<sup>96</sup> See Mohammad Yusoff Hashim, “*Daulat*” *Dalam Tradisi Budaya dan Politik Kesultanan Melayu Abad Ke-15 dan Awal Abad Ke-16: Antara Mitos dan Realiti* (“*Daulat*” in Cultural Tradition and Malay

them, are similarly vulnerable to legal proceedings or even to executive actions, such as detention without trial under the infamous Internal Security Act. Thus, the point which *Semangat 46* was making was that the amendment of the immunity provisions in Articles 32(1) and 181(2) would reduce Article 153(1)<sup>97</sup> to nothing more than a mere mockery.<sup>98</sup> With the removal of the constitutional 'shield' from the Rulers, any influence which might still be left to them could be curbed by any power-hungry political leaders inventing a reason or two under the special legislative provision of Article 149<sup>99</sup> (such as a threat to the security of the nation, the consequence of which would permit a person to be incarcerated without trial).<sup>100</sup>

Perhaps the argument of the *Semangat 46* party held some validity. In view of the political reality in Malaysia today, none could negate the fact that so long as the *Barisan* UMNO-led government maintains its two-thirds majority in the *Dewan Rakyat*, there is no provision in the Federal Constitution that is not amendable. Amending the constitutional provisions for the sake of over-ruling or of counteracting a judicial

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Sultanate of the 15<sup>th</sup> and 16<sup>th</sup> Centuries), *Sejarah* (Journal of the Department of History, University of Malaya), No.3/1994-1995, p.221.

<sup>97</sup> Article 153 provides that "it shall be the responsibility of the *Yang diPertuan Agong* to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article".

<sup>98</sup> See Tengku Razaleigh's speech delivered on 4 March 1993, at a fast-breaking ceremony held in Kuala Lumpur. Although Article 153(1) was not specifically mentioned, nonetheless there was an inference to that effect when he said that, "This is very dangerous. If the amendments were to go on despite the Rulers' objection, it means that the Malays will be facing the biggest threat of their life in future. Our position as '*Melayu*' will be at risk. The amendment is in effect allowing anybody to make modifications (to the constitution) as they wish without any regard to the Malay Rulers who are the protectors of our interests. The original spirit of the 1948 Federation Agreement is now completely destroyed."

<sup>99</sup> Among the special legislation enacted under this provision is the Internal Security Act 1960.

<sup>100</sup> Taking the case of the ousted Deputy Prime Minister, Dato' Seri Anwar Ibrahim, for instance, one might not be surprised if such a fate fell upon any Rulers who were daring enough to fight for justice and freedom. Though theoretically, it may not be constitutionally appropriate for any one Ruler to interfere with political affairs of the nation, but if the spirit of constitutionalism (expressed in the form of justice or freedom of speech) is on the verge of destruction, and the Rulers felt that they were in the best position to restore it, then in the light of political reality, it would probably be constitutional for them to do so.

decision is not something new to those who are well acquainted with the Malaysian constitutional and political systems. The case of Teh Cheng Poh v Public Prosecutor<sup>101</sup> is one of the classic examples of this phenomenon. The Privy Council in that case advised the *Yang di Pertuan Agong* that the conviction and sentence of Teh Cheng Poh be set aside and the case be remitted to the Federal Court for consideration as to whether to order a new trial. The issue which came before their Lordships was whether the *Yang di Pertuan Agong* could validly make regulations under the Emergency (Essential Powers) Ordinance 1969, when parliament was already sitting. Lord Diplock, giving the opinion of the Judicial Committee, said:

The maker of the law, the *Yang di Pertuan Agong*, is the same for both Ordinances and for Essential Regulations, the subject matter of the law-making power is the same for both; the only difference is in the label that is attached to them. But in applying constitutional law the court must look behind the label to the substance.... So far as his power to make written laws is derived from Article 150(2) of the Constitution itself, in which they are described as 'ordinances', it comes to an end as soon as Parliament first sits after the Proclamation of an Emergency; he cannot prolong it, of his own volition, by purporting to empower himself to go on making written laws, whatever description he may apply to them. That would be tantamount to the Cabinet's lifting up itself by its own boot straps."<sup>102</sup>

On that reasoning, the Privy Council held the purported Regulations of 1975 void as being *ultra vires* the Federal Constitution, and therefore the sentence and conviction of the appellant should be set aside.

It was in the aftermath of this decision that the Constitution (Amendment) Act 1981 was made. The amendments effected to Article 150 by this Act give the executive a very wide discretionary power to declare an emergency and to perpetuate emergency rule.

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<sup>101</sup> [1979] 2 M.L.J 50; [1979] 2 M.L.J. 238

<sup>102</sup> [1979] 2 M.L.J.53.

The amendments were clearly aimed at foreclosing any possible legal challenge which might seek anchorage in some of the observations of the Privy Council in Teh Cheng Poh.<sup>103</sup> In the light of what transpired from the Gomez incident, it appears that the government has once again resorted to a similar tactic in its handling of the issue of the removal of the Rulers' immunity. The principle enunciated by the court with regard to immunity in cases such as Dato'Menteri Othman Baginda was thus effectively overruled by the legislature by means of amending Articles 32(1) and 181(2). By disassociating immunity from the sovereigns, the legislature is therefore declaring that immunity is not an attribute of a sovereign, hence rendering the judicial interpretation of those two concepts irrelevant vis-à-vis the presently amended constitutional provisions.

Meanwhile, the 'revised' definition of immunity and sovereignty given by the executive-controlled legislature was further clarified by the Prime Minister in the *Dewan Rakyat* debates during the second reading of the Constitutional (Amendment) Bill 1993. He argued that the sovereignty of the Rulers would not be affected merely because there were provisions which forbade them from violating the law, and it would be erroneous to assume that sovereignty lay in the immunity of a Ruler. "The fact that they were still respected and loved by the *rakyat* despite the Rulers' participation in the signing of the MacMichael Treaty in 1946 proved that they had never lost that sovereignty", said Mahathir. Thus, to his mind, the quality of being sovereign is not dependent on the so-called 'immunity', but rather on the *rakyat*'s acceptance of their rulership. In other words, their legitimacy to rule, albeit on advice of an elected

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<sup>103</sup> H.P Lee, *Emergency Powers in Malaysia*, in Trindade F.A, and Lee, H.P, (eds), *Further Perspectives and Developments: Essays in Honour of Tun Mohamed Suffian*, Penerbit Fajar Bakti, Petaling Jaya,

government, is not merely determined by the fact that they are sovereigns, but by the support and recognition of the *rakyat*. Thus, the Rulers may be sovereigns but sovereignty belongs to the ruled.

In one sense, the ministerial interpretation of 'sovereignty' may not be entirely unacceptable if one were to consider the definition given by David Robertson in his Dictionary of Politics. Robertson defines sovereignty as "the right to own and control some area of the world. It has, nowadays, nothing to do with monarchy. Its basic meaning is legitimacy to rule, as opposed to actual power..."<sup>104</sup> Hence, it follows that since the government is elected by the people (*rakyat*), it therefore possesses the legitimacy to rule even though it does not belong to the category of 'sovereigns' that is (according to the definition in Mozley and Whiteley's Law Dictionary), King or Queen or, in other words, royalty. Despite not being immune from legal proceedings (except for 'immunity' conferred on the executive under special legislation, such as the ISA), the government cannot be said to have lost its sovereignty so long as it still has the mandate to govern. Basically, therefore, sovereignty is quite independent of immunity.

On the premise of this definition, it appears that the government was quite justified in saying that the removal of the immunity conferring-provisions from the Federal Constitution would not have any impact on the sovereignty of the Rulers, for sovereignty was not exclusively determined by the condition of being protected from legal actions. The essence of the Prime Minister's argument is that it is the mandate of

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Malaysia, p.147.

the *rakyat* that matters most, and that a constitutionally entrenched guarantee of the Rulers' immunity was not conclusive evidence of their sovereignty or legitimacy to rule. But having said that, mandate is unfortunately an elusive concept in the Malaysian political lexicon. Many a time this 'mandate' has been somewhat unfaithfully invoked by the ruling regime to legitimize what would otherwise have been illegitimate acts of government. Oppressive laws were enacted by Parliament because "generally, a 'mandate' to act has been given during the general election", claimed Mahathir.<sup>105</sup> This seasonal 'political consent' has been utilized by those in power as a legal canopy to cover up certain acts or decisions to which objection might have been raised by the *rakyat* if a specific referendum were carried out.<sup>106</sup>

A similar justification was offered by the ruling party in pursuing the 1993 constitutional amendments. However, as far as the Rulers' were concerned, whether a referendum would be the wisest way of testing the *rakyat*'s faith in the sultanate system was open to debate. But in the light of the alarm perceived by the ruling party with regard the '*perhimpunan 8 Januari*' proposed by the Sultan of Johor,<sup>107</sup> the Rulers might have some basis for their confidence. Again, on the basis of a similar response, namely, the one displayed by the *rakyat* of Trengganu to their Sultan with regard the 1983

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<sup>104</sup> Robertson, D, *The Penguin Dictionary of Politics*, Published by the Penguin Group, 1993, London, p.440.

<sup>105</sup> For Mahathir's interpretation of the role and power of the government, see Hickling, R.H and Wishart, D.A, *Malaysia: Dr. Mahathir's Thinking on Constitutional Issues*, Lawasia, Faculty of Law, University of Technology, Sydney, 1988-89, p.56.

<sup>106</sup> For example, the arrest of Anwar Ibrahim, the former Deputy Prime Minister of Malaysia, which led to an unprecedented public outcry against the way in which the government manipulated the law indicated that this 'mandate' was not comprehensive enough to legitimize every act of government.

<sup>107</sup> A gathering organized by the Sultan of Johor for the purpose of "getting to know the *rakyat* better" (see *Mingguan Malaysia*, 3 January 1993).

constitutional crisis,<sup>108</sup> one could perhaps say that the support for the Rulers had never completely ceased.

The 'tradition' of generalizing the *rakyat's* mandate has been deeply rooted in the culture of the ruling party's politics. Recollecting his experience in Malaysia, Hickling amusingly writes:

Shortly after independence I was concerned in the drafting of a Bill – its subject matter is irrelevant – and suggested to the Minister in charge that it be circulated to interested parties: chambers of commerce and the like. The Minister, himself, a member of the English Bar, and a man I liked and respected, was shocked. "But why?" he asked. "We are the elected representatives of the people, there is no more to be said." On which, it was my turn to be shocked: but after all, he was the Minister, and I a civil servant, and that was that."<sup>109</sup>

The above anecdote reflects fundamentally the nature of Malaysian politics and of the somewhat modified Westminster parliamentary system adopted by the Malaysian government at the inception of the nation's independence. The cultural difference between the society in which that system was born and the one, which adopted it is obvious. This is also acknowledged by Hickling in another anecdote:

"Again in the debate on the Internal Security Bill various proposals for its amendment were put forward by the late Dr. Seenavasagam and Lim Kean Siew. Some of these I thought excellent, and suggested to the Minister (Tun Razak, the second Prime Minister), a man I especially admired, that the Bill be referred to a Select Committee. In vain. It became clear to me that no suggestions from the Opposition were, or indeed could be acceptable, simply because of their origin. Government could not afford to be seen weak: that was the unspoken principle in the legislative process. ...I do not mention these incidents to discredit Ministers of great integrity and ability, nor to attack a policy based on a perceived need to show strength in government, but simply to

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<sup>108</sup> See Far Eastern Economic Review, 22 December 1983.

<sup>109</sup> Hickling, R.H, The Progress of Malaysian Law, Part 2, JMBRAS, Vol.67, 1994, p.5.



illustrate that Westminster concepts are not necessarily appropriate to another cultural environment.”<sup>110</sup>

It seems that the belief in the notion that the government knows what is best for the *rakyat* overrides other principles of good governance. But despite the absence of public protest against the decision of the government to amend the constitution, there were certain quarters of Malaysian society which oppose to the idea of removing the royal immunity. Those which opposed included the *Semangat 46*, PAS and DAP. However, despite sharing similar resentment against the amendment, these parties did not seem to have anything else in common with regard to the reason as to why the amendment should be rejected. The party of *Semangat 46*,<sup>111</sup> which had yet to establish itself as an alternative champion of the Malays, believed that the issue of royal misconduct should have been dealt with in as ‘Malay’ a manner as possible.<sup>112</sup> Moreover, as well as claiming the amendments as being too drastic, the party argued that “they would destroy the *rakyat*’s previous agreement with the Rulers at the time of independence, thus uprooting the very pillars of the Malaysian constitutional system”.<sup>113</sup> In consequence, the party decided to discontinue further participation in the debates over the issue.

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<sup>110</sup> Ibid.

<sup>111</sup> The UMNO splinter group which aspired to revive the old spirit of UMNO (the 1946 UMNO) after the nullification of the original UMNO party in 1988. However, after a brief ‘exile’ from the mainstream UMNO, now called the UMNO Baru or the New UMNO, the party decided to set aside their differences and resolved their conflict by rejoining the Mahathir-led UMNO party. Thus the crusade against Mahathir’s leadership was terminated; and the rhetoric of *bangsa* (purportedly it was for the purpose of Malay unity that the dissidents decided to return to UMNO) was again used as a justification for the reunion.

<sup>112</sup> That is to say in a non-confrontational way (see Tengku Razaleigh’s speech in the *Dewan Rakyat* Debates, 18 January 1993)

<sup>113</sup> Ibid.

The DAP, on the other hand, grounded its protest more on the procedural aspect of the amendment than on its substance. Thus, unlike *Semangat 46*, DAP was more agreeable to the proposed removal of the Rulers' immunity, but adamantly stressed the necessity of adhering to the required constitutional procedures stipulated under Article 38(4). The other Opposition, PAS (Pan Malaysian Islamic Party), looked at the issue from the Islamic point of view. It called for more comprehensive amendments which were in line with the teachings of Islam, such as equality for all, irrespective of Rulers or *rakyat*. It also questioned the sincerity<sup>114</sup> of the government in making the amendments and argued that although the removal of the Rulers' immunity would ensure justice for both the rulers and the ruled, yet without a holistic review of the Constitution the proposed amendment would be meaningless. In other words, PAS was suggesting that any immunity-conferring provisions in the Constitution, whether they applied to the Rulers or to the executive, must in all circumstances be removed altogether. Thus although the party was skeptical about the intention of the government in amending the constitution,<sup>115</sup> it nevertheless agreed that such an immunity provision should never have been allowed to exist from the beginning.

Despite its support for the removal of the Rulers' immunity, PAS also pointed out that it would be wrong for the government to claim that it had the full support of the *rakyat* to amend the Constitution. The party's President, Dato' Fadzil Noor, emphasized that the support shown by the UMNO members (1.2 million of them) and by the non-Malay

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<sup>114</sup> PAS believed that the government was bias and insincere because provisions such as Article 149 which authorizes draconian laws (particularly the Internal Security Act 1960) which protect the Executive from legal proceedings.

<sup>115</sup> See Abdul Hadi's speech in the *Dewan Rakyat* Debates, 18 January 1993.

communities alone should not be used as an index of the nation's support for the amendment,<sup>116</sup> because other Malay parties, namely PAS and *Semangat 46*, were not fully agreeable to the government's proposal. He further added that this did not imply that his party was in favour of having a villainous Ruler. To him, a Ruler would be a good Ruler if he had a good adviser, that is to say, a good government. In short, a corrupt government would breed a corrupt and wicked Ruler.

The party's ambivalence in this issue became clearer when Fadzil further stressed that if justice were to be done, it ought to be done justly. Thus, quoting a Quranic verse from surah (chapter) Al Maidah, which means, "Never allow your hatred towards a particular group of people compel you to act unjustly", Fadzil said that his party would oppose any form of injustice, irrespective of whether the victim was a Raja or a subject.<sup>117</sup> The conditional support given by PAS was therefore combined with its distrust of the UMNO-led government, which it accused of having used Islam only when it suited its leaders' needs.

The Rulers' fate was nonetheless sealed with the passing of the Constitutional (Amendment) Act 1994 after several modifications were made with respect to certain important matters, such as the power of the Rulers to pardon offenders. The UMNO-cum-*Barisan* government, by virtue of its two-thirds majority in the *Dewan Rakyat*, once again emerged victorious in its battle against the Rulers. Not only was the Rulers'

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<sup>116</sup> *Harakah*, 15 March 1993.

<sup>117</sup> *Ibid.*

fate sealed, but their lips too.<sup>118</sup> One might argue that the Prime Minister's ambition to proceed with his grand agenda of creating a new generation of Malays which was free of feudal thoughts and attitude was successful. But, to engineer such a project, he would need an enormous amount of power. In respect to legislation, the 1983 constitutional amendments cleared his path both at the State as well as at the Federal levels.<sup>119</sup> No matter how much the Rulers abhorred the way in which they were treated by the government regarding the crisis, nevertheless, they might have been deterred from further interfering with the affairs of government or politics for fear of losing whatever they have left of the amendment.<sup>120</sup> For the ease with which the constitutionally entrenched provision was amended may have created an impression on their minds of the fate awaiting them should they choose to defy the UMNO's dictate.

## 5.17 Conclusion

To some, despite the inordinate haste with which it was carried out, the federal government's adjustment of the role, position and function of the Rulers was in conformity with the spirit of constitutionalism. To others, however it reflected nothing less than double-standards on the part of the government. While preaching to the Rulers and to the *rakyat* about the virtues of constitutional theories and democracy, the

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<sup>118</sup> This is evident from the reaction shown by some of those who are connected with the Rulers, either personally (such as one of those in line to the royal throne of Perak) or officially (such as the office of the Keeper of the Rulers' Seal) to the writer's request for an interview about the amendment issue. None of them showed readiness to co-operate for fear of creating 'undesirable' impressions on those in power.

<sup>119</sup> The 1983 constitutional amendment which gave the *Yang di Pertuan Agong* a time limit of thirty days to assent to Bills, had in effect increased the power of the executive-controlled legislature to pass laws without any fear of assent being withheld by the monarch.

<sup>120</sup> The silence on the part of the Rulers, especially regarding the Anwar Ibrahim issue at the moment (1999) illustrates the point. In contrast to the dismissal of the Lord President in 1988, the present case proves more crucial to the stability of the nation. Yet, unlike then, the Rulers have been rather quiet about the whole affair.

government was at the same time violating them in other areas. But, the controversy over its violation of such principles evaporated rather quickly as Malay society was heading for the next millennium. That is, prior to the economic crisis of the late 1990s and to the Malaysian dramatic political conflict involving the ousted Deputy Prime Minister and the Prime Minister (see Chapter 7), Malays were reassured by the thought of becoming the *Melayu Baru* (New Malays). Thus, the 1993 constitutional crisis was soon eclipsed by Mahathir's grand vision of the year 2020, and the Rulers' immunity issue became just another episode in Malaysian history, a topic probably attractive only to a few. A new era in Malay political culture is now unfolding and perhaps no-one could have been more surprised to see its impact on Malay society, than the architect of the *Melayu Baru* himself, Mahathir Mohamad.

## CHAPTER 6

### *Wawasan 2020 (Vision 2020) and the Concept of Melayu Baru (New Malays): Fractured Images of a New Bangsa or a Shift in Malay Political Culture?*

#### 6.1 Introduction

The opening of 1990 in Malaysia saw a flurry of ideas formulated by the UMNO leadership with a view to stimulating Malaysian society in general and Malays, in particular, to strive for a better future: a future in which they would all stand equal to other advanced nations in terms of their academic achievements, of technological advancement, and of economic, mental, spiritual, social and political stability. In the wake of the 'miraculous' economic boom of the early 1990s in Malaysia, programmes and concepts such as *Wawasan 2020 (Vision 2020)*, *Masyarakat Madani* (a Malaysian version of civil society)<sup>1</sup> and *Melayu Baru (New Malays)* dominated not only political but also academic and economic discussions within Malaysian society, notably the Malay community<sup>2</sup>. Of the three, *Wawasan 2020* and *Melayu Baru* were the most widely discussed agenda. They attracted both favourable and cynical comments among people from various strata of life, particularly from the

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<sup>1</sup> This concept was advocated primarily by the then Deputy Prime Minister, Dato' Seri Anwar Ibrahim who is now (1999) forced out of office and on trial for an alleged illegal sexual misconduct and other offences. The concept (however, a discussion on this may take this thesis out of the intended framework of research) reflects his aspiration for and vision of the future Malaysian generation and is further elucidated in his book, *The Asian Renaissance* (1996). The book is intended to reflect the kind of leadership offered by Anwar (Anwar is seen by many, especially by the younger Malaysian generation as a more 'liberal' and democratic leader than Mahathir, who is labelled by some political observers as authoritarian) and which obviously (and dangerously) differs from that of his former mentor, Mahathir Mohamad. In a nutshell, one may say that in many ways, *The Asian Renaissance* is a contradiction of the Mahathir's *Malay Dilemma* (however, a detailed discussion of these points is beyond the scope of this thesis).

<sup>2</sup> See the dialogues between the participants and the Prime Minister, Dr. Mahathir Mohamad during a seminar entitled 'Towards a Developed and Industrialized Society: Understanding the Concept, Implications and Challenges' held on 7 December 1991, compiled by Ahmad Sarji in '*Malaysia's Vision 2020: Understanding the Concept, Implications and Challenges*', Pelanduk Publication (M) Bhd., Petaling Jaya, Malaysia, 1993, p.1.

Malay bourgeoisie and the Malay literary community, dwelling on the viability of the Prime Minister's agenda.<sup>3</sup>

The UMNO leadership had never been so euphoric about the years ahead as they were in the early 1990s.<sup>4</sup> Although survey evidence is lacking, it is believed that from discussions with fellow academics, there are quite a number of Malays, notably the entrepreneurs, who shared a similar sense of optimism until only recently when the economic catastrophe severely and mercilessly destabilized the whole of the Far Eastern and the Southeast Asian regions in a most abrupt and unprecedented manner. In retrospect, *Wawasan 2020* and *Melayu Baru*, in comparison with other contemporary concepts of their genre, provided a wide forum for discussions. However, the focus had been mainly on the socio-political impact of the implementation of these concepts on society rather than on the legal and constitutional aspects of the subject. Though some observers might view such ideas as nothing more than political rhetoric, and while others called it 'old ideas in a new package',<sup>5</sup> the writer believe that these concepts could nevertheless have a real and far-reaching impact on the working of the Federal Constitution if, indeed, they were to be seriously implemented.

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<sup>3</sup> For instance, a special seminar entitled 'Towards a Developed and Industrialized Society: Understanding the Concept, Implications and Challenges of Vision 2020' was held at Kuala Lumpur in December 1991 to explain and discuss the Prime Minister's vision.

<sup>4</sup> See Jeshurun, C, *Malaysia: The Mahathir Supremacy and Vision 2020*, Southeast Asian Affairs 1993, p.220 for a supporting view.

<sup>5</sup> See for instance, Shamsul Amri Baharuddin, 'Malaysia's Vision 2020: Old Ideas in a New Package', A Collaborative Project of Monash University and the University of Melbourne on the Patterns of Asian Development and Global Restructuring and Their Lessons for Australian Public Policy, 1991, Working Paper 92-4.

As both *Wawasan 2020* and *Melayu Baru* projected different kind of paradigms<sup>6</sup> from those established by Mahathir's predecessors for Malays as well as other races in the country, some adjustments would necessarily have to be made to the existing constitutional framework inherited from the founders of the *Merdeka* constitution some forty years ago. There are certain vital provisions in the Federal Constitution that might need reconsideration, and possibly major amendments in order to meet the changing needs of the new Malaysian society aspired by the Prime Minister. There are the special position and privileges of the Malays to be reconsidered<sup>7</sup>, and this would include special educational opportunities,<sup>8</sup> the position of the Rulers as 'protectors' of the Malays' special position<sup>9</sup> (assuming that the constitutional provisions relating to Malay rights and privileges were to be amended), the provision relating to Malay land reservations,<sup>10</sup> distribution of quotas in the public service,<sup>11</sup>

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<sup>6</sup> For instance, economically, the Malays were expected to be as equally successful as the Chinese, and therefore they would no longer need 'protection' from the government any more. Consequently, certain policies relating to economic assistance presently (1999) in force might no longer be relevant by the year 2020. The Malays' economic as well as social paradigms would have to be altered if the vision were to become a reality. Ideally, the new paradigms outlined by the Prime Minister, Dr. Mahathir Mohamad were meant to cut across ethnic, religious, cultural, social and political barriers. They are what one may describe as the "Malaysian Malaysia paradigms".

<sup>7</sup> Article 153 is one of the basic provisions in the Federal Constitution. This provision was incorporated into the Constitution in 1957 as a measure of protecting the Malays as the indigenous population of the country from the perceived threat (especially economic threat) of the immigrant races brought in by the British. This provision is viewed by the Malays as fundamental to bring them back into the mainstream of the country's development and to put them on equal level with those (particularly the Chinese), who had been dominating the country's economy and other important professions in Malaya (for more insight into this provision, see Tun Haji Mohd. Salleh Abas, *Traditional Elements of the Malaysian Constitution*), in Lee & Trindade (eds), *The Constitution of Malaysia: Further Perspectives and Developments*, Penerbit Fajar Bakti Sdn. Bhd., Petaling Jaya, Malaysia, 1986, p.13).

<sup>8</sup> Such as the rights to scholarships (either from government funds or from statutory bodies which offers grants exclusively to Malays, like MARA (*Majlis Amanah Rakyat* or The People's Trust Council), and also to be offered places in the universities, the policy of which is now in favour of the Malays and of the *Bumiputras* (natives of the states of Sabah and Sarawak) (see Article 153 (2)).

<sup>9</sup> Article 153 together with Article 159 (5) place the responsibility on the *Yang di Pertuan Agung* to safeguard the special position of the Malays and the natives of Sabah and Sarawak, as well as the interests of other communities.

<sup>10</sup> Article 89 provides for Malay Reservations.

<sup>11</sup> Article 153 (3) provides for the reservation of quotas in respect of services, permits, etc. for Malays and natives of any of the States of Sabah and Sarawak.



and the status of *Bahasa* (the Malay language which is now the national language)<sup>12</sup> Apart from those ‘traditional’<sup>13</sup> elements already mentioned, there are also provisions concerning fundamental liberties such as Article 8 (equality before the law), and Article 10 (freedom of speech, assembly and association), that might need reviewing. In sum, these twin-concepts (*Wawasan 2020* and the *Melayu Baru* concepts) symbolize to a significant degree, a departure from the basic tenets<sup>14</sup> upon which the Federal Constitution was formerly conceived. However, before exploring further their impact on the working of the constitution, it is necessary to understand what these concepts are all about.

## 6.2 *Wawasan 2020* (Vision 2020)

*Wawasan 2020* or Vision 2020 first made its debut when the Prime Minister spoke of his future plans for Malaysia during his presentation of a working-paper entitled ‘Malaysia: The Way Forward’, at the inaugural meeting of the newly established Malaysian Business Council in Kuala Lumpur on 28 February 1991, in Kuala Lumpur. For a long while *Wawasan* has become almost a ‘national’ catchword<sup>15</sup> and one of the most hotly debated topics among political observers, the business elite

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<sup>12</sup> Article 152 (1) provides : “The national language shall be the Malay language and shall be in such script as Parliament may by law provide”.

<sup>13</sup> They are called ‘traditional’ elements because matters such as Malay position as the indigenous people of the Malay Peninsula, the status of the Malay Rulers as ‘*pelindung*’ or protector of the Malay *rakyat*, and Malay language as the lingua franca of the region, had long been in existence even before the period of British colonial administration in Malaya.

<sup>14</sup> The Federal Constitution is built upon, among other things, the acknowledgement by those parties to the Federation Agreement of 1948 that the Malays are the indigenous people of the country and are therefore entitled to be treated as one. This acknowledgement is in exchange for the rights of citizenship conferred by the agreement on the immigrant races as they moved towards independence.

<sup>15</sup> For instance, as Shamsul Amri Baharuddin has noted in his observation (see ‘Malaysia’s Vision 2020: Old Ideas in a New Package’, A Colloborative Project of Monash University and the University of Melbourne on the Patterns of Asian Development and Global Restructuring and Their Lessons For Australian Public Policy, 1991, Working Paper 92-4, p.2), ‘...some enterprising Malaysians have even adopted this term for creative marketing purposes. Hence we would now go to “Vision 2020 Unisex Saloon” for a hairdo, or “2020 Entertainment Centre” for a game of snooker, or “Tom Yam 2020” stall if we are hungry,, and for those with poor vision there is a “*Syarikat Cermin Mata 2020*” in almost every major town in Malaysia today’.

and Malay intelligentsia alike.<sup>16</sup> At that meeting, a course was mapped out by the Prime Minister for a future fully industrialized Malaysian society. The objective was:

“...a Malaysia that is a fully developed country by the year 2020...We should be a developed country in our own mould...Malaysia should not be developed only in the economic sense. It must be a nation that is fully developed along all the dimensions: economically, politically, socially, spiritually, psychologically and culturally...By the year 2020, Malaysia can be a united nation, with a confident Malaysian society, infused by strong moral and ethical values, living in a society that is democratic, liberal and tolerant, caring, economically just and equitable, progressive and prosperous, and in full possession of an economy that is competitive, dynamic, robust and resilient”.

The ‘futuristic’ agenda was advocated by the Prime Minister in his effort to ‘steer the country past the agrarian economy into a prosperous industrialized nation state by the year 2020’.<sup>17</sup> In mapping out this course, several challenges were singled out by the Premier, which in his opinion need to be overcome before the Vision could materialize. They were:

- a) To establish a nation-state, united in its aspirations for the future;
- b) To develop a society that is resilient, confident, psychologically liberated, success-oriented and widely respected;
- c) To establish a mature democratic Malaysian society that is based on consensus and community oriented;
- d) To create a morally, ethically and spiritually strong Malaysian society;

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<sup>16</sup> See for example, Jeshurun, C, *Malaysia: The Mahathir Supremacy and Vision 2020*, Southeast Asian Affairs, 1993; Rustam A.Sani, *Melayu Baru dan Bangsa Malaysia*, Utusan Publications and Distributors Sdn.Bhd., 1993, pp.45-58; M.Kamal Hassan, *The Malay Community Facing the 21<sup>st</sup> Century: Socio-cultural Hinderances to Overall Progress*, Intellectual Discourse, 1994, Vol.2, No.2,p.175; Samat Buang, *Kesimpangsiuran Pandangan Terhadap Wawasan 2020* (Diverging Opinions on Vision 2020, Akademik (Special Issue), 1993, pp.5-9.

<sup>17</sup> M. Kamal Hassan, *supra*, p.178.

- e) To establish a mature, liberal and tolerant society, irrespective of their differences in culture and religious beliefs;
- f) To create a scientific, progressive, innovative, and far-sighted society which would not only utilize the existing scientific technological know-how, but one which would also contribute to the creation of a future scientific civilization;
- g) To establish a society that is caring and loving, based on a culture which emphasizes family values;
- h) To establish a just and equitable society, where no one ethnic group would be economically identified as backward or otherwise<sup>18</sup>;
- i) To create a prosperous society, with an economy that is highly competitive, dynamic, robust and resilient.

### 6.3 A Liberal Vision?

It should be particularly noted that although *Wawasan 2020* aroused such a deep interest, especially among the Malay intellectual community, the idea was not exclusively addressed to the Malays as such. The concept was presented to the nation, namely, to the Malaysians as a whole. It sought to instil within the Malaysian people, who would be commonly identified as *Bangsa Malaysia* (the Malaysian race, rather than the Malaysian Chinese or Malays or Indians), the kind of spirit deemed necessary for the creation of a strong nation-state, which could withstand the challenges of a modern world. Moreover, the vision was, according to Mahathir,

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<sup>18</sup> On reading the OPP2 (The Second Outline Perspective Plan 1991-2000), it appears that a "just and equitable society" is to be achieved within the existing framework of positive discrimination instead of the level playing field. Thus it might be more accurate to suggest that the principle which underlies the creation of the Malaysian Malaysia society is that of "first among equals". To what extent this recipe for a new Malaysia is acceptable to the non-Malays, particularly the Chinese, is difficult to say. However, as the post-mortem results of the 1999 general election revealed, UMNO's survival in the election was said to have been largely due to the Chinese voters (this information was obtained through an informal conversation between the writer and the representative of the UMNO club, United Kingdom and Eire, in February 2000).

'conceived with an open mind and without any fanaticism or religious inspiration whatsoever. It is merely a means of determining a target that was announced earlier this year'.<sup>19</sup> Again, the fact that the Prime Minister purposely emphasized the non-religious and non-fanatical nature of his vision shows that the project was not meant to be undertaken by one particular community alone, but by the entire Malaysian society as a coherent whole.

One might suggest that the statement sought to explain to the Malaysian people that the Prime Minister and his UMNO-led *Barisan* government, unlike their rival Malay party, PAS and its leaders,<sup>20</sup> were far more moderate in their religious outlook and liberal in their ideas of progress and development. The agenda projected in this vision was said to be the most pragmatic one ever proposed to the nation in terms of its economic, political, social, spiritual, psychological, and cultural dimensions.<sup>21</sup> The entire population, regardless of their ethnicity, religious beliefs and culture, were all included as participants in the preparation for the future of a better-developed and highly industrialized Malaysia. In short, the Prime Minister was saying that his party and the *Barisan* government are not religious fanatics concerned more with the vision of the hereafter than with that of a more immediate future.<sup>22</sup>

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<sup>19</sup> Dialogues between seminar participants and the Prime Minister, compiled by Ahmad Sarji, *supra*, p.1.

<sup>20</sup> PAS is generally labelled by UMNO as religiously fanatic and has vision that is only meant for the hereafter.

<sup>21</sup> Since traditionally, both parties rely their votes mainly on the Malays (who are generally Muslims), therefore each will have to prove to their Malay voters that its party is more Islamic than the other. In this competition, UMNO is saying that its Islam is better than the one projected by PAS, for UMNO's Islam is more 'practical' and more 'complete' (that is, it embraces both the temporal and the spiritual worlds). Apart from that the UMNO is also trying to show to the rest of the voters that despite being a Malay party, its agenda is for the benefit of the whole nation and that it is neither ethno nor religious-centric.

<sup>22</sup> This claim was later reiterated by the Prime Minister in his speech at the UMNO General Assembly 1991.

It is within this framework of time (about thirty years from the date the *Wawasan 2020* was announced) and from the aforementioned perspective that a modern industrialized Malaysia was to be carved out and fully established. But, in moving towards the goal perceived in *Wawasan 2020*, one cannot ignore the emphasis upon the enhancement of the morale of the Malays rather than on anyone else. To be able to accommodate themselves to the scenario painted by Mahathir, the Malays, argued the Prime Minister, would have to reform more than just one aspect of their lives. Thus, apart from being a vision, *Wawasan 2020* was meant to serve as an impetus for the Malay people to reassess their very existence so that they might recreate themselves anew characteristically, mentally, spiritually, economically, and psychologically. Mahathir argued that it was only through re-constructing their ways of thinking that the Malays would be able to participate effectively with other races within and without the Malaysian boundaries. Thus the agenda may not be simply about the re-branding of a *bangsa*, but also about abandoning the old habits and perceptions [correctly or wrongly]<sup>23</sup> associated with the Malays. Hence, it is from this perceived necessity that the 'old Malays' have to be transformed into what is now popularly known as *Melayu Baru*, or the New Malays.

#### **6.4 In Search of the *Melayu Baru* (New Malays)**

The concept of *Melayu Baru* was first introduced by the Prime Minister, Mahathir Mohamad, on 8 November 1991 (nine months after the inaugural meeting of the

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<sup>23</sup> Some negative traits such as laziness and self-indulgence have been attributed to the Malays by observers like Clifford and Swettenham (both of whom were colonial administrators in Malaya) who, for purposes which might probably have suited their colonial ambition, portrayed the natives under their colonial administration with negative characteristics. However, their theories about the 'lazy' natives have been brilliantly rebutted by Al-Atas, in his work, *The Myth of the Lazy Natives: A Study of the Image of the Malays, Filipinos and Javanese from the 16<sup>th</sup> to the 20<sup>th</sup> Century and its Function in Ideology of Colonial Capitalism*, Frank Cass and Company Ltd., 1977, p.142. Upon reading the colonial and the non-colonial works, one might be able to at least sift the facts from the myth about those characteristics which had been attributed correctly or otherwise to the Malays.

Malaysian Business Council). The occasion was the UMNO General Assembly; and the venue was the Putra World Trade Centre (PWTC) in Kuala Lumpur. The birth of the concept is said by some critics to have been induced by the reaction of the Malays to the Prime Minister's *Wawasan 2020* or Vision 2020 announced earlier that year.<sup>24</sup> Thus, despite the display of optimism by certain quarters of the Malay community with respect the *Wawasan 2020*, the Malay reaction as a whole, observed Rustam,<sup>25</sup> reflect their worries and uncertainties about the impact of the Prime Minister's agenda on the future of their economic and political existence within the new paradigm.<sup>26</sup> Thus, to ease their fears, the Prime Minister gave his assurance that the Malays would not be marginalized, and that their position would be further strengthened, albeit on one condition: that they would have to transform themselves into what he called *Melayu Baru* or New Malays.

The question is, who are the *Melayu Baru* or the New Malays? According to Mahathir, they are those Malays who are prepared to change their mentality and culture. In other words, they must be willing to undergo a 'mental revolution and a cultural transformation'.<sup>27</sup> To be a *Melayu Baru*, one must, says the Prime Minister, 'possess a culture that is compatible with time; he must be willing to face challenges and be able to compete without assistance, be highly educated and knowledgeable, sophisticated, honest, self-disciplined, trustworthy and competent'.<sup>28</sup> What does he mean by 'a culture that is compatible with time'? One might suggest that it is one

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<sup>24</sup> Rustam A.Sani, *Melayu Baru dan Bangsa Malaysia* (The New Malays and the Malaysian Race), Utusan Publications and Distributions Sdn.Bhd., Kuala Lumpur, 1993, p.86, for instance, describes that the Malays have reacted somewhat cautiously to the idea of *Wawasan 2020*. The more Islamic-oriented Malays, he says, view the *Wawasan* as too'secular', while some leading literary figures commented it as being too economically oriented.

<sup>25</sup>Ibid

<sup>26</sup>Ibid.

<sup>27</sup> Mahathir Mohamad, *Malaysia: The Way Forward*, Working Paper Presented at the Inaugural Meeting of the Malaysian Business Council, 18 February, 1991, paragraph 27, p.4.

which is modern and up-to-date; in brief, that it is the anti thesis of what is considered traditional. Hence, there has been a suggestion that by using such a term, the Prime Minister means that the Malays must 'leave behind the feudalistic and fatalistic vestiges of an older Malay culture'.<sup>29</sup> In the light of what he had previously said at a mass rally in Melaka in 1983,<sup>30</sup> there seems to be no reason to disagree with this interpretation.

However, is the Prime Minister genuinely of the opinion that the *kerajaan*, being part of those 'feudalistic vestiges', also had to be discarded before one could have a generation of *Melayu Baru* within the ambit of his definition? Indeed, the possibility of the Prime Minister harbouring such an agenda was considered by certain quarters of the Malay community (especially the traditionalist royalists) amid the 1993 constitutional crisis.<sup>31</sup> Let us for a moment, assume that he did in fact want to abolish the *kerajaan* system. Would he have the Malays' support permanently to remove that part of their culture? Those agreeing with Kessler (who posits that Malay society and culture, as they conceive themselves, rest centrally upon a political condition, that is, upon people having a ruler and being subjects of a raja)<sup>32</sup> might warn that one should not be too optimistic about obtaining the Malay *rakyat's* full support.

On the other hand, one could also suggest that by noting the absence of open protest against the move to abolish the royal immunity, the Malays were not particularly concerned about not having the *kerajaan* as part of their culture in the years to come.

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<sup>28</sup> The Prime Minister's speech at the UMNO General Assembly, 1991.

<sup>29</sup> Khoo, B. T, supra, p.336.

<sup>30</sup> There, the Prime Minister declared that he wanted 'the feudal system' to be over (see New Straits Times, 20 December, 1983).

<sup>31</sup> See Rustam A.Sani, supra, p. 83.

<sup>32</sup> Kessler, C, supra, p.136.

But again, the fact that there is a new constitutional provision (Article 63(5)) which forbids anyone, even in Parliament, from advocating the abolition of the *kerajaan* may reflect the view that the Prime Minister and his government were cautious about taking the apparent absence of such protest for granted. Thus whether the *kerajaan* will in future remain as part of the culture of *Melayu Baru* remains to be seen.

### 6.5 *Melayu Baru*: A Novel Concept?

Although the word '*baru*' in *Melayu Baru* suggests something 'new', yet the idea is not particularly a novel one, given the fact that there had been calls for reshaping Malay society as early as the late nineteenth century. Reformists such as Abdullah Munshi had already spoken about the need to reform the Malay society of his time (that is, in the early colonial period) and to emulate the British whose society he so much admired.<sup>33</sup> In addition, Syed Syekh Al-Hadi of Al-Imam (in the early 1900s), Za'ba and other fellow Malay nationalists (in the 1920s and 1930s respectively) also urged the Malays to do more to improve themselves. Indeed, the only thing new about the *Melayu Baru* is arguably, the context in which it was announced. However, although the issue of reforming the Malays had already been broached by previous reformists, the political access through which the implementation of such reforms could be achieved, and the tone of their calls was not quite the same as it is now. Given the rate at which current (the late twentieth century) changes are taking place globally, Mahathir and those who share his aspiration felt an uncompromising need for the Malays to reform themselves lest they will be left out of the global race.

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<sup>33</sup> Ibid, p.84.



In the early colonial days (the late nineteenth century and early 1900s) the only possible domestic threat the Malays had to face was what Abdullah called the 'evils'<sup>34</sup> of the traditional regime or *kerajaan*. But his call for reformation of the Malays was restricted mainly to liberating Malay society from what he described as the clutches of an oppressive traditional system of government. Hence the need for modernization of the Malays in those days was seen primarily as a vehicle on which they could escape the problems created by the *kerajaan* rather than as anything else. In the early 1900s, by comparison, the theme which underlined Al-Hadi's call for reformation was primarily about reforming the *kerajaan* in order to bring it in line with Islamic political ideals (this reflected the views in the famous local Islamic journal, Al Imam). At the same time Al-Hadi also urged the Malays to improve themselves so that they would be as successful as the immigrant races, particularly the Chinese.

Subsequently, however, significant increased Chinese immigration to Malaya caused deep suspicion and fear among Malay nationalists who perceived the Chinese as a new threat to Malay political dominance in Malaya and to the potential economic wealth available in the country. The success of the Chinese in the economic and professional fields had not only become a model for the Malays to emulate, but was also perceived by these Malay nationalists as a threat to their position as indigenous people of the Peninsula. The 'evils' of *kerajaan* were now eclipsed by what was perceived by the Malays as an attempt by a foreign race, the majority of whom were Chinese capitalists, to dominate their country and to usurp their position as the 'lord' of the land. Thus, the theme of reformation during that period had also changed,

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<sup>34</sup> Abdullah was referring to the tyranny of the Malay rajas and the poor economic and social conditions of the Malays brought about by the *kerajaan* regime.

from purely anti-*kerajaan* to anti-immigrant domination. Ironically, it was in the face of this new and modern (1930s) threat <sup>35</sup> that the Malays felt the need to reinforce their status of *ketuanan Melayu* (Malay hegemony) by co-operating with the traditional regime in a bid to preserve their status quo against the impact of Chinese economic supremacy.

However, with the approach of the new millennium and as the twentieth century is drawing to a close, the call for reformation of the Malays has begun to assume a different tone. With UMNO still in the lead, and racial differences being somewhat buried or made (temporarily) dormant through the political alliance called *Barisan Nasional*, the tone of such call is now less defensive than it previously was. Thus, the social, economic and political climate of the early 1990s has, as discussed in various political and economic discourses, generated a new spirit within Malay society, notably among the political and business elite. As a result, what was formerly perceived as a 'threat' is now seen as a constructive challenge. Therefore *Melayu Baru* is that generation of Malays which is expected by its leadership to possess the quality of being able to transform challenges into opportunities. It is in the context of this newly found confidence that the Malays are being called to reform (apart from working hard, they are also encouraged to abandon their 'inherited' fatalistic views of life, and also to achieve as much as they could in all areas of knowledge) themselves and to participate alongside other races both within Malaysia

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<sup>35</sup> The Chinese were mainly capitalists and a large number of them resided in town or urban areas and were more advanced and modern in terms of education and occupation. The Malays were, by contrast, largely rural dwellers, engaged mainly in traditional occupations such as fishing and farming (see Ibrahim Saad, *Competing Identities in a Plural Society: the Case of Peninsular Malaysia*, Occasional Papers No.63, Institute of Southeast Asian Studies, Singapore, 1975); see also, the Second Outline Perspective Plan 1991-2000, p.47).

and without, as economic partners instead of competitors, in global economic, social, political and technological developments.

Whilst reforms of the mentality and psyche of the Malays may be necessary in order to prepare them for the coming of a new Malaysian era, there is, on the other hand, another important part of the Malaysian nation that needs reforming, its constitution. A *Melayu Baru* generation, and even a *Bangsa Malaysia* (Malaysian race) for that matter, may not be able to function effectively in their new role if the old constitutional parameters that are currently in existence are not properly adjusted to suit the new social, economic and political demands. Thus some changes would obviously need to be made to certain aspects of the Federal Constitution if Mahathir's visions were to become a reality.

## 6.6 The Debates

The twin concepts of *Wawasan 2020* and *Melayu Baru* seemed to breath new life into the political agenda of the UMNO party, which optimistically foresees the continuity of its political hegemony beyond the 1990s. The future of the nation-state of Malaysia will thus have to be perceived in the context of the political, economic and social ideals projected in those two concepts. However, as with other untested ideas, *Wawasan 2020 and Melayu Baru* invited interesting debate and criticism, some of which were, in this writer's view, constructive, while others were the opposite. With regard to *Wawasan*, for example, some political analysts, such as Rustam A.Sani, welcomed the idea of creating a nation-state of Malaysia envisioned by the Prime Minister. In his view, this idea of nation-building had never been so

explicitly expressed by any Malaysian leaders prior to Mahathir.<sup>36</sup> To him, *Wawasan* would serve as a useful foundation upon which a more integrated or united Malaysian society could be successfully constructed.<sup>37</sup>

At the other end of the ideological spectrum, however, the arguments were either less supportive or non-enthusiastic. Traditionalistic Malay nationalists, for instance, alleged that the creation of a *Bangsa Malaysia* would amount to a betrayal of the dreams and principles of those who fought against the Malayan Union in 1946. They viewed the creation of a *Bangsa Malaysia* as a threat to the Malay nationalists' effort of preserving the identity of *Bangsa Melayu*; hence, to their claim as indigenous people of the Peninsula. Therefore anything that symbolized Malay political dominance and the *Bangsa Melayu* identity ought to be preserved and jealously guarded.<sup>38</sup>

The dynamics of Malay identity, such as the *Bahasa* (Malay language), culture (which, among other things, includes those values that make up their world view of

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<sup>36</sup> Zahidan Abd. Aziz, *Reaksi dan Pengisian Terhadap Wawasan 2020* (Reactions and the Input of Vision 2020), *Dewan Masyarakat*, July 1991, p. 11.

<sup>37</sup> Although Rustam lauds the idea of forming a Malaysian nation-state, he has nonetheless questioned the viability of such an agenda in view of the fact that the Malays have not thus far been able successfully to transform their *nasionalisme Melayu* (Malay nationalism) into *nasionalisme Malaysia* (Malaysian nationalism) (see Rustam.A.Sani, supra, p. 50).

<sup>38</sup> The meaning of the words 'jealously guarded' referred to here may be best explained by the High Court decision in the case of *Merdeka University Berhad v Government of Malaysia* [1981] 2 MLJ 356. In this case, the issue which came before the court was whether language other than the Malay language could be lawfully used as a medium of teaching in universities and colleges established under the Universities and University Colleges Act, 1971. Under section 6 of the Act, the Executive (in this case the *Yang di Pertuan Agong*) has the discretion to decide whether a university should be established 'if he is satisfied that it is expedient in the national interest' to do so. The Merdeka University Berhad (the word Berhad infers that it is a privately or commercially incorporated body) proposed to use the Chinese language as its medium of instruction. This university was incorporated on 8 May 1969 as a company limited by guarantee under the Companies Act 1965, but later, with the coming into operation of the Universities and University Colleges Act 1971, the plaintiff applied by way of petition to the *Yang di Pertuan Agong* for an incorporation order under section 6 of the Act. The application was rejected and later a writ was issued by the plaintiff asking for a declaration that the rejection was null and void as being in contravention of the Federal Constitution and that such a

rulership or authority),<sup>39</sup> and religion (Islam), according to their viewpoint, must never be disturbed or altered. Meddling with any of these elements was in their opinion tantamount to a breach of those pre-conditions provided under Article 160 of the Federal Constitution, which, *inter alia* provides a definition of 'Malay'.<sup>40</sup> Understandably, those who were against the 1993 constitutional amendment considered that such a move was a violation of a fundamental constitutional provision and that it debased the spirit of the 1957 constitutional agreement.

From the traditionalist's perspective, one might concede that the creation of a *Bangsa Malaysia* would in a fundamental way submerge the identity of the *Bangsa Melayu* and the culture of the 'indigenous us' into that of the 'immigrant others', thus undermining the validity of their (the Malays) hegemonic claim over the land. *Wawasan*, which foresees a non-ethno-economically identified society of Malaysia<sup>41</sup> would in effect render the above-mentioned identity-defining elements irrelevant and insignificant. The traditionalistic nationalists therefore view *Wawasan 2020* as a threat to Malay political dominance and to their status as *Bumiputra*<sup>42</sup> or 'son of the soil'.

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rejection amounted to an improper and unreasonable exercise of discretionary power conferred under section 6 of the Act. The plaintiff nevertheless failed in its application.

<sup>39</sup> Rulership here refers to both the traditional *kerajaan* as well as to the modern government (government is also now called *kerajaan*, but with a different connotation).

<sup>40</sup> Article 160 prescribes certain conditions which need to be satisfied before one could be considered a Malay. It refers to "a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom...." (and one has to bear in mind that custom here refers to Malay *adat*, which necessarily includes rules regarding one's relationship with a Raja, which have throughout the years crystallized into culture).

<sup>41</sup> Mahathir views a future Malaysian society as one which is characterized not by its ethno-economic societal divisions but by its class and ideological distinctions.

<sup>42</sup> *Bumiputra* is interchangeably used with the term *Melayu* or Malays in referring to the indigenous status of the people of Malaysia.

The anxiety of this group of Malay nationalists is not difficult to comprehend if one were to recall the experience which the Malays had gone through in the pre-independence days to preserve what they believed was rightfully theirs. The Malays had been rudely awakened by the sudden shift of the pre-war British pro-Malay policy to one which favoured all 'Malayans' (as the British called them), irrespective of their origins and focus of loyalty.

Thus they feared that their sovereignty as indigenous people of the land would be lost to the aliens (the British and the immigrant races) following the Malayan Union proposal to eliminate the Rulers' sovereignty, the symbol of their political existence and hegemony. Such were seen by them as conspirators attempting to dislodge them from the status quo they had so far enjoyed. Their struggle for independence was therefore very much underlined by the belief that they had been misled and betrayed by the British who were thought to be their 'protector' (hence, the Malay States which accepted the residential system and British Advisors had been called Protectorates). It was this feeling of distrust in the aliens and the anxiety of perceiving the loss of one's own country to others that gave the Federal Constitution some of its basic features.

The Federal Constitution is thus a product of the idealistic aspirations of an insecure generation of Malays who believed that the existence of the *bangsa Melayu*, of the Malay Peninsula and of the Malay Rulers were under threat. Thus the reassertion of their status as the indigenous people of the land was understandably one of the utmost important issues on the *Merdeka* agenda. They needed the *Bahasa*, the *kerajaan* and the Malay culture to emphasize this particular point. These were the

only acceptable representations of Malay social and political existence. Indeed, the Malayan Union proposal was vehemently rejected because it sought to obliterate the very characteristics of their Malayness, particularly the *kerajaan*.<sup>43</sup>

The Malays were frustrated to learn that the Malay Rulers had co-operated with the British to "surrender" the Peninsula and their rights over the land to the British Crown through the MacMichael Treaty.<sup>44</sup> However, the fact that the Raja institution still survives to this day suggests that the Malays never meant to replace it with anything else.<sup>45</sup> Thus the *kerajaan* lives on, albeit with powers constitutionally restricted. To destroy the *kerajaan* would mean to destroy a vital part of their Malayness. Despite their frustration with the Rulers, the Malays could not afford to adopt any confrontational approach with the latter. Their reluctance to do so may be supported by the explanation that the Malays had always believed that their sovereignty was so inextricably intertwined with that of the Rulers<sup>46</sup> that the demise of the *kerajaan* would also mean the end of Malay political hegemony.

This attitude was re-emphasized, though perhaps by chance, by the fact that the UMNO opted to have an aristocrat as their leader,<sup>47</sup> who, in spite of this background, believed in the doctrine of "government of the *rakyat*, by the *rakyat* and for the

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<sup>43</sup> For an interesting analysis of the significance of this institution to the Malays as an identity-conferring element, see Kessler, *supra*, pp.136-137.

<sup>44</sup> See Stockwell, A.J, *supra*, p. 76.

<sup>45</sup> The Johor Malay nationalists, for instance, were furious with their Sultan for signing away the State of Johor to the British without any regard for the feelings of the *rakyat*. The Sultan was said to have violated the Johor Constitution which prohibited him from ceding any part of the State to foreign power. Thus, in doing so, the Sultan had acted in breach of the State Constitution and was accused by the Malays of committing *derhaka* to the *rakyat*. However, their hostility was suppressed by the then President of UMNO (Dato'Onn) and their anger towards the Sultan was re-directed against the Malayan Union instead (see Ariffin Omar, *supra*, pp.54 &101).

<sup>46</sup> This assumption has in fact been reinforced by constitutional provisions such as Article 153 (the provision relating to the role of the Rulers as "protector" of the special position and rights of the Malays).

<sup>47</sup> Tunku Abdul Rahman, the first Prime Minister of Malaysia, was from the Kedah ruling house.

*rakyat*". It has also been argued that UMNO could not afford to have a leader with a confrontational style in dealing with the Rulers.<sup>48</sup> In line with this, the first Prime Minister, Tunku Abdul Rahman, himself, had declared that the party leadership would avoid any confrontation and split with the Rulers.<sup>49</sup> To the traditionalistic Malay nationalists, therefore, nationalism is, ironically, not so much of a struggle to break away from the feudal or traditional past, but rather a striving to restore some of its basic elemental features by means of resisting certain elements of modernity (such as freedom of expression) part of which was imposed on Malay society through the process of colonization.<sup>50</sup> The conservative view was that, none of the elemental features of the *bangsa* should be compromised at whatever cost. To what extent this traditionalistic perception of nationalism will be tolerated by the advocate and supporters of the twin of concepts of *Wawasan 2020* and *Melayu Baru*, especially among the present UMNO leadership, remains to be seen.

But having said that, one might perhaps gauge their attitude towards the conservative views from some of the Prime Minister's speeches. Hence, on nationalism, Mahathir insisted that:

“...the real nationalist is one who works hard to develop his race and is able to compete successfully with those who have progressed. A true nationalist is one who is respected because he is from a race that is successful, because through his accomplishments, he has been able to establish respect and esteem for his race”.<sup>51</sup>

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<sup>48</sup> Smith, S, *The Rise, Decline and Survival of the Malay Rulers During the Colonial Period, 1874-1957*, J. I.C.H., Volume 22, No.1., January 1994, pp.100 &101.

<sup>49</sup> Abd.Aziz Bari, *supra*, p.106.

<sup>50</sup> For instance, the impact of 'de-traditionalization' brought about by colonization was already visible in the attitude of Abdullah Munshi in the late nineteenth through his critical writings on *kerajaan*.

<sup>51</sup> A translated version of an excerpt of the Prime Minister's speech delivered at the 40<sup>th</sup> General Assembly of the United Malay National Organization (UMNO) in Kuala Lumpur on 5 September 1997 (this speech is translated into English and incorporated in Hng , H.Y, *CEO Malaysia: Strategy in*



The emphasis on achievements which are earned rather than inherited as the criteria which define 'nationalism', suggests that the Mahathir did not agree with the glorification of the feudal past as a basis of present or future achievements. In other words, the Malays must not sit idly by and watch helplessly as the nation progresses, while they themselves stagnate in every sphere of life. To him there is no real political dominance without economic progress. "Political power", he says, "is a crutch for someone who is handicapped. We should not depend on political power forever if we want to achieve success".<sup>52</sup>

On the *Bahasa*, Mahathir argued that,

"...those who love their national language (that is the *Bahasa Melayu*) must improve their race first. This would automatically make their language grow and be respected. Having command of other languages does not make us less nationalist or less patriotic...."<sup>53</sup>

Mahathir's refutation was hurled at those Malay critics who had alleged that the change in government policy to promote the use of English language as a medium of acquiring knowledge in higher learning institutions was an insult to the Malay sense of nationalism.

On culture, Mahathir displayed a similar degree of intolerance to traditionalist views.

He stated that,

"We will not become less Malay [or less Malaysian] because we accept certain aspects of foreign culture, or just because we are interested to learn something in depth and become more knowledgeable. We do not become

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Nation-Building, Pelanduk Publications (M) Sdn.Bhd., Subang Jaya, Selangor, Malaysia, 1998, p.150).

<sup>52</sup> Also extracted from Hng H.Y, *ibid*, p.94.

<sup>53</sup> *Ibid*, p. 96.

Europeans simply because we wear a coat or a tie, speak English, and practise democracy instead of feudalism”.

Interestingly, ‘feudalism’ (obviously this is made in reference to the *kerajaan* which forms the core element of the Malay ‘feudal’ system) is identified as one of those features which need not be present in order to make a person Malay.

But one facet of Malay culture which is said by Mahathir to have negatively characterized the Malays is the passivity towards certain important matters, such as the value of time, commitment to decisions and self-discipline.<sup>54</sup> He argues that the Malays do not appreciate the importance of being punctual and that this is the reason why they are so backward compared to other races. This unfortunate value system, he says, is further underpinned by the improper approach applied by the Malay religious teachers in teaching Islam to the Malays. The latter are accused by Mahathir of implanting in the minds of the Malay masses false notions about the religion by stressing excessively on the life in the hereafter rather than the virtues of good living in the tangible world.

To add to his justification, Mahathir quotes some Malay proverbs which reflect the passive attitude of the Malays, such as ‘*rezeki secupak tak akan jadi segantang*’ (meaning that you do not have to work so hard if you are destined to get so little) Malay passiveness may perhaps be understood by referring to Abdullah Munshi, who wrote in his *Kisah Pelayaran Abdullah*<sup>55</sup> that it was the condition of living under the *kerajaan* that caused the Malays to behave in the way they did. The Rajas

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<sup>54</sup> For instance, see Mahathir Mohamad, *Dilema Melayu* (translated into Malay by Ibrahim Saad), Times Books International, Kuala Lumpur, 1992, p.194.

<sup>55</sup> An English translation of this book was made by Coope, A.E, *The Voyage of Abdullah*, Malaya Publishing House, Singapore, 1949.

were said to have been tyrannical and oppressive; looting and robbing whatever surplus was produced by the *rakyat*. The latter in turn refrained from working harder since any wealth accumulated would go to the Raja. As a result, the fear had created a habit among the Malays of not wanting to work more than necessary. It is this part of the value system that Mahathir claims has inhibited the Malays from progressing, and as such it has to be eradicated.

However, Mahathir's criticisms were refuted by Syed Hussein Al Atas, a renowned Malay sociologist. In his analysis of the ideology of colonial capitalism, Al-Atas argues that the collective image of the Malays as portrayed by Mahathir is highly prejudicial and over-generalized.<sup>56</sup> With regard to punctuality of time, for instance, Al-Atas contends that "...the Malays of pre-colonial days as well as of subsequent periods until today, had always been punctual in saying prayers, especially the dawn and the sunset prayers. They observed time scrupulously.....".<sup>57</sup> On discipline, he argues that "...if the Malays had not had any sense of discipline, then the army organization of the Malay States in the past, the war, the raids, the administration.... could not have taken place".<sup>58</sup> People like Mahathir are diagnosed by Al Atas as having fallen prey to the ideology of colonial capitalism, for they help "...to justify Western rule in its alleged aim of modernizing and civilizing the societies which had succumbed to Western powers".<sup>59</sup>

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<sup>56</sup> Syed Hussein Al Atas, *The Myth of the Lazy Native: A Study of the Image of the Malays, Filipinos and Javanese from the 16th Century to 20th Century and its function in Ideology of Colonial Capitalism*, Fran Cass & Co. Ltd., London, 1977, p.142.

<sup>57</sup> *Ibid*, p.171.

<sup>58</sup> *Ibid*, p.170.

<sup>59</sup> *Ibid*, p.7.

Whilst the Malays may have conceded that it is necessary for them to participate in the process of modernization and global development, some quarters of the Malay community argue that there is no need to revolutionize the whole system of Malay values. Those dissenting are of the opinion that what the Malays actually need is not a revolution but an evolution of the existing value system.<sup>60</sup> They posit that there is nothing wrong with the way Malays perceive this life and all its endowments. The criteria of *Melayu Baru*, must necessarily evolve around the matrix that is already in existence. On the other hand, there are others who think that there needs to be some form of cultural transformation, but this process should start not from below but from above, that is, from the ruling rather than from the *rakyat* class.

Thus, Zainal Kling<sup>61</sup> argues that the idea (the new vision) is not going to succeed if its promoters choose to acknowledge the existence of merely a selected few of the 'new Malays (the entrepreneurs, for instance) and particularly those who are close to the government. He argues that the government must provide an environment that is conducive to the promotion of this new Malay culture, by restructuring the socio-political arrangement which is presently inclined towards nurturing and developing the culture of nepotism and cronyism. Further, he adds that assessment of an individual must be based not on birth or political connections but on merits and achievements.<sup>62</sup> Political patronage is, in his opinion, a destructive force which cripples any genuine effort of creating the *Melayu Baru* culture. Perhaps there is validity in this argument, for patronage tends to discourage the "clientele" from

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<sup>60</sup> Revolution here denotes an abrupt or radical change, for instance, a complete and sudden abandonment of the old value system. Evolution on the other hand refers to a gradual shift from the old ways, or perhaps a 'gentle' modification of some of the traditional values.

<sup>61</sup> Head of the Anthropology and Sociology Department of the University of Malaya (1993).

genuinely improving their skill or knowledge. All they need to do is, to establish a good patron-client relationship, which normally does not require any proof of academic excellence or professionalism.

The juxtaposing of these conflicting views on the Malay value system is necessary as it helps to shed some light on the reason why the Malays have neither unanimously nor spontaneously accepted Mahathir's call for the construction of *Melayu Baru* when the idea was first launched. Looking at the arguments of the advocates and opponents of *Melayu Baru* above, one may categorize the views as follows: first, that of Mahathir, which is extremely negative towards the 'old' or 'traditional' Malay value system (in the sense that he views the whole system as utterly defective and therefore needs to be revolutionized); second, that which is absolutely positive, so much so that the existing matrix is viewed as perfect, and third, a balanced view, which recognizes defects in the present value system, but insists that the responsibility of correcting the defective part must be borne not only by the *rakyat* but also by those who are holding the reins of power.

Perhaps the paradox is that the more the Malays realize they have to succumb to the pressure of modernity, the more they will have to retain that 'traditional' part of their culture which defines Malayness. This might not be difficult to explain if one were to accept Gellner's argument about nations and nationalism, who cogently argued that, "cultures now seem to be the natural repositories of political legitimacy".<sup>63</sup> As

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<sup>62</sup> Zainal Kling, *Melayu Baru: Pencerahan Adat dan Adab* (a paper presented at the "New Malays" Symposium, 25- 26 September, 1993), published in Monograf & Dokumentasi GAPENA, Jilid 1, Terbitan ITC Book Publisher, Kuala Lumpur, 1993, p.72.

<sup>63</sup> Gellner, E, *Nations and Nationalism: New Perspectives of the Past*, Blackwell Publishers Ltd., Oxford, U.K, 1983, p.55.

Malayness is not simply an issue of identifying an individual but rather a nation,<sup>64</sup> it is understandable why those conservative Malay nationalists are so paranoid about the whole idea of *Wawasan 2020* and *Melayu Baru*. They may not have objected to the modernization aspect, but it is the prospect of losing one's sense of 'Melayuhood' that, we argue, bothers them to the core.

Indeed the preservation of the sultanate system in every state of the Malay Peninsula (except the former Straits Settlements of Penang and Melaka) was meant to emphasize the Malayness of the Malaysian Federal system. It was on this very basis that the Malay nationalists fought against the Malayan Union plan in 1946, and finally had it replaced by a Federation in 1948. Unsurprisingly, too, it was for the same reason that the Sultans and their supporters vehemently opposed the 1993 constitutional amendments. It was not so much of losing their legal immunity that prevented the Rulers from consenting to the amendments<sup>65</sup>. It was the thought of having to bow yet again to the politically elected Malay leaders who were now overwhelmed by the attractions of modernity (including the sharp acceleration of progress and all those values inherent in it such as, materialism, 'corporatism', and anti-traditionalism) that placed the Rulers and the federal government at loggerheads. Interestingly, the 1993 constitutional crisis has not only exhibited the

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<sup>64</sup> The anxiety of these Malay nationalists was an echo of the sentiment of those earlier nationalists who believed that: "...once the national essence of the Malays has been lost, any demand of the Malays is branded as a communal one, even their demand for special rights. While the status of the Malays has fallen from that of a nation to that of a mere community, a demand has also come from the non-Malays for equality for all, which they regard as being democratic." (an excerpt from the *Warta Negara* (a Malay newspaper) editorial and quoted in Ratnam, J.K, supra, pp.112 &113).

<sup>65</sup> This is evident from the statement of the Conference of Rulers relating to the amendments, which states inter alia: "No Ruler has the right to hurt or cause any harm to another person. The Conference of Rulers agrees to the formation of an effective mechanism to hear the *rakyat's* grievances against them. It is in total agreement with the view that there cannot be two systems of justice in the country." However, in another paragraph which preceded that, the Conference of Rulers had also stated that: "Bearing in mind the complex constitutional structure in Malaysia, the Conference of Rulers considers it only desirable that a more detailed study of the principles and the mechanisms involved in

two forces, the centripetal (tradition) and the centrifugal (modernity), which operate in a federation that is uniquely Malaysian, but also the opposing values inherent in them, much of which were respectively epitomized by the Malay feudal system and the Western brand of democracy.

However, recent political developments in Malaysia illustrate that some traces of the new Malay culture are surfacing, particularly aggressiveness, rebelliousness and outspokenness. As these traits were rarely visible in the past, the fact that they are now suggests that the Malay value system has considerably changed, particularly in regard to their perception of leadership or government.<sup>66</sup> The shift from the old Malay culture of absolute loyalty to the ruler or person in authority (which shift began with the Gomez case) to qualified submission or allegiance to the ruling regime demonstrates that the emerging new Malay society is not harking back to the traditional value system that once moulded the past Malay generation.

Further to Mahathir's argument regarding the Malay value system, another important aspect, religion (Islam), has also been criticized. On this, the Prime Minister firmly stated that:

“We have no time for ridiculous interpretations of Islam. The first step towards achieving an Islamic renaissance is to debunk the belief that this world is not for the believers but for the non-believers only, that knowledge other than

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the proposed amendments incorporated in the Bill be made.”(*Dewan Rakyat* Debates, 18 January 1993)

<sup>66</sup> The term "government" here refers both to the traditional *kerajaan* as well as to the modern Malaysian government. One should also note that despite Mahathir's effort to eradicate feudal values, UMNO followers have ironically been urged to adhere to '*cara Melayu*' (Malay ways), for instance, in the way they treat their leaders, that is with respect. And respect here is normally reflected in their obedience to the leader's order. Thus, the change in the manner in which Malays perceive the traditional *kerajaan* and the modern *kerajaan* is mirrored in the latest incidents (1998/99) relating to Anwar's case.

spiritual knowledge is secular and therefore must be proscribed".<sup>67</sup>

He added that:

"To them (the advocates of Islam in Malaysia, particularly those engaged in partisan party politics), knowledge is limited to interpretations and rulings they have specially chosen. Knowledge that they have classified as secular should not be pursued. As a result, Muslims have not only become weaker, they also have become confused about Islam, and are easily influenced by these people who have vested interests".<sup>68</sup>

In short, Mahathir argues that for the Malays the identity defining elements of a *Bangsa Melayu* are but a fragile basis for sustaining Malay existence in this fast-developing world. A more tangible and success-oriented form of self-identity was required if the Malays were to remain dominant not only in their own land but also beyond their territorial borders. In other words, it was neither one's ethnic origin, nor language, and more so a frivolous interpretation of religion that determined the dominant status of a *bangsa*, whatever that *bangsa* might be. Instead, it was one's achievements in all spheres of life which determined one's survival.

Indeed, the *Melayu Baru* and the *Wawasan 2020* agenda are meant to serve as a framework within which the process of a complete overhauling of the Malay psyche in particular, and of the Malaysians in general, was to take place. But there has to be a genuine political will on the part of those in power to enable these conceptions to be translated into actions. Some amount of 'ideological space', for instance, ought to be created within the bounds of constitutional principles so that a citizen is free to articulate fresh ideas without fear of being labelled '*derhaka*'. Thus if this vision of a

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<sup>67</sup> Hng H.Y, supra, p.91.

<sup>68</sup> Ibid.



2020 Malaysian nation-state was to be seriously implemented, several key provisions in the Constitution must be reconsidered; and certainly those bargains (that is, the inter-ethnic bargain such as recognition by the ‘immigrant races’ of Malay special rights and privileges as *Bumiputra*, in exchange for their right to citizenship, concluded on the eve of the last colonial day of ‘British Malaya’) would have to be re-negotiated.

For *Melayu Baru*, themselves, there will have to be some fundamental re-adjustments to bring them into this new framework. Though some critics ridiculed the idea of creating a new Malay (that is a Malay with new culture), others have shown their support and admit that the Malays need to change the way in which they perceive certain elements in life, be it culture or religion, and no matter how revolutionary it may appear to the conservatives or traditionalists. On this note, it is worth echoing the words of Alfred Marshall, the notable British economist, who, in his *Principles of Economics* some hundred years ago, wrote that:

“The full importance of an epoch-making ideas is often not perceived in the generation in which it is made....A new discovery is seldom fully effective for practical purposes till many minor improvements and subsidiary discoveries have gathered themselves around it.”<sup>69</sup>

Although Marshall was referring to economy as his focus of statement, his remarks may be applied to other fields of life, such as politics and culture. *Wawasan 2020* and *Melayu Baru* are revolutionary concepts as far as the Malays are concerned, and if improvements were actually to be made to this basic recipe for transforming not only the Malay people but Malaysians in general, a united nation-state of Malaysia

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<sup>69</sup> Marshall, A, *Principles of Economics* (no detailed citations given), quoted in the *Economist*, 26 June 1999, p.19.

might eventually be constructed. Indeed, its creation would definitely mark the beginning of an epoch for what is presently an ethnically divided Malaysian society.

### 6.7 The *Melayu Baru* and the Federal Constitution

Looking at the overall developments in Malaysia today, particularly constitutional changes, it appears that the government is endeavouring to acclimatise the people, notably the Malays, to new social, economic and political environments. The constitutional amendment of 1993 is an obvious example of the government's effort in transforming or modernizing Malay beliefs regarding the traditional system of *kerajaan*, the institutional nucleus from which fundamental Malay cultural and political values evolved. The removal of the immunity status of the Malay Rulers from the constitution by the Mahathir administration, thus symbolized the initial step towards revolutionizing Malay perceptions of this feudal institution, from which we have suggested, emanates the Malays fatalistic and wholistic attitude to their very existence.

Arguably, the emergence of *Melayu Baru* was also reflected by the belief that from the 1993 constitutional crisis onwards, this present generation of Malays is now less concerned than its predecessors with the old rules and precepts that govern the ruler's relationship with the ruled.<sup>70</sup> Discourses in the newspapers, seminars and discussions, formal or informal, both within the academic and non-academic worlds demonstrate that there is a dramatic change in the Malay perception of the special position of a Ruler (in the light of the latest political development following the

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<sup>70</sup> In late 1990s, it was not only the traditional rulers who began to lose the kind of respect and obedience traditionally accorded to them by the *rakyat*, but the modern leaders too had begun to witness that the *derhaka* and *taat-setia* principles were slowly being eroded. Open criticism by

economic turmoil, this perceptual change has also been extended to the non-traditional rulers, namely, the UMNO leaders). Indeed, those qualities formerly closely associated with the Ruler and considered sacred and unchallengeable, are now slowly fading into oblivion.

Fundamentally, therefore, the 1993 constitutional amendments may have marked the departure of the Malay people from the passive and unprogressive images of their distant past. With Mahathir preparing the ground for what he called the new Malay culture, prompted by the re-interpretation of values and the re-definition of the *kerajaan*, a new history of Malay political thoughts can be drafted. This transformation was no doubt facilitated in the early to mid-1990s by the dramatic improvements in the economic performance of the country which lasted until the late 1990s when the economic turmoil vigorously swept across Malaysia and its East Asian neighbours.

It is interesting to note that although the 1993 constitutional amendments marked the Malay departure from their traditional perception of certain values associated with the *kerajaan* (such as, a *pemerintah* (ruler) should never be challenged), some of the old trends remained unchanged. For instance, the challenge against the Malay Rulers in 1993 was not initiated by the *rakyat* but by those from within the ruling class (in this context by the UMNO leadership) itself. This brings to mind the classical incident where Jebat, the traditional Melakan 'traitor' (*penderhaka*) ran amuck in a protest against Sultan Mansur Shah, who sentenced Jebat's closest friend, Hang Tuah to death. Thus, as far as the Malay *rakyat* are concerned, the initiative to break a

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students against the Prime Minister, Mahathir, and their call for his resignation, for instance, were the last thing the Malays would have expected.

'tradition', (that is the tradition of *pantang Melayu derhaka pada Raja* (or *pemerintah*) would normally be taken by the ruling elite itself instead of by the ruled. Similarly, in the late 1990s, the challenge against Mahathir, the modern ruler, was not initiated by the Malay *rakyat* but by Anwar, who, like Jebat, was formerly part of the ruling regime.

### 6.8 A Radical Politico-Cultural Departure

In some democratic countries a referendum may be held by the government of the day to solicit the opinions of the population about certain proposed changes affecting the constitutional framework of the nation. Malaysia (as it does in several other matters)<sup>71</sup> has yet again chosen to tread a different line. The removal of the immunity-conferring provisions from the Constitution was indisputably as 'radical' a step ever taken by a Malay leader in the whole of Malay political history. Indeed, it is surely ironic that the process of this cultural change, and the creation of a fully and highly industrialized Malaysia, all of which epitomize modernity, had their pace accelerated by an event involving a Raja, the representative of the *kerajaan*, an institution that is essentially traditional in character. The Sultans' reluctance to submit to the 'implicit'<sup>72</sup> requirements of the modern principles of government, and to a universal value cherished (or to which lip service is accorded in many instances) by all, namely, equality before the law, paved the way towards the abolition of, arguably, the fundamental facet of what is called 'sovereignty'. But 'radicalism' is what the *Wawasan 2020* and *Melayu Baru* represent. The amendments were clearly a

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<sup>71</sup> For instance, in handling the economic turmoil that hit Southeast Asia recently, Malaysia adopted a controversial method of resolving the crisis (for example, by imposing capital control and by bailing out giant corporations), a move that aroused many criticisms from around the globe.

<sup>72</sup> Requirements such as acting within the bounds permitted by the principle of constitutional monarchy, or that the king shall not act against the law (which is not explicitly spelt out in the Federal Constitution). They are referred to here as 'implicit' for the purpose of explaining the effect of not

manifestation of the leadership's desire to put an end to the feudal way of thinking, irrespective of whether the thoughts were those of the traditional Rulers only or also of the ruled.

But were the 1993 amendments alone sufficient to facilitate the entire agenda? If the underlying purpose of these amendments was to revolutionize the way Malays perceive the *kerajaan* and all those values emanating therefrom, then how should we address those provisions incorporated in the Constitution since *Merdeka*, which aimed at reinforcing the Malays' sense of Malayness and at preserving their status quo as privileged people of the country? Logically, the 'traditional' elements of the Federal Constitution<sup>73</sup> such as the Malay language and Malay special privileges encapsulated in Articles 152 and 153 respectively, would have to be amended or repealed to bring the Federal Constitution into line with the requirements of the new Malay(sian) society. Most importantly, is it not appropriate now for the government to review the existing law, which makes it illegal to question the existence of Article 152 (the national language provision), for instance, or to suggest that the Article be amended in order to reflect the present (1999) government policy on education?<sup>74</sup>

Since the Malays are encouraged to acquire modern knowledge, access to which, according to Mahathir, is by mastering the English language, then inevitably the

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codifying unwritten rules into the written constitution, which often lead to confusion and ambiguity about the role, functions and manner in which the monarch should adhere to.

<sup>73</sup> Elements such as the Malay sultanate or *kerajaan*, Islamic religion, Malay language, and Malay privileges are categorized as 'traditional' since they are matters which had been in existence long before the British colonial administration in Malaya (see Tun Haji Mohd.Salleh Bin Abas, *Traditional Elements of the Malaysian Constitution*, in Trindade, F.A and Lee, H.P, (eds) *The Constitution of Malaysia: Further Perspectives and Developments*, Penerbit Fajar Bakti Sdn.Bhd., Petaling Jaya, Selangor, Malaysia, 1986, p.1).

<sup>74</sup> On 22 June 1996, the Minister of Education announced that the government has agreed to allow the use of English language as a medium of instruction in all universities (that is whether they are

status of *Bahasa* would have to be readjusted.<sup>75</sup> The *Melayu Baru*, a component of the new *bangsa* (*Bangsa Malaysia*), would have to equip themselves with this foreign linguistic tool lest they be left behind in a fast-developing world. As national policy on the issue of *Bahasa* does not presently (1999) prioritize the use of it as a medium of instruction, notably, in the privately established higher learning institutions that mushroomed throughout the country in the second half of the 1990s, it is therefore pointless to retain that part of the existing provision of Article 152 which makes it mandatory to use *Bahasa* for “official purposes”.<sup>76</sup>

The present development<sup>77</sup> with regard the establishment of universities and colleges in Malaysia renders the court's decision in the case of University Merdeka obsolete. With the change in national policy on *Bahasa*, it is only logical, though not acceptable to certain quarters of the Malay community,<sup>78</sup> that the existing Article

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privately or government sponsored), especially in the teaching of science disciplines (see the *New Straits Times*, 9 July 1996).

<sup>75</sup> In this context it means that *Bahasa* would no longer require the kind of constitutional protection that it is now being afforded by the government.

<sup>76</sup> Article 152(6) defines “official purposes” as “any purposes of the government, whether Federal or State, and includes any purposes of a public authority” (the term “public authority” is defined by Article 160 (2) as “the *Yang di Pertuan Agong*, the Ruler or *Yang di Pertua Negeri* of a State, the Federal Government, the Government of a State, a local authority, a statutory body exercising powers vested in it by federal or State law, any court or tribunal other than the Supreme Court and High Courts, or any officer or authority appointed by or acting on behalf of any of those persons, courts, tribunals or authorities”). But note also that the definition of “public authority” had been widened by the decision in the Merdeka University case, when Abdoolcader J. ruled that a University, be it public or private, is a public authority and therefore its purpose would be an ‘official purpose’.

<sup>77</sup> The establishment of private universities and colleges which use the English language as their medium of instruction in Malaysia today, reflects a complete “u-turn” of the government policy regarding the use and status of *Bahasa* as national language. This development was made possible by the *Akta Institut Pendidikan Tinggi Swasta* (Private Higher Education Act) 1996. However, it might be argued that the Act was unconstitutional and illegal on the ground that it contravened Article 152 of the Federal Constitution. Thus strictly speaking, unless the Article itself was amended and given a retrospective effect, the Act would remain illegal due to its unconstitutionality. Unfortunately however, there is no judicial decision on this point since the matter has never been legally contested.

<sup>78</sup> Where the Malay cultural nationalists are concerned, this proposition may not be acceptable because *Bahasa* is one of the fundamental elements by which they thought the Malay identity could be preserved. Some nationalists have also argued that by demoting the status of *Bahasa* in this fashion, the government is actually contradicting its own objective of creating a united *Bangsa Malaysia*, as the impact of this new policy would, in the long run, only re-open the gap between the more economically privileged Chinese and the less advantaged Malays. As a result, the history of the 13 May 1969 race riots would repeat itself, and by then it would be too late to retreat (see for instance

152 be amended so that any ambiguity with respect to the status of *Bahasa* be clarified. With regard to changes in government policy, as in the matter of education (where the use of *Bahasa* as a medium of instruction and where the allocation of certain quotas for the admission of *Bumiputras*/Malays to higher learning institutions are no longer made paramount), it is doubtful whether they are constitutional if their implementation is not accompanied by any constitutional change to the existing relevant provisions.

To date, no extensive discussion has been held with regard the constitutionality of the 1996 Act. However, the legal status of the government policy on *Bahasa* was questioned by Sinnadurai<sup>79</sup> in his analysis of the Federal Court's decision in the University Merdeka case.<sup>80</sup> The only explanation for this phenomenon is that the law as it stands now prohibits the calling into question the existence of Article 152 or suggestions for its amendment.<sup>81</sup> Unless such questioning could be interpreted as one

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an article by Zainal Abidin Wahid, "*Kerana Bahasa Inggeris, Bahasa Melayu Semakin di Anaktiri* (For the Sake of the English Language, the *Bahasa* is Being Discriminated) in *Tamaddun*, Jun, 1999, pp.62-67).

<sup>79</sup> Professor of Comparative Law and Dean of the Faculty of Law (as he then was), University of Malaya.

<sup>80</sup> In his article "Rights in Respect of Education", in *The Constitution of Malaysia: Further Perspectives and Developments*, Trindade F.A and Lee, H.P (eds), supra, p. 55, Sinnadurai questioned whether a policy could be utilized by the government as a basis for rejecting the plaintiff's application to use the Chinese language as a medium of instruction. The Court, while admitting that "Policy is a somewhat nebulous and amorphous concept, difficult for the court to discern as such until and unless it becomes apparent from a legislative measure which reflects and effectuates it", had nonetheless held that it could be used as an additional reason for not allowing the Chinese language as a medium of instruction.

<sup>81</sup> See Public Prosecutor v Mark Koding [1983] 1 M.L.J. 111, 113. In this case, though the High Court held that it was seditious "to question any matter, right, status or position established by the provision of Article 152", confusingly decided that advocating the closure of Chinese and Tamil schools was not a seditious act. This decision was based on the amended Section 3(2) Sedition Act 1948, which bans anyone, including members of Parliament, from questioning 'sensitive issues', among which are those which related to Article 152. On similar issue (that is, whether advocating for the closure of Tamil and Chinese schools is a seditious act), the Court held that it was seditious (see Melan bin Abdullah v Public Prosecutor [1971]).

which related only to the implementation of the Article, then it might be lawful to do so.<sup>82</sup>

Similarly, the implementation of the twin concepts of *Wawasan 2020* and *Melayu Baru* would have to take into consideration the existence of Article 153 in which the special position and privileges of the Malays are enshrined. For how long should the Malays be 'protected' by the Constitution before they could actually survive on their own without these constitutional and political 'crutches'? Since the questioning of a constitutional provision such as this is presently legally prohibited, it is difficult to go further beyond the 'sensitive issues' line in discussing the position of this Article. However, it may be noted that the call for a more 'self-reliant' and 'confident' Malay society will be hollow and meaningless rhetoric unless the relevant constitutional provisions are aligned with Mahathir's current social and political programme.

### **6.9 Vision versus Reality**

Indeed, reality seldom coincides with visions or dreams. The reality of Malaysian politics is much more complex than what it appears to be. Given a 'pluralized' society like Malaysia, any government would normally find it difficult to find a perfect solution for any equation involving such culturally, religiously and ethnically diversified communities. Thus to speak of an 'equal' Malaysian society without casting aside the memory of past experiences of the colonial times, of the Japanese Occupation of Malaya, of the Communist struggle in the 1940s and Fifties, and of the 1969 racial riots, which have for a long time influenced the Malay-Chinese

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<sup>82</sup> Suffian L.P in responding to a question referred to the Federal Court by the trial judge in the case of Public Prosecutor v Mark Koding, held that "...Ordinance 45....amended version Section 3(2) of the Sedition Act, the effect of which is to allow a person to question the implementation of Article 152, as opposed to questioning the existence of the rights guaranteed by it."



relationship,<sup>83</sup> and moulded the perception of the three major ethnic groups (Malays, Chinese and Indians) about each other,<sup>84</sup> would be tantamount to nothing more than wilful blindness.

Given this delicate background, will history not repeat itself to undermine the *Melayu Baru*? Can a Malaysian Malaysia tolerate the uncompromising claim of *ketuanan Melayu* (Malay lordship) by the traditionalistic Malay nationalists? Whether the Malays are psychologically ready to join the global economic and technological is one pertinent question. But another is to address their defensive cry of: "how much more are we required to sacrifice in order for all parties to be part of Malaysian Malaysia?" Unless and until their claim as indigenous people of the land is no longer placed at the forefront of the nation's agenda, it is quite unlikely that the *Wawasan 2020* and *Melayu Baru* concepts will succeed. 'Sacred' or sensitive it may

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<sup>83</sup> The Malays' suspicion of the Malaysian Chinese loyalty to the country may have not faded entirely despite the current political trend which shows the tendency among the non-ruling parties towards working together as political partners in an effort to create a more just and better system of government in place of the *Barisan*. On the other hand, the UMNO, despite its coalition with the other main components like MCA and MIC, has warned the Malays of the importance of preserving Malay sovereignty (see the statement made by the Deputy Finance Minister, Datuk Mohamed Nazri Tan Sri Aziz, in *Utusan* Malaysia, 7 June 1999, [http://w.w.utusan.com.my/utusan/archive.../utusan\\_malaysia/home\\_news/hn1\\_full.1](http://w.w.utusan.com.my/utusan/archive.../utusan_malaysia/home_news/hn1_full.1), visited on 15 June 1999 17:16)

<sup>84</sup> All of these events brought a negative impact on the different ethnic groups in Malaysia in the sense that their perception of each other made it difficult for the government to forge a true common Malaysian spirit among its citizens. The Malays have been suspicious of the Chinese, whose loyalty, since the British colonial period, seems to have been focused on China rather than on Malaysia. As for the Indians, their activities during the days of Japanese Occupation, merely confirmed (in the eyes of many Malays) of their alien status and orientation. With the exception of the Indian Muslims, the Ceylonese and the Chettiar bankers, who were forced to join the I.N.A, the rest of the Indians in Malaya then had been actively involved in supporting this Indian militant group under the leadership of Subhas Chandra Bose to liberate India from the British. (see Stenson, M, *Class, Race and Colonialism in West Malaya: The Indian Case*, University of Queensland Press, St. Lucia, Queensland, 1980, p.88 & 89) Thus when the British planned to open up Malayan citizenship to these immigrants (through the Malayan Union) without taking into consideration their focus of loyalty, the Malays' suspicion of these "outsiders" began to increase, as the Union would promote the latter's position to a level equal to that of the indigenous Malays. Both the Malays and the Chinese had divided opinions about one another, and generally could not alleviate the feeling of mistrust they had for each other. Unfortunately, the doubt about the non-Malays allegiance seems to have perpetuated among the Malays up to this date (On this point, see also Mahathir Mohamad, *Jalan Ke Puncak* (The Road to the Peak), Pelanduk Publications (M) Sdn.Bhd., Subang Jaya, Selangor, Malaysia, 1999,

be, however, the enshrining of the special privileges and position of the Malays in Article 153 represents a contradiction of these two concepts.

With the robust changes that are taking place, it is difficult to discern a smooth implementation of Mahathir's grand vision without first having the relevant provisions in the Constitution duly amended and readjusted. But a major question is, would the Conference of Rulers consent to such an amendment? In the light of the 1993 constitutional crisis, one might perhaps argue that even if the Rulers were to withhold their consent, and provided that the ruling regime had not lost its two-thirds majority in the *Dewan Rakyat*, and assuming that Mahathir was still in power, the problem of consent could easily be overcome. While the 'sensitive issues' provisions cannot, according to the Federal Constitution be amended without the consent of the Conference of Rulers. Nonetheless, the 1993 constitutional developments demonstrate that such a consent is, in practice, irrelevant so long as the present ruling party is still in control, not only of the *Dewan Rakyat* but also of other government machinery such as the media. But would the Malays concede to another violation of this 'traditional element' of the Constitution? Or would the government, despite being in power, still be able to repeat its success in mobilizing the *rakyat* to its side as it did over the amendment issue during the 1993 constitutional crisis?

Looking at the latest political developments following the Anwar Ibrahim incident (1998/99), one might be tempted to think that the issue of *ketuanan Melayu* (Malay political hegemony) is being dwarfed by the burgeoning demand for a more liberal

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pp.43-44, and Ratnam, J.K, Communalism and the Political Process in Malaya, University of Malaya Press, Kuala Lumpur, 1965, pp.113-115).

and just government. *KeADILan*<sup>85</sup> (Justice) and *Reformasi* (Reforms) seem to have occupied a central position in the political agenda of the *Melayu Baru* generation, so much so that the once relevant 'sensitive' constitutional provisions might no longer be treated as such. Yet, it is also interesting to note that despite the non-communal (pluralistic) image which the so-called alternative parties<sup>86</sup> are trying to project, there remains within each organisation an underlying, albeit faint, tone of communalism.<sup>87</sup>

The issue of a non-Malay becoming the Prime Minister (in the event that the *Barisan* loses the forthcoming (29 November 1999) general election), recently raised by one of the leading figures from the non-Malay opposition party, has for instance, stirred a less welcoming reaction from PAS. The idea of having a non-Malay, and, let alone a non-Muslim as Prime Minister is, as reflected in the PAS leadership's statement recently, intolerable to them. Though there is nothing in the Constitution which prevents a non-Malay from being appointed a Premier, conventionally, it is argued, he cannot become one.<sup>88</sup>

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<sup>85</sup> The word '*keadilan*' (justice) is purposely spelt using this character. *KeADILan* is coincidentally the name of the newly formed opposition party led by the wife of the ousted Deputy Prime Minister, Dato' Seri Anwar Ibrahim. This new party has, since its formation, become a nucleus around which the other existing opponents of the UMNO-led *Barisan Nasional* Party collectively revolve in their bid to offer an alternative government to the Malaysian people in the 1999 general election. It is the first time in Malaysian history that a political party has been formed along a non-communal line.

<sup>86</sup> They include the already existing opposition parties such as PAS, DAP, PRM and also the newly established '*reformasi*' party, *Parti KeADILan Nasional* (National Party for Justice), which are said to have contemplated joining forces as a coalition opposition party in the forthcoming general election in their bid to displace the present *Barisan* government.

<sup>87</sup> For instance, PAS is now opening up its membership to non-Malays, DAP is concentrating more on the issue of justice for all Malaysians rather than just for the Chinese, and *KeADILan* is clearly moving along a non-communal party line, emphasizing more the unity of all Malaysians in combating a 'corrupted' government than ethnic issues. But the two older parties (PAS and DAP) seem plagued by the 'traditional' issues of the 'Malaysian Islamic State' and DAP's Malaysian Malaysia, respectively (the DAP was accused by UMNO as trying to rekindle the idea of a state championed by Lee Kuan Yew, which led to the separation of Singapore from Malaysia in 1965).

<sup>88</sup> Arguably, the fact that the Prime Minister has always been a Malay shows that such a practice has crystallized into a constitutional convention in Malaysia.

The notion that only a Malay, and needless to say, a Muslim, is eligible for the office of the Prime Minister of Malaysia has long dominated Malay political understanding since *Merdeka*. The fact that *Merdeka* (independence) was achieved through Malay rather than through Malayan nationalism has provided the Malays with the political and historical legitimacy to demand constitutional recognition. Those championing for the Malay cause argue that the claim of Malay constitutional supremacy should never be called into question on the footing that it has been understood right from the inception of the Federal Constitution that the Malays are the indigenous people of the land. The bargain struck among those signatory to the 1948 Federation of Malaya Agreement, and which formed the very basis of the present Constitution of Malaysia (that is, the citizenship status of the immigrants in exchange for their recognition of Malay special rights and privileges as the rightful heir of Malaya) should not, therefore, be renegotiated. Among those conservative Malay nationalists, the sentiment that the “indigenous us” should no longer concede to the “immigrant others” is not likely to disappear from their agenda.

#### **6.10 The *Melayu Baru* Dilemma**

Therefore, how does the *Bangsa* Malaysia, or *Melayu Baru* for that matter, fit into this scheme of things? Indeed, the proposition of a new *bangsa* has placed the Malays at a crossroad. Should a *Melayu Baru* disregard the issue of *Bumiputrarism* and then cross over to this new ideological territory? Would they be considered *derhaka* to their own *bangsa* (that is, *Melayu*) if they chose to ignore the conservative nationalists’ thoughts? Equally important are the questions of “who are these *Melayu Baru* and how are they to be distinguished from the old Malays?” While a significant number of intellectuals are divided in their definitions of *Melayu*

*Baru*, the laymen may be understandably puzzled as to how to identify these so-called new Malays.

After almost a decade since the concept was first introduced to the public, the *Melayu Baru* has yet to acquire its image. At the moment, the presence of the new Malays is perhaps vaguely felt rather than seen. Some visualize them as arrogant, impolite and blunt, disrespectful of their elders, materialistic, and anti-feudalistic,<sup>89</sup> while others simply call them *Melayu Korporat* (Corporate Malays or Malay entrepreneurs). Whichever description one prefers, *Melayu Baru* certainly give the impression that they are the modern species of Malays with quite a distinctive taste for a dynamic and sophisticated way of life. In answering to a question about her perception of *Melayu Baru*, a prominent Malay cultural nationalist, Azah Aziz, said, "They are the well educated, with yuppy tendencies, and have little culture. Though a few understand what their culture is, they are embarrassed to be part of it. Worst still is that some of them feel apologetic about being a Malay".<sup>90</sup>

Although she did not elaborate on the word 'culture', her cultural nationalist background nonetheless suggests that in using the term, she was actually referring to *adat* (customs).<sup>91</sup> Thus the lack of *adat* or lacking respect for it would culturally

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<sup>89</sup> Rustam A. Sani, *Melayu Baru: Perkembangan dan Implikasi Sebuah Konsep* (New Malays: The Development and Implications of a Concept), a paper presented at the *Simposium Melayu Baru* (The New Malay Symposium), held on 25-26 September 1993, at Shah Alam, Selangor, Malaysia.

<sup>90</sup> See Firdaus Abdullah, *Melayu Baru: Berakar Nasional, Berakar Internasional* (New Malays: National in Roots, International in Thinking), a Paper Presented at the *Simposium Melayu Baru* (New Malay Symposium) held on 25-26 September, 1993, at Shah Alam, Selangor, Malaysia.

<sup>91</sup> See also Zainal Kling, *supra*. He posits that the Malays, through their intensive and extensive interaction with nature and the world around them, have eventually formed their own system of culture, known as *adat*, within which their comprehensive understanding of the mysteries of nature, social norms and etiquette is neatly compounded. It is the very fabric upon which Malay civilization or *tamadun Melayu* was created. Quoting the experiences of other civilizations, such as the European renaissance, or the Meiji Restoration (*Meiji Ishin*), Zainal argues that social reformation does not exist *in vacuo*. It is a rediscovery of the old values and a return [perhaps with some modification] to that value-system which is already in existence. The Meiji Restoration, for instance, is in reality 'a return

render a Malay less Malay in the eyes of the *bangsa*; while legally, such a person would not be recognized as 'Malay', since by disassociating oneself from adat or by not conforming to it, as prescribed in the relevant paragraph of Article 160 of the Constitution,<sup>92</sup> such a person would fall outside the ambit of that provision. He or she would cease to be a Malay in the legal sense of the word, the consequence of which would be the loss of the special rights and privileges that had spearheaded the *Melayu Baru* to the position in which they are now.<sup>93</sup>

The term 'Malay' and its definition as found in the Constitution have an interesting historical background. The 'constitutional' Malay is in actuality a colonial legacy. It was the British who formulated the definition while drafting the Malay Land Reservation Enactments for the Malay States in the colonial days.<sup>94</sup> This definition later crept into the Federal Constitution via the Federation of Malaya Agreement of 1948, and has, since, remained in the present provision. The term may however be misleading, for the description of 'Malay' itself is not sufficiently comprehensive to include others who are ethnically Malay by origin, but who are not Muslim by

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to ancient governmental institutions and imperial rule after eight centuries of warrior control over civil affairs'. So is the Islamic Resurgence. It is a return to the roots of the Islamic religious teachings, the Quran and the Hadith. Therefore, *Melayu Baru* is a discovery of the old Malay values such as self-determination, confidence, self-discipline and resilience, much of which is echoed in the *adat*.

<sup>92</sup> Article 160 requires that to be a Malay, one must, apart from being a Muslim and habitually speak the Malay language, conform to Malay custom.

<sup>93</sup> The DEB (*Dasar Ekonomi Baru* or New Economic Policy) which came into being in the early seventies was in fact born as a result of the strengthening of the Malays' claim to their special position as indigenous people of Malaysia after the 1969 racial riots. The DPN (*Dasar Pembangunan Negara* or National Development Plan) and most recently the *Wawasan 2020* are part of the programme which aims at remedying the imbalance economic distribution between the Malays and the Chinese and social structures that resulted from the Tunku's (Malaysian first Prime Minister) failure to uphold seriously Malay special rights and privileges. However, in the 1970's and after, Malay economic and social status had dramatically increased with the implementation of the so-called 'positive discrimination' policies designed by Tunku's successors in favour of the Malays (see also Harold Crouch, *Economic Change, Social Structure and the Political System in Southeast Asia*, Singapore, Southeast Asian Studies Program Institute of Southeast Asian Studies, p. 31, quoted by Kahn, J.S., *Subalternity and Construction of Malay Identity*, in *Modernity and Identity: Asian Illustrations*, Alberto Gomez (ed), Comparative Asian Studies Series, 1994, La Trobe University Press, Bundoora, Victoria, Australia, p.37).

religion. As it stands now, that is, in respect to the Malaysian Constitution, *Melayu* must mean a Muslim and it is this inseparable character of 'constitutional' Malaysian Malay that has shaped and determined the nature of Malay politics to date.<sup>95</sup>

The other important point about the constitutional definition of a Malay which needs clarification is to what extent must a person conform to Malay customs before he can be called a 'Malay' under the Constitution? How can one measure precisely the Malayness of a person in terms of custom or culture? Which part of the Malay custom must one faithfully conform to in order to become a Malay? Does a person lose his legal status as a Malay if he is not unquestioningly loyal to the Raja? What about the act of removing the Rulers' immunity (that is a feature which is arguably integral to the Raja's sovereignty or *daulat*)? Does removal amount to *derhaka*? If it does, does it amount to non-conformity with the Malay *adat* which forbids a person from committing an act of *derhaka*?. All these questions seem to pose a considerable problem in any attempt at identifying a Malay within the parameters of the present Constitution.

However, the determination of the Prime Minister to create a *Bangsa Malaysia* suggests that the definition of 'Malay' in the Constitution may become irrelevant as time moves on, despite the fact that an amendment to the clause concerned has yet to be effected. By emphasizing other virtues such as knowledge, economic achievements and technological advancement as the identity-defining elements of a

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<sup>94</sup> Ghazali Shafie, *Melayu dan Masyarakat Malaysia Menjelang 2020* (Malays and the Malaysian Society on the Approach of the year 2020), *Dewan Budaya*, Januari 1993, p.9.

<sup>95</sup> Islam and Malayness have been the central issue that underlines Malay politics. Both PAS and UMNO compete along this ethno-religious line in their bid to woo the Malay voters in each and every election. Each of these parties tries to downplay the other's attempt at elevating the Malays and the

*bangsa*, including the *Bangsa Melayu*, it appears that the 'traditional'<sup>96</sup> criteria necessary for defining a Malay may become obsolete and redundant. Thus what is relevant and important now is not so much the question of being a Malay within the 'constitutional' sense, but of being a Malay in the modern sense. With minimal importance attached to *Bahasa*, and with the call for the reinterpretation of Islamic teachings as well as the gradual abandonment of feudal values, among which *adat* forms part of its system, the primary force<sup>97</sup> which triggered the creation of an independent Malaya and its Constitution may be assuming a new dimension. Complicated though it may be, it looks like the efforts towards converting Malay nationalism into Malaysian nationalism are now more pronounced than ever.

### 6.11 Nationalism: A Problem of Choice

In relation to nationalism, one cannot therefore ignore the strong message contained in Mahathir's agenda for the years beyond the 1990s. The economic, political and social milieu projected in his vision of the Malaysian future sends a powerful message to the Malays that they have to change, and in the process of it they will have to review their struggle. Hence, their 'traditional' sense of nationalism has to be recast in a different light. Without dismissing the historical fact that *Merdeka* was achieved as a result of Malay nationalism, Mahathir has argued that circumstances have changed, and will continue to change far beyond the imagination of those who fought against the Malayan Union in the past.

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Islamic religion. Hence there exist such terms as the 'PAS's Islam' and 'UMNO's Islam' in Malay political vocabulary.

<sup>96</sup> The *Bahasa*, Malay custom (*adat*) and Islam may be considered here as 'traditional' as these items have been associated with the Malays long before they were incorporated into the Constitution.

<sup>97</sup> That is, Malay nationalism, the essence of which, in the struggles of the mid-1940s and 1950s was the restoration of Malay sovereignty through the restoration of the sovereign status of the Malay



Against this background, the UMNO leadership sought to identify what it saw as the right formula for the reformation of Malay society in order to bring it into line with the changing times. Whether *nasionalisme Melayu* (Malay nationalism) can be successfully modified and readjusted to suit Malaysia's modern needs by means of the *Melayu Baru* and *Wawasan 2020* formula remains to be seen. Nevertheless, one might suggest that unless 'Malay sovereignty' or (manifested not only through the existence of the Raja institution but also through the 'positive discrimination' and 'affirmative action'<sup>98</sup> policies of government) is replaced with the Malaysian people's sovereignty, this formula might not take Mahathir's vision as far as he wishes.

## 6.12 The Twin Concepts and Article 63 (5)

As pointed out earlier, although the 'legal shield' was removed from the Rulers in the 1993 constitutional crisis, the fact that no suggestion was made to abolish the Raja institution or *kerajaan* suggests the 'invisible' strength of the Rulers' position within the ethnically divided polity. Despite their apparently insignificant practical role vis-à-vis the elected leaders in the *realpolitik* of Malaysia, the Rulers have proved to be uniquely instrumental to Malay political parties in the country. Notwithstanding the Prime Minister's statement amid the 1983 constitutional crisis that he wanted to abolish the feudal system, the government nonetheless constitutionally guaranteed that the existence of the Raja institution (which means the office of the *Yang di Pertuan Agong* and the Malay Rulers) shall never be

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Rulers, through the prioritization of *Bahasa* (Malay language) and through *kebudayaan Melayu* (Malay culture).

<sup>98</sup> These policies are reflected in the NEP (New Economic Policy) and also in the NDP (New Development Policy). One may refer to the Second Outline Perspective Plan (OPP2), 1991-2000 for a complete explanation of the policies.

questioned, not even by members of Parliament taking part in the proceedings of the legislature. Thus Article 63(5) provides:

Notwithstanding Clause (4), no person shall be liable to any proceedings in any court in respect of anything said by him of the Yang di Pertuan Agong or a Ruler when taking part in any proceedings of either House of Parliament or any committee thereof except where he advocates the abolition of the position of the Yang di Pertuan Agong as the Supreme Head of the Federation or the constitutional position of the Ruler of a State, as the case may be.

What implication does this have for the twin concepts of *Wawasan 2020* and *Melayu baru*? At a glance, one might notice that this (the proviso) is a contradiction in terms. While the two concepts are aimed at creating a new *bangsa* Malaysia (including, of course, the *bangsa Melayu baru*), 'which possesses a culture suitable to the modern period.....', the presence of an institution which is inherently 'traditional' in character conflicts with the aspiration of having a culture that is essentially 'modern' in nature. This observation is not meant to suggest or to advocate the abolition of the Raja institution. It seeks, rather, to point to the existence of a symbol of 'Malay tradition' (the *kerajaan*) within an agenda which ironically<sup>99</sup>, emphasizes modernity and all those values which it supposedly represents.

The question is, how would the *Melayu baru* with all their 'modern' values (many of which are abhorred by traditionalists,<sup>100</sup> such as critical, analytical, inquisitive, open and rebellious attitudes) accommodate themselves to this kind of a milieu? By critically expressing opinions against the ruler (be it a traditional ruler (Raja) or the

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<sup>99</sup> It is an irony in the sense that since *kerajaan*, to put it in Kessler's term, "does not only refer to the Ruler's domain but to his subjects' social-cultural condition, that, of having a Raja" and also serves as the source from which Malay values emanate, it is consequently difficult to imagine how one can successfully juggle with two competing notions, modernity and tradition, at the same time, since upholding one means ignoring the other.

<sup>100</sup> For instance, the act of removing the Rulers' immunity, the revelation of their misconduct and the criticism made against their lifestyles at a public forum such as the UMNO General Assembly were regarded as *biadap* (rude) by some Malay leaders like Tengku Razaleigh Hamzah and Rais Yatim.

UMNO party leader) and hence demonstrating the value of '*merdeka*' (freedom or independence), one would on the other hand be 'culturally' considered '*menderhaka*' (disloyal or treacherous). Time and again terms such as '*ikut adat Melayu*' (in accordance with Malay custom or culture) and '*derhaka*'<sup>101</sup> have been invoked by the UMNO party leaders and by those of like mind in condemning criticisms voiced against them by their subordinates.<sup>102</sup> The culture of the Malays, as Kessler rightly observes, is constitutive inter alia, of the understanding that "independence – standing outside of relations between ruler and ruled – was not a permissible option".<sup>103</sup> Indeed, this culture – the tradition of '*pantang Melayu menderhaka pada Raja*' (it is not the custom of the Malays to disobey the ruler)<sup>104</sup> has characterised the UMNO party for decades and it is only recently (in the late 1990s) that signs of a departure from this *adat* have begun to surface.

The difficulty with the notion of Malay loyalty to a leader is perhaps nowhere more clearly emphasized than in the case of Anwar Ibrahim, the ousted Deputy Prime Minister and previously anointed heir-apparent to the highest Malaysian political seat. His dismissal, the retaliation, the infamous 'black eye' episode<sup>105</sup> and the

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<sup>101</sup> Though this term is now used in referring to an act of offending the UMNO leadership, or acting contrary to the norms and rules set by the party, as exemplified by the case of Anwar Ibrahim recently (1998/99).

<sup>102</sup> A recent incident is where the speech of Zahid Hamidi (the UMNO Youth Movement leader) in June 1998 was viewed by the UMNO leadership as a provocative criticism against the party's President. Zahid raised the controversial issues of cronyism, nepotism and corruption during the party's general assembly. As if aware of the 'heat' he generated, and whilst anticipating the party's retaliation, Zahid commented that, "It is most unfortunate if dissent is considered as treachery, and the voice of the grass roots be interpreted as tendentious of breaking up the party" (this statement was obtained from *Berita Harian* Online, <http://ww.jaring.my/bharian,fri/ne002.htm>, visited on 19 June, 1998).

<sup>103</sup> Kessler, C, supra, p.148.

<sup>104</sup> In reality, this *adat* or custom /culture is not restricted only to the relationship between a Malay subject and a Raja, but also to that of a follower and a leader, particularly a political leader. Thus, the notion of *setia*, (the anti-thesis of which is *derhaka*) dominates not only the traditional ruling class but also the leading Malay political party, UMNO.

<sup>105</sup> This was an incident in which Anwar Ibrahim alleged that he had been assaulted by the Inspector General of Police while the former was under ISA detention. He sustained injuries, some of which

nascent 'Reformasi' movement (now institutionalized into *Parti KeADILan Nasional*) are illustrative of the ironic interplay of 'traditional' and 'modern' cultural forces operating in Malaysia. With Mahathir, the advocate of *Melayu Baru* on one side, inconsistently<sup>106</sup> defending the old virtue of '*setia*' (the antithesis of which is *derhaka*) to one's leader, and Anwar, on the other, exemplifying the so-called 'modern' value of '*merdeka*', one need not have to go far in seeking for a fine example of the paradox of Mahathir's agenda. The dilemma of being a *Melayu Baru* without actually breaking with the past and with all those values attached to it, particularly those which govern the relationship between the ruler and the ruled, or for that matter, between a leader and a follower, is manifested in the proviso to clause 5 of Article 63 of the Federal Constitution, forbidding, as we have seen, advocacy of the abolition of the Raja institution.

Therefore, the question of "to be or not to be a *Melayu Baru*" is not a simple one. It involves the problem of choosing between the retention or abandonment of certain principles, some of which are fundamental to their (the Malays') historical and political existence. The *ketuanan Melayu*, for instance, is very much hinged upon the principle that the Malays were the first to have established themselves as civilized people of Malaya. That there has been a *Malay* civilization in the Malay Peninsula is said to be evidenced by the establishment of the *kerajaan*, the embodiment of all those 'fine' values that have come to be known as *adat*.

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were inflicted on his eye, thereby causing a black bruise. Thereafter, news of the assault and a picture of Anwar and his black eye made headlines in some local and foreign media.

<sup>106</sup> *Setia* (sometimes this word is accompanied by the word *taat*, such as in *taat-setia*, which serves to emphasize the degree of loyalty), is one of those concepts central to the Malay doctrine of sovereignty or *daulat*. Similarly, like *derhaka*, the value attached to it is essentially traditional in the sense that by

### 6.13 *Kerajaan* Within the New Paradigm

It may be noted that in their pursuit of Vision 2020, the ideologues of the new *bangsa* (that is, the *Bangsa Malaysia* which includes within it the *Melayu baru*) have omitted a discussion of the role of the *kerajaan*, the *ancien regime*, within the new scenario. While the position of the Raja institution may have become somewhat antiquated with the emergence of sophisticated issues such as globalization, or the multi-media super-corridor (that is, Malaysia's Silicon Valley), the fact that the *kerajaan* has not actually been declared irrelevant by the ruling regime must be analysed. Following the 1993 constitutional crisis and those which preceded it (the 1983 and 1988 constitutional crises), it might have been thought that the Rulers have no further significant role to play in Malaysian politics other than as mute observers from the royal stand. While such a view is attractive, nonetheless, the government's desire to create that 'nation of intent' called Malaysian Malaysia, suggests that some kind of commonality (perhaps embodied in the Rulers?) and capable of binding the people together, is necessary for that process.

Commonality has become a nagging issue in Malaysia as the desire to cultivate a Malaysian sense of 'oneness' among its citizens has intensified over the last few years. Ironically, however, discourses on those subjects relating to nation-building have rarely touched on the role of the Raja institution (in this context, the *Yang di Pertuan Agong*) as the unifying element the nation has been looking for. Now that the policy of making *Bahasa* as an instrument of unity and an agent of nation-building has been 'diluted' with the introduction of the Education Act 1995 and of the Private Higher Education Act, 1996, Malaysians seem to have no better choice

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tradition a follower has no option but to obey his leader. To do otherwise is a breach of that tradition, something and totally unacceptable to the Malays, especially in the traditional days.

than to invoke the nation's mantra, the *Rukun Negara* (National Pillars, or State ideology/philosophy), for a solution.

The *Rukun Negara*, which was formulated by the government in 1970, after consultation with the representatives of all Malaysian communities an effort to resuscitate national unity which collapsed during the 1969 racial riots, has as one of its principles *kesetiaan kepada Raja dan Negara* (loyalty to King and Country).<sup>107</sup>

The first principle is *Kepercayaan Kepada Tuhan* (belief in God). That 'loyalty to the King'<sup>108</sup> appears immediately after 'belief in God' indicates the degree of importance of the Raja institution to Malaysians as a necessary element in nation-building. There is no doubt that the *kerajaan* is culturally representative of the Malays. This is notwithstanding two points. First, the office of the *Yang di Pertuan Agong* was only relatively recently created and is a focus of their allegiance with the coming into operation of the Federal Constitution in 1957. Second, that the constitution endorsed, inter alia, Malay acceptance of the immigrant communities into their social, political and economic life as one people to be called Malaysians (later Malaysians).

Given that loyalty to the Raja is one of the principles enshrined in the *Rukun Negara* and that the latter is not an arbitrarily formulated code of national ethics, it is notable that little attention has been given to the Raja institution as an agent of nation-building. Yet as the *Yang di Pertuan Agong* has been constitutionally entrusted with

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<sup>107</sup> For a better insight of the *Rukun Negara*, see Ghazali Shafie, *Rukun Negara: A Testament of Hope* (Selected Speeches), Creative Enterprise Sdn.Bhd., Kuala Lumpur, 1985, especially pp.8-75.

<sup>108</sup> King here refers to the *Yang di Pertuan Agong* as Head of the Federation, and parallel to this institution of the *Yang di Pertuan Agong* as a constitutional monarch are the Rulers of the Malay States and the Governor, who as symbols of unity stand above politics.

the duty also to protect the legitimate interests of the non-Malays,<sup>109</sup> his role ought to be highlighted rather than marginalized as an irrelevancy in the discourses on *Wawasan 2020*, *Melayu Baru* or *bangsa Malaysia*.

Pursuing this point, it is noteworthy that in spite of the Raja institution appearing to be politically impotent following previous as well as recent constitutional amendments, the indispensability of this *ancien regime* to the constitutional system of Malaysia has not totally been ruled out. Apart from the proviso (supra) to Article 63(5), the *Rukun Negara* also affirms the significance of the *kerajaan* (that is in terms of its role as a unifying element of the diversified Malaysian society) to the modern Malaysian government. Their importance having been recognised by both the Constitution as well as by the *Rukun Negara*, the Rulers may indeed have a crucial role to play in the forthcoming millennium. For example, the opening page of the Second Outline Perspective Plan 1991-2000, the government's blueprint of a modern industrialized Malaysia (in which the *Wawasan 2020* and *Melayu baru* ideas are incorporated) begins with a Declaration of the *Rukun Negara*, whose provisions are detailed below.

#### 6.14 The *Rukun Negara*

It may first be noted that *Rukun Negara* is a succinct Malaysian recipe for nation-building. It is a declaration of the people's determination to re-build and re-unite as well as to strengthen the Malaysian nation, the unity of which had been marred by the 1969 racial crisis. The Declaration reads:

Our Nation, Malaysia, being Dedicated to:

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<sup>109</sup> Article 153 provides "It shall be the responsibility of the *Yang di Pertuan Agong* to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the

Achieving a greater unity of all her peoples;  
Maintaining a democratic way of life;  
Creating a just society in which the wealth  
of the nation shall be equitably shared;  
Ensuring a liberal approach to her rich and  
diverse cultural traditions;  
Our Nation, Malaysia , being dedicated to:  
Building a progressive society which shall be oriented  
to modern science and technology;

We, her people, pledge our united efforts to attain these ends  
guided by these principles:

Belief in God  
Loyalty to the King and the Country  
Upholding the Constitution  
Rule of Law  
Good Behaviour and Morality

One might say that *Rukun Negara* was an attempt at soothing the growing pains of the then newly-established Malaysian state,<sup>110</sup> as well as providing the antidote for the sores and grievances of the indigenous Malays who felt that they had been unjustifiably marginalized in their own country and by their own government. The ‘pill’ produced by *Rukun Negara* took the form of the NEP (New Economic Policy), especially ‘manufactured’ for correcting the imbalances<sup>111</sup> which resulted in the identification of certain economic groups with particular racial communities. The NEP therefore aimed at eradicating poverty irrespective of race and at restructuring Malaysian society, which had previously been ‘compartmentalized’, with certain ethnic groups dominating various economic functions and professions. All efforts towards achieving these goals were to be taken within the framework of the *Rukun*

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legitimate interests of other communities in accordance with the provisions of this Article.”

<sup>110</sup> Malaysia was formed on 16 September 1963

<sup>111</sup> These social, occupational and economic imbalances are said to have been generated by the economic policies of the Alliance government led by the first Prime Minister, the late Tunku Abdul Rahman.



*Negara*. This document is consequently as important to those involved in nation-building as (to borrow Hickling's term) a compass is to a seaman in rough seas.<sup>112</sup>

Secondly, *Rukun Negara* may also serve as a useful aid to the interpretation of the Federal Constitution. Having incorporated within it the ideals of a constitutional government, such as the rule of law and supremacy of the constitution, the *Rukun Negara* would be an effective tool for a peaceful evolution or development of those constitutional principles previously revised and redefined<sup>113</sup> in the wake of the 1969 racial crisis. Matters relating to 'equality' and 'democracy', for instance, might require a fresh interpretation, one that is quite different from that elucidated in the NEP. Indeed, as *Wawasan 2020* envisages a "confident Malaysian society infused by strong moral and ethical values, living in a society that is democratic, liberal and tolerant, caring, economically just and equitable....", it may be appropriate for those who are genuinely interested in building a united Malaysian Malaysia to invoke the *Rukun Negara*. By sharing their focus of allegiance in the one and the same King, Malaysians may at least minimize, if not eradicate, the cultural and religious differences that have for a long time divided their society.

### **6.15 The Traditional '*Pelindung*' versus the Modern 'Protector'**

Needless to say, from the practical point of view, *kerajaan* may not be as potent as are elected politicians. However, the fact that the existence of the institution has been

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<sup>112</sup> See Hickling, *Suatu Tinjauan Umum Mengenai Perubahan Perlembagaan di Malaysia: 1957 – 1977*, in *Perkembangan Perlembagaan Malaysia: Perkembangannya: 1957 – 1977*, Tun Mohamed Suffian, Lee, H.P and Trndade, F.A (eds), Penerbit Fajar Bakti Sdn.Bhd., Petaling Jaya, Malaysia, 1987, p.15 (a translated version of *The Constitution of Malaysia: Its Development: 1957 – 1977*, Oxford University Press, 1978).

<sup>113</sup> See Hickling, R.H, *ibid*; and also Means, G.P, *Malaysian Politics: The Second Generation*, Oxford University Press, Kuala Lumpur, 1991, p.25, for the meaning of 'equality' and 'justice' under the NEP. Means observes that these words "were defined not in terms of overall patterns of distribution

included as one of the vital principles for the creation of a Malaysian nation-state signifies that its 'invisible' strength should not be underestimated. By incorporating the *Rukun Negara* into the Second Outline Perspective Plan, the government is indirectly cueing to all Malaysians that *setia* or loyalty to the Raja still forms an essential part of the recipe for a modern industrialized Malaysian nation. Since prosperity may only be feasible if the people are united and the nation is politically stable, some focus is necessary for the citizens to direct their allegiance and unity. The King, whose position, at least in theory, stands above party politics, is therefore the best person to be able to act as a focus of the nation's loyalty, unity and integrity. He will be the nation's voice of moderation and moral authority, especially in expressing national feelings in times of joy and sorrow.<sup>114</sup> As the *Yang di Pertuan Agong* must be drawn from among the Rulers, it therefore follows that the *kerajaan*, which exists at the State level, must be preserved. In this way, it has not only served as a bridge which links the nation's present with its historical past but also acted as a "power-plant" which generates the strength needed for the creation of a future united Malaysian Malaysia.

To what extent the Malay Rulers could effectively serve as 'protectors' of the *bangsa Melayu* as well as the rest of Malaysian citizens would depend on how well the Sultans (in this context, in their collective capacity as the Conference of Rulers) and the *Yang di Pertuan Agong* could fortify themselves and the Raja institution from further constitutional encroachment of their powers by the elected government. In the light of the royal immunity crisis, one might argue that the traditional Rulers

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of wealth or through fostering individual equality of opportunity, but rather on the basis of the aggregate distribution between ethnic communities of wealth, jobs, and economic power").

<sup>114</sup> Barnett (ed), *Power and the Throne: The Monarchy Debate* (1994), quoted in Aziz Bari, *supra*, p. 33.

were in a vulnerable position vis-à-vis the legislatively powerful *Barisan*-dominated parliament. On the other hand, it could also be argued that given the increasing interest of Malays in Islam (manifested by the growth in number of Malays in the Islamic-oriented party, PAS), the Rulers, being heads of the Islamic religion in their states might provide a better alternative<sup>115</sup> as *pelindung* (protectors) of the *bangsa Melayu*<sup>116</sup> than that offered by the secular UMNO.

Thus in their pursuit of "modernity", involving shedding the old images of their feudal days, Malays have ironically been urged to cling on to that traditional element of their culture, loyalty to the Raja. Since the deeply-embedded Malay concept of *taat setia* (loyalty) to a Raja, a leader or authority is not compatible with modern values of liberty, the Malays are in danger of being trapped between the demands of tradition and those of modernity. Though Malay perception of the *kerajaan* may have markedly changed in terms of their reduced deference to the institution, the bond that exists between the Malay *rakyat* and their Raja has not yet been absolutely extinguished.<sup>117</sup>

Despite the emergence of the new Malay middle class, whose social and political existence is expressed, not through the idiom of the Raja, but through that of the

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<sup>115</sup> In the sense that as heads of the Islamic religion, the Rulers possess a less secular image, a quality which would attract wider support from the presently confused Malay society, especially after the dismissal of, arguably, the most 'religious' figure in UMNO (Anwar Ibrahim) from the party and from the government in late 1998. Therefore, given that Islam is so intricately intertwined with Malayness, it is quite likely that the Malays would turn to the more religious (Islamic) figure in moments of distress and confusion.

<sup>116</sup> The fact that the *Gerak* movement (which comprised of Malays and non-Malays from the NGOs and the opposition parties) turned to the *Yang di Pertuan Agong* for his interference in the wake of the political crisis in 1998/99 illustrates that the non-Malays' too perceived the *Yang di Pertuan Agong* as the protector of not only the *bangsa Melayu* but also of the *bangsa* Malaysia.

<sup>117</sup> During the 1993 constitutional crisis, the Malays of Pahang (about five thousand of them) had gathered at the Kuantan airport in a show of support for their Sultan who was about to leave for Kuala Lumpur to attend the meeting of the Conference of Rulers. The cries of *takbir* (a sign of support) that

corporate world, the cementing force between the Ruler and the ruled seems to have remained intact. The “yuppies” may be contented with their corporate image (generally characterized by expensive branded and designers’ goods, and an inclination to converse in English rather than in *Bahasa*). However, with their corporate empires being torn apart by the economic catastrophe, the best haven to turn to now is perhaps the *kerajaan*.<sup>118</sup>

The economic downturn has no doubt adversely impacted upon the newly created Malay middle class,<sup>119</sup> not least the government, in a manner never seen before. Although it was suggested that the influence of the middle-class Malays (who were normally characterized by their corporate image) in UMNO was on the wane,<sup>120</sup> it is difficult to say with precision the extent to which their impact on the party has actually diminished, and to what extent their own confidence in the UMNO (the self-

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accompanied his departure were said to be reminiscent of the 1946 protest against the Malayan Union (*Harakah* 18 January 1993).

<sup>118</sup> Some of the Malays who benefited from the NEP through political ties and connections (they are labelled by PAS as UMNO-*putra* (in other words the cronies of UMNO) as opposed to *Bumiputra* (or sons-of-the-soil), have begun to feel the severe heat of recession. In moments like this, allegedly only a fraction of them was ‘saved’ from the ‘heat-wave’ through the goodwill of their patron. Whilst others have had to struggle on their own. The left-outs are those who do not belong to the ‘rich and famous’ circle (that is, the entrepreneurs) within UMNO, and whose link with the highest echelon of the party is not strong enough to place them under the party’s shelter.

<sup>119</sup> The Malay middle class had limited influence during the early years after independence when the aristocratic-bureaucratic leadership of UMNO enjoyed the overwhelming support of rural Malays, who regarded the party as the defender of the Malays against the Chinese. But with the restructuring of the country’s economy, the Malay middle class became the main beneficiary of the NEP and continued to support the party. However, this section of the Malay community had their own political aspirations. Armed with high education and strong economic standing, they began to view differently the ruler-ruled/leader-followers relationship. A number of them were big tycoons who emerged successfully into the society during the 1970s and 1980s, not through a gradual building up of their businesses, but through political affiliation with UMNO. Unlike rural Malays, who usually respected the right of established leaders to lead, the Malay middle class members of UMNO, who were largely city-dwellers, were prone to confrontation with the established leaders. Obviously, their politico-cultural outlook was very much influenced by their economic strength as manifested through intra-party conflicts resulting from competitions for party posts in the 1980s and 1990s (for further reading on the profile of Malay middle class, see Crouch, H, *Government and Society in Malaysia*, Cornell University Press, Ithaca, 1996, pp.193, 114 &115).

<sup>120</sup> In an interview by the editor of the *DETIK* magazine on 27 November 1998, Rais Yatim (a former cabinet minister) believed that UMNO was now trying to disassociate itself from this group (see *Suara Reformasi Rakyat* (the People’s Voice of Reforms), <http://www.majalah.com>, visited on 30/11/98 at 10.08.

proclaimed 'protector' of the Malays) has been eroded as a result of the economic crisis. But the "clients'" perception of their "patron" since the economic crisis might have well been reflected in their speeches during the 1997 UMNO General Assembly.

At that assembly the unprecedented call to end cronyism, nepotism and corruption within the party and the government, raised by the then UMNO Youth leader, Zahid Hamidi, marked the beginning of yet another new era in modern Malay politics. The call demonstrated a different sense of Malay perception of leadership or rulership. Hence, it suggests that there exists a strong conviction among UMNO Malays themselves to reject the party's claim that it is the sole 'protector' of the Malays since *Merdeka*. For, with only a section of the Malays receiving that protection,<sup>121</sup> the rest it was hinted, might be forced to seek refuge elsewhere. Following the worsening of the intra-party conflict in the wake of the fate that befell the party's ex-Deputy President and Deputy Prime Minister, Anwar Ibrahim, a genuine 'protector' for Malays seems elusive. As one prominent scholar of Malay culture has suggested, the Malays might look up to their Rulers again if the latter could rebuild their image as Heads of the Islamic religion (such as by conforming to good moral and religious values).<sup>122</sup> It is not surprising therefore to see Malay political parties, be it PAS or UMNO, trying to portray themselves as the champion of the Malays by identifying

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<sup>121</sup> See Gomez, E.T, Ownership Patterns, Patronage and the NEP, in Malaysia: *Pandangan Kritis* (Malaysia; A Critical View): Essays in Honour of Syed Husin Ali, Muhammad Ikmal Said and Zahid Embi (eds), Persatuan Sains Sosial Malaysia, Petaling Jaya, Selangor, 1996, p.143; and Khoo, K.J, The Grand Vision: Mahathir and Modernization, in Kahn, J.S and Loh, K.W (eds), *Fragmented Vision*, supra, p.56; see also, Maznah Mohammad, Can UMNO Survive? <http://www.reformasi.com/fellow99/4-3-maznah.htn>, visited on 29/8/99 at 17.40.

<sup>122</sup> A personal conversation with Dr.Ulrich Kratz, Head, Department of the Languages and Cultures of Southeast Asia and the Islands, School of Oriental and African Studies, London.

with the hereditary Rulers, who are traditionally and constitutionally considered as 'protectors' of the *bangsa Melayu* and Islam.<sup>123</sup>

Paradoxically, and notwithstanding UMNO's attempt to reduce the power of the Rulers, the party's leadership was aware of the benefit of winning the Rulers over to their side. Thus by recently appointing the party's former presidential contender (Tengku Razaleigh Hamzah, an uncle of the Sultan of Kelantan) as Kelantan<sup>124</sup> UMNO's branch leader, it may be speculated that such a gesture was aimed at appeasing the Ruler to favour UMNO. As past events had already illustrated, the Sultan's support for a party would increase the likelihood of its victory in the election. After several 'cold-wars' with the *ulamas*<sup>125</sup> (Malay Islamic jurists), the party may be trying to mend its 'unIslamic' image by aligning with the Sultan, the State's Head of Islamic religion.<sup>126</sup>

## 6.16 Conclusion

Thus, although many would have doubted the strength of the *kerajaan* after the successive curtailments of the power of the Rulers by the Federal government, there might still be some room left for the Sultans to exert whatever influence is left to them. Perhaps, as the confidence of Malays in their modern 'protector' is declining, their faith in the traditional Rulers might be restored, especially if the latter were an

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<sup>123</sup> For an interesting analysis of the identification of Malayness with the Rulers, see Jomo, K.S and Shabery Cheek, Malaysia's Islamic Movement, in Kahn, J.S and Loh K.W, (eds), *Fragmented Vision*, supra, p.98.

<sup>124</sup> Kelantan is a state well known for its Malayness, and the Sultan is seen (especially by UMNO) as a very influential figure in determining the political direction of the Malay *rakyat*.

<sup>125</sup> For instance, the Prime Minister's rejection of the idea of implementing the *hudud* (Islamic criminal law) championed by PAS was seen by the religiously-oriented Malays as an act of defying the laws of Allah. His cynical comments on those who are well-known for their religious knowledge and reputation had also aroused anger among certain sector of the Malay community.

ally or a sympathizer of an Islamic-oriented party. In hindsight, one might suggest that the *kerajaan* has not been made obsolete after all. The Rulers' usefulness has also been reflected in recent events (September 1998) following the arrest of Anwar Ibrahim. The *Gerak* movement (a coalition of political and non-political bodies formed in the wake of Malaysian political chaos to demand justice from the government in their handling of the Anwar issue) sent a memorandum to the *Yang di Pertuan Agong* imploring him to interfere in the matter as all other options had been unworkable.<sup>127</sup> How far this move transgressed the normal dispute-settling procedures or constitutional norms may not be the issue. The fact that the traditional political institution was approached in a bid to resolve a modern political fray is something upon which to ponder.

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<sup>126</sup> Mahathir was reported to have visited the Sultan of Kelantan (who was blatantly and harshly criticised by Mahathir in the 1993 constitutional crisis) at the latter's palace in July 1999 (see *Eksklusif*, 2-8 August 1999).

<sup>127</sup> [http://members.tripod.com/-Anwar\\_Ibrahim/memoraja.ht](http://members.tripod.com/-Anwar_Ibrahim/memoraja.ht), visited on 27 October 1998, at 18.43.

## CHAPTER 7

### The Anwar Factor

#### 7.1 Introduction

As if the 1993 constitutional crisis were not controversial enough to set the nation on an extraordinary journey into the unpredictable era of Malaysian politics under the Mahathir regime, the latest political development, is proving even more astounding as it took not only the country but also the international community by surprise. For the dismissal, arrest and assault in late 1998 of Anwar Ibrahim, the former Deputy Prime Minister and apparent successor to the Prime Minister, Mahathir Mohamad, has violently shaken Malay society in particular, and the entire Malaysian community in general, in a most unprecedented and inconceivable manner.

This episode, allegedly the most scandalous political fray in Malay and Malaysian history has not only introduced new climate in Malaysian politics, but has also created further, a series of constitutional controversies involving, inter alia, the executive and the independence of the Malaysian judiciary. Anwar's case puts everyone, the Prime Minister, Cabinet members, the courts, the police, the *Yang di Pertuan Agong*, and, most importantly, the people, to the severest test of religious, legal and moral conscience.

#### 7.2 Background to the Anwar - Mahathir Feud

As if the domino theory were proving itself right, the economic downturn, which began in Thailand in 1997, almost immediately crossed the Thai border into the



territories of its ASEAN neighbours, landed and settled there for some time before continuing its journey to the rest of the East Asian regions and other parts of the world. No one could reasonably have predicted the tremendous impact that this catastrophe might have on the once so-called 'Asian Tigers' and 'Asian little Dragons', those economies which had amazed the world with their phenomenal economic growth in the recent past. The meteoric rise and fall of Malaysia's economy ironically mirrored the manner in which Anwar ascended, and later fell from, his political ladder in UMNO, the largest Malay political party since *Merdeka*.

Some political observers<sup>1</sup> claimed that economy was among those factors which underlay the turbulent relationship between the Prime Minister and his heir-apparent. Whatever the cause, it precipitated an unprecedented political disaster threatening the end not only of Anwar's but also of Mahathir's, political career. We suggest that from various indicators<sup>2</sup> which prevailed during this period of turmoil, Malaysia's political future appeared to be vulnerable and unstable. While many believe that their clash over monetary policy and over approaches to settling the dire economic conditions were the causes of the conflict, others were convinced that conflicting political perceptions of the two men, combined with other personal grievances, were the root of the dispute. At a glance, looking at the manner and circumstances in which Anwar was accused and arrested, and later mistreated by the detaining authority, and also at the government's (notably, that of Mahathir's) reaction to those

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<sup>1</sup> See <http://www.reformasi.com.bahasa/bweek91198.htm>, visited on 25/08/99 17.19

<sup>2</sup> For instance, the swing of mood (that is from pro- to anti-UMNO) among the Malays, not only among the non-UMNO, but also among the UMNO members themselves, indicated a split within the party, which might undermine the chances of the coalition government winning in the 1999 general election. The increased number of UMNO members and supporters leaving the organization for the

incidents of ill-treatment inflicted on the ousted Deputy Prime Minister, it might be easy to conclude that it was politics which lay at the heart of the conflict. Although no one knew exactly what the real reasons were behind the Mahathir-Anwar's conflict, one might suggest that it represented a clash of culture, with Anwar representing that of an open society and Mahathir, of the opposite.

### 7.3 A Prelude to the Political Crisis

The political crisis that has taken Malaysia to this unprecedented level began between 1997 and 1998 in the period leading up to the UMNO General Assembly.<sup>3</sup> This was a period during which the Asian economies came to a standstill. There was chaos in the Thai, Korean, Indonesian, Hong Kong, and Singapore stock markets, and Malaysia was one of those hardest hit. It was an overnight loss and a nightmare not only for the stock traders, but also for the government. Worries seemed to have seeped through the government and those affected. The government's challenge was how to rescue the situation and restore not only the investors' confidence, but more importantly, the people's faith in the government.

These worries were taken up at the 1998 UMNO General Assembly. Issues of cronyism, nepotism and corruption, perceived by some within UMNO to be the reasons for the economic woes, were quickly, clearly and openly raised as noted in Chapter 6, by the then UMNO Youth Wing leader, Dato' Zahid Hamidi (also known to some as 'Anwar's lieutenant'). Zahid, apparently voicing his mentor's view,<sup>4</sup>

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opposition parties, especially PAS, led many political observers to believe that there would be chaos and political instability akin to that of the 1969 race riots.

<sup>3</sup> IMPACT magazine, published by News and Media Ltd., Vol.29, No.5, May 1999, p.20.

<sup>4</sup> 'Zahid Mohon Maaf Kepada Dr.Mahathir' (Zahid Pleads Forgiveness from Dr.Mahathir), reads a headline in *Berita Harian*, which relates that Zahid confessed to having been 'used' by Anwar to raise the issues of cronyism, nepotism and collusion at the UMNO General Assembly in 1997 (see,

might have expected that his speech during an earlier assembly (UMNO Youth Assembly) would be received by the party's President (Mahathir) without any taint of suspicion of ill-intention.<sup>5</sup> He was grievously and dangerously mistaken. His 'tradition-breaking'<sup>6</sup> speech was followed by refutations by the Prime Minister who admitted ingenuously that, yes, there was cronyism but that the cronies were those who had received benefits from the government public investment scheme, such as the PNB (*Permodalan Nasional Berhad* or National Equity Corporation), and not least the younger politicians themselves, like Zahid Hamidi, who was known to have been on the board of several companies and banks.<sup>7</sup>

There followed much speculation and many allegations within the party itself and without, that something has gone 'unusually' wrong between the 'number one' and the 'number two' men. Yet, 'unusualness' (in terms of Mahathir's ways of dealing with economic, political and constitutional problems)<sup>8</sup> has become a trademark of Malaysian politics ever since Mahathir came to power. The rationale<sup>9</sup> for the dismissal of his heir-apparent, the measures taken by Mahathir to forestall the perceived aggressive attacks on the Malaysian currency by currency speculators, his

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<http://www.jaring.my/bharian/mon/nadia02.htm>, visited on 21/06/99 17.08; see also MASSA, Bil.170, 26 Disember 1998 - 1 Januari 1999, p.42; and also see *Utusan Malaysia*, [http://www.utusan.com.my/utusan/archive...utusan\\_malaysia/front\\_page/fp1\\_full.htm](http://www.utusan.com.my/utusan/archive...utusan_malaysia/front_page/fp1_full.htm), visited on 25/06/99 14.35.

<sup>5</sup> His caution was reflected in his response to journalists' questions regarding his speech. He said that he was not referring to anyone in particular, and therefore hoped that his speech would not be misunderstood (see *Berita Harian* Online, <http://www.jaring.my/bharian/fi/ne031.htm>, visited on 06/19/98 21:16.18

<sup>6</sup> It was a 'tradition-breaking' speech because up to that moment there had been hardly anyone who dared to speak his mind so publicly and controversially against the party leadership, and to level (albeit indirect) indirect accusations hurled at Mahathir's government in the way that Zahid did.

<sup>7</sup> IMPACT, *supra*, p.21.

<sup>8</sup> The abolition of personal royal immunity of the Malay Rulers is one example.

<sup>9</sup> For instance, to link someone with a religious personality like Anwar Ibrahim with the alleged act of sodomy is indeed unusual. However, Mahathir chose sodomy as his reason for dismissing his Deputy.

obsession with mega-sized projects<sup>10</sup> were all an indication of this 'unusualness'. But the irony lies in the fact that on occasions, the results of his actions or decisions appeared to justify his defiance of all critiques and condemnations.<sup>11</sup> Whether the outcome of this particular political decision (dismissing the Deputy Prime Minister) will justify his defiance of the furious criticism levelled against him by local as well as international community,<sup>12</sup> is yet to be seen.

As the animosity between Mahathir and Anwar intensified, the whole of the Malaysian nation was taken aback by the news of the latter's expulsion from office and also from the party. Some suspected that it was Anwar who started the fire by adopting measures (which some called 'virtual IMF' measures) that contradicted his mentor's policy in counter-acting the economic crisis.<sup>13</sup> Others believed that the dismissal was politically motivated and that the economic crisis was just one of the straws that broke the camel's back. Whichever way one looks at it, and despite the absence of any concrete and documented evidence, the central issue seems to

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<sup>10</sup> Such as the Bakun hydro-electric project, the Petronas Twin-Towers (the tallest tower buildings in the world), and the new Kuala Lumpur International Airport (the largest airport in Asia).

<sup>11</sup> For instance, Mahathir's view regarding the need for effective control over the global financial system was finally accepted by those who had previously condemned his idea as a 'recipe for disaster' (such as George Soros, the financier, who finally admitted that the "arch-enemy of an open society is no longer the communist threat but the capitalist one.... it is wrong to make survival of the fittest a leading principle in a civilized society..." (extracted from Chan, C.K, Health and Development Towards the Millennium – Reinventing government, or the Demise of Community?, <http://www.gerakan/htdocs/html-dir/speeches/spriv002htn>, visited on 31/07/98 at 13.01

<sup>12</sup> This is evident from the fact that the NGOs, the Opposition parties, students' organizations, the Bar Council, the *ulamas* (Islamic religious teachers), and also Christian organizations, were reported as having opposed strongly the arrest and dismissal of the Deputy Prime Minister. Reports of such instances may be obtained from various internet sources as well as weeklies such as *Harakah*. Criticisms by ASEAN leaders such as the former President Habibie of Indonesia and President Estrada of the Phillipines, and also by the United States Vice-President Al Gore (see Utusan On-line, <http://www.demonstrated> the degree of opposition against the manner in which Mahathir dealt with Anwar's dismissal.

<sup>13</sup> During a Cabinet meeting held on 3 December 1997, Anwar is said to have decided to adopt an austerity plan similar to the one taken by Thailand and Indonesia. This took place without the knowledge of Mahathir who by the time of his arrival for the meeting found that his second-in-command had virtually concluded business without him. Though initially agreeing to go along with the decision, Mahathir soon decided to proceed with two mega-projects costing USD2.7 billion. This

have been a power struggle. It was as much political as it was economic. But what is unique about Anwar's case is that unlike the past episodes of trials of political strength, such as the Razaleigh versus Mahathir affair (1987), or the 1983 constitutional crisis (the limitation of Agong's power to assent to Bills), or even the 1993 battle-royal (1993), the present struggle was not exclusively a 'Malay affair'.

Anwar's dismissal, his arrest and the way he was being treated by the police while in detention, together with the government's apparently indifferent<sup>14</sup> attitude towards the beating inflicted on Anwar, transformed what could have been a personal and an intra-party feud into a national or, in other words, a 'Malaysian affair'. The lines of distinction between the different ethnic groups appear to have been obliterated.<sup>15</sup> Now the whole episode is being perceived not from any ethno-religious prism but from a much wider perspective, universal justice, human rights and democracy.

The developments following Anwar's detention unleashed the once-dormant public feelings of resentment against the government's attitude towards justice and the constitutional rights of the people.<sup>16</sup> The public outcry against the alleged abuse by the government of certain institutions such as the judiciary, the police and the media, might suggest that Malaysian society is undergoing a process of change in its political, cultural and racial attitudes. The rally of the *rakyat* (including the non-Malays) in support of Anwar on the day of his arrest and after, demonstrated the

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undermined his Deputy's decision and the rift between them grew wider apart. (<http://www.20.apc.org.au/malaysia/democracy/articles/981106-feud.ht>, visited on 21/06/99 18.55)

<sup>14</sup> When asked about the assault inflicted by the Inspector General of Police on Anwar while in detention, Mahathir replied that the injuries sustained by Anwar could have been self-inflicted or that he might have provoked the attack ([http://www..majalah.com/books/pemuda/misteri\\_lebam\\_mata/al.htm](http://www..majalah.com/books/pemuda/misteri_lebam_mata/al.htm), visited on 22/08/99 13.20).

unprecedented strength of Malaysians' sympathy and unity, creating the kind of feeling among them that transcended all communal barriers.<sup>17</sup>

Chinese, Malays, Indians, Muslims and non-Muslims alike,<sup>18</sup> joined forces by setting up political and non-political movements, calling for complete democratisation of Malaysian government and of society. Cronyism, nepotism and collusion had become the target of their attacks. "The government has to change", said Anwar, a few weeks before his arrest. He indicated that the old trend or feudal style of the ruler-and-ruled relationship must definitely go for the sake of democracy, and to this end there must be reforms. During that period of political unrest the populist's cry of '*reformasi*' became the buzz word among Malays, especially among those of the younger generation, such as university students.

The term '*reformasi*' was first coined as a populist slogan in the wake of the Indonesian political crisis which resulted in the downfall of the Suharto regime a few months prior to Anwar's arrest. It was reported that the manner in which President Suharto was ousted from office, and the same mantra (cronyism, nepotism and corruption) delivered against him by the Opposition, sent an alarm signal to his

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<sup>15</sup> See <http://www.pas.org.my/pas/harakah/al19981012/1019b9o07ibnu.htm> visited on 26/10/98 18.18

<sup>16</sup> *The Guardian*, 24 September 1998.

<sup>17</sup> *The Sunday Times*, 1 November 1998.

<sup>18</sup> For instance, a group calling itself 'Concerned Christian Citizens' issued a leaflet entitled 'An Open Statement from Concerned Christians' and distributed copies of it to its members, and urged the people to rethink the meaning of loyalty. It says, among other things, "The meaning of loyalty is now being subjected to fresh question owing to the extraordinary chain of events being forced on the country. If there can be a genuine debate on the issue of loyalty, the country will be the ultimate winner." It further adds that, "Justice and righteousness are what makes a nation great, not monuments of concrete and steel made by human hands." (see <http://www.pas.org.my/pas/harakah/semasa/1023b3e05htm>, visited on 26/10/98 at 18.15).

counterpart across the Straits of Malacca that there was a 'clear and present danger' that such a reaction was likely to happen in Malaysia.<sup>19</sup>

The symptoms of this 'danger' were apparently surfacing. Zahid's speech, Anwar's attitude towards the global market and his idealism about administrative transparency, the overt conflict of policies<sup>20</sup> and his perception of the causes of the economic meltdown, which contradicted Mahathir's, were all indicating that these two leaders were not moving in the same direction. Mahathir believed that the present style of governance was sufficiently efficient to ward off what was perceived by him as neo-imperialism by foreign powers through economic forces.<sup>21</sup> His Deputy, on the other hand, believed that the world is changing and that certain ways and concepts needed to change in order to keep pace with the tempo.<sup>22</sup> The conflicting economic and political outlook between them has ostensibly turned these former allies into one of the country's formidable foes.

#### 7.4 Malay Political Culture in Tension

'*Reformasi*' may of course mean different things to different people. To the younger generation it might mean a huge leap forward to a better future but to the older

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<sup>19</sup> See *Business Week* (Asian Edition), November 9, 1998, p. 6 (see also CNN.Chronology of Malaysian political turbulence, January 16, 1999, <http://cnn.com/WORLD/asiapcf/9901/16/anwar.chronology/index.htm>, visited on 01/06/99 11.41)

<sup>20</sup> For example, Mahathir prefers to extend the 'life line' by bailing out certain companies, while Anwar favours stringent measures by cutting public spending and increasing bank interest rates (see *BusinessWeek*, [reformasi.com](http://reformasi.com), supra).

<sup>21</sup> Mahathir's idea of neo-imperialism by means of economic strategies is perhaps best summed up in his latest book, *New Deal For Asia*, Pelanduk Publications (M) Berhad, Subang Jaya, Selangor, Malaysia, pp. 47-65.

<sup>22</sup> As Anwar says later, "We are in the age of globalization and in the midst of an information explosion. In order to meet the challenges that come with these changes, we too must change. The time to reform is now. And we need a clear agenda. We ourselves are the ones who determine the means, method, tempo and pace of reform. It is dissatisfaction within – not external pressure—that urges the call for reform. It is narrated in the Quran that the Prophet Shu'ayb says: "I desire only betterment, to the best of my power" (Quran:11, 88)." (extracted from the translated transcription of

generation it might mean a threat to their comfortable status quo. The dramatic events in Indonesia impacted upon the Malays in Malaysia in the sense that their formerly complacent attitude towards power, politics and leadership had now been 'activated' to the extent that they have become openly critical of their leaders. This culture, that is the culture of unquestioning loyalty to the ruling authority, was, as noted previously, created in the past by the *kerajaan* system, but later repeatedly resurrected and re-emphasized by the modern UMNO leaders,<sup>23</sup> such that it has become a salient feature of the present constitutional and political system of Malaysia.

The special legislative powers conferred on the legislature and on the executive under Articles 149 (concerning powers of Parliament to legislate laws against subversion and against action prejudicial to public order) and 150 (concerning powers of the *Yang di Pertuan Agong* to proclaim the state of emergency) of the Federal Constitution at the inception of the Federation, which are maintained right up to this date, and the various draconian statutes such as the Internal Security Act 1960 (ISA) provide clear testimony that the feudal Malay political culture of blind loyalty was, until the Anwar episode, far from over. The vast discretionary powers exercisable by the executive under laws made by virtue of those two constitutional provisions, coupled with the exclusion of judicial review over the exercise of those

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Anwar Ibrahim's press statement delivered on the afternoon of 3 September, 1998 at his residence at Jalan Setiamurni 1, Kuala Lumpur).

<sup>23</sup> Interestingly, this *derhaka* concept was recently brought up by Dato' Rais Yatim, one of the former UMNO leaders and an ex-Cabinet Minister, in his comment on the prospect of Datin Dr. Wan Azizah (Anwar's wife and now the President of *KeADILan* party) joining forces with the DAP against Mahathir and his government. The issue of Malaysian Malaysia advocated by DAP is perceived by UMNO as an insult to the Malay special position as indigenous people of the country. Therefore by teaming up with the DAP, Azizah was considered as committing an act of *derhaka* to the *bangsa Melayu*. This comment is obviously related to the issue of Anwar's arrest, and it was made in defence of the government's actions in the handling of the whole affair (see *Utusan Malaysia*,



powers, may be interpreted as *daulat* in the modern sense. By making the executive judicially unassailable under those laws, the legislature is in effect insulating the incumbent from being legally challenged by the masses.

Thus when Anwar broached the presently (in)famous issues of kroni, kolusi *and nepotisme* (or 'kkn' as they are popularly referred to by the proponents of 'reformasi') in his speech at the Johor UMNO Convention on Sibul Island in September 1998<sup>24</sup>, he has actually struck at the very core of the whole political system. Thus while it may be argued that Mahathir wished to terminate the feudal attitude as far as the relationship between the masses and the traditional Rulers or the traditional *kerajaan* was concerned, that may not have extended, some believe, to the *rakyat's* relationship with the ruling coalition party, or more precisely with the UMNO party (that relationship, of course, constituted a modern *kerajaan*, with the *rakyat* linked to the *pemerintah* or ruling authority).

### 7.5 The New Raja and the Modern *Kerajaan*

With the introduction of the federal system, whereby the Rulers agreed to accept their new position as constitutional rulers within the post-war political setting after the end of colonial rule in Malaya, it means that the absolute power of *kerajaan* which they had enjoyed previously was now being significantly reduced. Some political power was transferred to the elected coalition party, with the largest share possessed by UMNO. Thus, the 'raja' is effectively the party leader, and the real

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[http://www.utusan.com.my/utusan/archive...utusan\\_malaysia/front\\_page/fp1\\_full.t](http://www.utusan.com.my/utusan/archive...utusan_malaysia/front_page/fp1_full.t), visited on 26/05/99 11:50).

<sup>24</sup> The Straits Times Interactive - Welcome to Regional News, [http://straitstimes.asia1.com/anwar/anwar4\\_0904.htm](http://straitstimes.asia1.com/anwar/anwar4_0904.htm), visited on 27/10/98 18.55.

*kerajaan* is constitutive of those who are chosen by the President of the party as members of his Cabinet.

In order to ensure a smooth running of the country, the *kerajaan*, in other words, the government, must be strong and powerful. A strong majority in the *Dewan Rakyat* is therefore a necessity for the purpose of maintaining a stable and an effective government; but uncompromising support, which means absolute loyalty of party members, is quintessentially a useful ingredient for the making of a confident party President and Prime Minister, that is, one, whose government is able to offer 'protection' against internal and external threat, to its supporters and to the people.

The image of a 'protector', as head of the *kerajaan* therefore, has to be projected more prominently than ever as the challenges of modern age mount each day. 'Protection' in this case, however, takes in the form of manifesto pledges. As Malay, or even Malaysian, political culture is markedly characterized by the patron-client relationship<sup>25</sup>, a legacy inherited from the traditional *kerajaan* days, this protection is, in the contractual sense, a 'consideration' upon which the 'offer' of leadership and the 'acceptance' of loyalty are made. However, the 'contract,' once concluded, will confer on the 'offeror' an almost unlimited power over the 'acceptor' until the matter is renegotiated at the expiry of the five-year period when a fresh election is normally held. At this point, the 'protection' and the 'absolute loyalty' themes will be played and replayed once again in a bid to woo the supporters. The tune of the '*pantang Melayu menderhaka*' (it is not the custom of the Malays to be disloyal to

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<sup>25</sup> For an interesting analysis of this political characteristic of Malay culture, see Crouch, H, Authoritarian Trends, the UMNO Split and the Limits to State Power, in Kahn, J.S and Loh, K.W, supra, p.27.

the ruler) will thus be hummed by the UMNO party leadership while the rest of the coalition members will join in the chorus.

But nature is such that a repetition of similar things or ideas will eventually lead to exhaustion and boredom. As new ideas come flooding in via the variety of channels made available by modern technology, such as the internet, Malays and Malaysians are looking for better alternatives, especially when promises of protection offered at the time of every election fail to be delivered. Where inducements or manifesto pledges have reached only a section of the community, those others who have given their full loyalty to the government may feel marginalized and discriminated against.<sup>26</sup>

Nonetheless the 'unprotected' ones rarely spoke out against the leadership for fear of invoking the wrath of *kerajaan*, or of being labelled *derhaka* to the leadership, the party, the *bangsa* and the *negara* (nation). Where *derhaka* in this context is not merely confined to an act of betraying the ruling authority, but also the Malay sense of nationhood. As history and Malay *hikayats* have already illustrated, '*derhaka*' did not originate from, nor was instigated from the *rakyat* class but from within the ruling circle itself. Hence Anwar, the modern day 'villain' or Jebat, has fulfilled that traditional task, *derhaka* against a *kerajaan* of which he is, or rather was, a part.

### **7.6 *Derhaka* Redefined**

Although Jebat attempted to redefine the feudal concept of *derhaka* some five hundred years ago, his ideas were unacceptable by that generation. '*Raja adil Raja di*

*sembah, Raja zalim, Raja disanggah*' (a just Raja shall be obeyed, but a tyrant ruler shall be rejected) found no place in the hearts of the *rakyat* in the traditional Melakan days. However, as the process of modernization accelerated, and as Malay society became more acquainted with new ideas, such as civil rights and liberty, this feudal concept began to lose its appeal. Anwar's episode set the pace for an unprecedented display of change in perception of the feudal concepts of *taat-setia, derhaka* and *kerajaan* itself. In a press statement before his arrest Anwar declared that:

"People want change. God will not change a people's condition until they change that which is in them....We have just celebrated our 41<sup>st</sup> year of independence. But merely celebrating freedom is not enough; it is more important to live it. We have to be free politically, economically and culturally. We must be free from foreign oppression. But what is the meaning of independence when foreign oppression is replaced by oppression by your own people?"<sup>27</sup>

What Anwar was actually saying is that Malaysians, particularly Malays, had to realize that freedom from foreign rule was meaningless if the *rakyat* were not willing to free themselves from the slavish attitude imposed by the modern ruling authority (the Mahathir regime) upon them through the indoctrination of feudal ideas of *derhaka* and *taat-setia*. He was persuading the people to exert their will and exercise their freedom against what he considered an oppressive rule of the coalition government, of which he was formerly an important part. But like Jebat, Anwar was not against the whole system established by his predecessors (the UMNO leaders) and their allies (the MCA (Malaysian Chinese Association) and MIC (Malaysian Indian Congress)). The principle which governed Malaysian leaders in the early days of *Merdeka* and decades thereafter, namely the emphasis on political stability and

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<sup>26</sup> Anwar's letter released or to be more precise, smuggled out of his cell implies that the practice of favouring certain groups of supporters has been going on for years, notably, during the premiership of Mahathir (see <http://members.tripod.com/-mahazalimv/jelas.htm>, visited on 14/07/99 19.36).

economic prosperity, was still cherished and upheld by Anwar himself. Despite championing the idea of *masyarakat madani* (civil society), the former Deputy Prime Minister believed that :

"While it is true that freedom and democracy have their intrinsic values and their basic principles must be understood and cherished, priorities must be put right. East Asia could not have achieved such impressive economic results without stability.<sup>28</sup>

By 'stability' he meant a "stable social and political order".<sup>29</sup> In other words, there should neither be any riots nor any forms of violent expression of rights and liberty.<sup>30</sup> The formula adopted by the government to maintain stability was by curbing those activities through harsh and punitive laws such as the ISA. The twist of fate has, nonetheless, changed the attitude professed by Anwar, who, only after his dismissal and arrest began to advocate that *merdeka* should not compromise with anything, including social and political order.

Therefore according to Anwar, being independent or *merdeka* means to be free from all kinds of oppression, be it from external or internal forces, and the latter may also refer to self-inflicted oppression (in the sense that, by maintaining a servile attitude, one will also be oppressed). By challenging the party leader and the government, Anwar was in fact suggesting to the public that being *merdeka* does not necessarily amount to *derhaka*. To criticize a leader meant to exercise one's right as a citizen in a democratic country. The relationship between the ruler and ruled was no longer to be regulated by the concept of blind loyalty or *taat-setia* in the feudal sense, but by

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<sup>27</sup> Anwar's press statement, *supra*.

<sup>28</sup> Anwar Ibrahim, *The Asian Renaissance*, Times Books International, Kuala Lumpur, 1996, p.48.

<sup>29</sup> *Ibid*.

<sup>30</sup> But it is ironical that it was in the name of 'democracy' that he instigated and aroused public outcry and street demonstrations on 20 September 1998, thus creating a brief period of political and social instability (see CNN-Chronology of Malaysian political turbulence, *cnn.com, supra*; and also A Case

rights and duties recognized by democracy. Hence, *taat-setia* now had its limits. The *kerajaan* too was being redefined as an authority with power, albeit one which was subject to people's scrutiny and evaluation. Thus, challenging the *kerajaan yang memerintah* (ruling authority) would be justified in the name of democracy.

### 7.7 The *Melayu Baru* and *Bangsa Malaysia* in Action

One might have thought that the concept of *Melayu Baru* (New Malays) would have been destroyed as a result of the economic downturn. Generally, when one speaks of *Melayu Baru*, the immediate image that comes to mind is of middle-class Malays, particularly the technocrats, the professionals and the entrepreneurs. This is the most dominant class of Malays who stole the limelight of success in the socio-economic arena of a robust, modern and industrialized Malaysian society. At the beginning of the economic downfall, however, it is claimed that they lost that 'magic appeal' which had prominently underpinned their dominance.

Moreover, as the tension between the two leaders escalated, and as the prospect of Anwar's arrest mounted, one began to witness an unprecedented response among middle-class Malays against the *kerajaan*.<sup>31</sup> Although prior to that incident very few of these Malays were seen actively involved in politics<sup>32</sup>, especially in anti-

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of Order and Disorder, <http://www.pathfinder.com/asiaweek/current/issue/hnat4.htm>, visited on 10/10/98 14.24)

<sup>31</sup> The fact that the mood of middle-class Malays have swung from their former stance (that is non-apolitical, or in other words, on the fence) to political, particularly to the other side of the fence, is evident from their participation in the Economic Convention from the Islamic Perspective, organized by PAS on 7 June 1999, at one of the first class hotels in Kuala Lumpur (see *Harakah*, 18 June 1999). Previously, such an occasion was only attended by either PAS members or by the *ulamas* (Islamic jurists).

<sup>32</sup> See an interview by Rosmida Abdul Rahman (a *Tamaddun* journalist) with Associate Professor Mohamad Abu Bakar of the University of Malaya, in *Tamaddun*, Mac 1999 issue.

government movements or programmes,<sup>33</sup> they were now participating in anti-government campaigns and other similar activities organized by the pro-*reformasi* movement. They have become very vocal and critical while at the same time cynical against the present administration. The *Melayu baru* are beginning to learn that the “interrogation of power was legitimate”.<sup>34</sup> The Anwar episode thus provoked the minds of those middle-class Malays to think beyond the conventional line and to prompt them to forget the old traditional mantra of ‘*pantang Melayu derhaka pada Raja* (it is not the custom of the Malays to disobey the Raja) (in this context, Raja is personified by the modern government or *pemerintah* (ruling authority)).

If formerly the issues of constitutionalism have been the ‘monopoly’ of constitutional lawyers, presently, they have become the concern of almost the majority of the *rakyat*. The controversial, some say brutal, manner in which Anwar, the ex-Deputy Prime Minister, was treated by the government, particularly by the police (an institution in which the confidence of the *rakyat* had been reposed), invokes an unflattering picture of the nature of constitutionalism that exists in Malaysia. The fact that a Deputy Prime Minister was allegedly denied rights and protection under the Constitution suggests that the constitutional rights and guarantees enshrined in this ‘sacred’ document may be dangerously subject to the whims and fancies of those in power. It is against this sort of abusive disregard for

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<sup>33</sup> For example, prominent figures such as Dr. Hassan Ali (an expert in self-motivational courses) and Professor Datuk Dr. Harun Din (an ex-Dean of the Islamic Law Faculty at the Department of Islamic Studies, National University of Malaysia), Ustaz Ismail Kamus, to mention a few, are among those people who are actively engaged in the campaigns against the alleged maladministration of the *Barisan* government. They are presently official members of PAS, a party which is working closely with the other opposition parties in their attempt to oust the government in the next coming general election.

<sup>34</sup> Chandra Muzaffar, *The Anwar Crisis: Political Culture and Democracy*, see <http://www2.jaring.my/just/POL.Cul.htm>, visited on 25/08/99 17:25.

the Constitution and constitutional principles that Anwar and his comrades are now campaigning.<sup>35</sup>

### 7.8 Wither Constitutionalism ?

Where does Anwar's case lead to in respect to the problem of constitutionalism in Malaysia? 'Whither constitutionalism' has become a frequently debated topic among Malaysian lawyers each time the Federal Constitution is amended and each time a case involving the government's perceived 'enemies' is heard by the courts. The 1993 amendment that removed the Rulers' legal immunity clearly demonstrated the extent to which the government was willing to transgress constitutional bounds. However, the current political developments reconfirm such tendency, by revealing yet again the manner in which constitutional rules and principles can be manipulated by the executive.

The dismissal of Anwar from his positions as the Deputy Prime Minister and Finance Minister raises strong doubts as to the constitutionality and legality of the executive's (the Prime Minister's) action, in the minds not only of the detainee himself but also of those who understand the Constitution. This issue brings in the role of the *Yang di Pertuan Agong* and the constitutional provision of Article 43 (5).

This Article provides that:

Subject to Clause (4), Ministers other than the Prime Minister shall hold office during the pleasure of the *Yang di Pertuan Agong*, unless the appointment of any minister shall have been revoked by the *Yang di Pertuan Agong* on the advice of the Prime Minister but any minister may resign his office.

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<sup>35</sup> See the Reports of the Royal Commission of Inquiry, 6 April 1999.



This provision deals with the power of the *Yang di Pertuan Agong* to appoint and to dismiss ministers other than the Prime Minister, whose tenure of office is subject to the vote of no-confidence of the majority of the members of the *Dewan Rakyat*. In conjunction with this provision, one must consider Articles 40(1) and 40(1A). Respectively, they read:

(1) In exercise of his functions under this Constitution, or federal law the *Yang di Pertuan Agong* shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet, except as otherwise provided by this Constitution; but shall be entitled at his request, to any information concerning the government of the Federation which is available to the Cabinet; and

(1A) In the exercise of his functions under this Constitution or federal law, where the *Yang di Pertuan Agong* is to act in accordance with advice, on advice or after considering advice, the *Yang di Pertuan Agong* shall accept and act in accordance with such advice.

At a glimpse, Clause (1A) appears redundant on the footing that Clause (1) of that Article is sufficiently clear regarding the extent to which the King may exercise his functions as a constitutional monarch. However, justifying on its past actions and experiences with the Rulers, the government reasserted and reiterated the functions and powers of the *Yang di Pertuan Agong* in a more formal and clearer manner, in Clause 1A. By not merely relying on conventions, and by incorporating them into the Constitution, the government was in actuality trying to plug all possible loopholes which it considered might enable the Rulers to act in a fashion contrary to the spirit of the constitutional monarchical system of government. The fact that this fundamental principle was incorporated shows that the government, whether mischievously, provocatively, or justifiably considered the probability of the Rulers,

and the *Yang di Pertuan Agong*<sup>36</sup> for that matter, using such powers which are ambiguously worded in the Constitution might be greater than expected. Looking at the prevailing circumstances, one could never guess who (whether government, Rulers or other parties) might use what power to bring the nation back from the brink of political ruins.

But acting in consonance with the spirit of a constitutional monarchical system on the one hand, and acting in accordance with the conscience of good governance and with other primary principles of constitutionalism, such as the rule of law, on the other, are two separate matters. Thus when Anwar legally challenged the constitutionality of his dismissal, these two conflicting issues were once again brought to the fore. Should the King act in accordance with good conscience in responding to those demands of political propriety which fall outside the ambit of strict constitutional rules, or should he refrain from reacting at all? What is he supposed to do with the memorandum presented to him by the *GERAK* movement asking for his intervention in this matter? Must he ignore the abuse (assuming abuse to have occurred) of governmental apparatus and of other democratic institutions by certain politicians?

Assuming that he has acquired vital information which might discredit the decision of the Prime Minister with regard to the dismissal, should he ignore the latter's advice? If indeed the *Yang di Pertuan Agong* chose to ignore such advice, would he be liable to any legal proceedings for a breach of the relevant constitutional

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<sup>36</sup> This depends on who the *Yang di Pertuan Agong* is. Thus if he is someone whose character resembles that of the Sultan of Johor (that is, defiant, strong-headed and aggressive) then the likelihood of the loopholes being utilized by the *Yang di Pertuan Agong*, for whatever purposes that

provisions which require him to act upon advice (Article 40(1))? But what if there were no advice given by the Prime Minister to the *Yang di Pertuan Agong* before the former dismissed his Deputy? Would Mahathir, by putting the cart before the horse, be contravening the Constitution? Is he under any obligation to advise in such a matter? This is where the difficulty lies, that is, how to apply constitutional conventions of western origin which do not gain foothold on indigenous soil? How does one make these conventions or “understandings, habits, practices, customs, maxims and precepts”<sup>37</sup>, work within a system operated by those whose understandings, habits, and customs bear little resemblance, if any, with the society or country from which the doctrine originated? Or will local customs and usages be a helpful alternative in ensuring the smooth working of the constitution? However, in answering these questions, one need also consider the issue of justiciability. Does the court have any jurisdiction to entertain the issue of the constitutionality and legality of the dismissal?

Cases relating to the exercise of the power of dismissal by the Head of State are very rare. Furthermore, those cases which have occurred did not directly deal with Article 43(5). However some parallels might be drawn from issues raised in those cases, namely, those which concerned the exercise of discretion by the power incumbents. The leading case on the issue of justiciability is Stephen Kalong Ningkan,<sup>38</sup> the nature of which may offer a helpful analogy. Although the case dealt mainly with the

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suit the needs of the situation or of a person, is greater than, say, having a Ruler with a character resembling that of the Sultan of Kedah.

<sup>37</sup> Dicey, A.V, *An Introduction to the Study of the law of the Constitution*, 1959, (10th edition), with an introduction by E.C.S Wade, MacMillan, London, p.24 & 417.

<sup>38</sup> *supra*.

dismissal of a Chief Minister by the Governor (Head of State), the power possessed by the Heads of States and by the *Yang di Pertuan Agong* is virtually similar.<sup>39</sup>

In this particular case the questions that arose inextricably overlapped with the issue which centred on the exercise of the discretion of the *Yang di Pertuan Agong* to declare a state of emergency under Article 150(1). Although the problem in Stephen Kalong Ningkan was originally localized to Sarawak, for political reasons, it later became a federal concern.<sup>40</sup> Hence, when the Sarawak state of emergency was declared by the *Yang di Pertuan Agong*, the justiciability of the exercise of his discretion under that particular article came into question. Article 150 (1) states that:

If the *Yang di Pertuan Agong* is satisfied that a grave emergency exists whereby the security, or the economic life, or public order in the Federation or any part thereof is threatened, he may issue a Proclamation of Emergency making therein a declaration to that effect.

The significant words in this provision are “If the *Yang di Pertuan Agong* is satisfied...” The term “satisfied” has generated conflicts between the requirement of the monarch to act on advice and the discretion to use his own personal judgment. Prior to the insertion of Clause 8 in Article 150,<sup>41</sup> the courts had been indecisive as

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<sup>39</sup> The power of the Governor and of the *Yang di Pertuan Agong* as well as of the Rulers is similar in terms of appointing the head of government (either a Chief Minister or a Prime Minister, as the case might be). Their power differs only in terms of appointing someone who in their opinion has the command of the majority of the legislature. At the Federal level, the *Yang di Pertuan Agong* will have to appoint as Prime Minister a member of the *Dewan Rakyat* (House of Representatives), who in his opinion commands the confidence of the majority of the members of that House as opposed to members of the Senate; while at the State level, the Governor will have to appoint as Chief Minister a member of the *Dewan Negeri* (State Legislative Assembly), who in his opinion commands the confidence of the majority of that Assembly (unlike the federal legislature, the State’s is uni-cameral).

<sup>40</sup> Ningkan was the result of a crisis in Sarawak politics in 1966, in which the federal government wanted to see the State toe the line (see Ghai, *The Politics of the Constitution: Another Look at the Ningkan Litigation*, [1986] Singapore L.R., 147 –150, see also Aziz Bari, *supra*, p.191).

<sup>41</sup> This clause provides inter alia that, notwithstanding anything in the Constitution, the satisfaction of the *Yang di Pertuan Agong* mentioned in Clauses (1) and (2B), “shall be final and conclusive and shall not be challenged or called in question in any court on any ground; and also that no court shall have any jurisdiction to entertain or determine any application, question or proceeding, in whatever form, on any ground, regarding the validity of a Proclamation....”

to the justiciability of the matter. Thus in Ningkan case, the Privy Council found it unnecessary to decide the matter,<sup>42</sup> while the Federal Court had previously held it not justiciable and Lord MacDermott regarded the question debatable.<sup>43</sup> One proposition is that after Clause 8 was added to the Article, no one could henceforth challenge the satisfaction of the *Yang di Pertuan Agong* anymore, for, as Hickling says, "personal satisfaction, means personal satisfaction".<sup>44</sup> Perhaps this was the reason why the Prime Minister wished to transfer the power of declaring a state of emergency from the *Yang di Pertuan Agong* to himself in 1983, as the prospect of the Sultan of Johor<sup>45</sup> becoming the next King loomed large.<sup>46</sup>

In the light of the Ningkan litigation prior to the constitutional amendment, which resulted in the new clause being added to that provision, the justiciability of such an exercise of discretionary power (that is, declaring the state of emergency) by the *Yang di Pertuan Agong* was unresolved. Obviously the uncertainty and indecisiveness of the courts revolved around the word 'satisfaction' in that provision. This was the key barrier to any interrogation of the exercise of his power to the extent that the term "satisfaction" is one which is personal and subjective in nature, it is difficult for anyone other than the person himself to determine whether he is satisfied or otherwise. However, as the indecisiveness of the courts was later dealt

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<sup>42</sup> See Privy Council's decision in Stephen Kalong Ningkan v Government of Malaysia [1968] 2 M.L.J 238; see also H.P Lee, *Emergency Powers in Malaysia*, in Trindade F.A and Lee, H.P, supra, p.141.

<sup>43</sup> See Sheridan, L.A and Groves, H.E, supra, pp..381-382.

<sup>44</sup> This comment was made by Hickling in a personal correspondence with the writer, dated 11 July 1999.

<sup>45</sup> The Sultan of Johor is well-known for his defiant character and other eccentricities. There were strong rumours that he would abuse the power under Article 150 and would pull Johor out of the Federation. Thus in order to avoid such possibility, the Prime Minister considered it necessary to remove this power from the *Yang di Pertuan Agong* (ibid).

<sup>46</sup> Ibid.

with by Clause (8), the question of justiciability would be of no relevance any more in as far as Article 150 is concerned.

What similarity is there between the nature of the *Yang di Pertuan Agong's* power in Article 150 and that in Article 43(5)? The latter mentions nothing about 'satisfaction'. However, it states that: "...Ministers other than the Prime Minister shall hold office during the pleasure of the *Yang di Pertuan Agong*". Does the word 'pleasure' bear any resemblance to the word 'satisfaction'? Does the power exercisable by the *Yang di Pertuan Agong* here fall into the same category as the one under Article 150? The meaning of the words "office during the pleasure of the *Yang di Pertuan Agong*" has been discussed in cases such as Government of Malaysia v Mahan Singh<sup>47</sup>, Pengarah Pelajaran, Wilayah Persekutuan. & Ors v Loot Ting Yee<sup>48</sup> and Gnanasundram v Government of Malaysia.<sup>49</sup> In Pengarah Pelajaran Wilayah Persekutuan & Ors v Loot Ting Yee, for instance, Salleh Abas, F.J, said:

"The Constitution prescribes no limit on the scope and extent of the pleasure of the *Yang di Pertuan Agong* but when power to dismiss an employer or to reduce him in rank is to be exercised, the Constitution prescribes procedural restrictions as to the manner and by whom this power is exercisable."

However, as these authorities concerned the dismissal and reduction in rank of public servants, they may not be relevant to the case in point.<sup>50</sup> At this stage, it is difficult to speculate the outcome of Anwar's application to have his dismissal invalidated for its alleged unconstitutionality, in the absence of any precedents. But

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<sup>47</sup> [1975] 2 MLJ 155.

<sup>48</sup> [1982] 1 MLJ 68.

<sup>49</sup> [1971] 1 MLJ 208.

<sup>50</sup> Article 132 specifically deals with public services which include only the armed forces, the judicial and legal service, the general public services of the Federation, the police force, the railway services,

in view of the intriguing nature of the whole episode involving Anwar and the Prime Minister, and the possible chaos which might accrue as a result of a finding which favoured Anwar, one might reasonably predict that the courts would not stretch its judicial power to review the validity of the dismissal beyond the simple letter of Article 43 (5). Perhaps, the doctrine of political question might be invoked by the court as an excuse not to interfere in cases of such a nature.<sup>51</sup> Unfortunately, there is no precedence yet on this doctrine in Malaysia. But the other questions which may be asked in respect of this provision are whether (a) the *Yang di Pertuan Agong* has actually exercised his power of discretion? and (b) whether he has not been given the opportunity to exercise it. In other words, has he ever been consulted in order for that power to be exercisable by him?

If Anwar's allegation that there had not been any consultation between the *Yang di Pertuan Agong* and the Prime Minister before his sacking proved to be true, then it might be argued that the dismissal was unconstitutional, illegal and void. The question here, though, is whether the Prime Minister is under any obligation to consult the King before deciding to dismiss a minister. If he is, then a dismissal without consultation with the *Yang di Pertuan Agong* might amount to a violation of the constitutional rule which requires the Prime Minister to do so. On the other hand, if there was indeed consultation and advice had actually been tendered by the Prime Minister to the *Yang di Pertuan Agong*, would the latter be bound to use his discretion or would he be obligated to act upon the Prime Minister's advice, irrespective of what the outcome might be? What if the *Yang di Pertuan Agong*

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the joint public services mentioned in Article 133, the public service of each state and the education service.

decided to use his discretion, would he be liable to any legal action? A strict interpretation of the Constitutional provision of Articles 40(1) and 40(1A) would nonetheless render him liable for violating the constitutional provision; and if the exercise of such a discretion were to be construed as an act committed in his personal capacity, then by virtue of the 1993 constitutional amendments which removed his royal immunity, *the Yang di Pertuan Agong* might be subject to a legal proceeding.

However, one could argue that such a potential outcome might be unlikely in the light of Article 183 which provides that:

No action, civil or criminal, shall be instituted against the *Yang di Pertuan Agong* or the Ruler of a State in respect of anything done or omitted to be done by him in his personal capacity except with the consent of the Attorney General personally.

At a glance, it looks like the Attorney-General has a considerable degree of independence to initiate proceedings against the *Yang di Pertuan Agong* and the Rulers.<sup>52</sup> But to assume that the Attorney-General is entirely free of any interference from the executive would be to underestimate the relationship between these two organs of government. For as the Anwar case unfolded, many were suspicious of the Attorney-General's role as an independent body and a defender of the public. While the appointment of the Attorney-General is made by the *Yang di Pertuan Agong*,<sup>53</sup> such an appointment is subject to the advice of the Prime Minister. Consequently,

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<sup>51</sup> However, cases such as Tun Datuk Haji Mohamed Adnan Robert v Tun Datu Haji Mustapha bin Datu Harun [1987] 1 MLJ 471 might give an indication of Malaysian judicial attitude in addressing cases which are seemingly denominated by political issues.

<sup>52</sup> Article 145 (3) provides that, "The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah Court, a native court or a court martial."

<sup>53</sup> Article 145(1) provides that, "The *Yang di Pertuan Agong* shall, on the advice of the Prime Minister, appoint a person who is qualified to be a judge of the Federal Court to be the Attorney General for the Federation."



there is a possibility that the independence of the Attorney-General may be compromised or limited.

However, this issue is complex and intricate, as the extensive comparative researches of Professor J.Llewellyn Edwards<sup>54</sup> illustrate. One might nevertheless conclude that as far as Malaysia is concerned, the Attorney-General enjoys limited freedom, for not only is he appointed on the advice of the Prime Minister, his tenure of office too is subject to the pleasure of the *Yang di Pertuan Agong*, whose power is in turn very much subject to that of the Prime Minister. Therefore, it would take an exceptionally strong-minded Attorney-General to execute effectively the function of a defender of public interests.

Perhaps, there are times when the personal judgement of a constitutional Ruler ought to be trusted and respected<sup>55</sup>. The role of the *Yang di Pertuan Agong* in times of exigencies such as this should therefore exceed that of a mere legitimizing or endorsing agent. It has been argued elsewhere that those cases, which involved the Rulers of the State and their *Menteris Besar* were at times a blessing in disguise. It was pointed out that the resignations of those *Menteris Besar* following the Ruler-*Menteri Besar* crises were not entirely bad news.<sup>56</sup> Perhaps it would be better to

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<sup>54</sup> Edwards, J.L.I. J, *The Law Officers of the Crown*, Sweet & Maxwell, London, 1964; and *The Attorney-General, Politics and the Public Interest*, Sweet & Maxwell, London, 1984.

<sup>55</sup> On this particular point, Hickling, in his recollection of his experience in Johor, wrote, "Once on leave, the Colonial Office asked me to see His Highness the Ruler of Johor at Grosvenor House; he (the Ruler) had vetoed an issue of postage stamps, and consequently, although everyone else had agreed, the stamps could not be issued. So the Colonial Office asked me to persuade His Highness to change his mind. "If he says no," I told them, "he means No." But they told me to see him. I went, he gave me an excellent lunch, then asked if I had seen the stamps in question. I hadn't. "Come along and have a look at them," he said. I did so. A more ugly, inartistic set of stamps would have been difficult to find."

<sup>56</sup> See Salleh Abas, *Traditional Elements in the Malaysian Constitution*, in Trindade F.A and Lee, H.P, *supra*, p, 5 (quoted in Aziz Bari, *The Development and Role of Constitutional Monarchy in Malaysia*, *supra*, p. 196).

have a strong-minded, honest and a just Ruler than a corrupt but able Minister. Similarly, this should also apply at the federal level. The only way to stop the manipulation of this constitutional monarchy concept by corrupt political players in their pursuit of absolute powers is by not sticking to the strict and literal interpretation of the constitution but by going beyond it. Effect must therefore be given to the spirit rather than to the letters of this lifeless document.

### **7.9 Liberalizing the Interpretation of the Constitution**

Writing in 1986, the late Professor Datuk Ahmad Ibrahim said, "The power of the Court to interpret the Constitution and the exercise of judicial review by the Court are both new in Malaysia."<sup>57</sup> To illustrate that this is a recent creation, he offered the example of Article LXIV of the Constitution of Johor of 1895 read:

At the end of this law and the Memoranda We hereby make provision and reservation for Ourselves and Our Successors with the advice and concurrence of the Council of State, that We and Our Successors shall always have the right and authority to add to and enlarge from time to time the limits of this law whenever it shall be considered proper and necessary so to do, that is to say, in such manner as shall not alter, vary, undo, break and destroy the foundation or intention or aim of the Law which we have hereby made, created, established and confirmed. Furthermore We and Our Successors by and with the aid and concurrence of the Council of State or the Council of State alone shall have the power and authority to determine and fix the interpretations, constructions, renderings and meanings of all or any of the sections contained in this law, if at any time thereafter it shall be found proper and expedient so to do in order to render them clearer and more definite. And such interpretations, constructions, renderings and meanings hereafter so determined and fixed shall become and be accepted as a part of this State Constitution and shall come into one and never be called in question.

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<sup>57</sup> Datuk Ahmad Ibrahim, *Interpreting the Constitution: Some General Principles*, an article in Trindade, F.A and Lee, H.P (eds), *supra*, p.18.

For a further clarification of this particular Article, a Supplement of 1939 was issued in order to remove any doubts as to its construction. The Supplement reads, *inter alia*:

That the true purport and meaning of the said words is that only His Highness by and with the aid and concurrence of the Council of State or in the event that there is at the time no ruling Sultan then the Council of State can determine and fix the interpretations, constructions, renderings and meanings of all or any of the sections or any word or words in the sections contained in the Constitution of the State of Johore and that by virtue of the said Section no other person or body of persons or Court of Justice may or can determine and fix the interpretation, construction, rendering and meaning of section XLIX of the Constitution of the State of Johore or any other section thereof.

The sole interpreter of the Johor Constitution prior to *Merdeka* was therefore the sovereign himself or the Council of State, as the case might be. Indeed, the practice of constitutional interpretation by the Ruler was judicially recognized in Anchom v Public Prosecutor<sup>58</sup>. McElwaine C.J.S.S , stated that:

“While it is unusual I see no reason to think that a sovereign legislature cannot say that a particular enactment shall be interpreted by a particular person or body of persons and that it shall not be interpreted by the court. In legislating it must be presumed to have interpreted that legislation. So far as the present case is concerned the Constitution cannot be said to be a constitution which imposes any real restrictions on the legislature....The legislature is the sole authority which can decide whether what it does is *intra vires* or not. It is constituted by enactment and is the sole judge in its own cause.

Similarly, Poyser C.J.F.M.S in concurring with the judge’s statement, said that:

The Constitution of Johore is not therefore a rigid constitution. It is in the nature of an Enactment which can at any time be amended or varied and therefore has the force of law. In view of its terms I have no hesitation in coming to the conclusion that this court has no power to pronounce the validity of any

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<sup>58</sup> (1940) 9 M.L.J 22, 25.

enactment passed by the Council of State and assented to by the Sultan, any more than an English Court could pronounce an Act of Parliament to be invalid. To hold otherwise would be to ignore the sovereignty of the Sultan and the legislature and to treat enactments of the Johore legislature as the English Courts treat by-laws.<sup>59</sup>

Thus prior to the introduction of the Federal Constitution of 1957, the courts had no power to examine the validity of any provisions of the constitution or of any law passed by the legislature. It was only after the Reid Commission's recommendation for the establishment of judicial review was adopted by the then newly-independent Malaya, which incorporated the power to review into its Federal Constitution under Articles 4(3)<sup>60</sup> and (4)<sup>61</sup>, 128 (1)<sup>62</sup> and (2)<sup>63</sup>, and 130<sup>64</sup>, that the courts became the final arbiters of the meanings of legislative and constitutional provisions. The question is how far has that power of judicial review been applied by the courts in Malaysia after the introduction of the procedure?

Without going into detail on the developments of its application, suffice it to say that with respect to executive decisions, the courts have been reluctant to go beyond the

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<sup>59</sup> Ibid, p.27.

<sup>60</sup> Article 4(3) states, inter alia, that: The validity of any law made by Parliament or the legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament, or as the case may be, the Legislature of the State has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground ...

<sup>61</sup> Article 4 (4) provides that: Proceedings for a declaration that a law is invalid on the ground mentioned in Clause (3) (not being proceedings falling within paragraph (a) or (b) of the Clause) shall not be commenced without the leave of a judge of the Federal Court and the Federation shall be entitled to be a party to any such proceedings, and so shall any State that would or might be a party to proceedings brought for the same purpose under paragraph (a) or (b) of the Clause.

<sup>62</sup> Article 128(1) states, inter alia, that: The Federal Court shall, to the exclusion of any other court, have jurisdiction in accordance with any rules of court regulating the exercise of such jurisdiction ...

<sup>63</sup> Clause (2) of this Article provides that: Without prejudice to any appellate jurisdiction of the Federal Court, where in any proceedings before another court a question arises as to the effect of any provision of this Constitution, the Federal Court shall have jurisdiction (subject to any rules of court regulating the exercise of that jurisdiction) to determine the question and remit the case to the other court to be disposed of in accordance with the determination.

<sup>64</sup> This Article provides: The *Yang di Pertuan Agong* may refer to the Federal Court for its opinion any question as to the effect of any provision of this Constitution which has arisen or appears to him likely to arise, and the Federal Court shall pronounce in open court its opinion on any question so referred to.

letter of the statutes. In the light of previous cases<sup>65</sup>, it would not be misleading to say that much of it depends on the personalities of the judges hearing the cases. It would be an acceptable excuse for non-intervention if such reluctance were displayed by judges who decided cases in the early years of independence. For the difficulty of adjusting themselves to the new power conferred on them by the Constitution was noted by Ahmad Ibrahim who said that, "It was difficult for the judges, brought up in the English tradition in which the sovereignty of Parliament is a paramount consideration, to adjust themselves to this new power given to them."<sup>66</sup> The problem has also been observed by Rais Yatim (at the time of writing, was a former Cabinet minister) in his work on executive power in Malaysia. He states:

The early judges of Malaya, who were either English or Malaysians and who had their legal training in England, took quite some time before this element was put in its proper perspective. Even some Malaysian judges in recent cases appear to have distanced themselves from the significance of the concept of constitutional supremacy, especially in refusing to recognize the existence of the 'spirit' or the 'basic structure' of the Constitution.<sup>67</sup>

Hence, cases such as Chia Khin Sze v Menteri Besar of Selangor<sup>68</sup> illustrates the point. In that case, the applicant was detained on the order of the *Menteri Besar* who issued a warrant of arrest by virtue of his power under section 2 of the Restricted Residence Enactment, Cap. 39, as amended by the Restricted Residence Enactment 1948. The detainee made an application to be allowed representation by counsel and argued that Article 5 of the Constitution guaranteed him this right. His application was rejected by the court on the ground that Article 5 only applied to cases falling

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<sup>65</sup> See Theresa Lim Chin Chin & Ors v Inspector General of Police [1988] 1MLJ 293 (Supreme Court, Malaysia); Chong Kim Loy v Timbalan Menteri Dalam Negeri & Anor [1989] 3 MLJ 121 (High Court, Malaysia).

<sup>66</sup> Ahmad Ibrahim, *supra*, p.20.

<sup>67</sup> Rais Yatim, *Freedom Under Executive Power in Malaysia*, *supra*, p.117-118.

<sup>68</sup> (1958) 24 M.L.J. 105.

under the Criminal Procedure Code and not to arrests under the Enactment where a detention was made under a minister's order. Since the executive in this case was under no obligation to hold a hearing, the detainee could not claim the right to representation.

Similarly, in Ex parte Tan Kheng Long<sup>69</sup>, the applicant who was a British subject and a federal citizen by virtue of Article 124 (1) of the Federation of Malaya Agreement 1948, had been banished from the federation on the order of the Minister acting under Section 13 of the Banishment Ordinance 1959. In seeking to challenge the order, the applicant relied on Article 9 of the Constitution.<sup>70</sup> However, Rigby J held that the court could not go behind the banishment order issued by the minister in order to ascertain the nationality of the applicant. Had the court gone behind the banishment order, and had considered the constitutional provision relied on by the applicant, a different decision might have been made.

This non-interventionist attitude was criticized and a more liberal stance taken by the courts some years later, as reflected in cases such as Aminah v Superintendent of Pengkalan Chepa,<sup>71</sup> Public Prosecutor v Datuk Harun Haji Idris & Ors,<sup>72</sup> and Loh Kooi Choon v Government of Malaysia.<sup>73</sup> In Loh Kooi Choon, for instance, Raja Azlan Shah F.J (as he then was), in his judgment clearly enunciated that:

The Constitution is not a mere collection of pious platitudes. It is the supreme law of the land embodying three basic concepts: One of them is that the individual has certain rights upon which not even the power of the state may encroach. The second is the distribution of sovereign power between the States and the

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<sup>69</sup> (1958) 3 MC 205.

<sup>70</sup> Article 9 (1) reads: No citizen shall be banished or excluded from the Federation.

<sup>71</sup> [1968] 1 M.L.J 92.

<sup>72</sup> [1976] 2 M.L.J 116, at p.124.

<sup>73</sup> [1977] 2 M.L.J 187, at p. 188.

Federation, that the thirteen States shall exercise sovereign power in local matters and the nation in matters affecting the country at large. The third is that no single man or body shall exercise complete sovereign power, but that it shall be distributed among the Executive, Legislative and Judicial branches of government, compendiously expressed in modern terms that we are a government of laws not of men.

However, liberal attitudes and approaches to interpreting the laws and the Constitution are not constantly adhered to. It might be argued that there is still a general reluctance on the part of the courts to be more adventurous by going beyond the simple letter of the legislation and the Constitution as shown in cases such as Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia (Minister for Home Affairs),<sup>74</sup> Yeap Hock Seng v Minister for Home Affairs, Malaysia<sup>75</sup> and others. Indeed, some eminent judges concluded that certain principles were too idealistic to be reconciled with the realities of life. Hence in rejecting Indian authorities on some legal principles, Ong C.J stated that:

“Perusing both English and Indian authorities has been no small task, but at the end of it all, I would sum up by saying that, in my humble opinion, English courts take a more realistic view of things, while Indian judges impress me as indefatigable idealists seeking valiantly to reconcile the irreconcilable whenever good conscience is pricked by an abuse of power.”<sup>76</sup>

A similar perception was also held by the former Lord President, Tun Suffian when delivering his opinion in the case of Datuk Harun bin Haji Idris v Public Prosecutor

On the issue of equality raised in that case, Suffian said:

“...while we are all familiar with the idealistic concept of equality, Indian....and Malayan judges are not familiar with it as a legal concept, it having been introduced in India only in 1949 and in Malaysia in 1957. As a legal concept it is easy to state, but difficult to apply...because first equality can only apply among equals and in real life there is little equality, and secondly while the concept of equality is a fine and noble one it

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<sup>74</sup> [1969] 2 M.L.J 129.

<sup>75</sup> [1975] 2 M.L.J 279.

<sup>76</sup> Karam Singh v Menteri Hal Ehwal Dalam Negeri, supra.

cannot be applied wholesale without regard to the realities of life...”<sup>77</sup>

Whether the court in Anwar’s case would be willing and perhaps daring enough to take a creative, liberal and adventurous approach in interpreting the power conferred on the *Yang di Pertuan Agong* with respect to the dismissal of the Deputy Prime Minister, remains to be seen. The reality facing Malaysian judges now is that the power of the executive appears to have been overwhelmingly unfettered and whether the courts would in the interest of all parties concerned, of the public and of the nation as a whole, “reconcile the irreconcilable” and whether the courts’ “good conscience was pricked by an abuse of power” are some of the questions hanging over Malaysian constitutional lawyers’ minds. On this, certain factors might add to their fear. For example, the independence of the judiciary is much obstructed by the fact that the appointment of judges is not free of executive (in this context, Prime Ministerial) interference or influence.<sup>78</sup>

### 7.10 Begging the Royal Pardon

The wait for the entire saga to end might be a very long one, since failure of the appellant’s case at the Court of Appeal would eventually lead the case to a further stage, appeal to the *Yang di Pertuan Agong*. If that were to occur, the role and power of the *Yang di Pertuan Agong* would once more be brought under the microscope of constitutional lawyers. As far as his power to pardon offenders is concerned, Article 42(1) provides that:

The *Yang di Pertuan Agong* has power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial and all offences committed in the

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<sup>77</sup> [1977] 2 M.L.J 155, at p.165.

<sup>78</sup> For further reading on the method of appointment of judges under the Federal Constitution, see Rais Yatim, *supra*, pp. 82-83.



Federal Territories of Kuala Lumpur and Labuan; and the Ruler or the *Yang di Pertua Negeri* of a State has power to grant pardons, reprieves and respites in respect of all other offences committed in his State.<sup>79</sup>

However, one should not be too optimistic about the extent of His Majesty's power under this provision. Article 42(4) is a helpful guide to the extent to which this power may be exercised by the *Yang di Pertuan Agong*. It provides, inter alia, that:

“...the powers mentioned in this Article are, so far as they are exercisable by the *Yang di Pertuan Agong*, among the functions with respect to which federal law may make provision under Article 40(3).”

Although Article 42(7) prohibits the Ruler or a Governor from appointing to the Pardon Board a member of the legislature (in the case of a State, this means a member of the Legislative Assembly, and in the case of the Federation, a member of Parliament)<sup>80</sup>, the probability of the purpose of this provision being circumvented is not unreal. For by virtue of Clause (5) of the same Article, the Attorney-General is empowered to delegate his functions as a member of the Board by instrument in writing. In such a case, there is a likelihood of the Attorney-General delegating his functions to a member of the Legislative Assembly of a State or to a member of the *Dewan Rakyat*<sup>81</sup> who might have an interest in the matter before the Board. Therefore, if the discretion of the *Yang di Pertuan Agong* is one which is not absolute, then it would be very unfortunate were his non-partisan position as the '*payung negara*' (literally meaning the 'umbrella' of the nation) to be neglected.

### 7.11 Does 'Discretion' Actually Mean 'Discretion'?

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<sup>80</sup> Article 42(5),(6),(7),(8) and (9) apply *mutatis mutandis* to the Pardons Board for the Federal Territory of Kuala Lumpur and Labuan, where members of the Board will be appointed by the *Yang di Pertuan Agong* (see Clause 11 of this Article).

<sup>81</sup> See also Sheridan L.A and Groves, H.E, supra, p.141.

Clearly, the issue of 'discretion' raises deep problems of interpretation. The constitutional provisions are themselves conflicting. While Article 40(1A) states that, "In the exercise of his functions under this Constitution or federal law, the *Yang di Pertuan Agong* is to act in accordance with advice...", a proviso to Clause (3) of that Article excludes him from so acting if the functions are ones (see below) which are exercisable at his discretion. Although there is no provision which specifically defines 'discretion', Article 40(2) provides for the circumstances in which the *Yang di Pertuan Agong* may act at his discretion<sup>82</sup>. One of those circumstances includes the appointment of a Prime Minister.

Even so, it would be erroneous for anyone to take this provision at its face value. In appointing a Prime Minister, the *Yang di Pertuan Agong* must choose a member of the House of Representatives who in his judgment is likely to command the confidence of the majority of the members of that House. Since by convention the party leader whose party wins most seats in the election becomes the Prime Minister, there is little option for the *Yang di Pertuan Agong* but to endorse the party's decision with regard to the post of Prime Minister. Therefore the term 'discretion' here is more often than not a misnomer and its meaning is misleading.

It is in the 'grey' areas (that is, with regard to the exercise of the *Yang di Pertuan Agong's* discretion) that the function of the court as the interpreter of the Constitution is most crucial. However the problem of interpreting the Constitution is made more difficult by conflicting conceptions of it. One conception is that the constitution is a legal document, the task of interpreting it belonging solely to the courts. The other

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<sup>82</sup> His other discretionary functions include those mentioned under Articles 139 (4), 43 (2), 40 (2) (b).

view is that it is a political document drawn following negotiations between one political entity and another (in this case, between the colonial government and the Alliance Party), and therefore politicians are in the best position to interpret it. Nonetheless, one might argue that judicial interpretation is the supreme one on the footing of the rule of law doctrine.

Yet, as Louis Fisher (a specialist in American National Government with the Congressional Research Service at the Library of Congress) observes that:

“Just as it is a mistake to study constitutional law solely from the standpoint of court decisions, so would it be misleading to treat constitutional interpretation as simply the interactions between the judiciary and the other branches. Government operates within a political culture that presses its own brand of constitutional law.”<sup>83</sup>

Indeed, it is the interaction between this ‘culture’ of the politicians or executive and that of the judiciary in Malaysia that sparked off the controversy of 1988 which ended in the dismissal of the former Lord President,<sup>84</sup> Tun Salleh Abas. The question here is how to strike a right balance between the government’s brand of constitutional law and that of the judiciary?

### **7.12 The *Yang di Pertuan Agong*, the Rulers and the Islamic Factor**

In this respect, it mirrors the 1993 crisis. Apart from the constitutional issues raised by critics of the government in the Anwar saga, Islamic principles have been invoked by both sides in respect to the affair. Thus while Anwar's alleged sexual misconduct was condemned by government supporters as un-Islamic, the revelation

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<sup>83</sup> Fisher, L, *Constitutional Dialogues: Interpretation as a Political Process*, Princeton NJ; University of Princeton Press, 1988, p.6 (also quoted in Harriger, K.J, *Cues and Miscues in the Constitutional Dialogues*, an article in the *Review of Politics*, Summer Issue, 1998, p.499).

<sup>84</sup> Lord President is the highest judicial officer in Malaysia.

itself of Anwar's alleged 'gross misconduct', was said by the government's critics to contravene Islamic principles of morality and etiquette. The court scene which involved the production by the prosecution team of certain exhibits, such as the mattress allegedly used by Anwar when committing an alleged sexual offence, was strongly criticised by some Muslims, notably PAS leaders, as un-Islamic and humiliating. Since Islam prohibits its believers from humiliating fellow Muslims in public, the way Anwar was accused and the manner in which evidence was procured became a subject of resentment among that quarter of Malay Muslim society. As the case is one which involves a figure whose name or image is synonymous with the Islamic revival and religiosity,<sup>85</sup> especially in the past few years of active *dakwah*<sup>86</sup> movements in Malaysia, the humiliation received by Anwar is also seen as a humiliation against the Islamic cause championed by those others who share similar aspirations and dreams.<sup>87</sup> Thus comparisons were drawn between the criminal procedures applied in that case and the rules of evidence applied in Islam. The latter, which stress the necessity of having four male, adult and pious eye-witnesses to the alleged offence, was quoted by PAS leaders, not so much for the purpose of discrediting the criminal procedure system itself, as for condemning the so-called "malice"<sup>88</sup> and "abuse of powers" by Mahathir and his cohorts.

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<sup>85</sup> For an enlightening study of Anwar's participation and influence in Islamic revivalism in Malaysia, see Nagata, *supra*, pp.87-100.

<sup>86</sup> The generic term *dakwah*, is as old as the faith itself, and after the five pillars, integral to the observances of all Muslims. Its literal meaning of a "call" or "invitation" to the faith is grounded in its purpose to convert the unbelievers. More commonly nowadays, its goal is to revive the spirit and reinspire lapsed members ("born Muslims") (see Nagata, *supra*, p.xviii).

<sup>87</sup> That is, the aspiration of establishing a just and independent society or state based on the Islamic model (see *Harakah*, 9 April 1999, where it was reported that "Anwar thanked and praised the *ulamas* for opposing the slander campaign and for mobilizing the moral strength of the *ummah*. He also paid tribute to the leadership of PAS and its mouthpiece *Harakah* which widely opened itself as an information channel for the society at a time when the government-controlled media launched a massive propaganda against him and the *Reformasi* movement").

<sup>88</sup> The act of detaining Anwar under the Internal Security Act and of charging him for sodomy and illicit sexual activities is seen by Anwar's supporters and sympathizers as politically motivated. Anwar's previous career as an Islamic activist has given him the image of a pious and religiously disciplined leader among, especially, the urban and young Malays. Thus by associating him with

Like the early Muslim reformists of the early 1900s, the present rival Malay leaders from within PAS and without, are invoking Islam as an agent of change or as a basis for *reformasi*. Islam is now being used by this group of reformists as an idiom through which the alleged governmental acts of injustice, corruption, nepotism and authoritarianism are being condemned. Just as in those years, the Islamic spirit is once again revived and invoked (or perhaps in some cases is manipulated) as a “banner” (borrowing Nagata’s words) under which the interests of the post-post *Merdeka* Malays (in particular, the *reformasi* initiators and sympathizers) are represented.<sup>89</sup>

Indeed, as the 1993 crisis illustrated, Islam had also been invoked by the Sultan of Kelantan as one of the justifications for his rejection of the constitutional amendments to remove the Rulers’ immunity. Given that Islam is a matter which falls exclusively under the state’s jurisdiction, and that the Rulers (or the *Yang di Pertuan Agong* in the case of those states without Rulers, such as Penang, Melaka, Sabah and Sarawak, and also of the Federal Territories of Labuan and Kuala Lumpur) are the heads of the religion of Islam, therefore, it is submitted<sup>90</sup> that they could and should be acting as guardians of the Islamic religion. By claiming that the government has transgressed the limits of decency prescribed by Islam in revealing the alleged wrong-doings of the ousted Deputy Prime Minister, the supporters and sympathizers of Anwar and of the *Reformasi* movement may be hoping that the Rulers and the *Yang di Pertuan Agong* will ‘conspire’ and co-operate to rescue the ‘victimized’ politician. This strongly explains *GERAK*’s endeavour at urging the

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immoral and irreligious activities, the government, or more precisely Mahathir, is said to have tried to assassinate his rival’s (Anwar’s) character, a consequence of which would deprive the latter of the support of the Malays.

<sup>89</sup> Nagata, J, supra, p.79.

*Yang di Pertuan Agong* to intervene in the matter, as evident from its memorandum addressed to him.

As heads of the religion, both the *Yang di Pertuan Agong* and the Rulers are entitled to issue *tauliah* (commissions) to religious officials, particularly to the mosque officials and Muslim preachers.<sup>91</sup> Besides enabling these Muslim preachers (most of whom are now PAS members or at least PAS supporters) to use the pulpits as their platforms for launching anti-government campaigns, the Rulers themselves might also take the liberty to speak from there (as happened in Kelantan during the 1993 crisis) should they feel it necessary to do so. Thus, the most suitable avenue for disseminating dissenting views independently about the government to the public, particularly to the Muslims, are the mosques.<sup>92</sup>

The strength and influence of the Malay Rulers in the realm of Islam in Malaysia are acknowledged by both the Opposition (PAS) and by the ruling UMNO party. Hence in a speech of one of the PAS front line-members in Pahang lately, the UMNO was warned not to use the Rulers in their bid to woo the *rakyat*.<sup>93</sup> Although it might appear inconsistent when speaking about the Rulers' or the *Yang di Pertuan Agong*'s role as the guardian of the Islamic religion within a constitutional monarchy paradigm, yet the contradiction of their roles is explicable in terms not only of the country's and of the Malays' history but also of the latter's culture and beliefs. Article 3(2), in providing the status of the *Yang di Pertuan Agong* as the head of

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<sup>90</sup> Aziz Bari, *supra*, p. 245.

<sup>91</sup> *Ibid*, p.255.

<sup>92</sup> For further explanation on this, see Aziz Bari, *ibid*.

<sup>93</sup> *Harakah*, 9 April 1999.

Islam in his state and in states without a Raja, reasserts this feature as one that is uniquely Malaysian.

### 7.13 The Malays and Malaysia After the Anwar Saga

Some believe the Anwar episode promises a different Malaysia. There are signs that the Malays have begun to emerge from their 'communal cocoon'. The Chinese and Indians have also likewise begun to participate with the Malays in a similar quest in the wake of this period of trial and tribulation. If previously their struggles for a just, independent and progressive Malaysia were largely fought along communal lines, the close of the twentieth century is witnessing a very different scenario. The formation of the *KeADILan* party and the influx of Malays and non-Malays alike into this newly established political organization,<sup>94</sup> it can be argued, is heralding and reflecting the changing perception of the Malays in particular, and of the Malaysians or *bangsa* Malaysia as a whole, regarding the government (or the *kerajaan* in the modern sense).

This tremendous change in Malay political perception of the *kerajaan* (or ruling authority) which began in 1993 on the initiative of the *Melayu Baru* advocate and architect, Mahathir Mohamad, ironically seems to be reaching its full circle upon the dismissal and detention of his one time protege, Anwar Ibrahim. Thus the feudal Malay characteristic of *taat setia* is no longer given priority, and in place of it is the widespread manifestation of the forbidden act of *derhaka*. But has the old spirit of Hang Tuah (in whose person was embodied the feudal value of '*pantang Melayu menderhaka*') really gone forever? That the Malays would have reached this stage of

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<sup>94</sup> *Harakah*, 18 July 1999, where it was reported that more than one thousand Chinese had submitted their membership forms to *KeADILan*, and more applications were said to be continuing.

'disloyalty' and in a surprisingly concerted fashion, and would demand the once most respected leader or *pemerintah* to surrender his '*takhta*' (throne) seems astonishing. Though patience and submissiveness may have been the hallmark of the Malay people in general, it should not ever be forgotten that '*amok*' or 'amuck' is also a distinctive Malay trait, which it is traditionally said will readily surface when they are pushed too far.

Jebat might have been killed, but his spirit seems to have been continuously dwelling among the *Melayu Baru* generation since the 27 September 1998 incident. The '*derhaka*' spirit, rekindled by Anwar (the modern-day Jebat), and which seems to have spilled over the ethnic borders, finds it hard to die. With the doors of PAS now thrown open for non-Muslim members, there is now much fuel for the journey towards a different Malaysia, a 'Malaysian Malaysia'. But how long this journey will take is yet to be known, for the date of the next general election is still not known except presumably to Mahathir. Will all those participants (the opposition parties and the supporters of *reformasi*) in the quest for a more liberal, just and progressive society be ready when the opportunity they are waiting for is imminent. How will the different ethnic groups reconcile their diverse aspirations, PAS with its Islamic state programme,<sup>95</sup> DAP with its own version of Malaysian Malaysia,<sup>96</sup> and *KeADILan* with its Anwar's vision of '*masyarakat madani*' (civil society)?

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<sup>95</sup> See the report of an interview between Joceline Tan and Datuk Fadzil Mohd. Noor in the New Sunday Times, 11 April 1999.

<sup>96</sup> The DAP is said to have rejected the notion of an Islamic State aspired to by PAS. The former is more inclined towards creating a secular-based Malaysian Malaysia, that is, one in which Islam is not a central part (see *Berita Harian Online*, <http://www.jaring.my/bharian/sat/st21.htm>, visited on 15/06/99 17:59).



But the major question is how will the constitutional system be affected if the so-called '*Barisan Parti Alternatif*' (Alternative Coalition Party, comprising of PAS, DAP, KeADiIlan and PRM (*Parti Rakyat* Malaysia or Malaysian People's Party)) were to win the election? Would a new government radically change the existing structure of the constitution? Would there have to be a re-negotiation of the existing terms, such as the special position and privileges of the Malays, the position of Islam as stated in Article 3(1),<sup>97</sup> and the position of the Malay Rulers<sup>98</sup> which underpin the constitutional framework of the country? Perhaps these questions are too premature to ask given the fact that the government, particularly the UMNO party, has had a track record of winning every general election since independence.

Many have thought that UMNO would collapse following the court's declaration in 1998 that it was illegal.<sup>99</sup> But judicial pronouncement has not terminally affected it, since the 'doctor' (that is, Dr. Mahathir, who was also a medical doctor by profession prior to his ascendancy to premiership) succeeded in remedying the situation. Nonetheless, nothing is impossible under the 'political sun'. A leader of today might have ended as a cell inmate of tomorrow in the Sungei Buloh prison, as the Anwar case has illustrated. Similarly a governing party may become an opposition soon after the end of its present term. Thus, rumours have been running

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<sup>97</sup> Article 3(1) provides that "Islam is the religion of the Federation, but other religions may be practised in peace and harmony in any part of the Federation." Thus were PAS to win the majority of seats in Parliament, and given that the party's agenda is the formation of an Islamic State, Article 3(1) might have to undergo significant changes in order to accommodate it to the new situation.

<sup>98</sup> Given that PAS's Islamic orientation gives more emphasis to equality and justice than to Malayness, thereby rejecting the concept of the special position and privileges of any ethnic group (in this case, it refers to the Malays, whose claim to this special position or *ketuanan Melayu* is very much intertwined with the existence of the Sultans and the image of the feudal Malay *kerajaan*), there would be a contradiction between its Islamic aspirations and Malay demands. Therefore in order to reconcile these conflicting dogmas, some readjustment or realignment would probably have to be made.

<sup>99</sup> In the UMNO 11 case (1988) 2 MLJ 129, the UMNO party was declared by the High Court as illegal under the Societies Act 1966 for failing to have some of its branches registered. Legally

high pending the forthcoming general election that a very 'different' scenario will emerge in Malaysia once the secret ballot boxes are opened and votes counted. Some predict tension, if not chaos. Others are confident that the *Barisan Nasional* and its dominant coalition member, UMNO, will emerge triumphant.

Beyond these, a further crucial issue arises. Are the Malays in general willing to shift their loyalty from a party that has become synonymous with *bangsa Melayu* to others which have yet to prove their credibility as an alternative '*pelindung*' or protector? Some might feel more at ease working with the 'devil' they know rather than with an 'angel' they do not know. Such caution may have been the very factor that has kept the Malays steadfastly loyal to UMNO for all these years. But in the wake of the Anwar-Mahathir crisis, that caution, perhaps, complacency, seems to have been much perturbed. The Malay community (except for certain quarters) which has thus far been ignorant and dismissive of such concepts as democracy, transparency, justice and liberty, has suddenly been rudely awakened to the fact that the system can improve with *reformasi*.

Constitutional issues such as the rights of an accused to a fair trial, accountability of ministers, and police brutality are among those topics that have come to dominate their daily conversations.<sup>100</sup> In the light of all these developments, one might reasonably suggest that the Malays are indeed on the road to a *Malaysia Baru* (new Malaysia). The only problem is what will it take to build this new Malaysian nation-state? Will the old ingredients such as the *bahasa Melayu* and *budaya Melayu*

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speaking, the Prime Minister (Mahathir) was at that juncture, a leader without a party (or a Raja' without a *kerajaan*). For a discussion of this case see Rais Yatim, *supra*, p.319.

<sup>100</sup> One would only need to visit the various websites, especially the *Reformasi* websites, to gauge the change in attitude of Malays and Malaysians towards these issues of rights and justice.

(Malay culture) be retained, or will they be replaced with other elements in the new recipe for a better and more equitable Malaysia?

#### 7.14 Conclusion

Anwar has indeed become 'the' factor around which much broader issues revolve. Constitutionalism, democracy and unity are now being reworked by those Malaysians who are campaigning in the name of justice and equality for all. Though different groups supporting *reformasi* have their own ideas of how and what to reform, yet the cementing force which brings them together, which might be summarised as their expressed desire for a better and fairer *kerajaan* (government), appears to have at least overshadowed their differences. Even the theme of Malay struggle is now sounding less parochial than in the past. The slogan or rhetoric of *ketuanan Melayu* is becoming less prominent and in its place is the more universal idea of nationhood and brotherhood. But to what extent precisely the Malays will set aside their traditional status quo is yet to be discovered, perhaps after all the intensity of *reformasi* subsides and when the reality of a pluralistic society starts to resurface.

#### 7.15 Postscript

Although the 1999 Malaysian general election might be best discussed as a topic on its own, it would be relevant to mention briefly its outcome, for it helped to reflect the perception of Malays, in particular, and of Malaysians in general, regarding *pemerintah* (ruling authority) or government (*kerajaan* in the modern sense). The results of the election <sup>101</sup> turned out to be an anti-climax for those who expected a

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<sup>101</sup> At national level, *Barisan Nasional* (the National Front) won 52.9%, opposition parties 47.1%. But Malay support for *Barisan* was said to have dropped drastically, especially in the Malay States of Kelantan and Trengganu which resulted in the ousting of the *Barisan* government in both states. PAS alleged that the Mahathir regime depended heavily on the non-Malay votes, particularly the Chinese

change of government in the wake of the Anwar-Mahathir saga and of the heat of the *reformasi* movements. The *Barisan Nasional* (National Front) coalition party managed to maintain its grip on the reins of government despite all criticisms and 'hate-campaigns' against UMNO and its President, Mahathir Mohamad, who was described by Anwar's disciples and sympathizers as '*Mahazalim*' (the most cruel) and *MahaFiraun*.<sup>102</sup>

The *Barisan*'s victory was not totally unexpected in view of its track record of victory in previous general elections, of the machinery available to the ruling party, such as the mainstream media (including the national radio and television stations, *Radio dan Television Malaysia* (RTM) and the government-backed newspapers, and of other government apparatus. But *Barisan*'s victory was largely attributed, argued the opposition parties, to the 'dirty tricks' and tactics employed by UMNO and its allies (even the Election Commission was accused by some political observers as bias).<sup>103</sup> 'Ghost voters' (non-existent voters),<sup>104</sup> were among those so-called tricks allegedly used by the ruling party to win in the election. To what extent the allegations and rumours of foul play are reliable are difficult to ascertain. However,

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(see *Kenyataan Media* (7 Disember 1999) *Pengundi Melayu Tolak UMNO/Barisan* (Press Statement 7 December 1999) Malay Voters Rejected UMNO/Barisan) [http://www.parti-pas.org/dec1999/8dec99\\_dpp1.html](http://www.parti-pas.org/dec1999/8dec99_dpp1.html) visited on 29/03/00 at 12.27.

<sup>102</sup> Firaun is the name of one of the Egyptian Pharaohs who was revealed in the Holy Quran as a mean and a tyrant ruler. '*Maha*' (which means 'the most', and which is coincidentally, part of the Prime Minister's name), is deliberately and satirically affixed to the word 'Firaun' for the purpose of describing what was perceived by the proponents of *reformasi* as the 'tyranny' of Mahathir.

<sup>103</sup> Pillai, M.G.G, for instance revealed that the Election Commission was biased in this case. The Commission paid no heed to the Opposition's complaint of irregularities in the election process, such as, a last-minute appearance of thousands of postal votes which allowed the education minister to win by a 241-vote majority when he was actually trailing behind; ballot papers being spoilt if the votes were for the Opposition candidates, ballot papers printed in Sabah instead of being printed under the strictest security at the National Printers in Kuala Lumpur, and voting carried out during office hours and not otherwise (see "Democracy, The Vote and the Elections".> [http://www.parti-pas.org/dec1999/6dec99\\_mgg.htm](http://www.parti-pas.org/dec1999/6dec99_mgg.htm) < visited on 29/03/00 at 11.59.

<sup>104</sup> Some names, it was claimed by the Opposition, were registered as eligible voters although in actuality the bearers of these names had long been deceased. But, again, in the absence of an independent survey to verify the claim, it is rather difficult to say whether it is indeed true.

the fact that the then 680,804 newly registered voters had been denied the right and opportunity to vote by the Election Commission,<sup>105</sup> on what seemed to many, to be a feeble ground (that is, insufficiency of time to process the registration), might shed some light on the truth of those allegations.

What is interesting about the election results, though, is the fact that contrary to prevailing indications, the strong wave of change of Malay attitude towards leadership or ruling authority was not powerful enough to initiate a radical departure from the traditional doctrine of '*pantang Melayu derhaka pada raja*' (it is not the custom of the Malays to be disloyal to the raja/ruler). Unlike their counterparts in the neighbouring country, Indonesia, the Malays in Malaysia have not gone far enough to 'dethrone' the ruling authority, otherwise than through a peaceful and democratic means. The populist cry of *reformasi* which generated such a fiery outburst against the government in the early stage of economic downturn at the close of the twentieth century seemed to have lost momentum as the nation moved out of the recession and as it made its entry into the new millennium with renewed confidence and a fresh mandate to rule.

Thus as one veteran journalist<sup>106</sup> observed, the winds of change and the oppression allegedly inflicted by the government on the *rakyat* could not bring about the scenario, which many anticipated. Perhaps, the people of Malaysia have not been 'oppressed' enough, at least economically, by the ruling regime, to propel them to

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<sup>105</sup> *Detik*, ><http://www.majalah.com/detik/9925nov/cl.htm>< visited on 25/03/00 at 15.03

<sup>106</sup> Samad Ismail, a well-known Malay journalist who has lived through the periods of British rule in Malaya and of the Japanese occupation of the Malay Peninsula and the period thereafter, believed that the forces of change were not strong enough to bring about a drastically different scenario, such as the downfall of the *Barisan* government. He said that one should not rely too much on the confidence displayed by the Opposition as an indicator of possible change of government.

overthrow the government in as dramatic a manner as that adopted by the anti-Suharto rioters and opponents in Indonesia? Since from the beginning the economy has been at the heart of the Anwar-Mahathir conflict, the same factor, might have extinguished the fire that ignited the spirit of Malaysians (at least of the non-Malays) which had in the last few months during the crisis threatened to end UMNO's and Mahathir's political supremacy.

Although Malaysia's economy shrank by more than seven per cent in 1999, Malaysians seem to be spending as if nothing has happened. Business is brisk in trendy cafes, such as Starbuck's Coffee shop in Kuala Lumpur;<sup>107</sup> and if the large number of guests attending the Muslims' annual Eidul-Fitr celebration<sup>108</sup> at the Prime Minister's (Mahathir's) house could be used as an indication of the diminishing anger and frustration against the host, then one might argue that the economic recovery had indeed reversed the attitude of Malaysians, particularly the Chinese, towards the so-called Mahazalim and MahaFiraun Mahathir.<sup>109</sup>

However, despite the voting pattern in the election one cannot ignore the dramatic change of feelings and the undercurrents that lie beneath the calm surface of Malaysian society in the post-election period. The government itself is cautious since the pro-Anwar and pro-*reformasi* movements pointed to government malpractice

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<sup>107</sup> Asianow-Asiaweek, ><http://cnn.com/ASIANOW/asiaweek/99/0219/csl-2html>,< visited on 25/3/00 at 15.32

<sup>108</sup> The Eidul Fitr is a religious celebration for Muslims which marks the end of the fasting period of Ramadhan.

<sup>109</sup> Each side (that is, Mahathir's and Anwar's camps) boasted that their leaders received the greater number of guests during the 1999 Eidul Fitr 'open-house' celebration. While Wan Azizah (Anwar's wife and the President of the *Parti KeADILan*) was said to have received an overwhelming number of people (18,000) at her house during the Eid, Mahathir, too, was reported to have entertained a similar crowd at his residence. There were tears at both places. One elderly Chinese man was reported to have cried when he thanked Mahathir for having saved the country from foreign speculators (see ASIANOW, supra, note 109).

prior to the election. As the present Deputy Prime Minister, Abdullah Ahmad Badawi, admitted to a journalist, "...the younger generation is not identifying itself with UMNO".<sup>110</sup> The fact that a larger number of younger faces and non-political figures, such as the newly appointed Minister of Education, were recruited by the Prime Minister into his Cabinet after the election may indicate that the government is responding, albeit in a limited gradual fashion, to the wave of modern demands, some of which were part of the *reformasi* agenda. As one middle-class Malay observed, "Malaysia is getting more open. If ever there were a spin-off of 'reformation', it is this: People can be more politically conscious, and that is a good sign."<sup>111</sup>

Of course, one cannot make an assessment of public attitude towards the ruling authority by relying on the reactions and opinions of one or two individuals. Nonetheless, in the absence of a massive public outcry, perhaps as big as the one displayed by the Indonesians in their protest against the Suharto regime, one might agree with the suggestion that Malays, in particular, and Malaysians in general had not been oppressed brutally enough to create a different government. Therefore, *derhaka*, it seems, has its limits; and in order to be *merdeka* in the complete sense of the word, the *bangsa Melayu* perhaps requires to experience a more traumatic crisis than that which occurred during the Anwar-Mahathir saga.

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<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

## Appendix 'A'

### Proclamation of Constitutional Principles<sup>1</sup>

**Proclamation dated July 4, 1992, and made by us:**

DYMM SPB Yang di Pertuan Agung IX Sultan Azlan Shah ibni Almarhum Sultan Yussuf Izzudin Ghafarullahu-Lahu Shah; DYMM Tuanku Syed Putra ibni Almarhum Syed Hassan Jamallulail, Raja Perlis Indera Kayangan; DYMM Sultan Salahuddin Abdul Aziz Shah Alhaj ibni Almarhum Sultan Hisamuddin Alam Shah AlHaj, Sultan Selangor Darul Ehsan; DYMM Tuanku Ja'afar ibni Almarhum Tuanku Abdul Rahman, Yang di Pertuan Negeri Sembilan Darul Khusus; DYMM Sultan Haji Ahmad Shah ibni Almarhum Sultan Abu Bakar Al-Mu'adzam Shah, Sultan Pahang Darul Makmur, DYMM Sultan Mahmud Al-Muktafi Billah Shah ibni Almarhum Tuanku Al-Sultan Ismail Nasiruddin Shah, Sultan Trengganu Darul Iman; dan KDYMM Raja Nazrin Shah ibni Sultan Azlan Muhibuddin Shah, Pemangku Raja Perak Darul Ridzuan.

WHEREAS by Article 71 of the Federal Constitution it is provided inter alia that the Federation shall guarantee the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Rulers of that State in accordance with the Constitution of that State;

And whereas by Article 181 of the Federal Constitution the sovereignty, prerogatives, powers and jurisdiction of the Rulers within their respective territories as hitherto had and enjoyed shall, subject to the provisions of the said Constitution, remain unaffected;

And whereas we are desirous that at all times the constitution and the laws of Malaysia are upheld in the nation by all persons;

And whereas we subscribe to the rule of law;

And whereas to avoid any misrepresentation as to the nature and extent of their sovereignty, prerogatives, powers and jurisdiction:

Now, therefore, we hereby make the following proclamation on the nature and extent of such prerogatives and powers:

#### 1. Involvement in politics

1.1 In accordance with established practice and convention, we are not directly or indirectly involved in party politics.

#### 2. Appointment of Menteri Besar

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<sup>1</sup>Initially the Proclamation of Constitutional Principles was to be known as the Code of Ethics of the Rulers. However, later, the Code was officially known as the Proclamation of Constitutional Principles.



- 2.1 In accordance with the State Constitution, we shall accept the nomination of a person who commands the confidence of the majority of the members of the Legislative Assembly as the Menteri Besar.
- 2.2 Where no party has a clear majority in the Legislative Assembly, we shall exercise our own discretion in such appointment in accordance with accepted constitutional principles.
- 2.3 When we have any reservation as to the suitability of any person nominated as Menteri Besar, we may refer the nomination for reconsideration by the leader of the appropriate party for a final decision.

### 3. Appointment of State Executive Council Members

- 3.1 We accept that the appointment of members of the State Executive is made on the advice of the Menteri Besar alone and that in accordance with the State Constitution, we shall approve such appointments.

### 4. Acting on Advice

- 4.1 We shall, in accordance with the general principle provided in each State Constitution, act on the advice of the State Executive Council or of the Menteri Besar.
- 4.2 We recognize that in accordance with established constitutional practice, the terms “acting on advice” or “Ruler in Council” and other similar terms mean that we shall accept the advice of the Government of the State as tendered by the Menteris Besar and the State Executive Council.
- 4.3 In accordance with established constitutional practice, we shall have the right to be consulted, the right to encourage and the right to caution the Government.
- 4.4 In furtherance of our right to request any information concerning the Government of the State as provided for in each State Constitution, we shall have the right to be briefed by the Menteri Besar as and when requested by us and also prior to each meeting of the State Legislative Council.

### 5. Appointment of senior government officers

- 5.1 We shall appoint the State Secretary, the State Legal Advisor and the State Financial Officer on the recommendation of the appropriate Public Service Commission, and also in accordance with the practice and provisions of the State Constitution, after the name of the candidate has been submitted to us by the Menteri Besar.
- 5.2 In accordance with the present practice, we shall be consulted before appointments are made of all heads of Federal Departments in the State.
- 5.3 We shall appoint the members of the State Public Service Commission in accordance with the relevant State legislation.

### 6. Business

- 6.1 We shall not actively engage in any commercial enterprise except by way of trust.
- 6.2 His Royal Highness the Regent may through trustees/nominees participate in any commercial enterprise.

## 7. Expenses of the Royal Household

- 7.1 The Comptroller of the Royal Household shall control and administer the allocations provided for in the Civil List, in accordance with the financial procedure.

## 8. Religion

- 8.1 In accordance with the Constitutional principle that we are the heads of the religion of Islam in our respective States, we reaffirm our position that we will uphold the teachings and practice of Islam.

## 9. The Media

- 9.1 We, in accordance with constitutional practice, do not disclose to or discuss with the media any matter pertaining to the administration of the State which is likely to give rise in controversy.

## 10. His Majesty the Yang di Pertuan Agung

- 10.1 Unless otherwise provided for in the Federal Constitution, this Proclamation shall apply, mutatis mutandis to His Majesty the Yang di Pertuan Agung.

## Saving

This Proclamation is made for the purpose of clarification and assurance and is made without prejudice to the provisions of the Federal Constitution, the State Constitution and existing convention and prerogatives.

Made at the Istana Negara this July 4, 1992,  
by Their Royal Highnesses' command,  
(Engku Datuk Ibrahim bin Engku Ngah)  
Keeper of the Rulers' Seal.

## **Appendix B**

### **EXTRACT OF ARTICLES FROM THE FEDERAL CONSTITUTION, 1957**

#### **REFERRED TO IN THE THESIS**

### **3. Religion of the Federation**

- 1) Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.
  
- 2) In every State other than States not having a Ruler the position of the Ruler as the Head of the religion of Islam in his State in manner and to the extent acknowledged and declared by the Constitution of that State, and, subject to that Constitution, all rights privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired; but in any acts, observances ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his capacity of Head of the religion authorize the Yang di Pertuan Agong to represent him.
  
- 3) The Constitutions of the States of Malacca , Penang,Sabah and Sarawak shall each make provision for conferring on the Yang di-Pertuan Agong the position of Head of the religion of Islam in that State .
  
- 4) Nothing in this Article derogates from any other provision of this Constitution.
  
- 5) Notwithstanding anything in this Constitution the Yang di-Pertuan Agong shall be the head of the religion of Islam in the federal Territories of Kuala Lumpur and Labuan; and of this purpose Parliament may by law make Provisions for regulating Islamic religious affairs and for constituting a Council to advise the Yang di-Pertuan Agong in matters relating to the Religion of Islam.

### **4. Supreme law of the Federation**

- 1) This Constitution is the supreme law of the Federation and any law passed after Merdeka day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

## **PART I**

### **FUNDAMENTAL LIBERTIES**

#### **(8) Equality.**

- 2) All persons are equal before the law and entitled to the equal protection of the law.
- 3) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only religion, race, descent or place of birth in any law or in the appointment to any office or employment under public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
- 4) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler any State.

#### **(9) Prohibition of banishment and freedom of movement.**

- 1) No citizen shall be banished or excluded from the Federation.
- 2) Subject to Clause (3) and to any law relating to the security of the Federation or any part thereof, public order, public health, or the punishment of offenders, every citizen has the right to move freely throughout the Federation and to reside in any part thereof.
- 3) So long as under this Constitution any other State is in special position as compared with the State of Malaya, Parliament may by law impose restrictions, as between that State and other States, on the right conferred by Clause (2) in respect of movement and residence.

#### **(12) Rights in respect of education.**

- 1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth-

- a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or
- b) in providing out of the funds of a public authority financial aid for the maintenance or educational of pupils or students in educational institution (whether or not maintained by a public authority and whether within or outside the Federation).

#### **PART IV**

#### **THE FEDERATION**

### **32. Supreme Head of the Federation, and his Consort**

- 1) There shall be a Supreme Head of the Federation, to be called the di *Pertuan Agong*, who shall take precedence over all persons in the Federation and shall not be liable to any proceedings whatsoever in any court except in the Special Court established under Part XV.
  - 1) The Yang di *Pertuan Agong* shall be elected by the Conference of Rulers for a term of five years, but may at any time resign his office by writing under his hand addressed to the Conference of Rulers or be removed from office by the Conference of Rulers, and shall cease to hold office on ceasing to be a Ruler.

### **33 A. Yang di *Pertuan Agong* shall cease to exercise the functions of the Yang di *Pertuan Agong* if charged with an offence.**

- 1) Where the Yang di *Pertuan Agong* is charged with an offence under Any law in the Special Court established under Part XV he shall cease to exercise his functions of the Yang di *Pertuan Agong*.

### **38. Conference of Rulers**

- 1) There shall be a *Majlis Raja-Raja* (Conference of Rulers), which shall be constituted in accordance with the Fifth Schedule.
  - 1) The Conference of Rulers shall exercise its functions of –

(c) consenting or withholding to any law and making or giving advice on any appointment which under this Constitution requires the consent of the Conference or is to be made by or after consultation with the Conference.

(d) appointing members of the Special Court under Clause (1) of Article 182.

(e) Granting pardons, reprieves and respites, or of remitting, suspending or commuting sentences, under Clause (12) of Article 42.

(4) No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.

(5) The Conference of Rulers shall be consulted before any change in policy affecting administrative action under Article 153 is made.

### **The Executive**

#### **40. Yang di Pertuan Agong to act on advice**

- 1) In the exercise of his functions under this Constitution or federal law the Yang di Pertuan Agong shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet, except as otherwise provided by this Constitution; but shall be entitled, at his request, to any information concerning the government of the Federation which is available to the Cabinet.
- 2) In the exercise of his functions under this Constitution or federal law, where the Yang di Pertuan Agong is to act in accordance with advice, on advice, or after considering advice, the Yang di Pertuan Agong shall accept advice and act in accordance with such advice.
- 3) The Yang di Pertuan Agong may act in his discretion in the performance of the following functions, that is to say:
  - (a) the appointment of a Prime Minister;
  - (b) the withholding of consent to a request for the dissolution of Parliament;

- (c) the requisition of a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of Their Royal Highnesses, and any action at such meeting, and in any case mentioned in this Constitution.

#### **42. Power of pardon**

12) Notwithstanding anything contained in this Constitution, where the powers mentioned in this Article –

- (a) are exercisable by the Yang di Pertua Negeri of a State and are to be exercised in respect of his wife, son or daughter, such powers shall be exercisable by the Yang di Pertuan Agong acting on the advice of the Pardon Board constituted for that State under this Article and which shall be presided over by him;

- (b) are to be exercised in respect of the Yang di Pertuan Agong, the Ruler of a State, or his Consort, as the case may be, such power shall be exercised by the Conference of Rulers and the following provisions shall apply:

- i. When attending any proceedings under this Clause, the Yang di Pertuan Agong shall not be accompanied by the Prime Minister and the other Rulers shall not be accompanied by their Menteri-Menteri Besar;
- ii. before arriving at its decision in any matter under this Clause, the Conference of Rulers shall consider any written opinion which the Attorney General may have delivered thereon;

(c) are to exercised by the Yang di Pertuan Agong or the Ruler of a State in respect of his son or daughter, as the case may be, such powers shall be exercised by the Ruler of a State nominated by the Conference of Rulers who shall act in accordance with the advice of the relevant Pardons Board constituted under this Article.

#### **43. Cabinet**

5) Subject to Clause (4), Ministers other than the Prime Minister shall hold office during the pleasure of the Yang di Pertuan Agong, unless the appointment of any Minister shall have been revoked by the Yang di Pertuan Agong on the advice of the Prime Minister but any Minister may resign his office.

### **63. Privileges of Parliament**

3) Notwithstanding Clause (4), no person shall be liable to any proceedings in any court in respect of anything said by him of the Yang di Pertuan Agong or a Ruler when taking part in any proceedings of either House of Parliament or any committee thereof except where he advocates the abolition of the constitutional position of the Yang di Pertuan Agong as the Supreme Head of the Federation or the constitutional position of the Ruler of a State, as the case may be.

### **66. Legislative Procedure**

4) The Yang di Pertuan Agong shall within thirty days after a Bill is presented to him assent to the Bill by causing the Public Seal to be affixed thereto.

(4A) If a Bill is not assented to by the Yang di Pertuan di Pertuan Agong within the time specified in Clause (4), it shall become law at the expiration of the time specified in that Clause in the like manner as if he had consented thereto.

149. SPECIAL POWERS AGAINST SUBVERSION, ORGANISED VIOLENCE, AND ACTS AND CRIMES PREJUDICIAL TO THE PUBLIC AND EMERGENCY POWERS.

1) If an act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation –

- (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property ; or
- (b) to excite disaffection against the Yang di Pertuan Agong
- (c) or any government in the Federation; or
- (d) to promote ill feelings of ill-will between different races
- (e) or other classes of the population likely to cause violence; or
- (f) to procure the alteration, otherwise than by lawful means, of anything by law established; or
- (g) which is prejudicial to the maintenance of any supply or service
- (h) to the public or any class of the public in the Federation or any part thereof; or
- (i) which is prejudicial to public order in, or the security of, the Federation or any part thereof,



any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Articles 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to Bill for such an Act or any amendment to such a Bill.

### **151. Restrictions on preventive detention**

3) This Article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.

### **152. National Language**

1) The national language shall be the Malay language and shall be in such script as Parliament may by law provide

Provided that –

- a) to person shall be prohibited from using (otherwise than for official purposes), or from teaching or learning any other language;
- 5) In this Article, “official purposes” means any purpose of the government, whether Federal or State and include any purpose of a public authority.

### **153. Reservation of quotas in respect of services, permits, etc., for Malays and natives of any of the States of Sabah and Sarawak.**

- 1) It shall be the responsibility of the Yang di Pertuan Agong to safeguard the special position of the Malays and natives of any of the States of Sabah or Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.
- 2) The Yang di Pertuan Agong may, in order to ensure in accordance with Clause the reservation to Malays and natives of any of the States of Sabah and Sarawak of positions in the public service and of scholarships, exhibitions and other educational or training privileges or special facilities, give such directions as may be required for that purpose to any Commission to which Part X or to any authority

charged with responsibility for the grant of such scholarships, exhibitions or other educational or training privileges or special facilities; and the Commission or authority shall duly comply with the directions.

### **159. Amendment of the Constitution**

5) A law making an amendment to Clause (4) of Article 10, any law passed thereunder, the provisions of Part III, Article 38, 63 (4), 71 (1) 72 (4), 152 or 153 or to this Clause shall not be passed without the consent of the Conference of Rulers.

### **160. Interpretation**

3) In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:

“Law” includes written law, the common law in so far 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;

“Malay” means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and –

a) was before Merdeka Day born in the Federation or in Singapore or born of parents whom were born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or

b) is the issue of such a person.

### **181. Saving for Rulers’ sovereignty, etc.**

1) Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of Negeri Sembilan within their respective territories as hitherto had and enjoyed shall remain unaffected.

- 2) No proceedings shall be brought in any court against the Ruler of a State in his personal capacity except in the Special Court established under Part XV.

## PART XV

### PROCEEDINGS AGAINST THE YANG DI PERTUAN AGONG AND THE RULERS

#### **182. The Special Court**

- 1) There shall be a court known as the Special Court and shall consist of the Chief Justice of the Federal Court, who shall be the Chairman, the Chief Judges of the High Courts, and two other persons who hold or have held office as judge of the Federal Court or a High Court appointed by the Conference of Rulers.
- 2) Any proceedings by or against the Yang di Pertuan Agong or the Ruler of a State in his personal capacity shall be brought in a Special Court established under Clause (1).
- 3) The Special Court shall have exclusive jurisdiction to try all offences committed in the Federation by the Yang di Pertuan Agong or the Ruler of a State and all civil cases by or against the Yang di Pertuan Agong or the Ruler of a State notwithstanding where the cause of action arose.
- 4) The Special Court shall have the same jurisdiction and powers as are vested in the inferior courts, the High Court and the Federal Court by this Constitution or any Federal law and shall have its Registry in Kuala Lumpur.
- 5) Until Parliament by law makes special provision to the contrary in respect of procedure (including the hearing of proceedings in camera) in civil and criminal proceedings, the practice and procedure applicable in any proceedings in any inferior court, any High Court and the Federal Court shall apply in any proceedings in the Special Court.
- 6) The proceedings in the Special Court shall be decided in accordance with the opinion of the majority of the members and its decision shall be final and conclusive and shall not be challenged or called in question in any court on any ground.

7) The Yang di Pertuan Agong may on the advice of the Chief Justice, make such rules as he may deem necessary or expedient to provide for the removal of any difficulty or anomaly whatsoever in any written law or in the carrying out of any function, the exercise of any power, the discharge of any duty, or the doing of any act under any written law that may be occasioned by this article, and for that purpose such rules make any modification, adaptation, alteration, change or amendment whatsoever to any written law.

**183. No Action to be instituted against the Yang di Pertuan Agong or a Ruler except with the consent of the Attorney General personally.**

No action, civil or criminal shall be instituted against the Yang di Pertuan Agong or the Ruler of a State in respect of anything done or omitted to be done by him in his personal capacity except with the consent of the Attorney general personally.

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