

Ampun Tuanku

A Brief Guide to
Constitutional Government

ZAID IBRAHIM

Ampun Tuanku: A Brief Guide to Constitutional Government

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This book is dedicated to Suliana (my own Mumtaz Mahal) and Rayes, my only grandchild.

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Preface

Writing is known as a solitary pursuit but the truth is, many capable hands are needed to put a book together.

Lawyers Malik Imtiaz, Paul Subramaniam and Nizam Bashir, as well as a retired Court of Appeal judge who has asked to remain unnamed, offered invaluable pointers and made corrections – any error that escaped notice is mine. I am especially grateful to Malik for his support and friendship over the years. He is the epitome of a good lawyer – lucid, clear, and most importantly, never afraid to defend unpopular causes. For taking the time to read the manuscript and reminding me of the essential legal principles, and for sharing their informed perspective, I give them all my thanks.

I am thankful for my friends in our party KITA who understand the meaning of sacrifice, who have stood by me in defending unpopular but just political and legal principles, and who have remained loyal under very difficult circumstances.

I have also been inspired by other friends who stand at the frontlines fighting for the rights of Muslim women, and by moderates among the *ulama* who espouse a more progressive and forward-thinking perspective on the Islamic issues discussed in this book – our conversations have assured me that my understanding of Islam is not wrong. To avoid getting entangled with the authorities, these scholars and imams keep a low profile. They still, however, have an influential role in shaping the resurgent Islam we see today and they also carry with them the spirit of Prophet Muhammad’s Last Sermon, in which he spoke of the duty of Muslims to one another and to mankind, regardless of skin colour.

To my son Ezra and to ZI Publications, I owe much gratitude for publishing this book without worrying about sales and profitability. I also want to thank Shareem Amry, the best English teacher I’ve had.

And what would I do without the steadfast presence of the other members of my family: Suliana, Alysha, Kazran and Ema. I especially want to thank my wife Suliana, who always grows nervous whenever I say or write anything but who always gives her support and love. I am also grateful for my only grandson Rayes; my sun and moon who gives me comfort and happiness when all is bleak in the world of politics.

Foreword

Whatever one's affiliations or loyalties, events over the past four years have shown us that Malaysians are now ready for a more mature kind of politics that transcends race and religion. Malaysian voters are keen to involve themselves in a more participatory democracy where issues, and not stereotypes, are the focus. They are more aware of the need for checks and balances within government as well as the key roles played in this process by the institutions of the state. In short, the Malaysian voter is looking for a balanced form of governance that focuses on the fundamental concerns of all Malaysians in their quest for social and economic security.

Underscoring this is a desire for accountability. Gone are the days when average Malaysians would believe what was told to them by their leaders or persons of influence. Social media has changed the way many of us get our information and share our opinions. It has given us greater reach to matters that might not have otherwise seen the light of day. It has made us more willing to say what we think and to act on what we feel for the simple truth that information empowers.

With that empowerment has come the confidence to reassess the way in which things are done, chief among which is the way in which we are governed. Malaysians are now asking questions which they would never have before. They are demanding answers where in the past they would have compliantly accepted stonewalling silence. They have begun to challenge boundaries that have hitherto remained sacrosanct.

This includes the Rulers and their roles in government. Events in the public sphere and their respective controversies have enveloped the Palace in a way that many would have thought impossible and in a manner that threats of prosecution for sedition or other offences could not restrain. The indelible impression left by such affairs is that Malaysians expect their Rulers to remain above the political fray and, in that, to be bastions of fairness and good conscience.

It is also worth mentioning that reactions to the Palace on such matters indicate to me a great respect for the Rulers and their role in the constitutional democracy that Malaysia is. With that respect is an expectation that the Rulers will not lend themselves to politics and, in that regard, they will assist the *rakyat* in maintaining a level playing field. We must not lose sight of the fact that when the *rakyat* went to the streets demanding free and fair elections in 2007, their trajectory led them to the gates of the *Yang di-Pertuan Agong*. His Majesty was the court of last

resort for many, and the receipt of the memorandum brought by the protestors by His Majesty's emissaries was, in their minds, an indication that their pleas had been heard. Why would the *rakyat* have turned to His Majesty unless they loved and cherished him?

The political landscape at the present has led to questions over what it is that the *rakyat* will be able to expect from their Rulers in the aftermath of the next general and state elections. These in turn have given rise to important questions about how it is the Rulers will be expected to act during those possibly turbulent times.

This work by Datuk Zaid Ibrahim courageously takes on this admittedly thorny issue. The author has attempted, and in my view succeeded, to define the debate by reference to the roles of the Rulers under the Federal and State constitutions as well as to the expectations of the *rakyat*. The work does not seek to attack, as the author himself says he is not “anti-monarchy”, but rather to gently suggest that there may be key dimensions to being a Ruler that may have become obscured over time and which ought to be reasserted in the interests of both the institution of the monarchy as well as Malaysians as a whole.

The author has confided that he anticipates negative reactions. I sincerely hope that this will not be the case. While some might disagree with Datuk Zaid's views and question his audacity in speaking so

directly to the Rulers, we need to remind ourselves that all humans are fallible and in Malaysia no one is above the law. Let there be disagreement, if there is any, but let there be no discord. It is one of the hallmarks of a mature democracy, of the kind that we aspire to be, that opinions and ideas may be exchanged for the betterment of society.

I commend this book and offer my sincere congratulations to Datuk Zaid for his having authored this work.

Datuk (Puan Sri) Jamilah Ibrahim
Social Activist



Introduction

In the midst of all the excitement being generated by the upcoming 13th general election, I have decided to write about issues related to the role played by the King and the other Malay Rulers in the formation of a constitutional government in Malaysia. They are undeniably crucial in determining if it's possible to peacefully transfer power to the Opposition should they win control of the Government. It would mark the first time in our history that power changed hands at the federal level. Anything less than a proper exercise of power by the monarchs, however, would scuttle this effort to have a new government in Putrajaya.

This is not an unjustified concern. We would, after all, be entering into unexplored territory, a no-man's-land where UMNO has never lost power and where no precedent can be relied on. The true test of our commitment to democracy and our respect for the

mandate of the people is that the government elected by the people is allowed to rule. We want a representative constitutional government, one that operates within the rule of law, has legal legitimacy, public support and the ability to administer the country effectively.

We have seen such political change go awry in other countries, where polling went smoothly but was followed by problems as soon as the results were made known. After Zimbabwe's last election in 2008, civil strife erupted between President Robert Mugabe's ruling party and the Movement for Democratic Change, led by Opposition Leader Morgan Tsvangirai. It took international pressure, particularly from the United Nations and the African Union, to bring about a peaceful resolution. In Sierra Leone, civil war also broke out because the leaders who lost the election were unwilling to accept the verdict and held on to power. Again, UN peacekeeping forces had to be deployed to protect civilians from becoming victims of a civil war.

Today in Malaysia, much of any political discussion revolves around two questions: will it be the Barisan Nasional (BN) or the Pakatan Rakyat (PR) that will win the general election, and who would be Prime Minister if Pakatan were to rule? Everyone assumes that whichever side wins, there will be a smooth transfer of power after the elections. I, for one, am not so optimistic that any such transfer will go

smoothly should the Opposition win. On the contrary, I believe we will enter one of the most unsettling and tumultuous periods in our history.

It's not my work to predict what can happen – the best one can do is to forewarn and highlight issues of concern so that stakeholders and the powers-that-be in the relevant institutions will take notice of the dire consequences should they exercise their considerable powers wrongly, or do so without wisdom and care. I am particularly concerned however, because of the toxicity of our current political climate. We can see this in the cruel and shameful treatment of Opposition leaders and the espousal of extreme ideas about race and religion in the media. A responsible government would allow for space for an Opposition to provide a political alternative without continuous harassment and ill treatment. Bribery and cash handouts may be sufficient inducement for the *rakyat* to forget that their own long-term self-interests depend on having a responsible and accountable government, and this places all of us in peril. We need a strong and viable Opposition. The choice is simple: we either have continued hegemony, or we choose to be ruled by democratic means.

Regardless of who wins the general election, what is clear is that we need a smarter and better government than we have now, one that will put a priority on solving the people's problems. Our problems are real

and they require a good and smart government at the helm. If the Opposition were to win, they must be allowed to govern unimpeded and undisturbed in any way. If the BN were to emerge the victor once again, the losers must accept the verdict and hope the new BN line-up will comprise smarter and more capable Ministers who have fresh ideas and the political will to replace irrelevant policies with new ones that will work. If we want stability and peace, the people's mandate needs to be respected.

Many Malaysians now feel they have been shortchanged by their leaders' lack of integrity and broken promises. It's clear that it will take more than just high-priced consultants and stirring speeches to undo the policies and practices of the past decade. Trying to appease the public by introducing laws that appear liberal and progressive on the surface, but which cannot bear up under public scrutiny, only damages the reform effort even further.

Reform cannot be carried out piecemeal, nor is it enough to tinker with some laws and launch a public relations exercise. Real reform means putting new things in place of old ones. It calls for a true paradigm shift. It will always draw opposition because those with vested interests will oppose the change, which means a reformist leader must be someone who is willing to stake his career on the changes he believes in.

The challenges that will face the winner of the general election are too diverse and complex for this small book to tackle but what we need, ultimately, is a government that can govern well. Whoever wins the general election must realise and accept that Malaysia can no longer continue to flounder. The “more of the same” approach will not work. The prevailing political mentality of “you are either with us or against us” is not feasible. The way forward is for all stakeholders and the *rakyat* to work together. We have waged enough political battles in these last few years and to continue to do so after the election will be grossly irresponsible and will do grave harm to the country.

What must not happen is for the army or any other groups who are unwilling to accept the outcome of the general election to intervene. There must not also be, under any circumstances, a leadership crisis similar to the one that was allowed to unfold in Perak in 2008. We have only one chance at democracy, and its test is whether there can be a peaceful transfer of power from the BN to the Opposition. We have not been tested on this score at federal elections and so the *rakyat* and many international observers will be watching this general election very closely. There should never be any doubt that such a transfer of power can be peaceful; otherwise, all will be in turmoil.

The roles of the monarch and the other Malay Rulers are critical to our future as a democracy. A

constitutional monarch's role in a democracy is well-defined in books and constitutional practices. Unfortunately, decisions by some of our Rulers have overstepped these boundaries and caused political unrest and confusion to many. The Rulers' unwillingness to remain within their constitutional roles has been further aggravated by a lack of conviction and courage by the institutions that are supposed to protect and preserve the laws of the Constitution.

No other country has nine hereditary Rulers who each rule as King by rotation every five years. Such a system makes it a challenge for any of them to command the kind of adulation and awe that the hereditary kings of Japan or Thailand continue to receive. Still, our Rulers will get the public's respect if each of them willingly follows the rules and practices of law and convention and resists the temptation to interfere in the administration of the country.

To properly discharge the responsibilities assigned to him by the State, a Ruler must have a deep appreciation for his role and the pivotal impact his decisions have on his subjects' wellbeing. The proper function of the Rulers' powers lie within prescribed limits of law and constitutional practice. Any departure from this framework will derail the running of the government machinery and may even destabilise the country. It was the Elizabethan Lord

Chief Justice, Sir Edward Coke, who reminded King James I of the immortal words of Thomas Fuller: “Be you ever so high the law is above you”. I would like to think that the people of this country fully endorse such a view. But a Ruler’s role is not confined to just making sure any transfer of power takes place in the most peaceful manner possible. There are broader issues where the proper use of the monarch’s powers is essential if this country is to become a feasible and modern democracy.

This book is not just about the Malay Rulers – it’s also about the need for all stakeholders to play their rightful roles so that we can preserve a constitutional government as part of our political system. Aristotle reminds us that it’s always preferable to be ruled by laws rather than by men. What he means is that it’s always better to have a government that is bound by rules and laws than by the dictates and whims of its leaders. Although Malaysia is a democracy that is governed by laws and a legal foundation formed by the Constitution, the powers exercised by our leaders sometimes depart from the laws and practices associated with a democratic government. The ruling Government sometimes opts to rule by undemocratic means when the situation and circumstance suits it. Oppressive and archaic laws are still being used to curtail the freedom of information and freedom of expression.

Still, the country's march towards more democratic change is inevitable. The juggernaut of globalisation changes not just our trade and culture, it also opens up an unstoppable flood of direct information about political developments in other countries. The world truly has become a village where everyone actually knows everyone else, albeit superficially. Barriers are breaking down and seamless communication has become fast and cheap.

There is no doubt that the political developments that unfolded in the Middle East last year – named with such great hope as the Arab Spring – has had a profound impact on young Muslims in the country. The ruling Government has to accommodate the demands for more democratic reforms if it is to cope with the resurging might of the Opposition parties. There will be a proliferation of changes to its policies and laws to satisfy this demand for democratisation, even if these changes are superficial and are designed merely to appease Malaysians and secure their votes.

Conservative elements, be they religious or political, do not relish this march for change. They fear that globalisation is just a smokescreen for another round of Western colonisation. They argue that this push for democracy and more personal liberties is a means to contaminate our culture and Islamic values. They see an insidious design on the horizon, drawn by the West to stifle and weaken the establishment of

an Islamic civilisation and Islamic political system. Some of these fears are manufactured and some are real. The elements fomenting for change and greater liberalisation as well as its opposing forces are equally strong, and we can expect both sides to be hard at work in the coming general election as each seeks to secure political footholds to further its cause.

The Malay Rulers are equally susceptible to changes in the country's political development. They generally enjoy a good working relationship with UMNO; after all, it has been claimed that UMNO was born in the Istana. But the relationship does not run smoothly all the time. In the early 1980s, we experienced a constitutional crisis between the Malay Rulers and the UMNO-led Government. It was primarily due to the Rulers' not being able to accept that they were only symbols and figureheads of the government of the day. All executive decisions were – as they continue to be – in the hands of the politicians. The Rulers resented this fact, which was a departure from their traditional role as Head of the State in the days before constitutional government ruled.

The constitutional crisis of the 1990s was different in nature and less severe in its impact. In that instance the Government was ostensibly seeking to remove legal immunity from the personal actions of the Rulers so that they could be held responsible and accountable if they contravened the law. Whether

the resulting constitutional amendment has had the desired effect is questionable because until today, no criminal prosecution has yet been taken against the Rulers, whether in the Civil or *Syariah* Courts.

However, in civil claims we have seen legal action taken by Standard Chartered Bank against the *Yang di-Pertuan Besar* of Negeri Sembilan with respect to a personal guarantee. It underscores how important it is for the Rulers to act in a way that does not undermine the institution of the monarchy. The impact of conduct unbecoming does not end there. As a consequence of press coverage of the case, the then-Chief Justice amended the Special Court rules so that all cases are held in camera. A subsequent amendment to the rules barred the Press from covering any case before the Special Court (set up after a 1993 constitutional amendment to oversee cases involving Rulers who commit legal infractions in their personal capacities). This was in place when proceedings were brought to the court by the former Sultan of Kelantan, Tuanku Ismail Petra. I do not believe these amendments are valid but they define the state of play at the moment. Rather than let Malaysians know their Rulers for what they are, the judiciary took it upon themselves to preserve form over substance in an effort to preserve the veneer of the institution. This comes at great cost, including the suppression of information about the Rulers to the *rakyat*.

Meanwhile, today we see a different relationship between UMNO and the Rulers. The Malay Rulers are not traditionally very wealthy as some of them are Rulers of states that have few sources of revenue. As the country industrialised and prospered, we saw more members of the royalty getting involved in business. Inevitably, some of them were given lucrative government contracts and became very wealthy indeed. More and more tycoons can be seen on Palace grounds, receiving titles and awards. It's therefore not surprising that Rulers who once maintained a fittingly regal distance from politics now relish making highly political statements. Some of them are openly supportive of the BN's ideology and the Government.

Of course, criticising the Malay Rulers is a dangerous thing to do. It can expose us to criminal charges because our laws are so strict and unreasonable. It is appropriate to mention the prosecution brought against lawyer-politician Karpal Singh in connection with his remarks over the Perak leadership controversy. In its most basic form, all Karpal said was that he might take the Sultan of Perak to court. This was made a subject of a sedition charge against him. At the close of the prosecution's case, the High Court acquitted him but the Court of Appeal then directed him to enter his defence in a scathing judgment that brings into focus not only the constitutionality of the Sedition Act, but also the mindset of our administrators

on matters so fundamental to democracy. All Karpal did was to point out, in his own inimitable style, that the Sultan had got it all wrong. This was no different from other personalities who expressed a similar view. The issue of Perak's leadership crisis was and remains a legal one: is the Sultan entitled to refuse the *Menteri Besar's* request to dissolve the State Legislative Assembly? The prosecution of Karpal Singh is yet another example of the extent to which the system is reshaped to suit the Rulers' idiosyncratic behaviour. (I will revisit the Sultan's decision to refuse the *Menteri Besar's* request in Chapter Three.)

The Sedition Act allows for constructive criticism of erroneous exercises of discretion. Others also publicly complained about the events in Perak. A High Court judge found that the Sultan had acted outside the scope of his power. And yet an Opposition politician was charged with sedition. How is this just and fair? More importantly, why did the Sultan of Perak, a former Lord President, not speak out against the prosecution of Karpal? Perhaps the Sultan has found himself ensnared in a web of politics that makes it difficult for him to do the right thing. Leave aside the fact that Karpal is an Opposition politician – the prosecution underscores the point that at the end of the day, missteps by Rulers result in a suppression of basic rights.

Even if we escape being legally penalised, the wrath of our fellow Malaysians can still exact a heavy price. We last saw that when International Islamic University Malaysia lecturer Professor Dr Aziz Bari, a constitutional law expert, questioned the Sultan of Selangor's statement on a raid conducted by the State Islamic Religious Department on the Damansara Utama Methodist Church last August. Regardless of what we thought of Professor Aziz's stand, there's no denying that he was punished for his outspokenness: the university suspended him and he received a 9mm bullet in the mail with the message, "*Jangan kurang ajar dengan Sultan, maut nanti*" (Don't be rude with the Sultan, you may die later).

Still, we have no choice but to discuss in good faith and with intelligence why the Rulers need to remain above politics and partisanship if we are to have peace and political stability. There is no way we can discuss the functions and responsibilities of those in government without touching on the Rulers, since they are all part of the government. As Heads of State, the Rulers have constitutional duties and responsibilities, all of which should be open to debate and discourse by the *rakyat*. The word "government" has a wider meaning under the Constitution. Article 32 stipulates that the King is the Supreme Head of the Federation, and he takes his oath of office to protect the Constitution. Although he acts on advice, the

executive authority is vested in him.

In this small book, I will devote my thoughts on several areas concerning the royalty that are, in my view, critical to their own long-term wellbeing as well as to the proper functioning of our constitutional government today and in the future.

The opening chapters will take a brief look at the historical roots of our monarchy. It once followed the model of absolute rule that was a defining characteristic of all monarchies of old, but it nearly came to an ignominious end during the Malayan Union of the British colonial era. It was the combined efforts of our founding fathers, labour and workers' groups and freedom fighters that galvanised public opinion to bring impetus to the Independence movement, and ultimately also to preserve the institution of the monarchy.

Given this history, what does it mean to continue to have a constitutional monarchy? What roles and responsibilities do the Rulers have within this modern, constitutional context? We have already seen the Rulers testing these boundaries several times over the years, and this has resulted in more than one crisis of state leadership as well as showdowns with the country's political leaders.

A bigger, more relevant question that we must face today is this: if long-running tensions between the monarchy and the political establishment are not resolved, what can the ramifications be if the next

general election demands a transfer of power to the Opposition? Considering the political developments of these last few months, this potential outcome is not as far-fetched as it may have once seemed.

Other chapters of this book will try to identify what the characteristics of an ideal and relevant monarchy can be in our own unique context. We take a comparative look at other, more established monarchies and the mechanisms that have been put in place to ensure they continue to play a relevant role, even in the 21st century.

I personally have great admiration for some members of the Malaysian royalty, but at the same time I'm at a loss over the conduct of some others. Since we have to live with a political system involving the monarchy, I believe a discussion on how to make the monarchy an exemplary part or component of government should be undertaken with all seriousness.

I also believe that there is, without a doubt, a part that our Rulers can play today. Our country faces a host of challenges but among the most divisive is the impact of creeping "Islamisation". As conservative elements make increasingly heavy-handed attempts to legislate private behaviour and dictate personal faith, the different communities of our multiethnic and multi-religious society grow ever more distrustful of one another. I will discuss this

extensively in this book because in Malaysia, issues of religion cannot be divorced from the process of governance. On Islam and governance, it is worth mentioning the 1988 Supreme Court decision of the Che Omar Che Soh case. The former Lord President Tun Salleh Abas emphasised three important principles: a) the law is secular i.e. morality does not enjoy the same status as the law; b) the basic law is not Islamic law, as the supreme law of the land is the Federal Constitution; and c) Islamic law is limited to personal law. Che Omar Che Soh has never been departed from; therefore, these principles still stand. The Constitution has not been amended in any manner or form so as to undermine it. For all intents and purposes, the law is secular – not in a manner that suggests it is godless, but neutral.

As much as we would prefer to avoid the innate controversies involved, religion is inextricably linked to the secular views and policies of the Government. Fear of treading into these so-called sensitive matters will not help the country find solutions to the prevalent – and arguably worsening – conflicts among the faith communities.

The *ulama* or religious scholars play an important role in redefining fundamental concepts of Islam that can help us to accommodate the expectations of our different religions. No one who has read the history of Islam will fail to appreciate the immense

contribution of Islamic scholars to the development of the religion's pristine values. But there are those today who are blatantly politically partisan, and these are the scholars I am critical of as they thwart Islam's potential ability to resolve many of the problems that the modern world faces. The fate of the Muslim community depends once again on Islamic scholars, who must rise and seize the opportunity to positively transform the *ummah* or Muslim community and restore it to its rightful place.

The Rulers meanwhile – in their constitutional roles as arbiters of Islamic issues in their respective States – can also help to defuse existing tensions. They still command a special place of trust and loyalty among their subjects and have the ear of the political establishment, and in the closing chapters of this book I will argue that it is here that the Rulers can make the biggest and most meaningful contribution to Malaysia today.

Chapter One:



The roots of Malaysia's monarchy

For many people, the 21st century is a time of the rule of common man. Hereditary rulers and kings have largely been removed from the political equation except in a handful of countries such as Japan, Thailand, Brunei – and Malaysia. But even in this instance, our country is unique in more ways than we can describe.

While monarchies have disappeared from most Asian countries, to be replaced by a Western democratic system of government, Malaysia has nine hereditary Malay Rulers or Sultans who hold the office of the *Yang di-Pertuan Agong* or King every five years by rotation (or upon the death of the reigning King). It is the only system in the world where the King is elected by the other Rulers. While they no longer

exercise absolute rule, the Rulers do have a symbolic role that has been carefully mandated by the country's Constitution.

In the beginning

The Malay kingship is not recent, but not all of it stretches as far into antiquity as other extant royal houses elsewhere in the world. The Japanese Imperial family, for example, traces its genealogy to 660BC. Queen Elizabeth II, of course, traces her ancestry to William of Normandy who conquered England in 1066.

The oldest royal house of the nine Malay Sultanates is that of Kedah, which began eight generations before the coming of Islam in 1136. Other households are of relatively more recent origin, and most of them are offshoots of the Palembang-Melaka lineage. The House of Pahang was established in 1470 while the first Ruler of modern Negeri Sembilan was elected in 1778. The first Raja of Perlis came to power in 1834 while in Johor the current dynasty rose in 1819. The first ruler of Selangor ascended the throne in 1766. The Kelantan Royal House is not of the Malacca line and began in 1764 with the rise of Long Yunus. There were of course previous dynasties or Malay chieftains who ruled the country, but they weren't all necessarily Sultans as we know them today.

Our monarchy was born out of a mixture of Hindu, Buddhist and Islamic elements and the right to rule was deemed to have come from divine authority. The basis of the right to kingship can be further gleaned from *Sejarah Melayu* or *The Malay Annals*. According to this tome of historical myth, the authority to rule was created out of a social contract between the first Ruler, Demang Lebar Daun, and the representative of the land's native inhabitants, Sang Sapurba Taram Sri Tri Buana. The Ruler agreed never to oppress or shame his people, who in turn vowed to be loyal and obedient as long as the royal obligations were kept. Even in the early days of the monarchy, therefore, it was always understood that loyalty and obedience to the King was conditional on the King keeping up his end of the bargain.

Malay Rulers relied on the divine authority of Allah, especially after the royal line in Malacca became extinct in 1699, and only Rulers with Allah's blessings were deemed to possess *daulat* (sovereignty) and thus the right to rule. The signs of Allah's blessings included personal ability, high moral standing, knowledge and an understanding of the responsibilities to the people. Just as with the Western ideals of kings and queens, the Malay Rulers were expected to be humble, compassionate and to rule justly for the good of their subjects.

Surviving the Malayan Union

The Malay monarchy was already well established as a system of government before British colonial forces set foot on these shores, but it came under its greatest threat in the modern era when the British imposed the Malayan Union to replace British Malaya in 1946. Under the Malayan Union, which brought the Malay States and the Straits Settlements of Penang and Malacca under a single administrative rule, the Malay Rulers gave up all their powers save for their authority over religious matters. They surrendered their positions as heads of the State Councils, to be replaced by British Residents, while the Malayan Union itself was to be run by a British Governor.

What the British wanted as part of the Malayan Union was to reduce the Malay Rulers to nothing more than local chieftains bereft of any power, pomp or even money. The Rulers may have formed the Advisory Council to advise the Governor, but even on Islamic matters the Council of Rulers needed his approval. The Malay Rulers were clearly denied any role in the administration of the country and official recognition of their sovereign power to rule was to be taken away.

The Malay Rulers, ironically, were in favour of the Malayan Union. They were not prepared to fight the British; in fact, some of them were not keen to have an

early Independence for Malaya as they were not sure if their position could be saved without the British. This is, of course, the preferred view of historians. There is another, more generous view of the Rulers which I subscribe to. I tend to believe that there were Malay Rulers who opposed the Malayan Union, but they were overshadowed by politicians and their more flamboyant brother Rulers who were closer to the British. To say that the Malay Rulers were all united in favour of the Malayan Union is not accurate in my view. As it turned out, it was local political leaders who stepped in and saved the Malay Rulers from allowing themselves to become a remnant of the past.

UMNO founder Dato' Onn Jaafar galvanised the Malay masses to oppose the MacMichael Treaties, which the Rulers had signed to agree to the establishment of the Malayan Union.

The installation of the Governor of the Malayan Union, Sir Edward Gent, had been fixed for 1 April 1946. All the Malay Rulers were in Kuala Lumpur by 30 March. It was Onn and other Malay leaders who rushed to the Station Hotel where the Malay Rulers were staying to pressure them to boycott the installation. It was made clear to the Rulers that the Malays would disown them if they attended the installation and effectively launched the Malayan Union. The Rulers relented, thus signaling the beginning of the end of the Union.

Our first Prime Minister, Tunku Abdul Rahman, played a role in this drama which took a different route but was equally important in saving the institution of the monarchy. By then the Malays recognised that political organisations like UMNO were instrumental in gaining Independence, and that men like the Tunku were effecting profound sociopolitical change in the country. As a member of the royalty himself, the Tunku naturally believed that the Malays' special status as the indigenous community depended heavily on their continuing to have the institution of the Rulers behind them. It's not surprising that the Tunku always maintained that the programme for Independence had to include the continued existence of the monarchy. For the Tunku, it was unthinkable that an independent *Tanah Melayu* could exist separate from at least some form of the monarchical system.

But the great man saw very early on the perils of uncontrolled power, whether it lay in the hands of political leaders or the Malay Rulers. Even the best food, he said, could turn sour. And so when the country gained its Independence in 1957, it also created the office of the *Yang di-Pertuan Agong*, allowing a King to play a largely ceremonial role as the country's constitutional monarch. The Tunku was a royalist but not a blind one. In his lifetime he appealed many times to the Rulers to respect the Constitution, and in that

way, to ensure that the institution of the monarchy would always be respected in turn. He asked the Rulers to listen to the advice of political leaders, whom he described as “watchdogs” who guarded against any royal folly and excess.

The Malay Rulers had little difficulty respecting the Tunku and following his advice because he was an undisputed leader of the Malays and was well loved by all communities. They saw in him the man who had given them back the prerogatives and power they had so nearly lost under the Malayan Union. The Tunku did not threaten them nor did he ever use harsh words against them. He guided them to observe constitutional practices and got them to accept that the ultimate power rested with the people, who were represented by their elected political leaders.

The Tunku understood the royal psyche and was able to utilise the monarchy's strong points while curtailing the weaker elements found in some royal households. When he had to be tough, he was tough. He once lectured a Ruler about why he could not remove a *Menteri Besar* from office, just because that *Menteri Besar* had not given mining land to the Ruler. The Tunku had no qualms pointing out that it was not within the Rulers' authority to object to the appointment of certain individuals like the *Menteri Besar*.

Clearly, the Tunku did not just save the monarchy, but also tried hard to establish a harmonious working relationship between the country's Rulers and its democratically-elected leaders. He wanted that relationship to be based on goodwill and understanding. He knew that the young country was sailing into uncharted waters. Whereas most countries had decided to do away with their monarchy, Malaya took the opposite route and with nine constitutional monarchs, the young democracy would be put to the real test.

Testing the boundaries

True enough, after the Tunku's tenure as Prime Minister, major cracks emerged in Malaysia's political system. They were caused mainly by altercations and disputes between the elected leaders and the hereditary monarchs. Although a strong leader like former Prime Minister Tun Dr Mahathir Mohamad was prepared to confront the Rulers and went to the extent of introducing constitutional amendments to curtail some of their powers, the uncomfortable truth is some of the Rulers today are testing the boundaries of their roles as set under the Constitution.

Our monarchs are constitutional monarchs, which means they derive their power from the Constitution. When the Sultans agreed to establish

Malaya under the Federation of Malaya agreement, they ceded their sovereign authority to rule to the central and state governments founded by the Constitution. Their prerogative powers were limited and extended only to matters personal to the Rulers. The executive power in a democracy lies with the people's representatives. That being so, the King and the other Rulers have to follow the laws and rules which have been carefully laid out for them in the discharge of their duties.

What complicates matters when the Rulers deviate from this role is that in Malaysia, any critical discussion of the monarchy – no matter how respectful or constructive in intent – is out of bounds for the *rakyat*. During the power struggles between the Rulers and the political establishment in the 1980s and 1990s, UMNO had great latitude in criticising the Rulers but until today the *rakyat* can only discuss these issues at the risk of falling foul of the Sedition Act.

Malaysians are unable to express themselves freely about how they feel about their King or their Sultans. The law is prohibitive of even slightly questioning matters pertaining to the royalty, and I believe this lack of an open and frank discussion on the subject is one reason why the politics of this country is so ethnically driven.

Matters pertaining to the Rulers are also a lot less transparent here than they are in other countries such

as England and even in Thailand, where members of the public are able to get information and to raise questions about issues such as how much it costs taxpayers to maintain the royal household. At a time when the rising cost of living has many Malaysians deeply preoccupied with bread and butter issues, many among the *rakyat* may want to ask why we needed to spend more than RM1 billion for the King's new Palace.

This sin of *lèse-majesté* or offending the dignity of a monarch is rooted in the age when royal rule was absolute, when Kings were revered, almost godlike. It was deemed necessary to protect monarchs from all kinds of intrusion, including insults and injury to their reputation. At one time, the people were even forbidden to look at their King – until the late 19th century, for example, it was a serious offence for a commoner to look upon the Thai King. In Thailand, they still have a *lèse-majesté* offence in their criminal code which stipulates that whoever defames, insults or threatens the King or other members of the royal family can face imprisonment. Our laws are equally protective.

Unknown to many people, the Thai King himself is the harshest critic of this law. In his 2005 birthday speech, King Bhumibol said even a king is a human being and as such should be subject to criticism. The King, he said, *can* do wrong, so the law ultimately damaged the monarchy by isolating a ruler to the extent that he cannot even be criticised.

Those who overprotect the monarchy are actually doing the institution a disservice. Transparency is an indelible characteristic of the modern age and no subject can be prescribed as out of bounds of the people's criticisms or comments without seeming outdated or worse. Laws like our Sedition Act have frankly outlived their usefulness. If we say that the Malay Rulers are an integral part of the political and governing system of the country (which they are), then it follows that the people should be able to question their role, duties and responsibilities.

When the British Government recently decided that the country's royal purse would not be reduced or cut despite the worsening economy, many Britons weighed in with their views. This is not surprising, as it reportedly costs some £44 million a year to support the royal household. Some objected on the grounds that the Queen represents an outdated institution and should therefore not cost the people so much to maintain. Whatever the merit of both sides of the argument, this was an opportunity for England's royal household to get feedback on how the people felt about them. This is undoubtedly what King Bhumibol meant when he said a king would be in trouble if he could not be criticised, because he would never be able to accurately gauge the sentiments of his own subjects.

While the Rulers cannot be so insulated from public opinion, it can be argued that they should be

held above the temptations that are available to them, particularly when it comes to accessing other sources of income. Modern monarchs usually get some form of an annual income from the Government but this is usually insufficient to support their lifestyle. The Mughal Rulers of India lived lavishly and left behind their palaces and precious stones as relics of their wealth and power. Monarchs today are unable to live in such conspicuous splendour as the nation's riches are to be shared with the people. Rulers are no longer able to ignore the misery of the people, unlike their forefathers who literally owned all they could see.

To support their lifestyle, some Rulers get involved in business and for that business to be lucrative they have to depend on the chief executive of the State or the Prime Minister to give them the necessary support. This is where the seeds of trouble tend to be planted: the chief executive or the Prime Minister can provide their assistance and concessions to the monarch, but it's not unreasonable for them to also ask for favours in return. Such *quid pro quo* is commonplace in the worlds of business and politics.

In a later chapter of this book, I will discuss frankly the issue of how to insulate the Rulers from such temptations, which can bring contempt and ridicule to this cherished institution. All Malaysians have to work doubly hard to preserve the integrity and respect for our King and Sultans. It would be so

easy for the people to feel contempt if our Rulers are seen to be unreliable and unworthy of the *daulat* they inherited from the mythical god-kings of the past. The best way for the continued preservation of our Rulers, who are still respected and even loved by the *rakyat*, is for them to faithfully discharge their oaths of office as constitutional monarchs, and in doing so, preserve the peace and stability of the country.

Chapter Two:



Principles of constitutionality

Years of politicising race and religion have led some to doubt the validity of the *Merdeka* Constitution. Instead, they argue that the Constitution does not reflect the balance that Malaysian society has needed ever since the 13 May 1969 riots. All related discussion since then has been hijacked by talk of the need for a social contract, one in which Malays occupy an unquestioned position of privilege. But this view cannot be supported, as this country was founded on the principle that all Malaysians are equal. The Federal Constitution – which came into force in 1957 and which was amended when Sabah, Sarawak and Singapore joined the Federation to form Malaysia in 1963 – is the supreme law of the land. We cannot deviate from this document any more than we can arbitrarily change our DNA as a nation.

Given this context, what does it mean to have a constitutional monarchy?

The way the Malays understand the concept may be clouded by their lingering cultural memory of what the Malay Rulers once were: monarchs who enjoyed absolute rule and whose *daulat* or sovereignty commanded loyalty and obedience. Even today, the Rulers still occupy a special place of reverence in the Malay psyche. That aside, however, I believe Malaysians in general do not clearly understand how the Constitution defines the role of the King and the Sultans. This, at least, must be made clear if we are to have any meaningful discussion of how the monarchy can remain a relevant part of our country.

A constitutional monarch is a symbol – a symbol of the past, of our traditions and of the aspirations of the nation. He does not have the power of an absolute monarch. The kings of the days of old were a law unto themselves and they could do no wrong. All the property of the realm belonged to them, except those that they deigned to give away. But there are no such rulers today. Even the Japanese Emperor, traditionally acknowledged as a descendent of the Sun God, now conducts himself in accordance with the laws and traditions of his country.

Times have changed and the world has become somewhat flat, in that people have been accorded dignity and respect as human beings regardless of

their race, class or religious beliefs. Never before has humankind been treated with such dignity and accorded rights on such a large scale.

Constitutionalism

A constitutional government is usually a democratic one. It merely means a modern-day government that is based on a written constitution which sets out major principles of governance. It will usually have the sovereignty of the people as the starting declaration. If the country's independence was obtained from the British, the constitution will largely be about how laws are to be passed. Countries following an American-style constitution will usually have preambles about seeking liberty and justice – you see more eloquence and emotion in the American model.

The need for a constitution is obvious. It is the supreme law, the basic law or *Grundnorm*. It defines society by setting in place its basic structure. This theory of the basic structure was recognised by the Federal Court. Among the key aspects of the constitutional arrangement is the separation of powers and the system of checks and balances that this allows for. The people need to have a document, in effect a contract between themselves and those who govern them. The power of those who govern must

not transgress established limits so that the wellbeing of the people is not compromised in any way. Those who make the laws must also be subject to some measure of control by a third party – the judiciary – so that the principle of checks and balances is embedded in the system. More importantly, a constitution usually provides for the protection of the rights of the minority, an important responsibility a constitutional government must not abandon. Under this system, the majority cannot have all their demands met if they impinge on the rights of the minority.

Constitutionalism, however, will not work if those in power are unwilling to be subjected to the rules. In our country, we have gone through a lengthy period where political leaders believe that winning the general election entitles them to trample on and ignore the basic rules established in our Constitution. They have ignored judges and they have taken away the power of the courts to mete out justice. They regard the mandate they obtained at the general election as sufficient licence for them to do as they wish, or to even go so far as to alter the Constitution.

Ignoring and refusing to be bound by the law is not only a common transgression committed by those in political circles, but also by other stakeholders in government. While the British left us with a workable written Constitution, they did not, unfortunately, also leave behind a culture of respecting the law. The

single most admirable trait of the British people is their utmost reverence for the workings of the law. They have successfully developed sophisticated legal systems because they realised that only by according respect to and faithfully observing these laws can the country function properly. We have not yet reached that stage in our development. Our political leaders still think of the law as a hindrance to whatever political plan they have in mind. Judges who did not hand down verdicts that were kind to the Government had to be told which side their bread was buttered on.

One of the many negative side effects of political leaders who fail to give sufficient respect to the law and the courts is that it encourages other equally powerful stakeholders to do the same. When lawlessness reigns, then we have great instability, which in turn impairs our ability to progress as a nation. Sitting at the apex of our system of government are our monarchs. They have a duty not only to follow the law, but to set good examples to the people so that observance of the law and giving it due respect become second nature for Malaysians.

Legal position of the Malay Rulers

At this point, it is important for the *rakyat* to be clear about the legal position of the Malay Rulers. No person, including the Sultan, is above the law. The

Rulers' personal sovereignty is circumscribed by the Federal and State Constitutions.

There will be others who have or who will promote alternative legal views, depending on the situation. There will also be those who believe that the Rulers do not have to follow any rules. For the majority of people, however, we believe that even the King must obey the law.

Firstly, we have the Federal Constitution. As the supreme law of the land, even State Constitutions need to follow the requirements set out under the Federal Constitution. Under Article 71, all State Constitutions must include the provisions of the Eighth Schedule of the Federal Constitution, which means all the States in Malaysia essentially have similar provisions. If someone tells you that their State Constitution is different, tell them to go back and read it again.

The provisions that are the same in all State Constitutions are what we call “the essential provisions” and they are, in effect, the same as the Westminster-style constitutional conventions. So if a State Constitution lacks an essential provision that appears in the Federal Constitution, then Parliament can enact a Bill to give that provision effect in that State.

What we should not be confused about is the core principle governing our Federal Constitution, which is that Malaysia is a constitutional monarchy. This

means a Ruler must act on the advice of the Cabinet as represented by the Prime Minister and on the advice of the Executive Council as represented by the *Menteri Besar*. Under the amendment to the Eighth Schedule of the Federal Constitution in 1994, it was made doubly clear (not that it was unclear in the first place) that: “In the exercise of his functions under the Constitution of this State, or any law, or as a member of the Conference of Rulers, where the Ruler is to act in accordance with advice or on advice, the Ruler shall accept and act in accordance with such advice.”

The meaning could not be more apparent. There is nothing in the Federal Constitution that says the Ruler is exempted from acting on the advice of the *Menteri Besar* or the Executive Council in certain specified matters. The fact that the Rulers have ignored the advice of their *Menteri Besar* in many instances does not mean their actions were legally correct.

Discretionary powers

Now there are provisions that give the Ruler discretionary powers. The Ruler may act at his discretion only in the following matters:

- The appointment of the *Menteri Besar*
- The withholding of consent to a dissolution of the Legislative Assembly

- The performance of his functions as the head of Islam in the State
- The summoning of a meeting of the Conference of Rulers concerned with the privileges of the Rulers and Islamic matters
- The appointment of heirs, the consort and regency
- The award of honours
- The regulation of the royal courts

Let us take as an example, the Ruler's discretion in appointing the *Menteri Besar* – certainly a relevant point of interest for the *rakyat*. A Ruler's discretion in this matter is not absolute. According to the Westminster-style of government, the Ruler must follow conventions. Our Federal Constitution specifically stipulates the use of "convention". The convention is that the monarch must use his discretion to appoint someone who, in his judgment, commands the confidence of the majority, in this case of the State Assembly. In other words, the issue goes to the appropriate way to determine the confidence of the House. It should be left to the *Dewan* to decide – this process is transparent, which means it is not for the Ruler to take proactive steps to investigate majority confidence. The Ruler cannot, therefore, use his discretion to defeat the overriding principle that the *Menteri Besar* is someone who has the support of the majority, just to suit the Ruler's own preferences.

An example of this use of discretionary powers going wrong can be seen in Terengganu after the 2008 general election. Dato' Seri Idris Jusoh was clearly UMNO's preferred choice for the post of *Menteri Besar* as he had the backing of the majority of the State Assemblymen. Then-Prime Minister Tun Abdullah Ahmad Badawi also made a statement to that effect. In clear defiance of the above constitutional rules and conventions, however, someone else was appointed as *Menteri Besar*.

What, then, is the logic of giving this discretionary power to the Ruler in the first place? It is given to him so that he has the flexibility to resolve a potential political impasse, such as when it is not clear who has the support of the majority. Let's say that there are three major groups in a State Assembly with a total of 45 members. Group A comprises 19 Barisan Nasional Assemblymen, Group B comprises 20 Pakatan Rakyat Assemblymen and the remaining six Assemblymen are Independents. Some of the Independents want the leader of Group A as *Menteri Besar* while other Independents are in favour of having the PR leader of Group B appointed to the post. In this sort of scenario, it's necessary for the Ruler to choose someone whom he thinks can form an effective State Government. His use of discretion in this instance is legitimate, because he is given the power to effect a constitutional principle: that the *Menteri Besar* is someone who has the support of the people's representatives.

The principle of selecting someone who has the support of the majority of the people's representatives is so fundamental that, theoretically, even if it's a non-Malay who fits that criterion, then the Ruler has no choice but to appoint him (or her) as *Menteri Besar*. To assert that the Ruler has the absolute discretion of appointing a *Menteri Besar* is not only incorrect – for he has none – it also shows that he has ignored a fundamental constitutional convention to always act on advice. How he exercises his “discretion” reveals how good of a Ruler he truly is. The good Malay Rulers of old also took the “advice” of British Residents, which they could not refuse. Today, the Malay Rulers exercise “discretion” that must come with the agreement of the political leaders. Nothing, in effect, has changed.

This means the Ruler must act on the advice of the Prime Minister and the Cabinet at the federal level, and of the *Menteri Besar* and the Executive Council at the state level. Some lawyers and judges whom I consider as belonging to the royalist camp will refute this statement most vehemently. They will argue that the Federal and State Constitutions make explicit reference to the discretionary powers of the monarch. These royalists will argue that the discretionary powers are personal to the King. I will say that the only discretion a monarch has is whether to have one wife or more, just like other Muslims in

the country. Any other use of “discretion” that affects the administration of the country is reviewable and should be exercised only upon the advice of political leaders. Either we have this principle, or we can forget about the people’s power and democracy.

I am not denying that the courts have the power to declare certain exercises of prerogatives as non-justiciable and therefore not subject to review. In fact, the courts in Malaysia are still stuck with the old ways of rejecting judicial review at the slightest opportunity when prerogatives are put forward. But I maintain that such instances should be limited. The trend in England and Canada now is to allow for judicial review in cases where prerogatives are exercised improperly.

In England, the discretion or prerogative of the monarch invariably means the collective decision of the monarch and the government of the day. In Malaysia, the discretion or prerogative of the monarch, in some cases, may not be with the concurrence of the Government. Malaysian judges who rely on English and Commonwealth legal precedent and who embrace the principle of non-justiciability in cases involving matters of high policy obviously ignore the fundamental difference of the facts. In other words, while it is defensible for the courts to be unwilling to review cases where the monarch, acting as the head of the state, exercises his discretion which takes the Government’s advice into account, it’s altogether

unacceptable for the courts to stick to the same approach when the monarch exercises his discretion entirely on his own.

Tunku Abdul Rahman was able to convince the British to let us keep the institution of the monarchy in this country because the British themselves have a long and storied tradition of royalty. In England, however, the discretionary powers of the King or Queen would not normally cause problems because the ground rules for the exercise of that discretion are generally known. For example, the King or Queen's discretion in the appointment of the Prime Minister of England is in effect non-existent as they would unfailingly appoint the Prime Minister who has the confidence and support of Parliament. Only if there were two contenders for the post, with each claiming to have the required support, would the Ruler exercise his discretion as to who he thinks can form and lead an effective government. In no other circumstances would the King use his personal preference as the basis of his decision.

But apparently, "discretion" to a Malay Ruler can sometimes mean something else. If he conveniently forgets about democracy and the need to act on the advice of political leaders, he would interpret the provision to mean that he can appoint anyone he wishes. This is not the proper understanding of that provision. Not many political leaders have the courage to stand up to a Ruler, especially now when an ugly

confrontation with a Sultan would not do any good for any political party. If this is the practice today, and if the Rulers are allowed to misuse their discretion, then democracy and the people's right to select their own leaders will be defeated.

Immunity

Discretionary powers aside, before 1993 the Federal Constitution also provided the Rulers with immunity from a civil suit or criminal prosecution. Again, we must look back at why the British agreed to the Tunku's request that our institution of the monarchy be preserved with all the rights and privileges usually associated with the English royalty.

In hindsight, this was the first mistake that we made: adopting a foreign law and tradition to the local situation without understanding the ramifications of such a law.

The concept that a Ruler can do no wrong or that legal immunity should be made available to a reigning monarch is fine, if it is inconceivable for the Ruler to do any wrong in the first place. For the British, the rule of legal immunity reflected the defeat of absolutism. Immunity was a gift to the King and a sign of the people's respect for him and for the institution of the monarchy. The unspoken agreement, however, was that in exchange the King had to conduct himself in

accordance with the best possible traditions without violating any law of the land.

There was no such understanding or pact with the Malay Rulers. Incidents of unlawful or criminal conduct by some of the Rulers went unpunished because the *Merdeka* Constitution gave them immunity. They may have been deemed as constitutional monarchs in theory, but they were also accorded protection by the Constitution that effectively meant the Rulers could do no wrong. The situation eventually came to a head and resulted in a constitutional crisis that saw the Rulers' immunity being removed. I will examine that development and its ramifications in the next chapter.

The Reid Commission

Despite the clear provisions of the Federal Constitution which set out the principles of the Ruler's constitutional boundaries, there are those who continue to debate the status of the Malay Rulers in this country. I for one am tired of listening to the arguments brought by some lawyers who argue for a different interpretation of the Constitution, one that accords the Rulers with a more privileged position in the administration and governance of Malaysia.

I have repeatedly told them in plain language that a Malay Ruler is a constitutional ruler. That means he has to follow the advice of the *Menteri Besar* or the Prime

Minister, in all cases and under any circumstances. But lawyers are lawyers – you pay them a million ringgit or even less, and you can get them to argue to the contrary. After all, there are always two sides to any issue, although one side is right and the other is wrong. A lawyer can argue whichever side you want him to argue. That’s his job, not to argue his own personal views but the views of his client to the best of his ability. So while I disagree with them on this matter, I respect the seriousness with which they do their jobs.

Perhaps at this juncture it’s a good idea to revisit the Report of the Reid Commission, which drafted the Federal Constitution, and what it stated emphatically about the meaning of a constitutional monarch:

“The Commission had set out in clear terms what sort of government we will have after Independence. As far as the Malay Rulers are concerned they no longer have executive decision over the Executive Council. He is a Ruler with limited powers, and the essential limitations are that the Ruler should be bound by convention to accept and act on the advice of the MB or Executive Council, and that the MB or the Executive Council should not hold office at the pleasure of the Ruler or be ultimately responsible to him but should be responsible to a parliamentary assembly and should cease to hold office on ceasing to have the confidence of that Assembly.”

The British lawyer and academic Sir William Ivor Jennings, who drafted the State Constitutions, concurred with the Commission in his memorandum when he said that the Rulers would become constitutional monarchs and the executive government must be placed under the control of the State councils.

What of the traditional rights of Rulers?

Some would argue that Article 181 of the Federal Constitution guarantees the traditional rights of the Rulers. According to this school of thought, the Rulers have an overall, overriding and overarching hold on power because it belongs to them traditionally. This is a mistaken view. What the Article actually confers is the guarantee that the Malay Rulers will continue to enjoy and exercise the constitutional rights and privileges that have been accorded to them. If, for example, the Constitution has provided them immunity from a legal suit, they will continue to enjoy that privilege for as long as they remain Rulers. But if, on the other hand, there are changes to the Constitution, then the Rulers' rights and privileges are also affected. We have already seen this happen with the amendments made to the Constitution in 1993, after which the Rulers no longer enjoyed immunity for acts that they committed in their personal capacities and could be charged in a Special Court.

The situation would be different if a Ruler violates any rule or is in breach of his statutory, official or legal duties. It's arguable that in such an event, action can be taken against him in the Special Court. In 1988, Karpal Singh filed for a court declaration for a ruling that the Sultan of Selangor, who was Chairman of the State's Pardons Board, had acted unlawfully and unconstitutionally when he made a public statement to the effect that convicted drug dealers and traffickers would not be pardoned. The suit failed because the court held that the Sultan was speaking in his personal capacity and was thus immune from the proceedings. After the 1993 constitutional amendment, that immunity was no longer available to the Ruler. It would appear to me that legal redress could then have been obtained against the Sultan.

There is no basis to any argument that the Malay Rulers have special residual powers – they only have what the Constitution has provided for them, and they forfeit whatever the Constitution takes away. Their legal powers are circumscribed by law and restricted by conventions. Whatever traditional prerogatives they have are also limited by the words of the Constitution. For example, the Constitution recognises the Rulers' prerogative to bestow titles and awards, for which they are not required to act on advice. The courts also seem to view the power to

pardon as “personal” to the Rulers, but I don’t think this is in line with developments all over the world. In the United Kingdom, it is understood that this prerogative exists within a permitted scope and is also subject to judicial review.

Even the Conference of Rulers is a creature of the Constitution. The Conference has two main functions; firstly, it has a policy function whereby each Ruler has to act on advice of the *Menteri Besar* or Chief Minister. The *Yang di-Pertuan Agong* or King in turn has to act on the advice of the Prime Minister. The decisions of the Conference of Rulers are not binding on the Government but provide a healthy avenue for discussion on federal and state matters, or other issues too sensitive to be dissected in the public eye.

The Conference of Rulers has a second purpose, which is to perform functions of a religious or ceremonial nature. Here the Rulers have the discretion to decide these matters among themselves.

Ultimately, the Federal Constitution is all we need to govern ourselves and to manage the relationship between the monarchy and the political establishment. But it requires the Rulers to observe the limitations of their constitutional role, and the politicians and other relevant institutions to step in should there be any departure from the provisions which have been so clearly set out by the Constitution. There have already been various

skirmishes between the political leaders and the royalty in 1983 and again in 1993, and admittedly the effect of these encounters has not been significant. They have not changed the manner in which the machinery of constitutional government works. All the grandstanding and public posturing from both sides was unnecessary and the crises could have been averted if common sense had prevailed.

That may not, however, be true the next time.

Chapter Three:



Constitutional clashes

What happens when the Malay Rulers clash with the political leadership, and could these clashes have been avoidable?

Let's start with the 1983 constitutional crisis. The Constitutional Amendment Bill of that year had three key elements: the first was to make it clear to the Rulers that if they did not sign a Bill passed by Parliament, the Bill would automatically become law after a certain time. The second element involved the same principle but was applicable to Bills passed in the State Assemblies. Finally, the Proclamation of Emergency would now be determined by the Prime Minister instead of the King, which had been the case up until then.

I believe that if common sense had prevailed, and if the basic principles of constitutional government and the separation of powers had been understood and respected by both the then-Prime Minister and the Malay Rulers, no such crisis would have taken place. The Ruler's assent to Bills is an obvious example: if the relationship between the political leaders and the Rulers had been grounded on a proper respect for each other's roles, and if everyone fully understood these roles, then we would not have needed to make this constitutional amendment. Similarly, in a constitutional monarchy the Ruler is obliged to act on the advice of the Prime Minister whether for a Proclamation of Emergency or anything else.

Ten years later came the 1993 constitutional amendment. This was initiated to prevent any Malay Ruler from committing acts of a criminal nature: it removed the Rulers' blanket immunity from prosecution. I believe that this immunity had been conferred on the Rulers as part of the *Merdeka* arrangement, although some argue that since the British sovereign has immunity under common law, it is only right that the Malay Rulers should enjoy the same privilege. It is indeed appropriate that a monarch should possess such immunity because in this day and age it is unthinkable that a Ruler might commit unlawful acts. In Malaysia, however, the unthinkable did in fact happen.

The royal houses at the time were littered with anecdotes and stories of the abuse and misconduct of Sultans, so perhaps it was right that the blanket immunity should have been abolished. Furthermore, the Special Court that would hear cases involving the Rulers would effectively serve no purpose as the whole operation of the Court requires the involvement of the Conference of Rulers in the first place (extending even to the appointment of individual judges).

The fact that only limited civil claims have passed through the Special Court since 1995 shows that the immunity debate was much ado about nothing. The only useful outcome of the crisis was to remove the sedition charge that was hanging over Members of Parliament and the State Assemblies when discussing matters involving royalty. Prior to the amendment, the Sedition Act applied to Parliamentary speeches – even today MPs must not advocate the abolition of the monarchy when making criticisms, but these days we hardly hear any kind of royal criticism anyway.

However, one might rightly ask what would happen if issues related to actions undertaken in the Rulers' official capacity are involved. Rulers are not necessarily immune from being brought before the ordinary courts for actions undertaken in their official capacity. One instance that comes to mind – although it admittedly is without precedent – is if a Ruler assents to a Bill without due regard for the

constitutional provisions. Surely such an action can be subject to a judicial review. Another instance which may be deemed a wrongful act is when a Ruler refuses to dissolve a Legislative Assembly after his *Menteri Besar* has made a request for him to do so. Here the Ruler too can be subject to civil action, because in my view, any action of the Ruler in his official capacity is an action of a public authority, which means he can be sued.

Both of these crises should teach us some useful lessons: since the monarchy is our national symbol of sovereignty, we should all be able to be proud of that symbol. For that to happen, however, the monarchy must always conduct itself with dignity. The respect of the *rakyat* will flow when the Rulers do the right thing for the people. They must always show their relevance in a modern democracy. It is not enough that they are symbols of the past, or that they offer historical continuity, because the harsh truth is that no one cares about remnants. The government of the day needs to shoulder this responsibility as well. It needs to be in close contact with the Rulers and it must be responsible in running a modern state.

The Government cannot assume that every Ruler will understand his duties and responsibilities automatically. We have nine Malay Rulers and we have a King from among them who changes every five years. This makes it difficult to ensure that the right

code of conduct, values and understanding of the rules of modern democracy are consistently transmitted from one King to the next. The Government must not merely be satisfied with providing the Rulers colossal palaces and expensive limousines – the Rulers need as much guidance and support as anyone if they are to play their proper parts.

We sometimes forget that our Rulers are human. Just as politicians come in different shapes and sizes (some are capable and able to rule wisely, others are content to plunder the national wealth), the Malay Rulers also have among them some very capable monarchs. As a country, we need the collaboration of good politicians and good monarchs so that the machinery of government can function well. As we have seen in the past, where the competing interests of the monarchs and the UMNO elite collide – and this includes business interests – then a harmonious relationship between the two becomes difficult. In fact, the constitutional crisis of 1993 stemmed partly from UMNO's need to control the power of the royals in the realm of business.

The Proclamation of Constitutional Principles 1992 was the instrument by which the monarchs had agreed to a certain code of conduct. The Sultans said that they would uphold the Constitution and not be involved in party politics and business. But the principles were forgotten and UMNO eventually

had to push for a constitutional amendment. Some argued that the amendment had been a “triumph” for UMNO. They said that the Rulers had to accept the democratic principle that “all powers belong to the people” and that as constitutional heads, the Rulers were not above the law. They had to act in accordance with the advice of the Head of Government and the chief executives of the States.

Whatever triumphs some may have claimed over the Rulers, the years that followed the amendments of 1983 and 1993 showed that the victory had minimal impact. Indeed, nothing much changed at all. Some royal houses are still involved in big business today. Some still show themselves to be politically partisan, especially when their commercial interests require them to be supportive of certain political groups. And there is the fact that there has been no action against any of them (in the Special Court or anywhere else) for breaching the Proclamation of Constitutional Principles.

If the Rulers were antagonistic towards UMNO in the 1990s, they certainly made up for it in a special way during the Perak leadership crisis of 2008. After the 2008 general election, the Opposition Pakatan Rakyat alliance formed the Perak State Government with a wafer-thin majority of two. Three Pakatan Assemblymen then crossed the floor to the Barisan Nasional. One of them was facing a corruption charge

at the time and all three “disappeared” mysteriously for some time before declaring their support for the BN.

In early 2009, the *Pakatan Menteri Besar*, Dato’ Seri Mohammad Nizar Jamaluddin, went to the Palace to ask the Sultan for the dissolution of the Assembly. The Prime Minister also rushed in to meet the Sultan, telling His Highness that the BN now had the majority of seats in the State Assembly. The Sultan sacked Nizar and handed the government to the BN. I respectfully submit that what the Sultan did was wrong, regardless of the Federal Court’s ruling. When a wise monarch is faced with a political problem in a modern democracy, he should let the people solve the problem. The State Assembly should have been dissolved and fresh elections called. Political questions of this nature cannot be answered by rulings of the courts. If the Sultan had agreed with Nizar’s request, the people of Perak would have had the opportunity to decide again which political party should rule. Democracy and the will of the *rakyat* would have triumphed. The people would have been satisfied with the outcome and the Sultan would have enjoyed tremendous respect. Now, because of the unwise decision, the monarchy has suffered and the BN will probably still lose the next election in Perak.

That said, the Perak incident is supremely interesting from the legal perspective and lawyers had a field day arguing for and against the Ruler’s

decision. Certainly, the law is useful when the purpose is desirable and brings good to the people. And since there are always at least two sides to any argument, the legal issues surrounding the Perak case can be defended with equal force whether one supports the Sultan or the *Menteri Besar*. The High Court was very persuasive and, in my view, correct to say that the Sultan had no power to dismiss the *Menteri Besar*. The High Court was also correct in ruling that the request for dissolution was appropriate and should have been granted. I might agree with these arguments but, as I said, no matter how brilliant they are, legal arguments cannot solve political problems.

Extra-constitutional powers?

It is quite ironic that the Ruler of Perak, Sultan Azlan Shah, was very much admired when he was a judge. I still remember his famous dicta with fondness, whether about the corruption of absolute power or the need for discretion to be properly exercised. I was therefore doubly disappointed when, as Ruler of Perak, he dismissed a democratically-elected leader in contravention of the same constitutional principles he once upheld so well as Lord President of the Supreme Court.

I got even more jittery when I heard him talking about the power of the Ruler. He said that “a King

is a King whether he is an absolute or constitutional monarch. The only difference between the two is that whereas one has unlimited powers, the other's are defined by the Constitution. But it's a mistake to think that the role of a King, like that of the President, is confined to what is laid down by the Constitution. His role exceeds those constitutional provisions."

He might as well have said that the King is an extra-constitutional institution or that the Malay Rulers are absolute monarchs. Why bother about a Constitution at all if one man, the King, can go beyond it? I am truly puzzled to see how completely an eminent and learned judge has changed his view since he ascended the throne. As a judge he had decided cases where the principle of constitutional monarchy in a democracy was elucidated very well. Today, we should contrast his statement about kingship with the observation made by Tunku Abdul Rahman, our first Prime Minister. The Tunku said: "What the King can do and what he cannot do is clearly defined by the Constitution. One fact is certain, the royal prerogative is exercised by the Prime Minister and the Cabinet, as representing the electorate, hence the people have a lot of say ... [and although it] can be assumed that while the Rulers enjoy their rights and privileges, they must live within these rights."

So, we have two different interpretations of the role of our Rulers. No wonder we have never stopped

having problems. In the 1970s, Sultan Idris Shah, the Ruler of Perak at the time, was unhappy with the *Menteri Besar*, Tan Sri Mohamed Ghazali Jawi. The Sultan refused to attend any function where Ghazali was present and even refused to shave as a sign of protest. But we must credit Sultan Idris for accepting Ghazali as *Menteri Besar* although he obviously detested him. Despite his personal feelings, Sultan Idris strictly adhered to the basic rule of democracy that the candidate with the support of the majority of the State Assemblymen was to become the *Menteri Besar* – and Ghazali did have the support. I believe that if Sultan Idris's brother Sultans had followed his good example, life for Malaysians would have been a lot easier.

Dato' Abdul Rahim Abu Bakar was *Menteri Besar* of Pahang from 1978 to 1981. He too had difficulties with the Ruler of Pahang. So bad was the dispute that the Sultan refused to assent to Bills passed by the State Assembly. The machinery of government in the State literally ground to a halt. The Prime Minister at the time, Tun Hussein Onn, decided to let the Ruler have his way. Rahim had to resign. It is necessary to recall what the Tunku said on the subject: he cautioned the Rulers not to have a head-on clash with UMNO, as it was a party that represented the people. The Tunku pointed out that the powers of the Rulers were so limited that their role in the legislature of each State was infinitesimal. It

was better for them to work with the party in power. The Tunku's advice went unheeded and, years later, the Rulers clashed head-on with UMNO when Tun Dr Mahathir Mohamad was Prime Minister.

There is another recent example, which occurred in Terengganu in 2008. The Regency Council rejected Dato' Seri Idris Jusoh as *Menteri Besar* and this, unlike the Perak crisis of the same year, was indeed a legal issue. It was very clear that the majority of State Assemblymen wanted him as *Menteri Besar*, and this was confirmed by the then-Prime Minister. When the Ruler rejected Idris, he essentially forgot his pledge to honour his own Constitution. The Ruler must act "on the advice" of elected political leaders. Even where the Constitution uses words like "discretion", the Ruler actually has none because the underlying principle is that he is a constitutional monarch. This "discretion" is a legal fiction. The Malaysian Ruler, like all constitutional monarchs, must use his discretion only in accordance with this underlying principle. Unfortunately, UMNO did not take the opportunity to refer the matter to the Federal Court. Instead, it succumbed to royal pressure and in doing so, I believe the problem will continue to resurface from time to time. Henceforth, every aspirant to the office of *Menteri Besar* will have to be "acceptable" to the Ruler. This is not how democracy is supposed to work, for it is the will of the people that should be paramount.

The *Merdeka* relationship

The new generation of Malaysian royalty believes that the monarchy is not just a symbol: Rulers apparently must be consulted and must have their views heard and acted upon by the Government. The crux is that this “new role” covers almost every aspect of government administration. The most outspoken representative of this new generation of royalty has been the Regent of Perak (I deal with this subject in greater detail in Chapter Six).

In January 2009, Nizar Jamaluddin took action against the Director of the Perak Religious Department, Dato’ Jamry Sury. Jamry was also secretary of the Perak Islamic Affairs and Malay Customs Council. Nizar’s action involved transferring Jamry without informing the State Palace. The reaction on the part of the Regent was swift: Nizar was summoned and was told that his decision was invalid. Anything to do with the administration of Islamic affairs, said the Regent, required Palace approval. The transfer was rescinded and Jamry was reinstated. Not only that, Nizar had to apologise for his “oversight”.

There is no legal basis whatsoever for the Regent’s action. Under the Constitution, the Ruler acts only in name as Head of Islam. He is not a *Khalifah* – a real absolute ruler of the Islamic era. Constitutionally, the Malay Rulers are nominal heads even in Islamic

matters: if the Sultan has to agree on everything pertaining to Islam, then we do not need the State Assembly to pass any laws relating to the religion. A decree or order from the Sultan would be enough. In view of this I very much doubt that the position taken by the Regent had a sound legal basis.

This argument may be resisted by “royalist lawyers” who will quickly show you the 8th Schedule of the Constitution where it says that a Ruler can act on his discretion in relation to any function as Head of Islam. They will say that this is part of the royal prerogative. My answer to this would still be the same. Anywhere the word “discretion” or “prerogative” appears, it means the Ruler has to act on the advice of the *Menteri Besar* or the State Islamic Religious Council. The expression “Head of Islam” is merely a symbolic title, a throwback to the colonial era when British colonialists had to confer titles and ostensibly some power to the Malay Rulers. It could not possibly confer the same standing as a Caliph or *Khalifah*, the true executive Head of Islam in the Muslim tradition.

Let’s say that in a particular state, we have 5,000 Muslim women who have children to feed, but who have been left without financial aid because their husbands have abandoned them. These women’s marital statuses have also not been resolved by the *Syariah* Courts. Can the Sultan sack the entire State Islamic Religious Council and the *Syariah* Court

judges, take out all the money from the *Baitul Mal* (or Muslim public treasury) and distribute it to these poor women in any way he sees fit? Can he introduce new marriage and divorce laws for Muslims and ignore the *Menteri Besar* and the State civil service? As much as I would like to see such a Ruler in our country, I am certain none of them has that power. This is what I mean when I say the expression “Head of Islam” is merely symbolic.

Aside from the legal perspective, to assert that the Ruler is personally responsible and accountable for all decisions on Islamic matters is unprecedented and dangerous. When the Mufti of Perak (who is responsible for advising the Sultan on all Islamic matters) claimed that more than 200,000 Muslims had converted to Christianity, could the *rakyat* ask the Sultan what His Highness was doing while such massive proselytising was going on? To lay the burden of complete religious responsibility on the Sultan would, in this case, imply that His Highness was delinquent in discharging his duties. And what about the sorry state of affairs in the administration of the *Syariah* Courts? Do we also attribute this to Their Highnesses? Surely not.

Now, *hudud* has been a hot topic for the past three decades among Malaysian Islamists. Why have the Malay Rulers kept silent on *hudud* when they are the Heads of Islam? One would expect them to rule definitively on the matter, ending all controversy so

that the *rakyat* can move on to other pressing issues. Perhaps the Malay Rulers should not venture too far to claim that they have personal responsibility in the administration of the country. They might bite off more than they can chew. Of course, they will have the support of political groups from time to time on certain issues but surely they can see that political loyalty is short-lived.

In the case of Jamry, Dato' Seri Nazri Aziz, the Minister in the Prime Minister's Department with responsibility for law, supported the Palace's decision. This was not based on any sound legal advice. Nazri's statement that all State Governments should be mindful of the position of the Rulers was political in nature. He said that the Rulers had a special position in the power-sharing equation of the States. He did not say what the basis of that power-sharing was. He did not elaborate on how the power was to be shared. He was more interested in supporting the Palace and in hindsight we know why.

If Nazri truly believed that there was a power-sharing formula, the Barisan Nasional Government should also have accepted that there was a legal basis for Sultan Mizan Zainal Abidin's and the Raja of Perlis's authority in deciding who should be *Menteri Besar* of their States, regardless of UMNO's nominees or democratic practice. Is this the "power-sharing" that the BN wants?

The *rakyat* really aren't interested in short-term power-sharing between elected representatives and the Palace. The *rakyat* just wants the correct relationship to be enforced and accepted. This relationship, to be clear, is the same as the Tunku's view on how the royal prerogative is subject to the Constitution and the law. This "*Merdeka* relationship" is the only workable relationship and it is good enough – we simply have to make it work. If the Palace is keen for more power, go to the *rakyat* and ask for it. The *rakyat* might well agree, but as Uncle Ben in the Spiderman comics says: with great power comes great responsibility. Unfulfilled promises and expectations can be dangerous. The Rulers must not create new powers from the existing structure because that would be dangerous for everyone. They must not think that just because a political party supports them on a particular issue, they will always have support on every issue thereafter.

In July 2009, the Conference of Rulers asked for three Bills in Parliament to be withdrawn. Nothing has happened to the Bills since the withdrawal and the matter remains of great concern for many people. These Bills sought to amend the Law Reform (Marriage and Divorce) Act 1976, the Administration of Islamic Law (Federal Territories) Act 1993 and the Islamic Family Law (Federal Territories) Act 1984. If passed, the amendments would have helped resolve issues of religious conversion and some of the

problems faced by parents of different faiths when they divorce.

The amendments would have enabled Muslim converts to file for divorce in the Civil Courts and would have allowed the Civil Courts to decide cases involving Muslims that dealt with child custody, alimony, the division of *harta sepencarian* (jointly-acquired matrimonial property), the religious conversion of children, and the administration of the assets of a Muslim convert who died before the annulment of his or her civil marriage (this would also have included funeral rights as well).

Had the Government succeeded with these Bills we would likely see far fewer cases of child-conversion and “body-snatching” than we do today. And even if these cases did occur, there would be a clear legal framework to deal with them.

The Rulers apparently thought otherwise. This is regrettable and they should not dismiss the views of the *rakyat* lightly. They certainly should not assume that the decisions of elected representatives on Islamic matters are irrelevant. It is wholly wrong that major decisions in a constitutional democracy – even on Islamic matters – should be decided exclusively by the Rulers. We are not a democracy in some matters and an absolute monarchy in others. We are not a “hybrid” monarchy as some lawyers are keen to suggest. It is wrong for the Conference of Rulers to put

legislation in cold storage: what does this make of the Government and other stakeholders who have worked hard to formulate these Bills? The people expect the Government to be responsible for their welfare and when a democratically-elected government acts on the demands of the people, no one should usurp that power and authority. Parliamentary Bills should certainly not disappear into thin air.

In practice, however, a Ruler has “discretion” in withholding consent when it comes to a request from the *Menteri Besar* for the dissolution of a State Assembly. The first instance of such a request being denied occurred in Kelantan in 1977. The state was then under PAS rule, but PAS was part of the Barisan Nasional. After the 1974 general election, PAS wanted a particular candidate as *Menteri Besar* but then Prime Minister Tun Abdul Razak and the BN wanted someone else, who was also from PAS. The BN’s nominee was appointed but he became unpopular within his own party because he started taking action against its members for alleged corruption. He was expelled from PAS and a no-confidence motion was passed against him. Instead of stepping down, as he rightly should have, he sought to dissolve the State Assembly. The Sultan declined, perhaps waiting for a political and diplomatic solution. As the Sultan did not dissolve the State Assembly, the *Menteri Besar* should have resigned as he no longer commanded the support of the majority of the House.

To resolve this impasse, the Federal Government issued a Proclamation of Emergency. For Malaysia, this was the start of government by law instead of the government of laws. The Proclamation under Article 150 of the Federal Constitution was completely unnecessary. It was a display of brute political force and nothing else. Kelantan was not in danger of any imminent political or economic trouble that would warrant an Emergency. The facts were clear to everyone: the *Menteri Besar* had lost the support of the State Assembly. Instead of using the force of the Constitution and democracy to compel the *Menteri Besar* to resign (and prompt a new state election), the Federal Government preferred using emergency powers to rule the State directly. The BN went on to govern for 12 years before PAS regained control of the State in 1990. Incidentally, the Federal representative sent to resolve the crisis was Tun Dr Mahathir Mohamad.

History appears to have repeated itself in Perak in 2008-2009, although the facts were somewhat different. To restate the matter: when Nizar thought that he had to deal with three possible defections (which would thereby break his coalition's majority), he asked for the dissolution of the State Assembly although it was not yet clear that he had *actually* lost majority support in the House. Unlike the Kelantan *Menteri Besar* in the 1970s, there was no vote of no-confidence against Nizar. He sought dissolution

because he wanted a political solution, which was to seek a new mandate from the people. Nizar was denied this simple request because the Sultan felt the need to exercise discretion.

I hope that this discussion on the Rulers' discretion serves as a useful lesson for the future. In a constitutional democracy, nine out of 10 requests for dissolution are granted without incident. There is no meaning to the principle that the monarch must act on the advice of the Head of Government if this advice can be summarily dismissed. There is, of course, an argument to be made if, in rejecting the advice, the Ruler has a solid legal or constitutional basis. This is what the *rakyat* expects from its Rulers: in exercising discretion, Rulers must act wisely, fairly and above all in accordance with the spirit and letter of the Constitution.

This is not what happened in Perak. So what exactly did? When the three Pakatan Rakyat State Assemblymen “went AWOL”, rumours were already rife that they might be defecting. There was no way of knowing the real reasons for their disappearance but disappear they certainly did. It was only fair that the *Menteri Besar* should seek an audience with the Ruler to request for the dissolution of the State Assembly. Nizar would not have been able to govern with three missing State Assemblymen. Some argued that Nizar should have resigned if he had lost support. That

option was certainly available to him, but how would he know if he had actually lost support when there was no vote of no-confidence on the floor of the House?

So, what stopped the Ruler from acting on Nizar's advice to dissolve? What prevented the Ruler from directing the House to vote on a motion of no-confidence so that every Perakian could see the fall or survival of their Government? Even if the BN's alternative candidate was an immensely attractive proposition as *Menteri Besar*, the Sultan could have agreed to his becoming interim *Menteri Besar* on the condition that fresh elections be held within 60 days. A democratic government requires the mandate of the people. I contend that to this day (April 2012), the Government of Perak has no such mandate. Had the Sultan of Perak chosen to return the mandate to the people, he would very likely be celebrated today as the Ruler who exercised his discretion fairly and properly.

To refuse Nizar's request for dissolution was an improper exercise of power. Laws are meant to be exercised for the good of the people: the people chose the Pakatan Rakyat as its Government and where there were doubts over whether that Government could still govern effectively, the logical and most obvious decision would have been to dissolve the State Assembly to let the people choose again. Various arguments have been put forward to justify why the Sultan's exercise of discretion was proper. A few have

cited some odd cases where similar requests had been denied. I can safely say that we can find any principle in our law books to justify the most despicable act if we have enough lawyers to look for it. What is important is to know if we are doing the right thing for the State of Perak, and here I am certain that the Ruler had erred.

Where did the Sultan derive this particular power from? It is amuse to read for the reasoning of some lawyers and judges who had to justify the Sultan's actions. First they said that the Sultan could dismiss members of the Executive Council – and since the *Menteri Besar* was a member of that Council, the Sultan could dismiss him. But to come to that decision they had to ignore an explicit provision in the State Constitution that the *Menteri Besar* did not hold the office at the pleasure of the Sultan. These well-paid lawyers and judges also ignored the fact that while the members of the Executive Council are appointed by the Ruler and he has “discretion” in dismissing them, this discretion can only be exercised on the advice of the *Menteri Besar*.

They also conveniently ignored what was stated clearly in the Reid Commission Report:

“As the Executive Council is to be collectively responsible to the Legislative Assembly, the appointment of its members must lie in the hands

of the *Menteri Besar* and the new *Menteri Besar* must be free to appoint a new Executive Council in the same way that the Prime Minister appoints his Cabinet Ministers. This result follows from our recommendation that the Executive Council Member should hold office at the pleasure of the Ruler because in appointing or terminating the appointment of a Member of the Executive Council the Ruler must act on advice of the *Menteri Besar*.”

Simply put, the Ruler has discretion but that discretion must be exercised in accordance with the advice of the *Menteri Besar* or the Prime Minister.

The Perak case has turned our constitutional law upside down. No one knows what the outcome of the next general election will bring because the Malay monarchs have now been “vested” by the Federal Court with new powers. The monarch can call Members of the State Assembly to his Palace and he can determine, on his own, if a certain *Menteri Besar* has any support. In the old days, it was only proper that a vote of confidence be moved in the State Assembly so the *rakyat* can see for themselves the reasons and extent of the controversy. Democratic decisions should never be made behind closed doors or be subject to wheeling and dealing. The *rakyat* must be able to be confident that the Malay Rulers are not taking sides in political battles.

As it stands, the Federal Court has ruled that the Sultan can dismiss the *Menteri Besar* for whatever reason. This automatically means that the Sultan can also appoint anyone without regard for the advice of the party winning the majority of the seats in an election. The Federal Court has abandoned and destroyed the country's constitutional law with this decision. More worrying, however, is the abandonment of a very important principle in a democracy, namely, that the *rakyat* through its representatives have the ultimate power to govern. We appear to have entered a new age in which the Rulers are close to becoming absolute monarchs (although they have not yet used that term). In matters of Islam, they have said that they have absolute authority – and everything under the sun can be connected to Islam. Now with the help of the Federal Court, they also have power over elected representatives.

The High Court judge in Nizar's case, Dato' Abdul Aziz Rahim, was the only judge who understood the law and had the courage to do what was right. He captured the essence of our constitutional government when he wrote: "The genius of our Constitution is that we have chosen a system of government anchored on the principles and practices of constitutional monarchy and parliamentary democracy, whereby the *Yang di-Pertuan Agong's* and the Rulers' constitutional roles are set out in the Constitution and the people are

given freedom to elect a government of their choice in a free election and with the elected government being made answerable to the elected legislature.”

However, the senior judges in the Perak case were not at all interested in establishing this constitutional principle. They were more interested in finding arguments to justify the actions of the Ruler. So, even if these judges couldn't see the woods for the trees, they were content with this as long as the outcome was the one they wanted. They split hairs and searched irrelevant cases for dubious examples. They concluded that the discretion of the Ruler was beyond question. They should instead have asked if the Ruler's discretion in this case was properly exercised and whether it was done on advice of the *Menteri Besar*. If the judges wanted an absolute monarch, they certainly got one.

The Federal Court's decision will hopefully one day be reversed. Good judges like Dato' Abdul Aziz Rahim are not able to reach the pinnacle of the judiciary. Datuk Mohd Hishamudin Mohd Yunus, now in the Court of Appeal, also appears likely to do the same – some judges are just not adept at climbing the ladder. But the winds of change are surely blowing and they will carry away the dust of an outdated era. The will of the people is stronger than the power of the few who rule without regard for the wishes of the majority. The path to democracy is hard but even

the most powerful will not be able to stem the tide of change. They can collude, they can gang up, and they can delay the inevitable, but for how long?

What the Perak incident has shown us is that democracy must take a longer route to be entrenched in Malaysia. This is a lesson we learn over and over. Those in power seem to have an urge to show the people that they actually *have* the power: “Ignore us at your peril,” they seem to say. They don’t understand that people have long memories. No one in Perak who has any sense of dignity and self-respect will allow their choice of *Menteri Besar* to be thwarted by those in Kuala Lumpur. The people of Perak may show that when they cast their votes in the upcoming general election. The people of Kelantan took longer to register their abhorrence of the *coup d’état* in 1977, but they did it in the end.

That said, I don’t think we will see an end to this kind of constitutional problem any time soon. There could well be more instances of chaos and uncertainty if those in power are unwilling to follow the basic rules of democratic government. It will be more dangerous still if the Rulers fail to assert the prescriptions and guidance of constitutional conventions to problems at hand. And the truth is that any expedient exercise of power will be detrimental not just to democracy, but to the institution of monarchy itself.

Chapter Four:



Monarchy and the political process

There is a possibility that in the forthcoming general election, only a correct and wise decision of the monarch will prevent mayhem and trouble. I am certain that the mad scramble to become Prime Minister and to form a government will be chaotic unless constitutional rules are adhered to, especially by the Ruler.

Let's use a hypothetical scenario: say the Barisan Nasional wins 105 parliamentary seats and the Pakatan Rakyat gets 110. Let's also say that the seven remaining seats are held by Independents. Now, the majority required to form a government is 112 seats. The King will be faced with deciding who actually has this majority and he will not be able to ascertain this by asking the BN leader to come to the Palace with

his “supporters” from among the Independents. There is no way the King can determine if these supporters were coerced or bribed for their support. Equally, it is possible that the Pakatan leader will troop in with the required majority and lay claim to the ability to form government. Again, the King will have no way of knowing if the support of the Independent MPs is genuine.

It is in these delicate and exceptional circumstances that a wise King will be able to put his discretionary powers to good use, but all this depends on his judgment. If he decides to let the BN form the Government, it would be better if the party shows its strength by moving a Parliamentary vote of confidence in the new Prime Minister so that the people can see clearly that he has the necessary support. If the new Prime Minister scrapes in with a small unworkable majority, then the wise King should advise him to dissolve Parliament and let the people decide again.

An example of royal discretion being used improperly is a case involving the late Sultan Ismail of Johor: His Highness chose to exercise his discretion to pardon his son, who had been sentenced by the court for a criminal offence. While this action may have been within his constitutional powers, I contend that it was not the right thing to do. Monarchs must not only respect the law – it is imperative that they also lead by example. If everyone takes the law into his or

her own hands, the future of the entire country, never mind the monarchy, will be in danger.

In the case of Perak in 2008-2009, our courts apparently added a similar discretionary function to the role of our monarchs. According to Justice Tan Sri Md Raus Sharif, when a *Menteri Besar* asks for the dissolution of the State Assembly, the Ruler can determine if the *Menteri Besar* has actually lost the support of the majority of the State Assemblymen (see Chapter Three for a fuller treatment of the Perak case). This startling conclusion came about in the Court of Appeal when lawyers were arguing about the exact provision of the Perak Constitution under which the *Menteri Besar*, Dato' Seri Nizar Jamaluddin, asked the Ruler for dissolution. The trial judge had made a finding of fact that Nizar asked the Ruler to dissolve the State Assembly under Article 36, which is the general request to dissolve, and which is not connected to any purported loss of support.

Speaking for the Court, Raus took great pains to explain why the trial judge was wrong. He wanted to establish that Nizar had asked for the dissolution because he had lost support of the majority, so, according to him, Nizar had in fact asked for a dissolution under a different Article (that is, Article 16) of the State Constitution. The Court of Appeal thought that it was very clever: if Nizar had sought the dissolution because he had lost support, then the

Ruler could dismiss the Executive Council (of which Nizar was a member). Hence the Perak Ruler's action would be legitimate.

Is it normal for an appellate court to reverse a trial judge's finding of fact? The Court of Appeal can interfere with findings of fact only where there has been a misdirection of the law going to the evaluation of evidence. Certainly in this case the reversal was wrong – but assuming he is entitled to do it, Raus had in fact presented the monarch a new headache. Now the Ruler has to determine, in *any* request for dissolution, if the request is a general one (for instance, the election is due) or if indeed the Head of Government has lost the confidence of the majority.

Let's now say that Prime Minister Dato' Sri Najib Razak has gone to see the King in the morning to dissolve Parliament. In the afternoon, Deputy Prime Minister Tan Sri Muhyiddin Yassin also goes to see the King to tell His Majesty that he has the support of the majority in Parliament. Muhyiddin will plead that Najib made his request because he had lost the support of Barisan Nasional MPs. But there is no need to dissolve Parliament – just appoint Muhyiddin as Prime Minister and all would be well. According to Raus, all Muhyiddin has to do is bring enough MPs with him to the Palace. There would be no need for a vote of confidence on the floor of Parliament.

What is the King to do? According to Raus, His Majesty has to determine as a fact what prompted Najib's request for dissolution. If the King believed Muhyiddin's version (i.e. that Najib has lost majority support), then the King can sack the Cabinet. This includes Najib and, after all, Cabinet Ministers serve "at the pleasure" of the King. Muhyiddin can then be appointed Prime Minister. Najib's lawyers will scramble to go to the Federal Court (and possibly to Raus) to argue that the King is constitutionally bound to act on the advice of the Prime Minister. Unfortunately for them, they will be told that the King need not act on this advice. I am making this up, but it is simply a direct application of the interpretation of the law in the Perak case.

Points of agreement

Obviously, we need to reverse the decision of the Federal Court before it is too late. The decision will eventually lead to chaos, so both the Barisan Nasional and Pakatan Rakyat must agree on some ground rules as our judges have failed in their duty. For a start, I believe that the Conference of Rulers should be presented a memorandum signed by all major political parties restating the basic principle that the Ruler is obliged to accept as *Menteri Besar*, or the Prime Minister, the candidate who has the support of the majority of the Members of Parliament or the State

Assembly. The ascertainment of confidence in a particular person should be done in the *Dewan*, except where exceptional situations do not allow for it. Let's not create more uncertainty such as that which transpired in Terengganu and Perlis after the 2008 general election. The tussle then was among UMNO nominees, so it wasn't catastrophic. But imagine if the Ruler had refused the appointment of a *Menteri Besar* selected by a coalition partner. The coalition could break up and there would be a real possibility of dissolution for all the wrong reasons. There would be chaos, so the first principle should be that the Ruler must accept the candidate selected by the winning party or coalition.

The second point of agreement is that if a *Menteri Besar* or the Prime Minister asks for dissolution for whatever reason, then the Ruler is obliged to grant that request. It does not matter if the request is made two months immediately after a general election – issues of politics must be decided as political leaders see fit for these leaders are accountable to the *rakyat*. The Ruler must not substitute his own judgment in such matters, for to do so would deprive the *rakyat* of a fundamental democratic right.

The third point of agreement is that the appointment of the Executive Council and Cabinet is entirely dependent on the *Menteri Besar* and the Prime Minister respectively. There is absolutely no place for others to dictate the choice of the members

of government. This is necessary to preserve the democratic way of life, and if the executive is selected because of its connection to the Ruler, then clearly the *rakyat* would no longer be in power.

Finally, we are all duty-bound not to let lawyers and the courts cause confusion about the meaning of “acting on advice”. The Federal and State Constitutions make it abundantly clear that the Ruler acts on the advice of the Prime Minister and the *Menteri Besar* respectively. This means that the Ruler does not act on his own initiative. He can only act as he is told, instructed or notified. The Rulers must also be reminded that the phrase “during the pleasure of” does not mean that they can sack their Councillors or Cabinet Ministers at will. The phrase has a definite and distinctive meaning by convention: it means that an individual holds office unless the appointment is revoked by the Ruler, who can do that only on the advice of the Prime Minister or the *Menteri Besar*.

The Malay Rulers can take their own initiative to clear the present confusion by returning to constitutional principles. If they were to do that, they would be seen by the *rakyat* as wise and responsible. They will be deeply respected by the people if they were to disown the extra powers given to them by the Federal Court. The Malay Rulers could collectively defend democracy and the power of representative government as determined by the Constitution.

The importance of convention

Coming back to the question of the King's national constitutional role: the *Yang di-Pertuan Agong* does not usually attend meetings of the Conference of Rulers when it deliberates religious or ceremonial issues. That said, the King has a very powerful role to play. He appoints as Prime Minister the Member of the Parliament who, *in his judgment, is likely to command the confidence of the majority of MPs*. All these years, the King has had no difficulty determining who that person is because the Barisan Nasional has always been returned with a large (or at least a clear-enough) majority. There has never been a case of a hung Parliament in Malaysia.

But the appointment of the next Prime Minister may be the beginning of a trying and testing time for our constitutional monarch. Today, one cannot even assume that we will observe the practices and conventions of the Westminster system on which our own system of government is based. If the worst happens, much will depend on the wisdom of the King.

If we do have a hung Parliament, some MPs may be tempted to cross from one side to another. It doesn't matter what tempts them to cross over – whether it is based on principle or something else – and there is not much anyone can do about it. However, a wise

King might be able to deter last-minute crossovers by asking the leader of the group that has the most seats (however small the majority) to become caretaker Prime Minister while the country returns to the polls. This process will have to keep going on until one side or the other obtains a clear working majority. In any case, responsibility for government will be handed back to the *rakyat*. This is a convention of the Westminster system.

I use the word “convention” in several places in this book. Conventions are traditions and practices adopted in the Westminster system whether in Great Britain or anywhere else in the Commonwealth. Britain does not have a written Constitution: what they use is made up entirely of conventions that operate as laws because they are accepted by the people as essential to the operation of government and democracy. For example, the principle that the Prime Minister is the person who commands majority support in Parliament is an unwritten convention in Britain, while in Malaysia it is expressly stated in our written Constitution. This is one of many examples of how conventions can be made into written law and the corollary is that there are indeed conventions that are unwritten but which are still central to the practice of democracy. The independence of the judiciary is an unwritten convention that must be honoured.

Consider the Sabah political crisis of 1985: here is an example of how the proper application of convention benefits the country. Fortunately for us, the crisis was happily resolved by a capable judge and a Deputy Prime Minister who knew the meaning of the rule of law. If not for these two, we could well have had another Proclamation of Emergency similar to the one in Kelantan eight years earlier. Democracy would not have had a chance.

What happened was this: Tun Mustapha Harun, the leader of United Sabah National Organization or USNO, claimed that he had majority support because he could appoint and nominate six members of the Assembly (as is permitted by the State Constitution). But the point here is that he would not have had the majority without the nominated members. So he pressured the Governor to swear him in. On the other hand, Dato' Joseph Pairin Kitingan of Parti Bersatu Sabah did have a simple majority on the principle of "first past the post". By convention and law he should have been appointed Chief Minister. This is the logical interpretation of a democratic government of, for, and by the people. It is plainly wrong to calculate one's majority on the basis of seats one would be able to garner *if* one became Chief Minister, as Tun Mustapha tried to do.

The Governor of Sabah realised his mistake and immediately revoked Tun Mustapha's appointment. Later on the same day, he swore in Pairin. This sparked off a battle in the courts. What was interesting was the revelation that there were political leaders prepared to play fair in an otherwise dirty contest. But at the same time we had the misfortune to witness the actions of Tun Mustapha and his group, who did not feel any need to observe basic political decency by accepting that they had lost a closely-fought election.

In countries such as Britain and the United States, politicians are more likely to be guided by established rules of contest, fair play and convention. The thought of reinterpreting a clause in the Constitution to further one's dubious claims to high office – knowing full well that one does not have the majority – would be unthinkable. Thankfully, the court in the Sabah case rightly rejected Tun Mustapha's application and reaffirmed the cardinal principle that Pairin, as the leader who had the majority, was the rightful Chief Minister. Here the court clearly felt that its duty was to apply constitutional convention in reaching the correct decision.

There is something else to be said about the case: the coup would have succeeded and Tun Mustapha would have been Chief Minister if the political leadership in Kuala Lumpur had not taken a principled stand to support the winner. Tun Musa Hitam was acting as Prime Minister as Tun Dr

Mahathir Mohamad was abroad at the time. Musa was clear on his position: Tun Mustapha and his allies were in the minority. They did not win the election and under no circumstances could they be allowed to form government. Tun Musa then took three simple but significant steps which brought the crisis to an end: first he said that the Barisan Nasional had nothing to do with the events in Sabah. He then warned troublemakers that he would be firm against anyone who threatened the safety and security of the State. Thirdly, he said that the people's wishes must at all times be respected in a parliamentary democracy.

I happily surmise that had Tun Musa been Prime Minister in 2008, the Perak incident would not have happened and the people of Perak would still have a *Menteri Besar* of their choice today. This is an example of where political morality is deeply rooted in ethical practice and good conduct. Tun Musa's actions proved that conventions truly help build proper governance when those responsible are bound to observe them. The question we must ask today is whether our leaders want to see democratic government succeed in Malaysia, or whether they are only interested in the acquisition of power by any means. Power that is devoid of decency and fairness will produce nothing but a corrupt system of government whose leaders will sooner or later cause irreparable damage to the social and moral fabric of society.

Have I been unduly hard on Tun Dr Mahathir? I do not think so. I blame him for the constitutional crisis in Kelantan in the mid-1970s and I believe that, if he had been in the country in 1985, the Sabah crisis would have ended differently. It is no accident that the constitutional crises of 1983 and 1993 took place when he was Prime Minister. It is very important that a Prime Minister leads by example so that the others, including the monarch, will be guided to act in accordance with democratic principles. A Prime Minister who is a dictator, and who respects nothing other than his own views of what the country needs, can easily do the foulest things because he is convinced that only he has the interests of the country at heart. Such a leader will have no problem justifying any action, no matter how absurd, by alluding to the need to “protect the country”. Even the mad Roman Emperor Nero felt justified in burning his city to prevent the barbarians from taking it.

In this day and age, leaders are judged differently. They have to show the people that they believe in a democratic government, that they obey the rule of law above all else and that they treat the people with fairness. They have to show by their actions that these principles are the guiding principles of government. The days of autocratic rule, no matter how benevolent, are over.

Royalists may rejoice at any resurgence in the absolute rule of monarchs but they have obviously not understood the tides of history. Everywhere in the world people are asking their leaders to be answerable to them. They do not want dictators, and they certainly do not want absolute rulers under whatever name.

Chapter Five:



Other issues with the monarchy

The wealthy are the luckiest people in the world. Even the most talented and most capable among us may never have the good fortune of amassing huge riches for ourselves. In fact, people who are gifted with the most extraordinary skills are often destined to lead quiet, anonymous lives as just another neighbour on the street. Some of the wealthiest people in the country, on the other hand, are very ordinary in terms of intellect, wit, talent or skill. Few of them are inventors, scientists, artists, or even accomplished entrepreneurs in their own right.

Members of the royalty are lucky people because they are all generally wealthy. It's difficult to assess how wealthy they really are because of the scarcity of public information about this matter. We might assume

that a Ruler from a smaller state will have less than the Ruler of a bigger state, but wealth creation is not confined by geographical limitations. There's nothing stopping a Ruler from being successful in business even if he comes from a modest royal family. It's anyone's guess who among them is the wealthiest, although I believe the Johor royal family probably takes the top spot. Some would say the Perak royal household must also rank very highly because the Sultan's prince and princess are reportedly worth close to RM1 billion.

Funding monarchial systems

The question of a monarch's involvement in business does not arise in most modern royal families in other countries because the people would not tolerate it. These monarchs, like ours, depend on budget allocations from the Government for their upkeep and household expenditure. The British royal family has access to several funds, including public ones such as the Civil List and the Grants-in-Aid, which pay for expenses such as the maintenance of the royal residences, public engagements, state visits, staffing and travel. British taxpayers are able to look up details of royal expenditure and the cost to taxpayers is a matter of public record (although admittedly, there is inevitably some dispute over whether the figures are accurate).

In Thailand, the monarchy is supported financially by an institution called the Crown Property Bureau, which was specially created by law after the era of absolute rule ended in 1932. Before then all the land and everything in the Kingdom belonged to the King. When he became a constitutional monarch, the Crown Property Bureau was created to manage all royal assets and property and differentiate the King's personal property from that of the Crown. Personal property denotes whatever belonged to the King before he ascended the throne. Crown property refers to the palaces and all other assets and investments which belong to the institution of the monarchy, and which are managed independently by a board of trustees. The Minister of Finance is also a member of the Bureau.

In Malaysia, the taxpayers also provide for the upkeep and maintenance of the Rulers. However, we too should have a juristic entity like Thailand's Crown Property Bureau to hold and manage all assets and properties belonging to the monarchy so that all its expenses can be paid out of the Bureau's funds. It should be run by competent officials from the Government and representatives of the monarchs. It's important for the monarchy to be self-sustaining, especially in difficult times like we are facing now. When the Government expects the people to change their lifestyles and deal with the higher costs of living, it is not unreasonable for the *rakyat* to expect

the Rulers to moderate their spending as well to set an example.

The Bureau will of course need seed money from the Government to invest, but a one-off allocation of RM500 million should be sufficient to get things started. All assets belonging to the institution of the monarchy – such as the royal residences – should then be transferred to this entity's control. This will prevent confusion in determining which assets belong to the State and which are deemed the Ruler's personal assets. This distinction is important because personal assets should not be maintained by the Government.

The Bureau will run any and all business for the monarchy and will ensure that all assets are being well managed financially. The Malay Rulers would in turn receive the necessary funds they require to discharge their royal duties from the Bureau, for as long as they are the Rulers of the State. Expenses such as maintenance of the royal residences, for example, would also be borne by the Bureau. In this way, the Government and the *Menteri Besar* are freed from having to provide annual budgets for the upkeep of the various palaces and other officially approved spending. The existence of the Bureau would also alleviate the pressure on royal households, which must be inundated with requests from businessmen for various projects.

The income from the Bureau's investments will help the monarchy decide what sorts of expenses

are justifiable and what are not. They can then live their lifestyle accordingly. They would not be required to reduce their spending and allowances if the corporation has a lot of money, for example, and they would be spared the indignity of having to lobby for projects like you and me for extra income. Just as the royal institution should stay above politics, it should also steer clear of business to maintain the eminence and the greatness of the Malay Rulers. If the Crown Property of the Thai monarch can be worth billions of US dollars, then surely our Rulers can also have a Bureau that could make a fortune out of smart investments that would not only help the royal institution, but also develop the country's infrastructure.

It's high time the Government dealt with the expense of managing the country's monarchy in a more transparent manner. The sum concerned cannot be small, considering we have nine royal households. At present, it's open-ended because the law allows the Cabinet to add more royal purses or create other allowances for the King as and when the Prime Minister feels it is necessary. State governments are also free to decide on the purses and allowances for the Sultan and the *Permaisuri*.

We have to manage the country's overall finances better because our debt level is dangerously high. The lack of transparency and the apparent inability to cope

with massive corruption will result in the country's creeping ever closer to bankruptcy, and the expenses of the monarchy are surely one of the big-ticket items in the budget. We can learn from other countries that still have constitutional monarchies and observe what works for them.

The Rulers in business

The Federal Constitution explicitly forbids the King and Queen from actively engaging in business. State Constitutions should have provisions similar to Article 34(3) if they currently do not. The reason why we have such laws is to protect our Rulers from the possible indignities of failed businesses, unpaid debts and other complications. When members of the public (usually businessmen) talk derisively of the Rulers seeking business opportunities and other economic benefits from them, as a Malay, I feel aggrieved and sorry that the Malay institution we all cherish is being mocked by some of these people. Political leaders should forcefully enforce the laws and prohibit the Rulers from engaging in business because it's important to maintain the integrity of the monarchy.

It would be remiss of us if we did not address the many problems associated with the number of Tunkus and Rajas lobbying for business. The question

that interests me is how a Ruler can get involved in business and wealth creation without becoming obligated to the Government, the *Menteri Besar* or the Prime Minister. The reality in this country is that it's the political leaders who make key decisions in major (and therefore lucrative) projects.

The role of the monarch is to decide difficult questions with absolute fairness to the *rakyat* and to exercise his discretion properly in administrative and political matters – his family as well as his own business interests must be secondary in the scheme of things. The question is, will a Ruler be prepared to sacrifice his business interests and possibly incur the displeasure of political leaders for the sake of good and proper governance?

This is the reason why, everywhere else in the world, monarchs and their families are not allowed to do business and are certainly not allowed to secure government contracts and projects. This rule was set to prevent any possibility of a conflict of interest. Continuing public confidence in the institution is essential for the monarchy to remain relevant. Conflicts of interests will disenchant the people. For those who think they can outsmart the system by using proxies, a free Press and an accountable, democratic government would surely eventually be able to expose them, earning them the people's contempt and ridicule.

Since we have nine royal households, there are quite a number of members of the royalty that may be involved in lobbying for business and projects. At the moment their efforts are uncoordinated and some may have better advisers than others. If a member of a particular royal family is from a small State then it may be more difficult for them to command larger royal purses and allowances. Even those who have better connections do not always have good investments; in fact, many have dubious prospects. The Rulers may even end up competing among themselves in some instances, which puts a lot of pressure on politicians.

It would be better for everyone if the monarchy were shielded from the rigours of business dealings and were instead adequately funded in the manner that was discussed above. It is equally important for the *rakyat* not to have to endure competing with members of the royalty for business. It would hardly be a level playing field. Even if they were to become joint-venture partners with the royalty, it would be difficult for a member of the public to seek redress from the courts in the event of a dispute.

Of course, it would be unfair for all Tunkus and Rajas to be denied the chance to participate in business because of their familial connections to a Ruler, so it's important that the restriction applies only to the Ruler himself, his consort, the Regent

and his consort – all of whom may be called upon to exercise their powers from time to time. Restricting them from doing business prevents them from being persuaded to make any decision that may be detrimental to the people. The Rulers would be able to maintain their dignity and not have to compete or lobby for business as ordinary hustlers do. In this way, we can preserve the people's respect for the Rulers and remove all possibility of royal decisions being shaped by pressure or personal interest. Only when a monarch is free from such influences can we expect him to be truly impartial.

The mechanism of the Crown Property Bureau that I have suggested would be a suitable vehicle for the monarchy because they would not be personally involved in the running or even the procurement of business. All management would be handled entirely by professionals on the monarchy's behalf. The Minister of Finance could nominate a few trusted officials to be members of the Bureau's Board so that all investments are properly managed and accounted for. State governments, meanwhile, can still continue providing for the royal purses pending a positive return on the investments by the Bureau. The Government, at both state and federal levels, can act as "guarantors" to the Bureau to ensure that at no time would the royalty be short of funds.

The *rakyat* and the Rulers

Besides the royalty's problematic involvement in business, another aspect of our relationship with the Rulers that must be better managed is the *rakyat's* ability – their right – to express their ideas and concerns about them. We have a unique arrangement of rotating the position of the *Yang di-Pertuan Agong* among the heads of nine royal households, and it is incumbent on the Government to manage the affairs of the monarchy just as it is expected to do with other governmental institutions. This means that the expectation is for it to be transparent, accountable and answerable on issues that have an impact on the people.

The principle of good governance requires leaders to show transparent conduct and behaviour, and that includes the Rulers. This is why monarchs in other countries are willing to show their books of expenses to Parliament so that they will not be accused of unfairly taxing the people. Queen Elizabeth II's expenses can be brought up in the British Parliament. Our Constitution also says that the King and Queen should be paid from the Consolidated Fund, so it is permissible for Members of Parliament to raise relevant questions on the expenses of the monarchy.

Royalists balk at this and say that allowing the *rakyat* to question issues – such as how much is spent on maintaining the monarchical system or the need

for another palace for the King – is tantamount to disrespectful, even traitorous behaviour. But that is certainly not the case, nor the intent. If we observe other constitutional monarchies around the world, the people have the right to ask such questions and debate issues connected to their Rulers. Even in Thailand, where the King himself tried to persuade the Government to mitigate the deterring effects of the laws of *lèse-majesté*, the people already question many aspects of their royalty's role and perceived political bias. England is another country that loves its royalty, but that has not prevented the people from raising questions in Parliament about the expenses that members of the royal family incur.

We must expect the Rulers of Malaysia to be closely scrutinised by the public, like everywhere else. Instead, a climate of fear and intimidation is imposed on the people whenever the royalty becomes a subject of public debate – this is uncalled for. To discourage public debate, royalists cleverly position the Rulers as representatives of Malay power, which means to question them is to question Malay power. But the Rulers' role and responsibilities are spelled out carefully by the Constitution and should not be politicised. And besides, people power is what's relevant today. The Rulers are monarchs for us all. No responsible government in a constitutional democracy should use the monarchy for its own political agenda.

The Government of this country is His Majesty's Government, regardless of which political group it belongs to. In fact, no political group should be allowed to use the monarchy for its political ends.

If we truly are a democracy, that means we must be prepared to give the *rakyat* the freedom to express their views. Our laws on what does and does not constitute sedition are outdated and deserve to be thrown into the dustbin. Today everyone has the ability to obtain information quite freely, which means people are better informed now than they have ever been. It's therefore natural that they will want to ask questions and it is incumbent upon the political leadership to respond swiftly and adequately (especially since any vacuum of information is often filled by rumour and innuendo). The practice of hiding behind the Official Secrets Act will not be helpful to any government in power. People today know that the secrets that are being used to justify certain actions are not actually secrets of the State but of the leaders concerned, be they politicians or members of the royalty.

Let people discuss the social contract or whatever else in the Constitution concerns them, including the much-debated Article 153. Of course, when we accept that people have the right to speak, we should also accept that there will be all kinds of views expressed. Some will be intelligent and some will undoubtedly be

uninformed. Some views will spur creative discussions and others will incite hate. We have already had to listen to our fair share of stupid speeches, such as that from the Penang chap who recently suggested that all Malaysian-Chinese should be sent back to China. I have a Malay friend who thinks that Indian-Muslim politicians are spoiling the good name of the Malays, who are honourable and gentle people. According to him, this means *mamak* politicians should be sent back to India, which is an equally obnoxious idea.

We have to take all of this in our stride because in a democracy, it's necessary to allow people to speak. We must learn to recognise what has merit and what should be ignored, but that will never happen if our eyes and ears are kept shut.

Yet we have reached a point where even asking simple questions or offering legal opinions on the Rulers can create an uproar. The most recent example of this was the condemnation that International Islamic University Malaysia lecturer Professor Dr Aziz Bari received late last year when he said that a statement by the Sultan of Selangor on the subject of forced conversion was unprecedented. The professor was not only suspended by the university, but was maligned by the mainstream media. Everyone in UMNO took the opportunity to support the Ruler. This is a normal occurrence in Malaysia – political parties will always try and curry favour with a Ruler

when it suits them. They do not seem to realise that in the long term, this blind support will only make the Rulers believe that they actually have real power. If politicians make any attempt later to lecture the Rulers on their constitutional boundaries, they will be rebuffed.

Professor Aziz even received a bullet in the mail for his trouble. The situation would be silly if it were not so dangerously divisive. He is known to be sympathetic to PAS but regardless of what we think about his personal politics, his comments about the Sultan had a sound constitutional basis. Even if he had been wrong there is no reason to punish him for his views for they lie within the bounds of the law. Karpal Singh faced similar condemnation when he questioned a statement by the Sultan of Perak that the Ruler has the power to dismiss a *Menteri Besar*. Karpal also received a bullet, which makes me worry about what will happen after this book is published.

Of course, it's also important to state that it would be unfair to generalise about the Malay Rulers. Some are well-respected and diligently follow the dictates of a good monarch. But others do not, and these Rulers still think they have powers way beyond what the law prescribes.

To remedy this situation, the people must be allowed to speak and our politicians must meet our expectations of statesmanship, leadership and wisdom.

We expect them to temper the boiling political heat, not to make things worse. We expect them not to descend to the political gutter because there is no way of knowing what the repercussions might be. Give democracy a chance to survive and the people will learn to find the right balance and the right solutions to the problems, real or imagined.

Chapter Six:



With power comes responsibility

Today, the world has only 41 monarchs left and nine of them are in Malaysia. Wherever they may be they are all constitutional monarchs except here, where in reality they are more than that. They are “hybrid” monarchs: at times they seem to be guided and subject to defined rules while on other occasions they seem to have absolute powers.

A few years ago, a Malay Ruler refused to give out any awards, which is the customary practice on his birthday, because he could not agree with the list of recipients given to him by the *Menteri Besar*. He obviously thought that it was his prerogative to bestow awards on those he himself preferred or to withhold them from those he didn't, and there were some pro-royalty lawyers who seemed to agree with

that view. I, too, recognise that the giving of awards is the prerogative of the Sultan, but would urge the monarch to exercise this power properly so that the people do not talk unkindly of Rulers who may have been “too generous” in giving awards. The *Menteri Besar* can also bring shame to the institution by asking the Ruler to give awards too freely. Both sides have to act properly so that the monarchy is not besmirched. Finally, it is better for all Superior Court judges to only get their titles from the King so that they would not find themselves in the difficult situation of having to accept titles from state Rulers who might be involved in a case!

The Malay Rulers are influential not just because of their positions of authority but because they do exercise real political power which has somehow been vested in them beyond what was intended when Malaysia gained Independence. Let’s look at the Conference of Rulers, a creation of the Constitution: all appointments of top civil servants; the police; the chiefs of the army, navy and air force; and the judiciary require the approval of the Rulers. While this was meant as a nominal exercise of power, the process of approval has now become a real power in the Malaysian system of government. No judge can hope to be promoted, especially to top positions, unless this has been agreed to by the Rulers. When the Perak constitutional crisis was brewing, many

lawyers felt that despite the early victory for the sacked *Menteri Besar*, the higher courts would reverse the decision. They did not feel that the judges had the guts to decide against the Sultan of Perak because their future promotions depended on the Rulers. The lawyers were correct about the reversal but I have no evidence that the judges of the Court of Appeal and the Federal Court were afraid to offend the Sultan.

So, if what we are fighting for is democracy and constitutional government, then we need to be concerned about the powers of the Malay Rulers that seem to go out of control. Let me be clear that I am not against more powers for the monarchy since I am sure that the powers which can be exercised by politicians are not necessarily better for the people. But the big difference is this: when politicians make bad decisions, we can ask them questions. We can even boot them out of office if we are not satisfied with them. They must then answer and explain their decisions. If we ask questions of the Rulers, there will be those who will call us *biadab* (ill-mannered) and disrespectful. This is the crux of the issue, for if the Rulers feel that they are entitled to exercise their powers, prerogatives and privileges like the monarchs of old, then they must be prepared to be responsible and accountable to the *rakyat* of the modern world. They must be prepared for public criticism and for their affairs to be examined in the same way as all other public officials.

Some will say that the Malay Rulers have taken the Malays for granted as they did before *Merdeka*, but I do not agree with this harsh verdict. However, it is nevertheless true that if not for the sacrifices of the freedom fighters and the anti-Japanese movement, together with the hard work of Dato' Onn Jaafar and Tunku Abdul Rahman – who persuaded them to support the demands for *Merdeka* from the British – the monarchy may well have a less important role to play in our country today. Historical records are clear that the Malay Rulers were more interested in protecting their positions instead of agreeing to the demands of independence led by Malay nationalists on both the left and right of the political spectrum. To be fair, the Malay Rulers had no reason to be sure that their positions would be safeguarded in the newly independent state – what more when monarchs in India, Indonesia and Burma were all vanishing after Independence was gained in those countries. They only changed their position when the Tunku assured them that they would be protected under the Constitution.

This did not mean, however, that there would be no contests between the political leaders of the new nation and the traditional monarchy – but we must remember that we were all evolving politically as a whole, and indeed we still are. After the constitutional crises of 1983 and 1993, for example, some political observers said that the new Malay monarchs had

changed for the better. By “new” they meant that the younger monarchs of the 20th century had put up a more appealing image. The Rulers no longer represented the old monarchy that, according to these experts, was unable to reconcile its traditional role with the demands of modern democracy.

In the new millennium, observers usually cite Raja Nazrin of Perak’s statement, which was widely published in 2004, about the role of the monarchy in contemporary Malaysia. Later, in a 2008 speech, Raja Nazrin alluded to the need for the monarchy to reclaim the respect and support of the people. He seemed to imply that the ugly and unacceptable side of the royal lifestyle of the past would not or should not recur. He noted that Malaysian monarchs should play a unifying role in society and remain above the political fray. The Rulers had to ensure stability and continuity in the country: they were the Heads of Islam and the stewards of history, giving both Malays and non-Malays a common identity in the new world.

Raja Nazrin said that a Ruler must remain politically neutral and had to be seen as unbiased. He also said in 2006 that the monarchy was supposed to play a productive role in a democracy. I am not sure what “productive” means here, but he did add that the monarchy could bring a healthy check and balance to the system of governance because, according to him, the Federal Constitution mandates the monarchy as

guardians of the just rule of law, as impartial arbiters in the democratic process and as overseers of the pillars of state.

So far so good, but Raja Nazrin also said in 2008 that the Ruler “has a special role”. He was probably alluding to his father’s observation that the “monarch’s role far exceeds the Constitution”. According to Raja Nazrin, this royal role involved a sharing of power between the people and the Rulers since the Rulers were often the “source of reference” whenever there was a crisis among the *rakyat*. He also repeatedly stressed the need for Rulers to have a genuine and in-depth consultation with the Executive. What he was saying was that the consultation the *Menteri Besar* was obliged to give to the monarch was not a mere formality: the monarch should have executive decision-making powers as well.

He then went on to say that when the advice given to the Rulers was contrary to the spirit of the Constitution, the sanctity of law and basic principles of justice, the Rulers should not be pressured to give their assent. He concluded that it was the responsibility of the Rulers to keep watch and to criticise elected representatives so that the latter might govern responsibly. It is interesting that Sultan Mizan Zainal Abidin of Terengganu echoed the same idea when he said that he regarded his role as more than purely ceremonial.

Is the monarchy ready to assert itself?

Our leaders make good speeches all the time, although they usually save them for overseas delivery. This is where they talk of subjects on which they usually say little at home. In places like Oxford University, they will speak of tolerance and the need to reject extremism. They talk of acceptance of multiculturalism and diversity in Sydney, and in Singapore they talk about the acceptable roles of the monarchy in a modern democracy.

The people, however, are not as gullible as before. In this day of instant information, the *rakyat* listen to speeches and they compare what's said with the actions of those saying it. The people still believe in the old adage "actions speak louder than words". Raja Nazrin's (or for that matter any other leader's) words will have to be matched by deeds. The difficulty I have with a more assertive role for the Rulers is simply this: are they prepared for it? The Rulers must understand that public life resembles Newton's third law of motion: to every action there is an equal and opposite reaction. This applies to the machinery of government as well and when someone, elected or not, makes a decision, he or she is answerable to the public as to the reasons for making the decision. Public officials must learn to accept criticism and be accountable for their actions. In short, Raja Nazrin's monarch might

well be on the way to stardom if he were popular and revered by the public – but he might equally be the start of the demise of the institution of monarchy in Malaysia if the *rakyat* decides that it does not want or need a Ruler who makes bad decisions.

The monarchy has an important role in determining the fate of our young nation. If the institution is to play a greater role in public affairs, it must be subject to close scrutiny as with every other institution of government. The fact that the Rulers have so far escaped such scrutiny does not mean it will be the same in the future. So, what the new monarchs as represented by Raja Nazrin must understand is that the extra-constitutional power he refers to, or the desire to seek wider consultation with the Executive, entails more responsibility that the Rulers will have to shoulder. The people of Perak are surely fully aware of what a more assertive monarch can do, and we will have to wait for the coming general election to see their reaction to it. If, for example, they once again reject the Barisan Nasional but the Opposition gains a majority of only three seats (as they did in 2008), the people will want to know how the monarch will decide this time around.

A good monarch makes decisions that are right. He has no need of a Queen's Counsel to search for words in the Constitution that will defend the indefensible. A good monarch knows what democracy

means, and this in turn means that the people will have to decide political questions for themselves. The wise monarch does not pretend to know what the people want, and he has the humility to let people decide what to do when the political process fails to yield a clear-cut winner.

The Malay Rulers must also understand that, as it stands, there is no way of measuring how the people feel about them. Our country does not permit free expression about the monarchy – the strong arm of the law will descend on any who are critical of the monarchs. In the absence of such a freedom, it is presumptuous to assume that all Rulers are always well-loved and revered by the public. They might well be, but we cannot know for certain.

In such a political climate, it is best that the Malay Rulers should think about their new parts a step at a time. The less they are involved in the administration of government, the better it will be for them. In fact, I do not believe that their positions are particularly suited to exercising such an assertive role because they are dependent on political leaders for many things besides the royal purse. The people know how much the Royals are involved in business. The Rulers have many sons and daughters and the Malay royalty as a whole have large extended families too, many of whom are also involved in commerce. If, for example, a monarch has a sister and she is a successful

businesswoman, the public can view the monarch's involvement in important decisions of the Government with suspicion. They will ask if any decisions made are actually prompted by the Ruler's concern for good governance and justice for the people, or if they are the result of other considerations.

The Malay Rulers have also so far proven unwilling to expose the royal households to public scrutiny. In this age of freedom of information, the whole machinery of government must be transparent as the public has the right to ask for information about almost everything under the sun. The people might be less eager to ask probing questions about the monarchy if they feel that the Rulers are truly impartial and do stay above politics. But the moment people feel the balance of power has shifted away from them and that this shift was brought about by the interference and involvement of the Rulers, then the people too will be assertive. They will likely unleash a far greater force than the monarchs can organise even with all their pomp, power and pageantry.

A new brand of leadership

The weaknesses of the major political parties in their relationships with the monarchs became apparent after the 2008 general election. Clearly the capitulation of the Barisan Nasional on their choice

of *Menteri Besar* in Terengganu and Perlis showed that when political parties feel vulnerable, they will be disposed to accommodate the Rulers even if they have to compromise any legal principles involved. The Rulers will understandably take advantage of any weaknesses in political leaders to assert their new ideas about extra-constitutional powers, which is sometimes euphemistically called their “participatory” constitutional roles. On the surface of it, the rejuvenation of the role of monarchy has been hailed as proof that the prestige of Malay royalty has increased. The *rakyat* seem more willing now to embrace the monarchy in this wider role. I do not share this view. It is true that the people feel considerable unease about the political leadership of this country because of corruption and abuse of power and it is also possible that some are putting their faith in the Rulers because they feel a desperate need for a system of checks and balances that has otherwise disappeared completely.

However, the eminence and greatness of the Malay Rulers cannot be created by decree or by proclamation alone. It can only be earned over time, as with other great kings and queens in history. The Malay Rulers needn't worry about the people's support as long as they maintain their impartiality and free themselves of petty political considerations. To be great monarchs, they must conduct themselves as great monarchs.

By and large, I believe that the Rulers' quest to play a larger role will be resisted by the people. Firstly, there is no assurance that the quality of leadership offered by the Rulers will be any better than what is offered by the present crop of political leaders. Good governance, which the people desperately want, will not be achieved if the leaders are a discredited lot, regardless of their royal standing. The demand for a bold and clean leadership with less oppressive government means that an entirely new brand of leadership is required. The people will look to a leader who is less concerned about power and pageantry but is more willing than his or her predecessors to address the difficult questions that the *rakyat* want answered.

For example, in 2008 when the Rulers came together to address the issue of the Social Contract, the monarchs seemed more interested in reaffirming the Malays' special position and the role of Islam. This is an easy position to take as it is popular with the majority race. For the first time in history, the Conference of Rulers took a political stand on the meaning of the Social Contract. Why they felt the need to do this escapes me – the question is deeply controversial and cannot be answered with finality unless we are prepared to enter the realm of politics. The first rule of constitutional monarchy is to stay away from political controversy but in Malaysia today, the opposite seems to be true.

So the Malay Rulers made an unprecedented statement in October 2008 that sought to explain the historical background of our Independence and the terms of the Constitution, which they felt some Malaysians did not understand or had only a cursory knowledge of. They started by saying that the Social Contract (which they defined as the agreement based on discussions made by all parties to our Independence) should not be discussed or challenged. They said that it was not proper to dispute or question the Social Contract, or to subject it to review or change, because it was the primary basis of the formation of Malaysia.

They then reiterated, firstly, that the constitutional role of the Rulers was to protect their own special privileges, position, eminence and greatness, and here they emphasised their duties in safeguarding Islam, Malay as the national language and the legitimate interests of the other communities. Secondly, the Rulers said that the institution of monarchy was a protective umbrella that ensured impartial treatment of all citizens. They would therefore take on a check-and-balance role and would untangle any complications that cropped up. Thirdly, they called for Malay unity as a necessary part of their constitutional position and, fourthly, they reiterated that the legitimate rights of non-Malays are guaranteed under the Federal Constitution.

In this the Rulers expressed a hope that such a strongly worded statement would end confusion among the people and that an atmosphere of peace, harmony and mutual respect would prevail.

The statement was bold and strong but it achieved very little. The subject of the Social Contract or for that matter the Constitution itself cannot possibly be removed from public discussion and debate as long as we remain a democracy with the freedom of expression. The Rulers can issue as many statements as they wish, but it will not stop the discussion. I personally do not understand what is so sensitive about the Social Contract that we cannot talk about it. Indeed, we can be right or wrong in our opinions, but we cannot be stopped from having opinions and making them known. If the Social Contract is about Malay political hegemony regardless of how many votes Malay leaders gain in a free election, then it is complete hogwash. If it means that democracy and the rights as enshrined in the Constitution are preserved for all, then I say that the Social Contract is a good thing. We can certainly dispute and talk about it. It is our democratic right and responsibility to do so.

Furthermore, the part about Malay unity sounded very political since UMNO had been pressing hard for unity with PAS at the time. Anyway, why should the Rulers speak of Malay unity at all when, as monarchs

for all Malaysians, they should lead us towards the national unity of all races? I found it a very strange statement because they assumed that the Malays were not united. I believe that just because the Malays have political parties to choose from other than UMNO, it does not mean they are disunited. The royal statement seemed to also imply that if the Malays were not united then the Malay Rulers and the Malay language were in danger. This is unfair to non-Malays who are as loyal to King and country, and to the national language, as the Malays themselves. It is dangerous to play politics with loyalty, for we must always respect the loyalty of all citizens of this country, Malay and non-Malay alike.

To say in their statement that the genuine and legitimate rights and interests of the non-Malays will be protected is unfortunate, but it is the result of the wording of the Constitution. When it comes down to it, who is to say which interest or right of the non-Malays is or isn't genuine or legitimate? Likewise, are the rights and interests of all Malays always legitimate and beyond question? To be sure, the Constitution does not permit the Malay Rulers to determine which interest is genuine and which is not. In fact, no one can determine this with any certainty, and the formulation of "legitimate" is for all intents and purposes meaningless. All people of this country regardless of race have equal rights – full stop. It is

not wrong for the Malay Rulers to embrace the respect and love of all Malaysians. It is certainly not wrong for them to depart, if they wish, from the ideology of old that sought to classify and divide our people as part of the British colonial political game. The Rulers now have an opportunity to play a truly wider role: this is something that is not predicated on extending their powers, but on their taking an all-embracing stand in areas where politicians fear to tread, which is in protecting the rights of all Malaysians. Let the overzealous politicians debate and argue about the Social Contract and whatever else they want. Let the monarchs show them what true leadership means.

There was a Court of Appeal judge in the infamous 2008 Perak case (where the *Menteri Besar* was unceremoniously dismissed) who made a pronouncement about the duty of the monarch in acting in the best interests of his subjects. Here is an example of where a judge, having no legal basis to justify a decision, resorts to platitudes. The duty of the monarch can only be found in the Constitution, which defines and limits the exercise of his power. There is no other duty expected of him. If he were to do other extraneous things for the benefit of his subjects, this is all well and good. He can for example start a foundation to eradicate poverty, help the disabled, or improve literacy and knowledge among his subjects. This is all the work of a good King.

But the Malay Rulers, individually or collectively, cannot violate their oaths of office, which is to uphold the sanctity of the Constitution. The best way for them to do that is not to interpret the meaning of the Constitution or to form views on the “Social Contract” or whatever political arrangements were made prior to the writing of the Constitution. These matters are for scholars, politicians, lawyers and the public to debate and argue. The Malay Rulers, however, must remain impartial and disinterested lest they be accused of abusing their offices for political purposes.

Above the fray

The Malay Rulers’ 2008 statement reminds me of the *keris*-waving UMNO leader who made headlines a few years earlier. This fellow warned everyone that the Malays and UMNO would never allow anyone to question the rights and privileges of the Malays, for there would be chaos otherwise. The UMNO philosophy, simply put, was that the Social Contract conferred on the Malays and Bumiputera a special right in all spheres of life – politically, administratively and economically – because the non-Malays agreed to it in 1956 in exchange for citizenship. It was a *quid pro quo*. It is from this that the concept of *Ketuanan Melayu* was born. So, in their view: don’t question or ask for a review of this arrangement or there will be trouble.

Why the Malay Rulers deemed it necessary to echo UMNO's philosophy escapes me. Surely they do not assume that all Malays and Bumiputera share the philosophy of *Ketuanan Melayu*. Not all Malays believe this doctrine of "special rights" can exist in a democracy, for if there are two classes of citizenship then there certainly *will* be trouble. And if there is this kind of trouble, everyone including the Malays will suffer. I also wonder why the Malay Rulers also assumed that UMNO's interpretation of the Social Contract was correct.

Lord William Reid, who headed the Reid Commission, provided the framework of our Constitution and made it clear that the "privileges", or rather the special position of the Malays and Bumiputera contained in things such as Article 153, would be temporary. Indeed he recommended that the provision be reviewed after 15 years. The Reid Commission also said that the provision was necessary only because there was a need at the time to avoid giving an unfair advantage to the economically stronger non-Malays. The Malays needed special help to overcome their historical disadvantage. These provisions were to be gradually reduced and eventually eliminated, for the Malays were certainly not permanently hobbled.

If we look at the speeches of Malay political leaders, even at the time of the New Economic Policy

(such as Tun Abdul Razak, Tan Sri Ghazali Shafie and Tun Dr Ismail Abdul Rahman), no one advocated anything like *Ketuanan Melayu*. They never said that the Malays had “special rights” which the non-Malays didn’t. The phrase used was “special position” in the sense of privileges that would be taken away when the time was right. The special position under Article 153 was meant to give the Malays a kick-start to help them overcome their educational and economic shortcomings. It was never meant to create an exclusive first-class citizenship for the Malays. I believe that it was ethnic politics that brought a new meaning to the Social Contract, and the Rulers fell for it.

No one will ask for Article 153 to be repealed if the application of the Article is fair and just. The poor need help and there are still many Bumiputera who deserve that help. But if I question any of the Government’s policies which are outright discriminatory, or if I challenge gross abuses of power, am I therefore challenging the Social Contract and *Ketuanan Melayu*? If indeed I am challenging a government policy under whatever name, why should the Rulers get involved at all? The call for Malay unity was wholly unnecessary because it implies that non-Malay Malaysians were not loyal subjects and could not be trusted to defend Malay institutions. As I said earlier, I would have thought it more sensible for the

Rulers to ask for unity among all Malaysians: just because UMNO is in deep trouble doesn't mean that the Rulers have to come to its rescue.

Royalists should not look for short-term benefits for the monarchy if they want to maintain "the greatness and eminence" of the Malay Rulers. Politics should be left to politicians and the people. So, when a Ruler makes a statement, the *rakyat* must be able to feel proud of that statement because every word will be taken to heart. The people will analyse and discuss the speeches of monarchs in the hope of wisdom and guidance from their Rulers. The country certainly needs a symbol of unity and strength, but that will not be possible if the symbol likes to make contentious political statements. The symbol will fail to provide unity and strength if it is unable to obtain respect and reverence on its own merit.

To put it bluntly, warnings and gestures are for the arena of politics, not the palaces of kings.

Chapter Seven:



What makes a good Ruler?

A king is a king, one of the Malay Rulers once said. What could he have possibly meant by that? If I were to hazard a guess, perhaps he meant to suggest that a king is not a normal person but is someone who has been endowed – perhaps gifted – with something beyond the ordinary. Maybe a king is supposed to be above the law or the Constitution. But that would be incorrect – a king, like the president of a republic, is a head of state whose powers have been vested in him by the Constitution. He cannot claim to have powers beyond that. (In any case I also know that an egg is an egg – there are many grades of eggs and some eggs are better than others. I suppose the Rulers are like that too, with some being better loved and more admired than others.)

In this modern age where most people prefer to have their country run by a government they elected into office, one reason to still have a monarchy is because we want something that can represent us in a way that politicians cannot. Politicians come and go, but royalty is a part of tradition that stretches back hundreds, and in some cases, thousands of years. Royalty can be said to embody our history. Some of us are sentimental and we like to be reminded of the past and of our traditions.

Rulers also lead lives marked with the kind of grandeur and luxury that we can only dream of, and by living vicariously through them we can share in their extravagance and opulence. Kings and queens are also romantic figures and they are expected to exemplify the qualities that we all aspire to but cannot always achieve. In days of old when kings led armies into battlefields, they stood for courage. They fought on the side of truth.

Their subjects also revered them because they were believed to possess a divine mandate. People did not have the option of evaluating if their rulers were suitable for them, especially since they needed their protection. Only a monarch could keep them safe then, unlike today when the mechanism of modern government exists to take care of its citizens. Whether he was a good or bad ruler, a king was a king and the people just had to accept him. They did not expect him to be accountable or responsible for his actions, and he did not need to justify his decisions.

Even now when the age of absolute rule has long passed, we have high expectations of our monarch and want him to have an idealised character that we all wish we could have, but are simply too flawed to. We don't want our King to be normal. We want him to be intelligent, wise, courageous, compassionate, just and understanding, all packaged in one person (or in the case of Malaysia, nine).

In the previous chapters I've noted the ways we don't want our Rulers to behave, but idealism aside, what is it that we subjects want from the Rulers today? As taxpayers we shoulder the heavy expenses of all the royal households, and if we must tolerate the excesses and opulence that the monarchs are capable of, then we expect them to bring benefits to us, tangible or otherwise.

An ideal Ruler

I suppose what would be uppermost on our wish list would be for our Rulers, particularly the King, to be our protector when political leaders fail us. We want him to be the voice of wisdom and to counsel the politicians when they get lost in their endless political gamesmanship. When they have abandoned all sense of propriety and balance, then the King becomes our conscience. We want him to be our compass when the nation has veered off its path and into the wilderness, where we are no longer able to see what the future will bring.

For the King to be able to play this role effectively, he has to be impartial. He must keep himself above the political swirl and detach himself from the people who are seeking influence. This is the stand that has been taken by the revered King Bhumibol of Thailand, whose 62-year reign makes him the longest-serving monarch in the world today. “We keep in the middle,” he said in his book, *A Life’s Work*, “neutral and in peaceful coexistence with everybody. This is the way to do it. We could be crushed by both sides, but are impartial. One day it would be very handy to have somebody impartial, because if you have in a country only groups or political parties which will have their own interest at heart, what about those who don’t have the power ... who are just ordinary people who cannot make their views known? They need to look up to somebody impartial. And if one wants to destroy somebody who is impartial, well, one destroys one’s self.”

He even questioned the law of *lèse-majesté* in the Thai Constitution, which held that the King was “enthroned in a position of revered worship and shall not be violated.” During his birthday speech in 2005, he suggested that such a law only isolated a ruler from the true sentiments of his subjects, which was not what he wanted.

To me, King Bhumibol embodies the best qualities that we can hope to have in a constitutional monarch. He equipped himself with a good education and

training. He attended the best schools in Switzerland and later on took up science, politics and law at university so that he could be useful as a ruler of his country. His interests include music and he is an accomplished saxophonist.

What truly sets him apart, however, is his selfless commitment to the people of his country. Knowing that much of the population were still mired in poverty and endured harsh living conditions, he never ceased to urge them to work hard and to be self-reliant.

Half a century ago he visited a part of his country that was afflicted by severe drought. Rainfall was so meager that it could not even support one annual crop and the people lived in hunger. The King was moved by their plight and wrote in his journal that he had to find a solution to the problem. He started a lifelong search for a better and more effective management of resources for his country. He helped start the construction of Thailand's first reservoir, designed effective rainmaking equipment by getting help from Israeli experts and improved irrigation schemes throughout the country. In short, he selflessly immersed himself in the task of helping his people. He did not do any of these things for photo opportunities or to gain popularity – he simply wanted to help his country.

Another problem that the King tackled was the growing of opium in Thailand. For many years, experts had developed a series of ideas and implemented

policies to stop the hill tribes from growing the opium poppy, to no avail. The King told them it would take many decades but they did not believe him, so he persevered with his own ideas on an experimental basis. He believed that people could only be persuaded to abandon opium once they had a better job, but establishing the groundwork for this would take at least 30 years.

King Bhumibol went to the villages to meet the people and asked them if they would consider growing alternative crops such as strawberries and flowers. He made sure his own research laboratories checked the accuracy of data from government laboratories about the right soil nutrients and irrigation requirements for these crops. Today, 30-odd years later, the King's Gold Mountain project has transformed the hill tribes from being opium growers and traders to exporters of fruits and flowers to all over the world. Now countries still suffering from the drug menace such as Mexico, Peru, Laos and Vietnam are adopting the same method.

By the late 1990s, Thailand, like other Southeast Asian countries, was in the throes of economic expansion. Every one of them wanted to be a tiger economy like Singapore. Thailand was doing well and enjoyed massive foreign direct investments and a strong currency to support the economy. But the Asian Financial Crisis of 1997 took its toll, depleting

the country's foreign currency reserves and sending it right over the brink of a financial meltdown. The tiger economy imploded.

King Bhumibol toured the country, telling his people that they would overcome. He published *The Story of Mahajanaka*, about the value of perseverance, so that he could send a message of hope to his people. He told them that it was not important to be a tiger, and that greed could destroy the country. He offered an alternative economic model, one that did not rely too much on trade. He advocated that each district or area should have the capacity to generate enough goods and services for its own consumption, with only the surplus to be sold. A self-sufficient economy, he said, would allow people to apportion and use limited resources better, ensuring moderate consumption and less wastage. Some have described his economic views as outdated but that did not stop his people from listening to him. It also made the Thai Government ponder whether the mad rush to be a tiger was worth it all.

This is also a King who is so self-assured and confident of his people's support that he is unafraid to be truly impartial and neutral. He respects the Thai Constitution and so does not need to get his lawyers to read between the lines to see if he can claim some residual power somewhere. He does not feel the need to curry favour from other groups, just so he can be

more influential. He is not interested in more power because he knows that in Thailand, there is no greater moral authority than himself.

When Thailand faced a crisis of political leadership, sending hundreds of thousands marching through the streets of Bangkok in April 2006, the army, political parties and even some Constitutional lawyers urged the King to appoint a new Prime Minister to replace Thaksin Shinawatra. But the King flatly refused. He said the Constitution provided for a democratic government and did not permit the King to do what he wished. To do so would be overstepping the mark. "I have no discretion," he said, "(and) only the people can select the Prime Minister".

He went on to say that when the country faced a crisis, responsibility could not be shifted to the King. He did not have a duty to resolve that crisis. In other words, this great King understands that in a democracy, it is the people who must ultimately decide what kind of government or leader they want. The King can and should give advice and encourage political leaders to do the right thing, but he must never engage himself in public debates or administrative matters of the state.

King Bhumibol follows a simple rule whenever he is confronted by the latest fiery clash of Thai politics. He has said many times that the King has to be with the people. He will not involve himself directly with

political arguments. He accepts that his constitutional powers are nominal and that he is the repository of the people's trust and faith. He makes it clear that he only signs laws, proclamations and the appointments of ministers, civil servants and judges. He does not promote individuals or influence the Government directly, even though his views are always given the respect they deserve.

His greatest strength has always been his ability to be the moral compass in the nation's push for development. A speech that he gave to students in the early 1970s puts into perspective the dynamic influence he has over his people, including the young. He spoke about qualifications and knowledge as being insufficient. He urged them to also have a tender conscience, honesty in thought and deed, perseverance and selflessness. He counselled them not to take advantage of others and asked them to believe in doing good, and to do things with determination.

The Rulers and their boundaries

Even as a foreigner, I feel inspired by King Bhumibol's work and sacrifice for his people. That is the kind of admiration that keeps a monarchy well-liked and respected by the *rakyat*. While it is true that such an institution can be seen as an anachronism in this day and age, people always want to look up to

something bigger than themselves, to motivate and inspire them, especially in times of hardship and distress. A well-loved King or Queen can play this role of keeping the country together very well. It's probably well worth the upkeep.

Our own monarchs make their share of public pronouncements, most often on the occasion of their birthdays or on national holidays, but invariably they will insert politics into their message. Perhaps some of our Rulers feel they need to be seen to support certain groups for their own benefit. Malaysian political parties on both sides of the fence will quietly rush to please the King or a Sultan whenever the opportunity arises. I can only surmise that even political leaders want to be close to the King, in case they need his help in future.

This kind of relationship is not at all healthy. What we need to see is both sides raising their standing in the eyes of the people by rigorously keeping to their part of the constitutional bargain. There is no need for any more horse-trading because all that was already done for *Merdeka* in 1957. The *rakyat* now want both the Rulers and the political leaders to focus on the development of the country and not waste any more time like they did in the constitutional crises of 1983 and 1993. They were ultimately futile skirmishes, all at the expense of the people.

We may not have such a problem with the Rulers insisting that they have residual powers parked somewhere between the lines of the Constitution, or perhaps even extra-constitutional powers, if we could see for ourselves that these powers are used for our benefit. What the *rakyat* find objectionable is the selective use of such powers. The great King Bhumibol never claimed to have any extra-constitutional power or rights, and always insisted that he was just a constitutional monarch with no power to dictate the way the country was governed. Such is his humility, even though he is a descendant of a line of kings that stretches back over 800 years. The Queen of England also comes from a long line of monarchs, but not once has she taken it upon herself to decide on any major policy matter other than on the advice of the British Prime Minister.

The Malay Rulers should support the new generation of the *rakyat* for they are tired of those who abuse power for their own interests. The people want democracy and an accountable government. There is a widespread acceptance of Islamic values in the country and the people expect their leaders, including the Rulers, to live a life of simplicity and moderation. They want their political leaders to share their hopes for a cleaner government. They want justice for all. They are not anti-tradition or anti-monarchy – they are anti-corruption, and those

who are seen to support this corrupt system will be punished. The Malay Rulers cannot align themselves on the wrong side of history yet again, because this time there may not be a Tunku Abdul Rahman to save them.

Chapter Eight:



The Rulers and Islamisation

The Malay Rulers have always jealously guarded their positions as Heads of Islam in their respective States – Islam is the religion of the majority of Malaysians and it is the religion of the Federation. Historically, the Malay Rulers have based the legitimacy of their rule on the powers given to them as defenders of the faith. After all, Malay kingship emerged from the syncretism of religious beliefs and local traditions. This system of kingship was also very much in line with Islamic design and thinking, and the *hadith* seem to show that this idea of legitimacy originated from the time of the Caliphs. The Umayyad Dynasty, for example, took great pains to depict its Rulers as having been divinely appointed. The Umayyad Caliph was considered to be God's trustee (*amin*) and vicar (*khalifah*).

After Independence, the Malay Rulers retained their authority over Islamic affairs in the new Malaysian Constitution, and they exercised it in the same manner as they had under colonial rule. If there was one area of government the British were quite happy to leave alone, it was the administration of Islamic affairs. British colonial officers took great pains to leave the issues and administration of Islam to the Rulers, presumably because these things contributed little to the national revenue and the Malayan economy.

Today in politics we see great contestation between UMNO and PAS – the two largest Malay parties – about anything and everything to do with Islam. Starting in the early 1970s the issue of *kafir* (or infidels, i.e. who is a real Muslim?) has been at the political forefront in Malaysia. PAS accused UMNO Malays of being *kafirs* for not wanting to establish an Islamic state, among other things. UMNO joined in the name-calling by portraying PAS members as followers of deviationist teachings or as outright deviationists themselves.

There was more: for example, the ban on the al-Arqam movement in the early 1990s was motivated by UMNO's fear that Muslims found al-Arqam and other groups very attractive – although al-Arqam was not a political movement, its core emphasis on the “Islamisation” of all aspects of life resonated

deeply with many. The Government's decision to ban al-Arqam therefore stemmed from the movement's success in attracting younger Malays who were looking for a more satisfying cause to live for – they couldn't find this in UMNO, which at best could satisfy only temporal and material needs. If the movement succeeded, PAS would have been the natural choice if these Muslims sought to pursue political goals. Al-Arqam had to be banned to deny the nascent Islamic political movement a theological breeding ground.

In the past 30 years or so, Malay political leaders on all sides have found it convenient to champion the cause of Islam. Even UMNO has become more "Islamic" than in the days of Tunku Abdul Rahman and Tun Abdul Razak. By this, I mean that the party has become more superficially Muslim – appearances are supremely important to these people. So, when PAS uses the religious platform to spread its influence, it invariably engages scholars and academics who graduated from the Middle East (including Iran) and Indonesia. Their style of dress and appearance are usually distinctly different from the European tendencies of UMNO in its early days.

The new UMNO, however, has followed in PAS's footsteps. Today, UMNO leaders no longer socialise as they used to. They don't drink or even let themselves be seen in entertainment outlets, and their speeches are frequently peppered with Arabic words, religious

quotes and messages from the Quran and the *hadith*. This process of Islamisation began with the Iranian Revolution in 1979 and spread worldwide. Now, Malaysia is becoming more Islamic by the day. It is hard to fathom the impact of this on the people at a personal level but, on the whole, the change has produced great difficulties for the country with very few positive outcomes.

Islamisation in Malaysia has so far catered only to political needs and interests. The economic gap dividing the *rakyat* grows wider and wider. The rich are getting richer while corruption is widespread and gets worse daily. Leaders of all stripes abuse their power for money and position while integrity is totally lost in the mad rush. The elites continue to dominate the politics and administration of the country while the ordinary *rakyat* for the most part are powerless.

There is nothing Islamic in any of these things.

Yet without fail, Muslims perform the pilgrimage (the *Hajj* and *Umrah*, i.e, both major and minor pilgrimages) now more than ever. Mosques are full, at least on Fridays, and powerful sermons offer simple solutions to life's problems as well as good guidance for a purer and more fulfilling life now and in the Hereafter. Even TV and radio dramas, as well as other programmes, forever extol the value of religion and prayer.

The political pressure to have more religious content in public broadcasting will continue, whichever Malay party rules the country. This is because no one is willing to change the country's education to emphasise the secular humanistic learning that we see in the West. The fourth US President James Madison was right when he said that "religion and government will both exist in greater purity, the less they are mixed together", but few agree in Malaysia.

The Islamisation of politics has also contributed immensely to the social division of our country. Schools and educational curricula have more religious content than necessary for a world-class teaching system and the three decades of contestation between PAS and UMNO have had a tremendous impact on the country. Not only are Muslims more divided politically today, they have also created a plethora of problems which would not have existed had we stuck to the original style of democracy envisaged under the 1957 Constitution. One of the chief problems in this battle for Islam has been the creation of a parallel legal system where the original balance between federal law and state law has become skewed.

Under the old system, religious laws were basically personal laws governing things like marriage, divorce, child custody and inheritance. The power of the State Government extended only to passing laws of this nature. Where criminal law was concerned, the State

Government could only legislate criminal offences against the precepts of Islam. These precepts meant only the pillars of Islam or *Rukun*. Today, however, every sin is a criminal offence – or soon will be – and *Syariah* law is not confined just to religious precepts. State Governments now have the power to legislate on criminal matters, which was not allowed when the division between State and Federal Governments was respected.

In 2007, the Federal Court had a golden opportunity to explain the ambit of the application of Islamic laws in the country with the case of *Sulaiman Takrib vs the State Government of Terengganu*. Sulaiman, a Sky Kingdom follower of the teachings of Ariffin Mohamad (better known as Ayah Pin), was charged with various offences under the Terengganu *Syariah* Criminal Law (Hudud and Qisas) Enactment. These offences included acting contrary to *fatwa* and possessing DVDs containing material deemed to be against the *hukum syarak* (religious law). Sulaiman challenged the constitutionality of certain provisions of law, pointing out that if a *fatwa* is gazetted with a Ruler's assent, then it becomes binding on Muslims and enforceable in the *Syariah* Court. In other words, the gazetted *fatwa* is given the force of law when it was originally meant to serve only in an advisory capacity. This also means the *fatwa* committee can effectively create laws without having to refer to the Legislative Assembly.

The offences for which Sulaiman was charged were not offences against the precepts of Islam. This was a strict requirement under the State List of the Federal Constitution. But the Federal Court under Tun Abdul Hamid Mohamad and Tun Zaki Azmi disagreed, and held that the *fatwa* committee had been vested with delegated legislative authority to issue binding *fatwa*. With this judgment, the Court failed to determine the Legislative Assembly's competency to do just that – a crucial point. The Court also conveniently ignored a basic principle of second-year administrative law class, which is that delegated legislation can only regulate procedures, not create substantive offences. The Court then went on to aggressively perpetuate new inroads into applying for what they consider to be Islamic laws in the country. They said that precepts could be derived from *fiqh*, or man-made law, as opposed to the *syariah*. *Syariah* is based on the words of the Quran and the indisputable *hadith*. According to Islamic scholar Professor Mohammad Hashim Kamali, the precepts of Islam refer to the principles of Islam, not matters not explicitly in the Quran and the *hadith*.

Few people realise the impact that the Sulaiman Takrib case has on the daily lives of Muslims in Malaysia. It essentially gave *fatwa* the status of law, and it gave the *fatwa* committees the power to legislate unilaterally, bypassing the legitimate law-making

bodies of the country. We must be the only Muslim country where a group of men, elected by no one, can make laws by issuing *fatwa*. This is, in effect, back-door Islamisation and certainly unconstitutional. The liberal application of *fatwa* has resulted in stultifying the lives of Malaysian Muslims as every aspect of personal behaviour has been deemed punishable. Activities that are accepted as part of a normal lifestyle – practising yoga, for example, or smoking, engaging in foreign exchange trading, wearing lipstick – have all been condemned by *fatwa*. The list of “offences” is endless and growing by the day. This is not religion they are preaching, but authoritarian rule by another name. I hope that Chief Justice Tan Sri Arifin Zakaria will find the strength to reverse this case, which is a travesty to the rule of law.

Under the 1957 Constitution, the jurisdiction of the *Syariah* Court was intended to be limited by federal law. This meant that the States had to impose sentences that did not exceed the penalties prescribed in federal law. So, if federal law said that the *Syariah* Court was not to imprison anyone for more than three years, then the State Government could not legislate offences that attracted a more severe punishment.

Today, our Constitution has been amended to extend the powers of the *Syariah* Court, which now has exclusive jurisdiction over all Islamic legal matters. This has given Islamist judges in the Federal Court

the opportunity to extend the *Syariah* Court's powers even further. At the same time, these senior Federal judges seem to crave the acceptance of political leaders by refusing to hear any case that has the faintest connection with Islam. They simply pass the case over to the *Syariah* Court and it matters little to them that there are non-Muslims involved or, for that matter, Muslims who feel that the dispute requires the determination of the civil legal system. These judges have failed to maintain the constitutional supremacy of the Federation. Indeed, they have forgotten that the constitutional amendments were never intended to deprive non-Muslims of the right to seek legal redress under the civil system.

Simple common sense tells us that since the *Syariah* Court is a creature of State law and is established under the Constitution, surely the judges of the civil system first have the duty to establish if a particular case falls within *Syariah* jurisdiction. Only if this is so, should they remit the case to their *Syariah* colleagues. They must not be afraid to say that they have the right to hear cases involving Islamic matters if non-Muslims are affected, or if the subject matter is one where the Civil Courts have jurisdiction even if the parties are Muslim. Otherwise, we will have (and indeed have had) ridiculous situations of judicial abandonment where some of the *rakyat* find themselves totally without legal recourse and remedy.

The Ninth Schedule does not give State Assemblies *carte blanche* to pass laws on Islamic matters without regard for the constitutional guarantees contained in Articles 5 to 13. If the framers of the Federal Constitution had wanted to give the States and the Federal Government powers to encroach on the entrenched provisions of “fundamental liberties”, they would have said that the provisions of fundamental liberties are guaranteed to the extent that they are not contrary to Islam. This was the route taken by the framers of the Maldives Constitution. Unfortunately, in our country the qualification inserted in the Maldives Constitution is unlawfully carried out by bureaucrats, politicians and lawyers, all of whom have their own crusade to fight, even if in doing so they violate their oaths of office to defend the Constitution.

The need to be seen as pious and upright Muslims is in vogue in this conservative Muslim country and it affects not just politicians: judges, civil servants and the Malay Rulers all want to fit into the “correct” image of a good Muslim. As much as the Malay Rulers may feel it necessary to remind us of their jealously-guarded powers over religion, it is also incumbent on us, the *rakyat*, to examine how much the Rulers have contributed to making Islam the way of life that all Muslims aspire to. At the same time, Their Highnesses are also charged with the duty of protecting the

Constitution and the country from chaos. It is therefore imperative that we reflect on the role our Rulers have played in these issues over the past 30 years.

The Rulers as Heads of Islam

The creation of a “parallel Islamic system” beyond the limits of the Constitution is being done through uncountenanced judicial legislation, either by design or the cowardice and incompetence of judges. As a result, a very narrow and highly regulated Islam has come into existence, fuelled of course by the two Muslim political parties vying for votes in the election. In our country, bureaucracy has interceded between believer and God.

In the past, the Rulers have not felt it necessary to clear the air or take firm positions during times of religious controversy. They have offered neither advice nor wise counsel to political leaders: they responded to the *kafir* issue of the 1970s with silence, and they did likewise when PAS introduced *hudud* as a political weapon. Passed by the State Government of Kelantan, the *hudud* law was clearly unconstitutional and the implementation of its punishments was never explained properly to the *rakyat*. Had it been fully enforced, *hudud* could have caused grave injustice to Muslims – but the Rulers were silent.

Everyone is aware of the families that have broken up and the marriages that have been destroyed because politics has usurped power over religion, and I contend that this is a breach of the constitutional powers of the Rulers.

Malaysians continue to be plagued by religious controversies to this day and perhaps more so in the new millennium. Recently, Malaysian Muslims have gotten themselves entangled in the issue of religious freedom and this has taken a terrible toll on the good-will between Muslims and non-Muslims, especially Christians. In 2008 the Mufti of Perak claimed that more than 250,000 Muslims had converted to Christianity. A permutation of this idea reappeared in 2011, which prompted a few Muslims to hold public rallies “warning” Christians not to proselytise while Muslims too were warned about the severe punishment for apostasy. In August 2011, the Selangor Religious Department conducted a raid on a church function in Damansara Utama to stop it from allegedly converting Muslims. Religious tensions remain high even now and yet the Malay Rulers have not been able to engage the various groups and advise them to coexist without conflict. The Malay Rulers are after all sovereigns for non-Muslim citizens too, and they have a duty to foster harmony among religious groups.

As it is, fundamental questions remain unanswered: why are Muslims so attracted to Christianity (if indeed they are) that authorities fear mass conversions of faith and therefore have to punish everyone? Why are Muslims apparently so prone to reacting violently by burning churches and effigies and destroying Bibles? Why, for that matter, is the government so afraid of letting the Bible be published in *Bahasa Malaysia* when a Malay Bible has been in existence for a century?

In summary, I believe that some Malay-Muslim community leaders are terribly insecure about how to deal with the new generation of Muslims in the country. These leaders have not been successful in their efforts, whether it's in imparting progressive ideas in education or dealing with the emotional needs of the young. Muslims have probably been taught their religion in ways that do not truly fulfil their emotional needs. There may be many reasons for this and it is not easy to speculate about why the Muslim-majority community in Malaysia should apparently fear the much smaller Christian community. I can say only that if the Heads of Islam are able to call all the politicians together and tell them to stay clear of using religion to get votes, then maybe Islam can be taught and discussed by the true scholars and believers. The religion might then be more satisfying and fulfilling for the young of today. Truly, the Heads of Islam can pave the way for bringing back intellectual growth

and genuine scholarship among Muslims. If this is achievable, we might one day experience true unity because there will be something strong and meaningful in the lives of Malaysian Muslims other than what they experience today, which is fear.

I cannot speculate about why the Heads of Islam have so far not chosen to do this, but the divisions within the Muslim community itself should have alerted our Rulers to be more proactive. As Heads of Islam, the Rulers cannot allow the community to be divided on questions of faith. For many years now, Muslims whose beliefs or practices differ – or are perceived to differ – from the “official standard” determined by Jabatan Kemajuan Islam Malaysia (JAKIM), or the Department of Islamic Advancement of Malaysia are considered deviationists. Today there are more than 60 Muslim groups on JAKIM’s watch list and these groups do not qualify to be regarded as true Muslims. The Shiite community is clearly discriminated against in this country and there are many Shiite sub-groups who are forced to practise their faith under constant fear of official persecution.

I believe the freedom of religion must also mean the freedom to believe in an Islam that is different from the “official” Malaysian creed. Muslims who are considered deviationists by JAKIM are punished in many ways: besides prosecution and imprisonment, they are also subject to forced counselling in efforts

to change their beliefs. It is heart-wrenching to hear of Muslim men and women who have been imprisoned in Malaysia for years because of their faith. To me, those who persecute Muslims they consider to be deviationists are no different from the Quraysh chieftains who punished the early Muslims for their beliefs.

Islam – the great purifier and liberating force in the world – has been reduced to an ordinary cult in Malaysia. Politics has besmirched Islam in a milieu where superficial appearance is all that matters. Mediocre teachers and scholars have been co-opted to promote religious values that are suitable to (or consistent with) the narrow political agenda of the political parties while larger and deeper concerns go unheeded.

Corruption and abuse of power, for example, were actively opposed in early Muslim society. The attractiveness of Islam was its egalitarian and socialistic ideas of equality and simplicity, and the early Muslim leaders' personal rejection of pomposity and wealth won them instant converts. Today in Malaysia, Muslim clerics who are under the control of the Malay Rulers hardly say a word about abuse of power and corruption – and yet Muftis like Tan Sri Harussani Zakaria of Perak proudly associate themselves with UMNO's ideologies and suffer no repercussions at all.

Where is justice in this "Islamic state"? The living conditions of the poor, for example, whether Muslims

or not, should be the concern of all authorities including the Malay Rulers, and what more as Muslim leaders, they have a duty to take care of all the people in the land. Despite this, we hear very little of our Rulers' views and advice on the deplorable hardships faced by the people.

Where Islam is concerned, the Malay Rulers have a golden opportunity to make their mark. They could, if they wanted to, reshape the method of teaching Islam to make it more acceptable even to Muslims themselves. They could bring back unity among the various Muslim groups by encouraging healthy religious discourse. They can whisper to their *Menteri Besar* that they want to see a more tolerant Islam so that fellow Muslims are not persecuted and prosecuted as they are now.

I believe the Malay Rulers have an excellent chance to emulate the administration of the great Caliphs where *zakat* (tithe) was used to alleviate poverty and banish ignorance through education. The legal position of the Malay Rulers is secure and, once their financial position is entrenched, they can lead the Muslim community out of its present weakness to greater prosperity. They can lead Malaysian Muslims by example – by being educated and by having a deep thirst for knowledge – for I believe it is because of a deficit of knowledge that the Muslim community as a whole is so weak economically.

It is a profound and sacred honour to be able to show by example how Muslims should live in order to succeed. To be a good example, one must have admirable values and lead an exemplary life. I believe that qualities such as thrift, saving for the future, and hard and honest work are essential to success. Those who are in positions of leadership must be innovative and creative in finding their own ways to succeed. On the other hand, no one can ever achieve any lasting success if they think they can short-cut the process. Political affiliation lasts only for a short time, and the ways of greedy and corrupt businessmen are not the ways a good Muslim ought to follow.

It is therefore very important that the Malay Rulers become visible examples of the honourable life for a Muslim. They represent the morality of the nation, and if the Malay Rulers can be restored to their rightful roles in this, they will certainly make lasting contributions to Islam in the country.

The Rulers and the *Syariah*

There is another matter where the Malay Rulers have a definite and necessary role to play and, given the dismal state of Malaysian interfaith relations today, this is perhaps the most urgent and important one: the Rulers have the opportunity to clear any doubt and confusion created by politicians, judges and lawyers

with regard to the administration, scope and ambit of the Islamic laws enacted in each State.

From a national perspective, this confusion and uncertainty can easily endanger the democratic and secular nature of the Constitution. The truth is that the situation has been left unattended for so many years that it makes a mockery of our entire legal and judicial system. Look at what has been said about the laws of our land: a well-known law professor with an obvious bias towards PAS has opined that our Constitution allows for the coexistence of a parallel legal system, namely the civil and *Syariah* codes. Many Malay judges who unashamedly declare that they are “Muslim first and jurist second” have frequently made decisions contrary to the Constitution by asserting that the *Syariah* Court has exclusive jurisdiction over Islamic matters. In their view, this means that the Civil and *Syariah* Courts are of at least the same status.

They then argue that because the Constitution allows for the States to legislate on matters of Islamic law (i.e, to create offences against the precepts of Islam), it follows that state legislatures can create penalties that have no limits. This conveniently ignores a very clear provision in the Constitution that demarcates what the Federal and State Governments can and cannot do. The Constitution specifies that only the Federal Government may pass laws on

criminal matters – not State Governments. It also provides that where the Federal List stipulates the legislative powers of the Federal Government, the State Government cannot legislate on the same matters unless these are listed in the Concurrent List. So, when politicians say that certain State Governments can pass *hudud* laws (which deal with crime), the public goes berserk arguing whether such laws can be enforced or are valid in the first place. Non-Muslims are understandably worried about such developments – but so are Muslims. The only difference is that Muslims will not say anything openly for fear of being labelled un-Islamic.

I would have expected that such an issue would have been brought to the attention of the Conference of Rulers. The Rulers can easily obtain authoritative legal opinions from lawyers and jurists and then decide on the matter once and for all instead of letting it fester, causing more divisions and unease. There are enough opinions circulating on the subject and the preponderant view is this: unless the Federal Constitution is amended, there is no way *hudud* can be made into law by the State Governments (or, for that matter, by the Federal Government). It is regrettable that the Conference has not intervened to prevent bickering between Muslims and non-Muslims, and it would have been a fine chance to put the “participatory” role of the Rulers to good use. In

matters of religion, there is little to be gained from extensive and widespread debate which we know brings no useful outcome – indeed, all it does is foment more unhappiness among the various religious groups in the country.

I once brought up this matter for determination by the Federal Court but was “pressured” by my erstwhile political party to withdraw the suit. My former party was concerned that the action might be construed by the *rakyat* to mean that UMNO was anti-Islamic. Being an obedient party member (which ironically did not save me from the sack – though this was on a different issue), I had to withdraw and thus to this day, the highest court has not made a definitive ruling on the matter. If the Malay Rulers had been able to take the bull by the horns on this subject, we would have been spared many years of fruitless public argument and disquiet.

Where religious conversions are concerned, the Civil Courts seem unable to resolve the question even though the Constitution explicitly guarantees freedom of religion. Some judges have said that Muslims are not permitted this freedom as the constitutional provision applies to non-Muslims who want to leave their religion and become Muslims – not the other way around. The judges offered no legal basis for the argument except to say that a Malay is defined as a Muslim, and since one is

unable to change one's ethnicity, Malays will forever remain Muslim. Other judges take the view that a Muslim may convert but this must be approved by the Religious Department or the *Syariah* Court. This is another way of saying "no" because no Religious Department or *Syariah* judge will make such an order – it is tantamount to abetting the commission of a heinous crime in the eyes of the religion. The civil judges who make these rulings apparently do not care that their pronouncements make nonsense of our constitutional rights.

There have also been instances of gender discrimination where the Court and the National Registration Department have refused to recognise sex changes. The sad story of Aleesha Farhana should be a lesson to us all. Aleesha underwent a sex-change operation in 2009 only to have her new identity go unrecognised by the authorities. The High Court refused her application to have her new name registered, effectively barring her from pursuing tertiary studies locally, to say nothing of having her gender acknowledged as she had wanted. Sadly, Aleesha died in July 2011, less than two weeks after the Court handed down its verdict.

The Malay Rulers have the power to intervene on compassionate grounds to alleviate the suffering of Muslims caused by the rulings of overzealous bureaucrats, ostensibly to protect Islam but which

cause nothing but misery. The various State laws prohibiting particular religious practices deemed as deviationist are clearly unconstitutional, and yet the Conference of Rulers has not provided a remedy. Freedom of religion is a fundamental human right recognised by the whole world except a few ultra-conservative Islamic countries such as Iran, Saudi Arabia and Pakistan. This freedom is not meant to facilitate Muslims converting to another religion (although there may well be a small group that will benefit from this freedom), but it is important that Muslims are able to practise their faith without pressure and persecution by their fellow Muslims because they belong to a different *mazhab* (school of Islamic jurisprudence). As I mentioned earlier, there have been many cases where the Shiites have been persecuted or harassed by the authorities, and the state seems overzealous in “protecting” the form of Islam it approves of by punishing those who subscribe to different tenets and practices.

In 2004, at a conference in Amman sponsored by King Abdullah of Jordan, Muslim muftis and scholars from all over the world signed a declaration that all Muslims were of the same faith and none should victimise and punish those of different schools of thought, be they Shiite or Sunni. The Amman Message declared that it was wrong to brand other sects as infidels or regard them as non-Muslims. Yet

Malaysia, which was represented at the Conference by Ministers and senior religious officials, came back and did nothing to adopt and support the declarations. Surely the Malay Rulers have the power to ensure that Muslims of whatever shape and size have a place in Malaysia to practise their faith. A good Muslim would not have failed to notice that during the pilgrimage in Mecca, not all of the faithful are of the variety sanctioned by JAKIM, and yet there they are in the Holy Land to surrender themselves to Allah the Almighty. If they are permitted their beliefs in Mecca, why are they not given the same consideration here in their homeland?

Every time we have a Muslim public celebration, whether it is after the fasting month or the *Hajj*, we are always told to be united. How will we be united if we have petty bureaucrats and religious officials playing God with the lives of fellow Muslims? The Malay Rulers have the ability to understand the many problems faced by the Malaysian Muslim community and they certainly have the power to resolve the problems that politicians have so far failed abjectly to tackle.

Malaysia's secular Constitution

One area where politics has failed – indeed, it has made things worse – is the basic question of whether Malaysia is a secular or an Islamic country. This debate

would not even have been necessary if Malaysians were less hypocritical and their leaders less cunning. Do you see other Muslim-majority countries wringing their hands over this issue? They hardly talk about it except perhaps when politicians articulate manifestos during elections, where naturally some of their ideas incorporate Islamic principles and values. Even the conservative Salafis in Egypt accept the secular nature of the Egyptian Constitution and they are honest enough to campaign on the platform that they will change the Constitution when they come to power. In India and Indonesia, where the Constitutions are also secular, no political party representing Muslims has ever doubted the kind of Constitution they have, nor would they campaign to change it. They are content with working within the existing system to achieve their Islamic aspirations without altering the fundamental legal framework of the country.

In our case the status has been clear from Independence. The Reid Commission made it clear that although Islam was to be the religion of the Federation, this would not in any way affect the position of the Federation as a secular state. Our first Prime Minister Tunku Abdul Rahman clarified the same issue in 1963 by saying that the provision making Islam the religion of the Federation only meant that the country would use Islamic rituals and practices for ceremonial purposes. However, the idea

that Islam is the religion of the Federation has since been used as an argument that both the Constitution and our country are fundamentally Islamic in nature.

I cannot conceive how a country can be Islamic or not. Religion is for human beings, not for countries that are just mental constructs of physical space. To me, the meaning “religion of the Federation” cannot be more than symbolic. In fact, the Malaysian Supreme Court under the leadership of former Lord President Tun Salleh Abas on two separate occasions ruled that Islam was not the basic law of the land, nor was Islam the general law of the States. Our own Constitution clearly says that the supreme law of the land is the Constitution itself. We cannot be clearer on our status as a country and there should be no uncertainty about it.

Some academics of course have a different view. One of them described our Constitution as a hybrid – in other words, it is a mixture of both secular and religious elements. This is an easy way out and he is wrong. We have a secular Constitution except that our practice is unlike America’s, where the Government is not allowed to promote or use taxpayers’ money for the establishment of religious institutions. In our case we have a limited power to enact laws for Muslims only, and we can use taxes collected to promote Islamic education and build mosques. So, we do not have an American-style Constitution

but that does not mean we are not a secular nation. There is in fact no single exclusive model of secular government in the world. There are many but they have one thing in common: the Government does not make law or policy purely because a particular religious law, precept or tenet requires it.

We have a former Prime Minister who, as a tactical strategy to counter the Opposition's insistence that Malaysia should be an Islamic state, declared that Malaysia was already one. This was a clever tactic, more so because that particular former Prime Minister has always had his own definition of things ranging from *Ketuanan Melayu* and the interpretation of Article 153 of the Federal Constitution to the meanings of freedom and democracy. It is certainly not surprising that, to him, Malaysia is an Islamic state: his definition and his understanding of the concept is enough for everyone. It matters little to him that he has caused unspeakable confusion with his brilliant idea. With that one fell stroke, the stage was set for other Muslims to start more "Islamic" initiatives. Nobody wants to be left behind on the journey to this new Promised Land.

First, politicians started promoting the *Syariah* Court as being of equal status to that of the Civil Courts. They even went so far as to amend the Constitution to make it clear that matters falling within the jurisdiction of the *Syariah* Court would

be placed under its exclusive purview. However, the *Syariah* Courts are creatures of State law. They only have jurisdictions and powers that are granted to them by the Federal Constitution. So in the old days, the Civil Courts as the interpreter of the Constitution could determine, as they should, if the exercise of the powers of the *Syariah* Court was in accordance with the law. Now, chances are that the Civil Courts will not deal with that question at all for fear of being labelled un-Islamic or, worse, anti-Islamic.

There are of course other complications: when you have a dual legal system of equal status, who has the power to determine whether a matter is within or beyond the powers of the *Syariah* Court? Furthermore, what happens if one party is a Muslim and the other is not? The Constitution clearly states that non-Muslims are not subject to the jurisdiction of the *Syariah*. Further still, what happens when the subject-matter in dispute is mixed and involves elements of both civil and *Syariah* systems?

Our civil judges (most of whom are Malays and probably very pious) will not touch these issues with a ten-foot bargepole, and it has been evident since 1988 that they prefer to push the problem somewhere else than to risk being labelled bad Muslims. So they go round and round the mulberry bush to avoid making decisions that appear unsupportive of Muslims and Islamic law. Cases involving conflicts between husband

and wife, wife and children, as well as burial rites and inheritance disputes where one spouse has converted to Islam, have caused untold pain and anguish to the person or family concerned. At the same time, judicial dithering has huge ramifications on society at large and there is no solution in sight because those in authority are more interested in politics or preserving their pious reputations among fellow Muslims. The law has become secondary to these considerations and so the uncertainty and confusion continues.

The refusal by the Federal Court in the Shamala Sathiyaseelan case to answer some legal questions put forward to them is the best example I can think of where the judges refused to make a legal ruling that might be construed as unhelpful to the Islamic cause. They chose instead to find a way out based on some technicality or other. The facts of the case were that Shamala's husband, Dr Jeyaganesh C. Mogarajah, converted to Islam and became known as Dr Muhammad Ridzwan Mogarajah. Unknown to her, he also converted their two sons, aged four and two. Shamala applied for custody in the High Court while Dr Muhammad Ridzwan applied to the *Syariah* Court.

There were four main questions that Shamala posed to the High Court, namely: whether a provision in an Islamic legal enactment concerning the right to determine the religion of an infant is valid as it is inconsistent with Article 8 of the Constitution and

federal law (i.e, the Guardianship of Infants Act 1961). The second issue involved Article 121A of the Federal Constitution where, in the event a custody order for children is made, which court between the *Syariah* Court and the High Court had higher authority?

The third question concerned the conversion of children in a civil marriage to Islam by one parent without the consent of the other – do the rights and remedies for the non-Muslim parent lie within the High Court? The final question: does the *Syariah* Court have jurisdiction to determine the validity of the conversion of a minor to Islam once the conversion is registered by the Registrar of Muallafs (converts)?

These basic but difficult questions of law were not entertained because the judges found it necessary to avoid answering them. Instead, they held Shamala in contempt of an order of the High Court as their basis for not doing anything. Well, the questions were not just for Shamala: they were for the whole country to know so that the rights of the people are clear and certain. These judges, like political leaders, avoided answering questions according to the law because they did not want to be accused of not respecting the *Syariah* Court. No one is asking them to show disrespect for Islam or the *Syariah*. We just want them to do their work, which is to interpret the law and uphold the Constitution.

Politicians at state level and bureaucrats in the Religious Departments also play an important part in the Islamisation of Malaysia. A rash of laws has been passed to show the change that the country is experiencing: adultery has been made an offence in State laws although the punishment is mild compared to the stoning some lawmakers would have liked. This is despite the absence of adultery as an offence under federal law. Adultery is a sinful conduct forbidden in Islam, but it is not an offence against the precepts of the religion. I therefore maintain that laws punishing Muslims for sinful conduct are unconstitutional because States have no power to make such laws – it is, in legal doctrine, *ultra vires*.

The State can only create offences against the precepts of the religion, meaning the pillars of Islam of which there are five. If Muslims do not believe in these precepts or if they commit acts that go against the pillars of the religion, then and only then can they be punished. The precepts of Islam do not mean anything that the Religious Department wants. In fact, there is no legally definitive meaning of the precepts of Islam whether in statute or in any statement by the Conference of Rulers, but it is clear that the State's powers to enact Islamic laws are limited by federal law and the Constitution. For example: the State List in the Ninth Schedule of the Constitution is subject to the provision of fundamental liberties. The

Ninth Schedule does not give the State Assemblies *carte blanche* to pass laws on Islam without regard to the constitutional guarantees in Articles 5 to 13.

Now, the Civil Courts do not recognise the defence (put up by some so-called deviationist Muslims) that they no longer profess the Islamic faith and are therefore beyond the jurisdiction of the *Syariah* Court. This in my view is a solid defence because the *Syariah* Court has power only over Muslims. If someone does not profess that religion, how can he or she be subject to the powers of that court? To profess means to believe, declare and assert in one's own heart – it is an internal affair that no other person can determine from the outside. Only the believer can tell the true feelings of his or her beliefs.

Judges who have rejected this argument say that such a defence is an afterthought concocted as a means to avoid the punishment. So what if it is? Who is to say what is inside another person's head and heart? Judges should apply the law as it is and leave matters of conscience and personal belief to the individual. It is only for selfish reasons that judges are motivated to be so opposed to the religious freedom of the Constitution they have sworn to protect and honour.

The Malay Rulers thus have the opportunity to take a close interest in the plight of Malaysians who have no recourse to remedies under the law. If

politicians are reluctant to be compassionate and will not rise above legal technicalities, or if they are unwilling to legislate on matters that the judges are too timid to handle, then the Malay Rulers as the founts of sovereignty and representatives of Islam can take the matter into their own hands and help resolve the crisis. The good name of Islam as the religion of compassion, mercy and forgiveness must be restored so that the people can see what is meant by the Islamic way. Following the mantras of the politicians is easy enough to do. Following the path of justice and fairness in a multiethnic and multi-religious society is much harder but it must be done.

This is especially necessary in Malaysia today where being truthful and direct about Islam in the context of any discussion about our Constitution is not the preferred approach of Malay politicians – and some politicians can be outright dishonest about the matter. As we know well enough, the *Syariah* Court has no jurisdiction over non-Muslims, and yet these politicians happily create controversies presumably for political mileage.

Selangor is famous for this: in 1989 its State Assembly (under the Barisan Nasional, mind you) passed a law that said if a non-Muslim converted to Islam (that is, becomes a *muallaf*), any children of the convert would automatically become Muslims as well, whether or not the convert had custody of them. This

Bill was approved by the BN and even had the support of the MCA.

This was a glaring attempt by the proponents of Islamisation to disregard the civil laws of the country. The federal law on guardianship and the right to freedom of religion were set aside because of the disregard shown to a simple but important principle: Islamic law is a personal law for Muslims in respect of certain offences only. As I mentioned earlier, it is not the basic or general law of the land. So, no Islamic law can be valid or justified if it has an effect on non-Muslims. It is, furthermore, equally invalid even for Muslims if the particular law is not permitted by the Federal Constitution. The then-Prime Minister in 1989 realised the danger of opening up the scope of Islamic law to non-Muslims and issued a statement that the Selangor Bill would not be adopted in other states.

Selangor tried to interfere with non-Muslims again 20 years later. This time it was about the sale of alcohol in certain convenience stores. The issue was about prohibiting 7-Eleven shops from selling beer in the Muslim-majority residential areas of Shah Alam. If the authorities had even a modicum of respect for the law, the matter would never have arisen. In Malaysia, the prohibition is for a Muslim to consume alcohol in public. Selling alcohol is not prohibited, nor is driving a lorry carrying beer crates. This is what personal laws are about. Why should the rights of non-Muslims be

affected in any way by such an injunction? If Muslims are “offended” by the presence of beer, then the whole country should be dry – that is, liquor production and sale should be made illegal throughout the land. Why this was not suggested by the religious activists is easy to understand: any such move might deprive them of non-Malay votes. Again it is about politics, not religion.

Related to these policies of Islamisation is the *Syariah* legal instrument of the *fatwa*, of which there are many kinds. According to the Attorney-General’s Office, a *fatwa* (i.e. an edict issued by the National Fatwa Council, or a State Fatwa Committee) has the force of law. This means that a group of clerics can make laws although none of them is elected by the *rakyat*. If this is truly the case, we should altogether dispense with the State Assemblies and even Parliament and let the Fatwa Councils make our laws. We already have a slew of *fatwas* banning smoking, participating in beauty contests and engaging in foreign exchange trading. Another *fatwa* says that if one has fathered a child out of wedlock, he is not able to claim that he is the rightful father, even if that means the innocent child is the one who will suffer from such a ruling. Not only is it an offence not to comply with a *fatwa*, it is also illegal to dispute or question a *fatwa* in this country. The recent decision by the Pakatan Rakyat government of Kedah ousting the jurisdiction of the

court to review any decision of the Mufti and the Fatwa Committee reminds me of the Mahathir era. We may just be replacing one kind of authoritarian rule with another. The protest lodged by Tunku Mansor Tunku Kassim on this issue is laudable. More members of the royalty should stand up for the Rule of Law.

It is incumbent on Muslim leaders, and this includes the Malay Rulers, to acknowledge first and foremost that the Constitution is the supreme law of Malaysia and that the Quran is supreme law of the personal faith of Muslims. If Muslims are unwilling to accept this distinction, the Malay Rulers as Heads of Islam should help explain to Muslims what the laws are all about. They are far above mere populism and petty political pressure: they are the great Malay Rulers whose duty is to make sure that all Malaysians live in harmony. They can explain what politicians and judges have so far believed to be unexplainable, and they can embrace the Constitution in its entirety until the people change the Constitution for a new one, if at all. When the Malay Rulers themselves take prime position in upholding the Constitution, they will set shining examples to our judges (whose promotion depends very much on them) as well as politicians.

As Heads of Islam, the Rulers can make decisions on almost any Muslim matter regardless of what the religious bureaucrats say. Some years ago, for example, the Sultan of Perak decreed that *Hari Raya Puasa*

(*Aidil Fitri*) would be celebrated on a day different from that determined by the Perak Religious Department. His decision was unprecedented but it was obeyed at least by state officials and the majority of Muslims in Perak. I do not know what the basis was for his decision, but there is nothing legally wrong with it.

Today, I wish that the Malay Rulers would do more for Islam and Muslims because of the enormous influence they wield. Muslims are the weakest community in Malaysia whether in terms of economic representation or in education. They have immense difficulty getting their rights and dignity accorded to them by the *Syariah* Courts because of gender bias and old values that still dominate in the Malaysian Muslim society. The Malay Rulers appear progressive and modern in their outlook, conduct and in what they say. They can help their Muslim subjects reach the same level of modernity in worldview and outlook.

Around the world, Islamic law in many countries has gone through massive reform and change. The political uprising in the Middle East will see the adoption of more progressive Islamic elements in politics and social economy and it is timely that Malaysia as a Muslim-majority country should grapple with these changes too.

The truth is that Muslims in Malaysia have not achieved their true potential because the two main groups of Muslim leaders – politicians and the religious

bureaucrats – have failed them. These leaders have failed to make Malaysian Muslims truly independent and knowledgeable. Instead, they are more interested in turning Muslims into blind followers and will use whatever tool at their disposal, whether politics or religion. Every day these leaders are busy telling Muslims that Christians are on the attack. They are also busy telling their fellow Muslims how un-Islamic their political opponents are. Then, after long periods of bashing each other they will, with false enthusiasm, declare the need for Malay-Muslim unity and the whole bashing-session will start again.

The religious bureaucrats are no different. When a former Prime Minister gave them the opportunity to explore the wide vistas of Islamic knowledge whether in law or economics (under the much-ridiculed policy of *Islam Hadhari*), these clerics did nothing. They were too lazy to think and too timid to allow their minds to accept new ideas. They could not respond intellectually to the demands of dialogue or discourse on Islam in the modern world. They could not even answer the taunts of another Muslim group that there was no such thing as *Islam Hadhari* because there was only “one” Islam.

The religious bureaucrats could have responded with some conviction that Islam was indeed one, but Muslims have a multitude of meanings to what Islam should be in the context of nation-building.

The debate would have been an opportunity to show everyone the kind of Islam that will guide the country forward. Properly managed, *Islam Hadhari* would have enabled the policies and laws of the country to be more in line with other successful democracies because, at the core of it all, Islam is about justice and fairness for all.

Of course we are too lazy to delve deeper into the Islam of the great era of the past. We are content to emulate the Taliban and the tribal practices of the Bedouin. Here again, I believe the Malay Rulers can still seize both the day and the opportunity to carry Malaysian Muslims forward. The Malay Rulers can show Muslims how important it is to be in the front line of progress, and how useless it is to whine and complain about non-existent enemies at the gates.

Chapter Nine:



The hypocrisy of leaders

The lack of reform in Islamic law in Malaysia is due mainly to the absence of leadership within the Muslim community. If we compare Malaysia to other moderate Muslim countries such as Indonesia, Jordan and the North African nations, we are definitely conservative and Taliban-like, notwithstanding our many skyscrapers and pay-TV channels. It would seem that the message of reform in Islam has been lost on too many of our leaders.

Some of our Muslim leaders are a source of embarrassment. At the very start of 2012, a top politician in Selangor (who has since been sacked) gloated that he and other members of the moral police were able to arrest some Malay girls for drinking in celebration of the New Year. These so-called Muslim leaders are fond of showing off their power to arrest and shame other Muslims, either for gambling (buying four-digit lottery tickets), drinking or illicit sex. These

leaders think that by doing so they are protecting Islam and other Muslims. What they don't realise is that other Muslims think they are a bunch of hypocrites. If they are serious about controlling gaming, alcohol and sex, they should go after all the VIPs first. How is it that, since *Merdeka*, the only Muslims who are arrested for these "offences" are all ordinary *rakyat*? It is hard to believe that the Muslim elite in the country is all free of vice – so much so that not one of them has been arrested.

Muslim leaders will lecture you about pious living but they are unable to keep the country free of corruption. They can't even keep our public toilets clean. These leaders prefer to pick on a relatively minor moral issue like *khalwat* (being of close proximity in a secluded place with someone of the opposite sex who is not a relative) or drinking, which are really matters personal to the individual, but pretend to be blind to the abuse of power and gross inequalities in our society. I believe they do this to hide their own inadequacies. It's a simple task to go and harass Malay girls having beer on New Year's Eve. It's more difficult to go after VIPs drinking alcohol in the privacy of their hotel suites. The arrested girls were not the children of Royalty or Ministers, so nobody creates a fuss if Muslim leaders want to flex their muscles on them. They can also go to the four-digit shops and arrest taxi drivers because the Muslim VIPs do their

“business” in Genting Highlands, Marina Bay Sands in Singapore and the Crown Casino in Melbourne. These hypocritical “Muslim leaders” are a disgrace to the world.

If they were more responsible, they would have advised their spineless moral enforcers to do more useful things for Muslims. They could work on a new and more progressive family law. Indonesia, Iraq, Egypt, Tunisia and Jordan have all enacted new Islamic Family Laws since 2004. These in essence give equality to both husbands and wives in a marriage. No one can be forced to marry without consent and there is always a minimum legal age of marriage in these countries. In Malaysia, the consent of the woman (and in some cases, literally girls) is unnecessary in some States and a certain professor in one of our universities proudly declared all this to be in accordance with Islamic law. Even ultra-conservative Saudi Arabia has banned the practice of forcing women to marry against their will. The Saudi Government made it clear that forced marriage is an injustice and anything that is unjust is not in accordance with the *Syariah*.

Morocco has done the Muslim world proud by enacting a new family law code that mandates equal treatment for husband and wife, allowing polygamy only under the strictest court supervision. Morocco also allows for divorce by mutual consent

and recognises divorce on grounds of irreconcilable differences. In Turkey, the new code recognises that the family is a union based on equal partnership and responsibility of spouses.

In our own country, Muslims are apparently more concerned about Christians trying to take over the Government while husbands are allowed to divorce their wives unilaterally, sometimes via text message, while wives have no such right. In all other countries, divorce is recognised only if it is endorsed by the courts. We once had a law that was able to prevent irresponsible men from divorcing their wives without basis but then the wave of political Islam brought changes to the law and gave these useless husbands even more freedom to be useless.

Why should a wife be guilty of disobeying a husband (*nusyuz*) when the husband is cruel and unreasonable to her? Why should the religious bureaucrats prevent a man and a woman who conceive a child out of wedlock from acknowledging that child and registering him or her as if born in wedlock? These religious bureaucrats don't care that the innocent child will have no father on all official documents, thereby telling the world that he or she is a bastard. The child will also not be entitled to any inheritance under Muslim law. What wrong did the baby commit to earn such a penalty all throughout life? Furthermore, why do the religious bureaucrats

wish to punish these parents who might well decide to get married and “regularise” their relationship as well as their child’s status? The religious bureaucrats obviously have no compassion in their hearts. They are a disgrace.

These are issues that every Muslim leader in Malaysia should care about instead of pursuing Taliban-style punishments for their fellow Muslims. The religious bureaucrats should look towards thinking of policies and laws that alleviate the suffering of their fellow Muslims. They should absolutely not be adding to that suffering. Again, I do hope that the Malay Rulers as Heads of Islam can find the time in their busy schedules to reflect on the suffering of Muslims at the hands of the wannabe-Taliban in Malaysia. These modern mullahs do not carry Kalashnikovs but their power and authority has very often caused misery and pain to millions of women and children. They administer the Islamic laws of the country as if they are infallible, perfect Muslims. They are so coldly unforgiving and hard on those who have breached the law, when the law itself contains many parts that are remnants of their own outdated thinking. There is no forgiveness in their hearts, only strict adherence to their own self-righteous superiority. Here the Malay Rulers can do something wonderful to set things right. Their Highnesses can bring Muslims into a new era of enlightenment and

knowledge, putting an end to the people's blind loyalty to mediocre politicians and bureaucrats.

In the past, Islam was viewed as the merciful and the compassionate religion. In the early days of Islamic government in Spain and North Africa, Christians and Jews lived together happily with Muslims. They chose to live in Muslim lands because leaders at the time were open and merciful to everyone regardless of religion. As a whole, they expanded their knowledge and trade and they created enough wealth for everyone to share. Universities sprang up in all these places while Europe struggled through the Dark Ages with only a few. How far these Muslim countries have fallen since corrupt and mediocre leaders mismanaged them over the past 1,000 years! Today, Muslims are the poorest people in the world and they contribute very little to humanity's wealth and knowledge. Yet all that Muslim leaders talk about is unity, unity and unity. They are lazy leaders because this kind of talk is easy. Muslims need to learn to be more financially capable and knowledgeable – this would be more in keeping with our intellectual tradition, and with the size of the *ummah* or Muslim community today. Doing something that really improves the lives of Muslims is the true challenge, which they prefer to avoid. This is particularly true in Malaysia, and Muslims here desperately need new champions to bring them up to par with the other communities of our land. They need new champions to free them from the shackles

of fear and the ancient and barbaric values of the past. I believe the Malay Rulers are more than suited to be these champions.

The failure of the political leadership

Without fail our Prime Ministers start their administrations by asserting a commitment to upholding the tenets of Islam in the administration of the country. Tunku Abdul Rahman, the first Prime Minister, alluded to the concept of *hadazri*, which involved adopting the core principles of the religion such as belief in Allah and *taqwa* (protecting oneself from sin), fair and just government, balanced development, mastery of knowledge, and the protection of women and minority rights. This idea was further developed by Tun Abdullah Ahmad Badawi when he became Prime Minister in 2004. His policy of *Islam Hadhari* was not a new sect or another “version” of Islam as was described by his political opponents, who were interested only in gaining political mileage. It was an attempt to reorganise Muslim thought in Malaysia to make it more adaptable to the demands of the new world. It was an attempt to answer the problem of Muslims being left out of the opportunities in the modern era simply because they were unable to reconcile and understand the core principles of the religion.

The Tunku's *hadazri* and Abdullah's *hadhari* meant a Muslim government that opened the door of *ijtihad* (reasoning) far and wide when conservatives were trying to nail it shut. This approach would have allowed for the acceptance of many human rights principles that conservatives and the orthodox Muslims have frequently opposed without much thought. For example, the fundamental principles of the Constitution can easily be understood and accepted by Malaysian Muslims today if they can be seen to be consistent with Islamic principles. Unfortunately for Abdullah, his efforts came to nothing because his own party did not have enough scholars of repute to push his reforms through. Most of them were political sycophants.

The current Prime Minister, Dato' Sri Najib Razak, has also spoken about the need for Muslims to take the moderate position and he has exhorted them to reject extremism and intolerance. I certainly agree with Najib that the norm must be moderation and tolerance. If the Prime Minister can implement this here, with conviction, then I have no doubt it would help to stem the tide of extremism in Malaysia. Violence and extremism do not consist exclusively of actions that inflict physical pain and bodily harm. To deprive people of books banned by the Religious Department is an act of extremism. Likewise, to make it a crime for people to question the *fatwa*

of the Religious Councils is an act of violence and extremism, and this is especially the case when the Constitution gives people the right of free speech and expression.

What Malaysia needs in this regard is action. In this I believe the Malay Rulers as Heads of Islam can do more than all our Prime Ministers combined. They can start by telling their Muftis of their roles under the law. They can be firm and impart clear messages to the Muftis that all public announcements and *fatwa* must have the approval of the Rulers. The Malay Rulers as Heads of Islam, should surround themselves with scholars and progressive Islamic thinkers from all over the world in order to have the best advice readily available. Just as the state football teams require injections of foreign talent to bring them up to professional standards, our efforts to develop an Islamic administration needs an infusion of world-class scholars.

Politicians can't do this because their primary concern will be the popularity of their actions. As we have seen all too frequently in the past, Malay-Muslim bureaucrats will gang up against progressive politicians and that will be the end of the attempted reforms. This is not the case with the Rulers for, as Heads of Islam, they have free rein without having to worry about the petty sensibilities of narrow-minded officials. The Rulers might not be able to cut off the heads of disobedient Muftis, as was the case in the

Abbasid Caliphate, but they certainly have enough clout to pension off any Mufti without a whisper of opposition being heard.

At the very least the Malay Rulers can easily avail themselves of the services of research houses and think-tanks – they might even establish their own Islamic foundations to build support for progressive ideas they wish to implement. For example, if they wanted to know about the effects of uncontrolled polygamy, or about any serious social problems that result from polygamy, who is better placed to undertake data collection than the independent professional research organisation? Their Highnesses can then be confident of any evidence obtained, which will in turn help them rule conclusively on matters such as polygamy. Surely Their Highnesses, who have travelled far and wide, would like to see the positive changes happening in other Muslim countries also taking place at home.

In this regard, the court system is another matter begging the attention of the Rulers: it is one thing for politicians and jurists to brag about *Syariah* Courts being on par with the Civil Courts, but the people expect the *Syariah* Courts to be as efficient as the Civil Courts, if not more so. The truth is that even today there are still many *Syariah* Court orders for maintenance (or even summonses to appear in Court) that are routinely ignored without penalty, and this is made worse by the lack of coordination among the

courts in the various states. The people are promised that the courts will take speedy action but even simple remedies often take years to become available.

Whenever we talk of the *Syariah* Court, all we ever hear is why the courts need more powers. I think they have enough power. What they need is the responsibility that comes with it and proper administration so that relief can be granted speedily. The *Syariah* Court should use its power to punish for contempt (i.e. disobeying court orders) with sufficient regularity so that people take its decisions seriously.

Instead, what we have is the increasing Talibanisation of the country and State Governments continue to go way beyond their constitutional powers by creating more and more offences for Muslims that are not defined under the Penal Code. State “religious police” have suborned the authority of the Heads of Islam by becoming the final arbiters and judges of what constitutes sin and public morality requiring legislation for offences and punishments for offenders.

In our country today, a Muslim is deemed to have insulted Islam if he or she is found in a pub, participates in a beauty contest or does not observe the dress code while at work. This obsession with superficial trivialities is what brings the religion into disrepute, and it is the religious police who have truly insulted the religion with their hypocrisy (men, for example, are somehow allowed to participate

in “beauty contests” such as bodybuilding shows). Muslim women in Malaysia are always prohibited from doing things that are acceptable, even praiseworthy, if done by men. And there are so many other “offences”, such as having a contrary opinion on a *fatwa* that has been gazetted or being found in possession of books contrary to *hukum syarak* (religious law). It has got to the point where today, no one has a clear idea what insulting Islam means exactly. I would have thought that having a casino in an Islamic state would be an insult, but apparently it isn't.

Other offences include having sex outside marriage, *khalwat*, not fasting in the month of *Ramadan*, not attending to Friday prayers, and (in Terengganu) failing to perform one's daily prayers. The consumption of alcohol is high on the list of things that get the religious authorities into a frenzy and yet they don't consider drug abuse as seriously. This isn't an exhaustive list, and depending on the progress of the Talibanisation programme, I think we will see even more offences being created by the authorities.

This is a serious issue in law. The Constitution never meant to confer powers to the States to make all sins in Islam criminal offences. Why else would it have used the Ninth Schedule to exclude the States from legislating on matters that affect the fundamental liberties of Malaysians? The right to enter a beauty contest is a fundamental right to free expression. So

is the choice not to wear a *tudung*. Not covering the *aurat* may be sinful, but to penalise women for such conduct is a violation of the law. The Bar Council and other lawyers' groups should defend the fundamental rights of all citizens, no matter how unpopular this may make them. The character of the country as a free democracy must not be sacrificed at any cost. No *fatwa* or State law can take this freedom away from anyone, including Muslims.

As I have mentioned in the previous chapter, the power to create offences against the precepts of Islam can only mean a limited power to create offences against the pillars of Islam: for example, if a Muslim preaches that a belief in two gods is permitted in Islam, this is an offence because it clearly violates a precept of Islam (that there is only one God). But to assert that the National Fatwa Council is not the sole authority to issue a *fatwa* cannot be an offence because the Fatwa Council is not a precept of Islam.

The power to create offences against the precepts of Islam is vastly different from the power to legislate on any activity considered sinful in Islam. Why are lawyers keeping silent on this outright violation of the Constitution? Perhaps no one is willing to be accused of being un-Islamic or an infidel. What is clear, however, is this: if Malaysia is to be a model moderate Muslim country, the Rulers must be able to rein in religious bureaucrats and stop the creation of multitudes of

offences that are entirely personal in nature. It will look ridiculous and pathetic to read in the newspapers that only the Muslims in our country appear too weak in spirit to observe the requirements of their religion, so much so that they must be marched to prison on a daily basis for the slightest of moral breaches.

In Afghanistan, girls are barred from going to music classes. Is this something we can dismiss as completely out of hand in Malaysia? I honestly don't know because the discourse on what constitutes Islamic rules and morality is not determined by consensus brought about by a healthy exchange of views. What currently matters in this country is the view of the Fatwa Council and a few hard-line politicians. This clearly usurps the powers of the Rulers as Heads of Islam and, for the ordinary Muslim, life will be increasingly constrained by more and more laws that will ultimately make them unable to engage with the current milieu. Muslims will fearfully isolate themselves from things considered normal by others. In doing so, they will simply be disadvantaged by being excluded from an otherwise thriving community.

In our schools we already see the separation between Muslims and non-Muslims. Of course this is very unhealthy and it is no surprise that the divide grows wider with each passing day. What do we gain by going down this path? To say that Islam will be "purer" and Muslims "more obedient" is utterly

untrue. We have had so many *Syariah* offences on the statute books for so long but have we seen anything to suggest that increasing legislation and creating more offences make Muslims more obedient? No, we haven't. There is in fact nothing to suggest that the deterrent effect of harsh punishments has done any good at all. All that we have achieved is a superficial show of authority that we "care" about our religion by punishing our fellow believers. Malaysia has become an intolerant country as a result, and despite the many wonderful speeches about tolerance and moderation, the situation on the ground is far from rosy.

In countries such as Nigeria, Pakistan and Indonesia, inter-religious strife has caused many deaths. Distrust and fear are difficult to purge from any community that has suffered serious conflict. It really isn't easy to heal the wounds caused by religious strife: it takes generations to forgive and forget. Luckily, we have not had such a blowout yet but we came close a couple of times and it is critical today that our leaders, including the Malay Rulers, make religious harmony a top priority. I think that the only way for us to avoid inter-religious strife now is to set ground rules that everyone must follow. We will enjoy no peace if one religion is allowed to dominate the public sphere to the extent that it encroaches on the lives of all others. Equally, the practices of Malaysia's many faiths, while they are protected by the Constitution, ought not to

violate the rights and sensitivities of Muslims. Why can't we be sensible about these things at an individual level without having to legislate every little thing?

The unfortunate truth is this: unless Muslim leaders are willing to be tolerant and moderate with their fellow Muslims, it will be difficult to conceive of a tolerant and moderate Muslim community that can thrive happily with others in the country. We have seen in other Muslim countries that the degree of understanding the majority exercises towards the minority largely reflects the national makeup of that country – where leaders are too engrossed to make “better Muslims” out of the populace, harsh rules apply. Where leaders are focused on developing the capacity and capability of Muslims, as opposed to their personal moral and religious conduct, a more open, conducive and harmonious environment exists.

Malaysians must discuss what they mean by “tolerance” and “moderation” and the Government must allow for free discourse on a subject as important as this because the people want to see their country moving forward rather than always going backward. There is no point merely calling for “unity” again and again without doing anything, because it is real unity and harmony among Muslims in Malaysia that will help us all progress to the next step: religious harmony among all faiths. Muslim unity must evolve naturally and not be the result of political coercion

or be the exclusive domain of a few political leaders. Scholars should begin the dialogue among themselves and discuss all the necessary topics, including, I hope, the subjects raised in this book. I hope also for a measured response rather than the usual threats and intimidation that usually spring up when someone raises a religious issue.

Women in the *Syariah* system

The measured response is, however, a rare thing in Malaysia whose modern face belies the ultra-orthodox undercurrents of its Islamic legal system. Malaysia likes to describe itself as a modern and moderate Islamic state but there is absolutely nothing modern or moderate about some of our laws and practices. It is difficult to believe that Malaysia today still allows for child marriage, and yet this is the truth. In some States, the *Syariah* Court has discretion in approving the marriage of girls aged below 16 (the minimum statutory age of marriage). Despite this, we are apparently committed to observing international conventions and laws. The United Nations Conventions on the Rights of the Child and the Elimination of Discrimination Against Women are two established conventions that we are bound to honour. I humbly submit that these issues have so far escaped the attention of the Malay Rulers,

and here again they have the ability to make great and progressive changes for the better.

The most immediate matter that requires Their Highnesses' attention is the removal of gender bias in the administration of Islamic law. The appointment of women judges in the *Syariah* Courts is frowned upon even though it is a most sensible thing. There are so many women who have retired from the law who could be deployed as *syarie* judges if only the Religious Department were more sensitive to the needs of gender representation. It is high time that Malaysian leaders move the country forward so we can stand together with other modern Muslim countries, but the employment of women jurists isn't popular because some clerics believe that, based on a questionable *hadith*, Islam does not support the idea that women make good judges.

I recall that some 15 years ago, much to the surprise of many people, a *fatwa* was issued saying that women were completely unqualified to be judges. Ironically, the *Syariah* Courts would have been better served if there had been more women judges. Fortunately, when Tun Abdullah became Prime Minister, the National Fatwa Council did an about-turn in 2006 and ruled that women could be judges after all.

This joy was short-lived. Today, only two judges have been appointed since the 2006 announcement (both were appointed in 2011). There was talk initially

that even these two judges should not be allowed to hear divorce cases and should be confined to hearing only “less onerous” matters. This was subsequently denied by senior *Syariah* judges. In any case, the lack of trust in women as judges is really a throwback to pre-Islamic days when the Arabs did not consider women as equals, which made it unthinkable to appoint them judges and arbitrators.

However, there are strong statements in the Quran that put men and women on an equal footing – if our Muslim leaders had wanted to be more progressive in bringing about positive change for Muslim women they would have found ample justification in the Quran itself. So, despite some minor developments, the authorities are still not appointing enough women judges. Women judges certainly understand the difficulties faced by wives abandoned by their husbands or women who are unilaterally divorced and left with absolutely no financial support. Women judges have the necessary perspective that allows them to deal with these cases with much more urgency.

Are we not ashamed to profess ourselves a progressive and modern Muslim country that is afraid to appoint women judges or to ban child marriage? Indonesia has more than 150 women judges hearing divorce cases and they are Muslim too. If their scholars, who are in no way inferior to ours, can find support for the reform of outdated marriage

laws, why do we still languish in an old feudal system where justice is blunted, ossified and warped?

Of course, I do not say that all male judges are incapable. However, there have been too many instances where their performance has fallen awfully short of the high standards of justice required in Islam. Consider the case in Penang where a woman had to wait five years for her divorce application to be heard. All this time she had five children to feed and no financial support. There was also the case in Perak where a woman (a Muslim convert) had to endure five long years of waiting for her divorce to be settled, and likewise, she had no financial support from the estranged husband. Why is it that a man can unilaterally divorce his wife, even without the sanction of the court, and a woman must wait for so many years? The answer is not because the religion made it so. It is because heartless clerics interpret religion as such, and it is because that interpretation suits them. If the Muftis were enlightened and more caring, they would never have allowed the situation in the *Syariah* Court to deteriorate to this extent. They would have used their authority to find solutions to the real problems faced by Muslim women.

Above all else, our country has a Constitution that says clearly that we cannot discriminate on the basis of gender. There is no excuse for not appointing women *Syariah* judges other than the deep-seated

bias of men. Fortunately, we now have what has been described as the “new face” of the Malaysian monarchy – younger Malay Rulers now sit on the thrones – and a change in attitudes towards women should be easier to achieve. The younger Rulers have all had their education in established Western universities. They are fully aware of the winds of change that have returned rights and dignity to women all over the world. I am confident that the new generation of Rulers have what it takes to prevail over the orthodoxy and male chauvinism still lurking in the corridors of power. Now is the time that leadership is needed to free women from the shackles of the past – and it is really our responsibility as a nation to give Malaysian women the fullest recognition of the rights they have long deserved.

I truly hope that the Malay Rulers will do something to bring about change in the Malaysian *Syariah* system. To date, some of the Islamic scholars and administrators in decision-making positions have not treated women with the respect and dignity they deserve. There is absolutely no basis in the Quran to suggest that women are not equal to men, and Muslims recall that the Holy Book’s only condition for leadership is the ability to provide it with wisdom and effectiveness. To be sure, there were many women leaders in Medina during the time of the Prophet: the chief inspector of the Medina market was a woman,

as was Aishah, the army commander at the Battle of Bassorah (she was also the Prophet's wife).

Besides, there are so many *surahs* in the Quran that uphold the equality of women. *Surah Al-Hujurat*, for example, states that within the pairs in which humankind is created, the one to be most honoured is the righteous, be it men or women. *Surah At-Tawbah* speaks of women and men needing and protecting each other. There is clearly no religious reason at all for our Islamic legal system to allow women to be discriminated against and exploited.

Today, we have more women graduates than men (it is also no accident that they get the best results) and in many industries and professional sectors, women outnumber men. If our leaders are willing to deploy more women to do work traditionally done by men, I believe the country will be more efficiently run. The *Syariah* Courts are a bastion of male domination and yet the majority of those who come to the court for relief and remedy are the poor Muslim women of Malaysia. The most obvious thing to do is to employ more women *Syariah* lawyers and judges, which will help speed up cases. I believe that we have so far proven unable to do the obvious because we are insensitive and to a large extent we do not care enough about the suffering of women who are left behind by husbands or neglected by their children.

I notice also that the plight of Muslims all over the world shares some common characteristics: men end up making all the decisions about matters affecting women. It is also the men who make the rules, and it is men who decide what laws are applicable and what believers must follow. Men are responsible for the backwardness that Muslims have endured for so long, and there is no urgency among them to change. These old customs of the Arabs have become a part of Malaysia's laws and traditions, and until we remove them completely there is little chance that our Islamic legal system will be able to dispense the justice and equality that is central to Islamic teachings.

Our lack of exposure to the changes happening all over the world is partly responsible for the continued ignorance of our policymakers. These officials make frequent overseas visits, but they have not been able to study and learn from the new systems they must have seen in many Muslim countries in order to improve the management of Muslim affairs in Malaysia. And yet we probably have one of the biggest bureaucracies in the Muslim world: not only do State Governments each have various statutory and administrative religious departments on Islamic affairs, the Federal Government also has a large Religious Department and a Minister in charge of Islamic affairs.

What do these people do? Most certainly they have many things on their plates, ranging from collecting and distributing *zakat* (tithe), managing mosques, making sure our food is *halal* and deploying enough moral and religious officers to catch Muslims breaking an ever-increasing number of laws. Since there are so many laws that restrict and prohibit Muslims from doing things (i.e. normal things for other people), these officials must always be extremely busy. No other religion except some bizarre cults punishes its adherents for religious violations as openly as Malaysian Muslims do. As I said at the outset, I sometimes feel that the act of punishing others serves no purpose other than to cover up one's own insecurity and inadequacy. It's a subtle admission of failure which we refuse to recognise.

I think that punishing fellow Muslims for these many offences (which are all personal in nature) is a terrible idea. It makes a mockery of both justice and the religion because only certain people – those without influence – are prosecuted. It is also very hypocritical: who is so perfect as to be without sin? Who is so perfect that they can punish “bad” personal conduct in others? It is about time that Muslims focus on larger issues in life and society instead of these petty violations. We all know what the real problems are: lack of education, social breakdown caused by high divorce rates, drug abuse, our weak economic position – the list goes on.

Muslim leaders would be better off working on the existing problems of Muslims rather than creating new ones for them. Our Muslim leaders should wonder why the world's 1.5 billion Muslims are poorer and weaker than the 14 million-strong Jewish community. We should be able to be more financially independent, educated and knowledgeable so that we can match their progress, especially since there are so many more of us than them. It certainly has something to do with our failure to organise ourselves properly, but it also has something to do with our leaders' inability to solve the problems of the community. Here in Malaysia it has a great deal to do with our leaders' preoccupation with the "weaknesses" and "flaws" of their fellow Muslims. It has to do with our desire to punish rather than to find ways to educate, uplift and motivate people so they can realise their full potential.

The Malay Rulers need to promote Muslim officials who are proactive and care deeply for the community. Those leaders who have impressive academic qualifications but have no compassion and sympathy for the poor and the unfortunate will not be able to perform the work of Islam properly. Terengganu is fortunate to have Dato' Ismail Yahya as its Chief *Syariah* Judge. He has travelled, learnt many things and has the courage to implement new ideas. Terengganu also made a sound decision in

allowing a child born out of wedlock to be registered normally if the father marries the mother within six months of the child's birth. This is an important step and I hope it will prick the consciences of other Malaysian Muslim leaders to do the right thing, not just by our religion but also by the standards of human values and decency.

We now need a Royal Commission to be established to provide a detailed report to the Conference of Rulers on the state of the administration of Islamic law in Malaysia. Since Independence we have not had any serious evaluation of the system, and the Royal Commission's recommendations will be useful in helping the Malay Rulers appreciate the situation on the ground. Muslim bureaucrats should not feel insulted that I make this suggestion and I hope they do not follow the example of the former Inspector-General of Police who in 2005, objected strongly to the recommendations of the Royal Commission into the Police. Had the Police accepted the Commission's recommendations, the force as a whole would be in much better shape today. Similarly, because Islamic laws are within the purview of the respective Malay Rulers, it is only reasonable that the Conference of Rulers charge itself with the responsibility of coordinating the study so it can determine the extent and depth of the problems and the shortcomings besetting our *Syariah* system.

Islam and human rights

I do not think that the modern concepts of human rights and fundamental liberties are completely alien to Malaysian Muslims. After all, Islam is about rights and justice. The Malay Rulers have a great chance to pursue reform in Islam and they can engage enlightened Muslim scholars such as Abdullahi Ahmed An-Na'im, who is currently professor of law at Emory University, or Ayatollah Akhbar Hashemi Rafsanjani of Iran. These scholars believe that Islam, human rights and secularism are mutually dependent and that it is perfectly possible for Muslim societies to determine policies and laws that are consistent with both Islamic principles as well as international human rights standards.

In other words, there is no reason why a Muslim has to choose between religious beliefs and a commitment to human rights. The 1948 Universal Declaration of Human Rights did not stipulate that the source of these rights originated in any particular religion. All the major religions of the world uphold human rights and there is no basis to think that only secular societies value human rights.

When human communities are disposed to believing that a particular religion is exclusive and pre-eminent in relation to all others, peaceful co-existence is no longer possible and solidarity among

the different groups of faithful is lost. The value of impartial and neutral secular imperatives lies in avoiding such conflicts in multi-religious and pluralist societies such as ours. Unfortunately, our politicians are blind to these ideas because they are not interested in the long-term stability of the country. When they deny that Malaysia is multicultural and multi-religious, they are taking the country down a dangerously wrong path. Muslims in Malaysia are entitled to say that we are a Muslim country – but this only means that the Government does all it can to make Muslims free to practise their faith and beliefs without impediment or restriction. It is, however, quite wrong to postulate that the views, laws and morality of the Muslim majority should be imposed on non-Muslims. It is also wrong to say that Islam has a superior claim to any benefit and facility available from the Government. Every religion in this country has as much right as any other within the Constitution.

The Malay Rulers as Heads of Islam can do a great deal to bring about change in the thinking of the traditionalist *ulama* about the role of Islam in the country. The Government itself has to be scrupulously neutral when dealing with religious disagreements in the country, for it is only through this neutrality that we can defend human rights and dignity. It is pathetic to see Ministers and government officials making

their rounds to churches and temples before elections or immediately after some altercation between the communities. This would not be necessary if the Government had taken the correct constitutional stand on freedom of religion and human rights in the first place. They only need to apply the law and conventions fairly to all religious groups, and we can all live happily ever after.

One prominent PAS politician (although at the time of writing, he has been sacked) is very fond of saying that his primary duty as a politician is to “defend Islam”. To him, God comes first. He is entitled to devote his life to God or his religion, but when he is also a public official, his first duty is to his office. He has laws to follow and he has all the people who voted for him, which include non-Muslims and the different shades of Muslims. He has the Constitution to respect and uphold. He reminds me of a Malay judge who made a similar remark that when he is confronted with delicate questions of law, he is a “Muslim first”. This judge is entirely wrong. If he thinks that the Constitution is not Islamic enough for him, he should resign. He was made a judge to apply the law, regardless of his own personal beliefs.

Great Muslim intellectuals and politicians such as the late Abdurrahman Wahid, better known as Gus Dur, had no problems at all on this front. Gus Dur used to say that God does not need a bodyguard

– what God wants us to do is to make sure religion brings benefit to humanity. Abdullahi An Na'im, for example, insists that the State should be secular and neutral so that he can be a Muslim according to his own conviction and not out of fear of the Government's coercive punishment. The Indonesian people, who are 90 per cent Muslim, also want a government that does not punish people for infractions against religious morality. In Malaysia, however, Muslims have a long list of offences described as "offences against the religion". Some are arrested and punished (and generally they are women or from the lower income group) while others get away. In any case, there is no way of knowing if Muslims in Malaysia refrain from doing certain acts out of free will and genuine religious conviction or out of fear.

The debate on the status of Malaysia as an Islamic State has taken up so much time and produced so little. There is no precedent for (or even an agreed definition of) what constitutes an Islamic State, and yet the debate rages on. It would be better if our political and religious leaders were sufficiently satisfied that the country should follow the general principles of the religion. Islam is simple enough to demand the recognition from its followers that we are all trustees of God. We do things for Him. We are our brothers' keepers. We live for the community because everything belongs to Allah. We are expected to act justly to all.

It's the simplicity of Islam that has attracted more than 100,000 converts in Britain within the last decade. So when we look around and see so much dishonesty and greed, so many corrupt leaders who no longer care for the poor and weak, and so much of the country plundered and destroyed, then we have all strayed from Islam.

We need a new Malaysia, and here I believe the Malay Rulers can return the real Islam to our country. It does not matter if the religious bureaucrats do not recognise this new Malaysia as Islamic or not, for as long as the country has changed for the better, then the reform agenda is worth pursuing.

When launching the Organisation of the Islamic Conference, our first Prime Minister Tunku Abdul Rahman called on Muslim countries to be less critical of one another and to focus instead on the strengths that they each have so that they can help one another. That simple message still holds true for the Muslim world and it holds true for Malaysian Muslims too. Our preoccupation is still to criticise and to be judgmental of other Muslims. We take pride in being God's bodyguard. It would do a world of good if a more liberal and tolerant environment existed in our country so that Muslims and non-Muslims can live without fear. Let's take the challenge that has been set by great Islamic scholars such as Gus Dur and Fazlur Rahman Malik: for the Malay-Muslim world

of Malaysia-Indonesia to revive the great Islamic traditions, which the Arabs and the Pakistanis have failed to do. This is the way forward for our country.

The dangers of religious extremism

Religious leaders in Malaysia need not look far to see the dangers posed by a religious majority that does not care for the adherents of other faiths. Over the years, India has witnessed terrible human carnage and brutality that has brought shame to both Hindus and Muslims. Starting with the killings caused by the Partition of India in 1947, when almost two million people died because they happened to belong to a different religion, we have seen many similar incidents between Hindus and Muslims. Gujarat, the home of Hindu fascism, saw some 2,000 Muslims killed in a single day in 2002 and more than 200,000 left homeless. Women were stripped, gang-raped and bludgeoned to death. Tombs of great Muslim poets and musicians were desecrated. Arsonists burned mosques and *madrassahs*.

The Hindu fascists organised themselves in order to bring systematic destruction to the Muslim community in Gujarat. Mobs patrolled the streets identifying which homes and shops belonged to Muslims, and they burned them while the police

looked the other way. All this was possible because the State Government of Gujarat was then under the Hindu-extremist Bharatiya Janata Party. The religious clashes did not spread to the neighbouring states of Rajasthan, Maharashtra and Madya Pradesh although tensions between Muslims and Hindus were equally present in these areas. However, the State Governments in these regions were responsible enough to accept that they had a duty to protect all the people of India regardless of religion.

The lesson of the Gujarat experience is this: when the state is party to fascist ideas and allows the systematic destruction of a community, there can be only one outcome: the Killing Fields. This will be inevitable in a multi-religious society like Malaysia if people or religious groups espouse violence and hatred. That said, I believe they can be contained and controlled with adequate support from the police, the state machinery and respect for the rule of law. However, all hell will certainly break loose if the Government takes sides: when a majority religion is in conflict with a minority and the Government is not neutral in the conflict, then what happened in Gujarat can happen anywhere. This is why the neutrality of the state in an inter-religious conflict is paramount. Conflict has to be resolved by the application of law through the mechanisms and institutions set up for such a purpose.

In Malaysia today, the Government is playing a dangerous game by showing a lack of neutrality in resolving conflicts among the religious groups. Islam has the Malay Rulers, the Constitution, the Malay judges and a Federal Minister to protect it, let alone the government apparatus in the various States, but the other religions only have their own associations to turn to. Why can't the Government have a Minister of Religious Affairs so that all religious issues can be discussed in an amicable way? The non-Muslims too require a Minister to look into administrative problems associated with the practise of their faiths. Instead, we like to sweep things under the carpet.

For example, when the use of the word "Allah" in the Bible in East Malaysia became the subject of litigation, and when the High Court decided in favour of the Christians, there was a deliberate attempt to stall the appeal process. The election season was probably not conducive for such issues to be determined, but shouldn't the people be properly guided to accept that even religious issues must be resolved by the application of our laws and not our emotions? The door to deliberation and discussion among the religious groups must always be kept open, and the Government bears the responsibility not to exaggerate hostilities and add fuel to the fire, but always to work in the interests of all groups.

In Malaysia, religious conflicts have not reached the scale of those we have sadly seen in India or Nigeria. But we have to do everything possible to stop the government of the day from taking sides. When the Government no longer sees the need to be impartial and to use the machinery of government to resolve conflicts fairly, then mobs will rule. We will no longer be a peaceful country. Religious animosity will go out of control and the innocent will suffer.

In my view, the future of this country depends mainly on the way our religious leaders handle their responsibilities. If we have a spendthrift government, we will have a debt-ridden country. If we have corrupt leaders then the people will be poorer. But the worst will happen if we have irresponsible religious leaders. If they fail to play their roles with wisdom and responsibility, and they are aided by fascist politicians, they will not want to maintain religious harmony at all – far from it. And if what they want is religious hegemony, then the country will surely be destroyed.

Again, I hope that the Malay Rulers will lead the way to a truly moderate, open and harmonious Malaysia where communitarian clashes are no more than history lessons from a distant past, rather than reasons to fear constantly for the future.

Chapter Ten:



Epilogue

This book is an attempt to remind everyone of the constitutional principles which govern the role of the monarchy and which all of us – the *rakyat*, the political leaders and the Rulers themselves – must adhere to if Malaysia is to survive as a democratic nation. As I hope I have shown, veering away from the constitutional framework that our founding fathers carefully drew up at *Merdeka* and allowing for a role for the Rulers that goes beyond the boundaries of the Constitution may well be a recipe for disaster, especially in our current political climate.

It has not been my intention to diminish the Rulers – I am not an anti-royalist, nor am I saying that the monarchy has become an anachronism. On the contrary, I believe the Rulers have a vital place in our complex society. They command an immediate respect from the *rakyat* that can be put to good use

during times of confusion, chaos or uncertainty, and they can still be a moral compass for Malaysians who have grown weary of bickering politicians and their empty promises.

Nonetheless, there will be those who will take exception to what I have written in this book, whether it has to do with the monarchy, the religious bureaucrats or the judiciary.

I have tried my best to remain constructive and to treat each subject I have written about with as much care and tenderness possible under the circumstances. In doing so, I hope only to increase awareness of the issues, thus helping in a small degree to pave the way towards consensus. I believe I have been factual and dignified in my criticisms, and furthermore I believe that this is the only way for a democratic community to function properly. It is the only way our country can begin to see the benefit of doing things the right way – however painful it might be in the short term.

The majority of Malaysians now understand that we can no longer hide under the blanket of the past or skirt around the important issues affecting our lives. Everywhere in Malaysia today, people seek suitable channels to articulate and to express themselves. Finding and using these channels is absolutely necessary to prevent pent-up anger and bitterness from exploding and causing even deeper divisions in our country.

We can no longer afford to use “internal security” or “hurting feelings” or “to save parliamentary democracy” as excuses to avoid thinking about and making difficult decisions. We must allow free expression on the issues I have written about in this book and I believe that free expression will help form the bedrock on which we can transform our country completely for the better. After all, the only way we can go on building a country with the right values is to keep reassessing and redefining the entire framework of our nation and all its constituent parts. This is how all lasting democracies are built.

As a nation we have experienced both the happiest of moments and the most tragic. We may be a young country, but we have a long history and we do not lack the experience and understanding of conflicts of the gravest kind. Nor do we lack anything in national spirit when we rejoice as one for a truly Malaysian achievement, be it a sporting success or something else that makes us proud not only to be who we are but to know that we are not alone in feeling national pride.

The only obstacle we have is the fear that if we transform ourselves and truly set the people free, we may lose what we have now. But what is it that we “have” that makes us so fearful of change and criticism? We have an identity problem. As a people we lack a truly national identity, and we lack confidence and even a national consciousness. This is the crux of the problem.

The need for a national identity is present everywhere in society: the dress code in government schools as well as the educational curriculum (particularly the compulsory subject, History) are feeble attempts at forging this identity. Likewise, Malay leaders – especially those moulded early in their lives by right-wing views and misplaced nationalism – never fail to impress on others the need for strong nationalism and national identity. The whole concept of *Ketuanan Melayu* is predicated on the necessity that the majority race forms the superstructure of this identity as expressed in religious, cultural and social values. This is what the group means when it says that *Ketuanan Melayu* is “non-negotiable”.

It is not necessarily a bad thing if the majority ethnic group has an identity that makes it secure in itself and the paradigm it operates in. The problem in Malaysia is that some Malays remain forever unsure of themselves and who they are. This fundamental insecurity – the lack of awareness and confidence in one’s own psyche and consciousness – renders impossible any attempt at creating a supra-national identity that embraces non-Malay and non-Muslim elements. In any plural society, it is difficult to develop a cohesive national identity unless the majority ethnicity already has an entrenched and secure identity: they must be sure of themselves if they are to have nothing to fear from others.

Without such a foundation all we can hope for is the creation of an identity that is “forced” either by law or political power. The problem with this is that it will never evolve into a national identity that everyone can be proud of.

Some of these insecure Malays are too easily provoked when dealing with normal everyday events in the country. Doesn't it appear strange that they should be so fearful of so many things in daily life? They feel as if they are always under siege and, sadly, even if the majority of Malays are not so insecure and fearful, too many Malay political leaders make sure they become so.

Consider the recent craze in the political arena to “save the Malays, the Malay Rulers and Islam.” The Malays are safe in this country, as they have always been. No one is planning to send them back to another country. There is in fact no country for *any* Malaysian today except Malaysia.

Lim Guan Eng, for example, is the Chief Minister of Penang. He is of Chinese origin but he is without question Malaysian. And yet there are some Malays who have been issuing calls to other Malays “warning” them that Penang will soon become a part of Singapore. This is truly bizarre. Penang has always had a Chinese Chief Minister since Independence, so why are people so fearful of Lim? The Democratic Action Party of which Lim is Secretary-General is

certainly not the People's Action Party of Singapore, although the two parties do share the same roots (just as PAS shares its history with UMNO). In any event, no State of the Federation can secede unless agreed to by three-quarters of Members of Parliament. If ethnicity is in question, the Malays and other Bumiputera occupy more than two-thirds of the seats in Parliament. There will be a Malay Parliamentary majority for a long time for the simple reason that the Malays are the majority ethnic group. Why would these Malays want to let Penang secede, to say nothing of other Malaysians who might oppose such a move? If only people were willing to think a little deeper they might realise that none of this actually makes any sense.

There is another group that wants to "save the Malay Rulers". I believe the Rulers have taken care of themselves very well indeed and that it is absolutely laughable that some politicians should want to be "champions" of the monarchs. Could it be that these politicians are so insecure in their own identities that they have to latch on to someone else's all the time? But the fact that such preposterous ideas are mooted with vigour and publicised as part of the election campaign shows that there are indeed Malays out there who may be willing to listen to such harebrained nonsense.

Being Malay

So what is it that makes Malays so susceptible to threats and fears about their existence? The Malays are a unique but unfortunate group of people. I say this because the life of the average Malay is highly regulated: Malays are treated as if they are a protected species in their own country. Their entire existence and their identity are defined by law, making them a unique “race” of people in the world. In the same way, religious bureaucrats (Big Brother) has already carved the mould in which Malays should live: their religion is conferred on them at birth and by law. To be a Malay one has to be Muslim, which would be wonderful if one can thereafter search for the meaning of Islam in one’s own way. But the faith and conscience of the Malays play secondary roles (if at all) in the belief system they are permitted to have. The *akidah* (faith, in Islam) of the Malays is determined by Big Brother too. Big Brother will tell them what and how to believe, and then punish them when their *akidah* strays from the manufactured “norm”. It doesn’t matter if the Malays might be blissfully happy in their relationship with Allah. The faith markers are set for them and while they may outwardly look pious and peaceful, God alone knows their inner feelings.

I was once a witness at a Muslim marriage. The *kadi* (properly a judge, but in Malaysia a religious

official in charge of marriage) was scathing of the groom who, when asked if he prayed five times a day, answered that he “sometimes did not.” This was meant to be a great moment of happiness for the couple and their families, but it turned sour and embarrassing. Instead of taking the answer as an expression of honesty – an attribute a Malay should be proud to have – the groom was admonished in front of everyone for his perceived personal failings as a Muslim. How can we ever develop a Malay-Muslim identity when we are not even allowed the simple freedom of being ourselves on our wedding day?

There is another requirement in the legal definition of “Malay”, that is, the person must practise Malay customs. Perhaps the Constitution should not have taken the trouble to define “Malay” so closely because it causes all sorts of unnecessary problems. What is a Malay custom today? For example, if you are a member of the English-speaking urban middle class and your daughter has her wedding in a posh hotel ballroom, then you would probably get her to wear Malay dress for the ceremony and then change into a Western gown to cut the cake. The music would probably be Western too, and the stories about how the couple met, which universities they went to and how they fell in love would probably all be in English. This is certainly not a Malay custom.

On the other hand, if you were educated in the Arabic or *pondok* school system and then graduated in Yemen or Pakistan, your customs and lifestyle might be markedly different. You might detest the opulence and excesses of the Western lifestyle. You might also consider the *bersanding* (when the bride and groom sit on a dais as in a Hindu wedding) to be completely un-Islamic and therefore un-Malay. You might not have music of any kind at the ceremony, and the more austere and sparse the environment, the better.

Now, who is a Malay?

This is what I mean by the legal definition causing immense problems for Malays, but they are of course not confined to these examples. What comes naturally to the Malays (by reason of innate human experience, values and upbringing) and what the authorities expect of them are completely different. This mismatch has existed for a long time and has caused a deep disturbance in the collective psyche of the Malays. Many spend the rest of their lives after childhood trying to cope with false expectations. It is certainly painful and fatal to the development of a confident Malay identity.

It is for these reasons that culture is a barren land for the Malays. I say this because Big Brother does not want the Malays to know that, once upon a time, they were an animistic people who became Buddhist-Hindu for at least a thousand years before Islam came to our

shores. The long cultural history that developed in the pre-Islamic period left many Hindu-Buddhist traces in the artistic and cultural practices of the Malays. However, there are many “revisionists” today who seek to expunge all of this from history so that Malays will forget that they were once non-Muslims. In doing so, Malay culture has become almost completely lifeless.

How many traditional performing arts have been banned as un-Islamic and harmful to the faith? *Mak yong*, *menora* and *wayang kulit* have all but disappeared, as have many of the traditional *pantun*. What culture we have now persists only in re-runs of P. Ramlee movies on TV (for which I am very grateful), and at least these movies can still give us a glimpse of a past when Malays were apparently capable of having fun.

So how does one develop an identity and cultural values when the art of living is always determined by someone else? It is a great shame that culturally talented Malays are not allowed to grow and blossom as their counterparts do in other countries. Particularly deplorable is what has happened to the art of wood engraving and sculpture. Someone should stop the clerics from killing our arts by banning them or declaring that figure sculpting and woodcarving are “un-Islamic”.

Here I believe the Malay Rulers, who are quite secure in their identities, can help formulate and instil

a new sense of confidence in the Malays so that they can believe that they do have an identity after all, and in fact never really lost it. I wish that one Malay Ruler in particular would actively promote *mak yong*, *menora* and *wayang kulit* to set an example for the revival of other nearly lost traditions.

Why must everything be made difficult and obstacles put up to discourage the growth of one's personal skills? Another Malay Ruler could be an active patron of music or any other of the arts and disciplines that bring out the best in people. Yet another Malay Ruler might develop an interest and passion in something like chess, or some other competitive game that exercises the intellect. Malays are generally quite laid-back in their personality and don't seem willing to rely too much on using their minds. And yet we all recognise that logic and critical thinking are central to human reasoning and evaluation. Let the politicians run football matches and hockey games. The Malay Rulers can show leadership in pursuits that enhance the mind and spirit.

This brings me to the point I made earlier: if the Malays are allowed to develop themselves and to have a clear sense of their own identity, and if they then proceed to enrich themselves in the arts, music and other activities, it would be very much easier for them to relate to and engage non-Malays at least in everyday life if not beyond. So, instead of banning

yoga for Muslims (which is apparently due to the humming of the mantra, though how humming alone can affect one's faith or *akidah* is beyond me), the yoga-practising Malay will have the chance to talk to and discover meditation techniques from other participants. It seems almost too obvious to say that shared interests are one way people become friends. And if friendships can be built over things that are *shared*, then a national identity will surely evolve when different communities do even more things together. Yes, I have oversimplified my recipe for the creation of a national identity, but I suspect that it is not far from the truth.

The problem of identity

We obviously need a common national identity if we are to discard the ethnic and communal crutches that keep hobbling us. I believe that this identity can be forged from the values we already share. What values? I mean those principles found in someone's character that society as a whole considers exemplary and desirable for the greater good. Courage and friendliness are values. So are sincerity, honesty, and even (or, perhaps, especially) the ability to stand up for these principles. Even promptness is a value that can help shape the identity of the nation.

Of course there is no assurance that the mere possession of a common identity will automatically prevent carnage and war in a society. If we remember Old Europe before the two Great Wars, its countries were homogenous culturally but this didn't stop them from killing each other with a ferocity that was unknown until then in the history of the world. What is certainly true, however, is that without shared values and a shared identity, a nation will have no hope whatsoever of providing its people the character and collective purpose necessary to succeed and prosper. Japan, China, India, the United States and the countries of Europe – all the successful nations of the modern world have been built on the shared values, identity and purpose of their various peoples.

But there can be no Malaysian identity if there isn't first a clear understanding of the Malay identity. The majority component of any society forms its principal character and bears much of the national identity. What then is the personality and character of the Malays? I am not sure if anyone can be certain what constitutes a Malay in the 21st century, but the first thing that comes to mind is the fact that religion plays an important part in their lives. This is not to say that all Malays lead a saintly sin-free existence and that none gambles or commits adultery – they certainly do – but I believe that Malays by and large know their religion as it has been taught to them.

Islam, however, has shown different sides throughout history. We have seen an Islam that promotes peace and harmony, provides justice for all and is a guardian of the poor and the weak. We know that under Muslim rule the world benefited from the proliferation of universities and centres of education that (ironically) preserved Western learning when Europe itself was in the Dark Ages.

In our own time, however, we have seen the dark side of the Muslims. Terrorist organisations have sprung up all over the world and they do nothing but perpetrate acts of violence and brutality in the name of religion. There are notable Malay terrorists and infamous bomb-makers operating in the southern Philippines and Indonesia – and a few have met their wish to die for a cause, whatever that might be.

The Malays have a choice. They can be Muslims who are contemporary, peaceful, open and understanding of others, or they can be violent fanatics who see enemies everywhere. If the Malays allow their collective character and personality to be shaped by the extremes in society, then the Malaysian character and identity will be shaped accordingly. But if the Malays can adopt the positive values of the religion as their guiding principles then the Malaysian personality will evolve along a different path. This path is more likely to be welcomed by the non-Muslim communities in Malaysia and it will augur well for the future.

As it stands, there is a different dynamic at work: I observe, for example, that the Malays receive favours quite freely. If someone wants to pay for their meals, or even buy them things, they almost without fail accept with gratitude. They even regard a refusal of such offers as rude. This attitude has resulted in some politicians taking advantage of them by handing out cash and other goodies just before a general election. Indeed, the coming general election will be a test of the Malay character because more money will be used to influence voters than ever before. The bulk of the recipients of this largesse are Malays and if indeed the Barisan Nasional retains power, one can say with some certainty that the Malays are tolerant of bribery and corruption, or at best that they are too unsophisticated to recognise when they are being bribed. Whatever it is, the attitude will forge and shape our national identity, and we might end up becoming a nation that accepts corruption as a way of life, if we haven't already.

Despite the omnipresence of religion in Malay society, those at the apex of the community generally tend to be "flexible" on many things. In other words, they can be quite value-free. They believe that only the amoral pragmatic approach is best and so we see plenty of betrayals in politics where allies turn into enemies not for principle but for cash. Likewise, there are political leaders who have no qualms

about committing unethical or improper acts in their work and feel no sense of shame in doing so. They see nothing wrong when their children become billionaires and are awarded huge contracts, even though everyone knows that they have been directly influential in the children's so-called success stories.

If this becomes a national trait and part of the Malaysian personality and character, we will undoubtedly see a Malaysian identity being built on value-free enterprise. The only consideration that matters in such a society is the right amount of money. Greed will be our primary motivation, and this new influence will become so pervasive that I don't think there will be a force strong enough to stem the tide. Everything from a sack of rice to honour and matters of principle will become negotiable. The few leaders who take a stand on something will soon see the futility of their efforts when their followers desert them en masse. I speak from experience, but perhaps you too can see this for yourself.

And yet the majority of Malays are dead against corruption and unfair practices. I sense in the Malays a deep disgust against all forms of injustice and they genuinely do want to clean up all wrongdoing in government. For now, they might not be very vocal in their opposition to government misdeeds, but they may show their displeasure at the ballot box. If the Malays truly want to see real change in the country's policies,

I will be very surprised if they continue supporting the current Government at the next general election. And if I am correct in this prognosis, I believe we will see the next Government performing a real clean-up. The fight against corruption will be undertaken with more seriousness and Malaysia will have the chance to have an administration with some degree of accountability and transparency.

What is indisputable is that many Malays are friendly and trustworthy. They are very accommodating and perhaps this helps explain our collective success in obtaining Independence on the basis of compromise and consensus. I think that these attributes – trust and friendship – are the Malays' strongest points of reference in building their identity and hence our national identity. Despite serious efforts to break up the trust between Malays and non-Malays for political reasons, I do not see that really happening. The Chinese sense of pragmatism and their realistic assessment of their position in the political establishment of the country should make it easier for the Malays to believe that their political power will always remain intact. If this confidence can be encouraged, I believe the Malays will be willing to cooperate with and befriend the Chinese and other races much more closely, as their forefathers used to. The future would be bright for Malaysia.

Who shall lead the Malays in this? The most visible of them are the Rulers. The values the Rulers hold, the respect they bear and the character they display are the keys to forging and creating a national identity and culture – not merely the public displays during the annual *Merdeka* Parade, but the more lasting kind that brings out the deepest characteristics of Malaysians that are born of true comradeship. The people of this country have waited a very long time for the blossoming of the unity and friendship of the various communities. The Malay Rulers, as exemplary leaders of the nation, thus have a golden opportunity to play an important part: they are respected by all and can engender a unity and an identity that is cherished by all.

A return to the *Rukun Negara*

The thing is, we don't have to look far for a set of principles to uphold: the *Rukun Negara* contains our shared values as a nation, or at least this was what the leaders of the 1970s believed. Living these values, however, is a different thing altogether. Why is the *Rukun Negara* not as effective in providing the building blocks of nation-building as, for example, Indonesia's *Pancasila*? I believe it is due to the lack of application and conviction on the part of our present leaders. It would have been different if our leaders

had wholeheartedly embraced the principles of the *Rukun Negara*, for the framework of our identity would at least had an outline, unlike now where we seem perpetually stuck with meaningless sloganeering.

I fervently hope that the Malay Rulers will adopt the principles of the *Rukun Negara* in the discharge of their duties, and I hope they will visibly espouse these values in their speeches and actions as an example for others. These are universal principles and, more importantly, they are by, for, and of our country. None may accuse the Rulers of partisanship if they publicly champion the *Rukun Negara*; instead, the people will be grateful that their monarchs have given sufficient care and thought to the need for unity amid so much diversity. The position of the Rulers puts them in an ideal situation to inculcate the right values and standards of behaviour to promote a better understanding among all citizens. This is so much better than espousing and supporting partisan ideologies that do not reflect the aspirations of Malaysians as a whole.

Is there an alternative to the *Rukun Negara*? There is nothing better at the moment and I do not believe that we will have another effort to bring about the cohesiveness necessary for creating a national identity – not for a long time. The attitude now is “let’s live separate lives: as long as you don’t disturb me and I you, all will be well.” This makes us

a nation without a soul, but with plenty of money and scandalous conduct. The role of the Rulers in putting forward a moral and ethical agenda for the country, if we ever have such a thing, would be priceless and the event itself, historic. This is more than merely filling up a long-neglected pothole that will undoubtedly endanger the journey of future Malaysians. It is in fact a new lease of life for the entire nation.

Such an agenda might be difficult for politicians, but poses no danger at all to the Rulers. Politicians naturally tend not to approve of any initiative that might negatively affect their popularity. As a result, they are averse to dealing with complex issues and would rather pay to solve problems, that is, by throwing money at them. I believe, however, that the special position of the monarchs will give them sufficient latitude to improvise and introduce new ideas without generating much opposition.

This is not to say that it will be plain sailing all the way for the Rulers. Dealing with ultra-conservatives is never easy, but if the Rulers were to fail in bringing about a change in the mindset of the Malays, then I doubt anyone else can succeed. Granted that issues such as freedom of religion and the rights of women are complex and emotive, I believe that the Malays maintain a very subservient attitude towards their monarchs. Some call this a feudal hangover but I believe it can also be a source of

change for the Malays. The Malays do tend to accept the advice of their superiors readily and without much question. This characteristic might have altered a little today, but not by much, and if change does in fact take place in the Malay world it is because Malay leaders have advised them so. All we need today is for the Rulers to “push the envelope” in order to transform the Malay mind where no politician can. We must, in a very real sense, use the feudal mentality to create a modern critical democracy.

Finally, it would be easier for the Rulers than the politicians to show by example what honest living means. The ethical standards of our political leaders have dropped below zero and, more than ever, the people expect integrity and honesty from their leaders. The Malay Rulers, because of their wealth and standing, are best positioned to show by their own conduct how leaders should behave and carry themselves. This positive influence and advice is entirely feasible although some might not expect it from our Rulers. And because it is unexpected, it will be so much more powerful.

The moderates must prevail

If it is to mean anything, the new Malaysian identity must contain a Malay-Muslim identity that fits into, enriches, and is enriched by, the cultures of other

communities. This requires that the Malays discard their insecurity, as well as – and more importantly – the overcompensation for that insecurity by proclaiming that they are superior to everyone else.

The Malay-Muslim identity suffers from the same fate as other Muslim communities around the world: they are unable to present cohesive, consistent and identifiable characteristics and value systems that fit with the times because they are torn between moderates and extremists. By “moderates” I mean those who seek to deal with modern times by facing those challenges squarely in the face, while the extremists are reactionary and inclined to live in or return to some imaginary Golden Age of the past.

What do I mean? Moderate Muslims regard their relationship with God as based on trust between God and humanity. The Quran describes Creation as the moment in which humanity was entrusted with a responsibility: God endowed humanity with rationality and the ability to differentiate right from wrong. He made us His agents on earth and entrusted us with the responsibility of civilising the mortal world. To the moderates, the attribute of Godliness includes being inherently and fundamentally moral and good. It means being ethical in the sense that God shares with us an objective standard for beauty, morality and goodness. For example, civilising the mortal world means that we must strive to propagate

Divine attributes and qualities such as justice, mercy, compassion and beauty. In contrast, to condone and allow hatred, injustice and ugliness means that we have failed to discharge our obligations to God. The Quran explicitly states that any action that damages the world is a terrible sin. It is *fasad fi al-ard*: an act that corrupts the earth by destroying the beauty of Creation. It is among the worst blasphemies.

The earth was given to humanity in trust and we share the burden of ensuring that the attributes that constitute the essence of Godliness find their place in our world. The purpose of the gift of rationality is so that we may investigate and seek the meaning of Godliness as well as its opposite, Evil. God charges Muslims with a sacred and central obligation: to do good and to forbid evil, and to bear witness upon humanity for God. To the moderates, God is too great to be just the embodiment of religious laws and rituals. The *Syariah* may help Muslims in their quest for Godliness but the laws of men are not the laws of God. And if the ultimate objective of law is to achieve goodness and justice, any application of the law that causes suffering, injustice or misery means that the law does not serve its purpose.

To the moderates, life is an ever-changing situation. God wants us to improvise, to adapt and to change and always to trust our minds. We have nothing to fear about the strength of our faith just because

we live with non-Muslims or have disagreements with other Muslims about the practices and rituals of Islam. The core beliefs of the religion, including the Five Pillars, are fixed and that's all that is required of a good Muslim.

The extremists see things very differently. Extremists regard the worship of God as central to mortal existence. Humans were created to submit to God by prayer and other rituals that must be performed “correctly”. Extremists believe that it is only by performing acts of submission in the “approved” manner that Muslims will gain salvation. Their relationship with God is formal and takes the form of an inferior and a superior. God is to be feared and obeyed. The *Syariah* is already perfect and therefore any action that ensures that Muslims comply with these laws is justifiable regardless of the real consequences. The social impact that the *Syariah* might have on the people is considered irrelevant. This is why the Taliban in Afghanistan were oblivious to the social suffering caused by the laws that they enforced – since they believed the law was Divine, there was no point in evaluating its actual impact on the people. To the extremists, there is nothing else that Muslims need to do except to obey the laws and perform the rituals of Islam.

Islam, like other religions, is clearly a powerful force that is able to push its believers towards the

abyss of hate – or it can carry them to great heights of love and enlightenment. While God is the Arbiter of all things and can do and undo everything He chooses, His believers are the ones who will determine if the potential to do good is realised. Likewise, it is up to humanity to decide if it will do harm. As in all times, the future of Islam in the world today depends on its believers. Do we follow the narrow and feudalistic Wahabbis or the more progressive Islam of Indonesia and Turkey? Even the *Ikhwan al-Muslimin* (the Muslim Brotherhood) in Egypt has shown its adaptive character and willingness to accommodate the demands of all Egyptians for democratic rights and personal freedom. No doubt the future lies with the Muslims who are prepared to follow the great Islamic tradition of intellectual vigour, and who are willing to fight for justice for the poor, the dispossessed and the marginalised. Muslims must choose to embrace modernity and rebuild the world rather than destroy it.

Muslims should not fear religious reform because reform does not imply that Islam is faulty. It merely means that for God's Message to be properly understood we must continuously do things differently so that we can optimise and maximise our ability to help improve the fate of mankind. This is His principal message in the Quran. What we must emphasise is the need for Muslims to accept

that the impact of Islam in the modern world will be greater if the humanistic – not the extremist – form of Islam prevails. By this I mean that our religious orientation must focus on ending or reducing human suffering, and that we must believe that the wellbeing and progress of *all* humanity is a Godly task. The universal challenge and obligation that confronts Islam today is how to harness and direct the powerful force of religion towards the pursuit of happiness and goodness in life.

This is the state of Islam in the world and so it is also in Malaysia. Are the Malays and their leaders content with following the strictures and practices of the Wahabbis or are they ready to seize the moment to expand and develop the vast potential that Islam brings? It is absurd that Islam, a rich and universal religion, should be submerged by some fanatical groups emanating from the desert of Najd in Saudi Arabia and from the teachings of a single 18th-century theologian, Muhammad ibn Abd al-Wahab. Why should his teachings, which oppose all forms of intellectual rationality and moderate behaviour, become the norm in Islam? Malaysia and Indonesia have more Muslims than the entire Arab world and yet in Malaysia we don't seem to have the faith and conviction to shape and promote the true teachings of Islam, which existed long before the Wahabbis and Saudis hijacked the great religion.

We must have a new civilisational approach in Islam. Bring back *Islam Hadhari* if we need to, but since Malaysia is so desperately keen to be a part of the First World, may I suggest that we first become an exemplary Muslim country governed as dictated by God the Almighty, the Compassionate and the Merciful, and not by a band of wannabe-desert clerics?

I remember that the late Abdurrahman Wahid, the Indonesian scholar and President, lamented that his compatriots were unwilling to draw on their knowledge to forge a new Muslim identity instead of parroting the Saudi Arabs. In Malaysia, our Malay Rulers are the custodians of Islam. They are in a prime position to help define and establish a new moderate Malay-Muslim identity that we can hold up as a beacon to the Muslim world. With the Arab World now changing rapidly in the socioeconomic and political spheres, the resistance of the old order is crumbling fast. It is impossible even for Saudi Arabia, a conservative Muslim country that controls the Holy Cities of Mecca and Medina (and has lots of oil money to boot), to continue spreading its 18th-century tribal worldview in the name of religion.

Winning the love of the *rakyat*

How can the Malay Rulers achieve this? They can go down to the ground, from the *kampung* to the town alleys, so they can be better acquainted with the daily challenges that the people must face. It's no longer enough to only meet the people for photo shoots, at birthday celebrations or during the festivals. The Rulers must work to win the *rakyat's* love, just as Sultan Alauddin Riayat Shah did in Malacca many centuries ago.

As I discussed in the last two chapters, the Rulers can make themselves especially relevant today by helping to mitigate the effects of creeping Islamisation in our society. There are so many instances in which extreme or overly-emotional voices are dominating the subject of religion and Islam, and we need cooler heads to prevail.

This is, however, an extremely delicate role to play, even for the Rulers. They must do so without forgetting that they are Rulers not just for Malays and Muslims, but for all Malaysians belonging to different faiths. The Rulers must be careful that their words do not alienate other believers. I have yet to hear a Thai monarch talking about his duty to protect Buddhism, or the Japanese Emperor saying he must protect Shintoism, or the Queen of England declaring that she is here to defend Anglican Christianity alone.

The implication of such statements would be that the Ruler is not concerned about other believers, and that goes against the understanding that he will protect all his subjects, of all faiths.

Unfortunately, our Malay leaders like to show their Islamic credentials with great enthusiasm, more than I think they should. It borders on being political. Muslims don't need to put their piety on display for all to see and admire. In any case, while the Ruler is the head of religion, he is not one in the mould of a caliph. He is still a constitutional monarch and should therefore leave the administration and management of religious issues to his Chief Minister and the religious department officials.

At most he can offer advice and counsel them, as all wise rulers should from time to time. He could help to encourage a measured response to the Islamic issues of our day, perhaps by advocating academic research so that the emotions that too often dominate this space are tempered by reason. But he should never be on the frontlines engaging in public debates and courting controversy because he has to be respected by all.

I still believe that the Rulers are the best candidates for this task as politicians who have tried to take it up before have ended up being accused of having a different agenda. This is not to say that I think political leaders should abdicate the responsibility

of curtailing religious extremism, but the simple fact is their opponents would immediately politicise their intentions. This is arguably what happened to former Prime Minister Tun Abdullah Ahmad Badawi when he tried to launch *Islam Hadhari*. I believe the policy was a sincere attempt to return the religious conversation to a place of moderation, but partisan politics and a lack of intellectual commitment made sure that *Islam Hadhari* never got off the ground. In fact, after Pak Lah's tenure, it was promptly shelved and we never heard of it again. I wonder if it might have had a better chance of taking hold if the King had stood behind it instead.

Another reason why the Rulers can take this role is because they have the ear of the Government. Giving long lectures for public consumption that berate political leaders does not serve any purpose. The Rulers should instead quietly whisper to the Government what needs to be done. A wise monarch does not show he has power. He does not speak like a demagogue for his authority is deep and sublime. The respect that he has will carry his wishes far and wide. No Constitution or promulgation or proclamation can do that for him.

No court decisions, no matter how high they come from, can give the Rulers what they need right now. They need acceptance from the *rakyat* and they will get that once the *rakyat* believe that they have

abandoned the old ways. They must not compete with the *rakyat* for business, they must not play politics to thwart what political dreams the *rakyat* may have, and most importantly, they must not be above the law. With these simple steps, the glory days of the monarchy may return.

Glossary

<i>Akidah</i>	Belief; faith; confidence, in Islam.
<i>Amin</i>	Trustee.
<i>Aurat</i>	Parts of the body that should not be exposed according to Islamic belief.
<i>Bahasa</i>	Language.
<i>Baitul Mal</i>	Muslim public treasury.
<i>Bersanding</i>	When the bride and groom sit on a dais as in a Hindu wedding.
<i>Biadab</i>	Ill-mannered; impolite; discourteous.
<i>Daulat</i>	Sovereignty; majesty; kingly power.
<i>Dewan</i>	Hall; council.
<i>Dewan Negara</i>	Senate.
<i>Dewan Rakyat</i>	House of Representatives (Lower House of Parliament).
<i>Fasad fi al-ard</i>	An act that corrupts the earth by destroying the beauty of Creation.
<i>Fiqh</i>	Islamic jurisprudence.

<i>Fatwa</i>	A legal opinion issued by a Muslim scholar on a matter of Islamic law. In many cases, the scholar or the <i>fatwa</i> itself can bear much political and social weight, compelling observation and even agreement.
<i>Grundnorm</i>	(German) The supreme law; the basic law.
<i>Hadazri</i>	Adopting core principles of Islam in government.
<i>Hadhari / Islam Hadhari</i>	An attempt to reorganise Muslim thought in Malaysia to make it more adaptable to the new world, to solve the problems of the Muslim <i>ummah</i> efficiently and effectively, in the new age of modernisation.
<i>Hadith</i>	A report of the sayings or actions of Muhammad or his companions, together with the tradition of its chain of transmission.
<i>Hajj</i>	The religious pilgrimage to Mecca that all Muslims try to make at least once in their lives.
<i>Halal</i>	Permitted by Islamic law.
<i>Hari Raya Puasa Aidil Fitri</i>	Muslim holiday that marks the end of <i>Ramadan</i> .
<i>Harta sepencarian</i>	Jointly acquired matrimonial property.

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<i>Hudud</i>	Muslim laws dealing with crime; the bounds of acceptable behaviour and the punishments for serious crimes; in Islamic law, the class of punishments that are fixed for certain crimes that are considered to be “claims of God”, they include: theft, fornication, consumption of alcohol and apostasy.
<i>Hukum syarak</i>	Religious law.
<i>Ijtihad</i>	Reasoning.
<i>Jabatan Kemajuan Islam Malaysia</i>	Department of Islamic Advancement of Malaysia.
<i>Kadi</i>	Properly a Muslim judge, but in Malaysia, a religious official in charge of marriage.
<i>Kafir</i>	Infidel; a person with no religious faith.
<i>Kampung</i>	Village.
<i>Keris</i>	Malay dagger.
<i>Ketuanan Melayu</i>	The concept of Malay supremacy; special rights that non-Malays don't have.
<i>Khalifah</i>	A real absolute ruler of the Islamic era; vicar; the true executive Head of Islam in the Muslim tradition.
<i>Khalwat</i>	Being in a secluded place with someone of the opposite sex who is not a relative.

<i>Madrasah</i>	Islamic school.
<i>Mak yong</i>	A traditional form of dance-drama from northern Malaysia, particularly the state of Kelantan.
<i>Mamak</i>	An Indian-Muslim; half-Malay and half-Indian.
<i>Mazhab</i>	School of Islamic jurisprudence; religious sect or school of thought.
<i>Menora</i>	A folkdance of southern Thailand origin and practiced in the states of Kelantan, Terengganu and Kedah.
<i>Menteri Besar</i>	Chief Executive or Chief Minister of the state government.
<i>Merdeka</i>	Independence.
<i>Muallaf</i>	Convert.
<i>Nusyuz</i>	The disruption of marital harmony, traditionally by the wife; wife's disobedience to her husband.
<i>Pantun</i>	Oral form of a Malay poem (four-line verse).
<i>Permaisuri</i>	Queen.
<i>Pondok</i>	A religious school with self-made lodgings for students.
<i>Rakyat</i>	The people; citizens; the public.

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<i>Ramadan</i>	The ninth month of the Muslim year, when Muslims do not eat or drink between sunrise and sunset.
<i>Rukun</i>	Pillars of Islam.
<i>Rukun Negara</i>	Also known as the National Principles, consist of five articles promulgated by Royal Decree on <i>Merdeka</i> Day, 1970.
<i>Surah</i>	A chapter in the Quran.
<i>Syariah / Syarie</i>	Islamic law.
<i>Tanah Melayu</i>	Malay States.
<i>Taqwa</i>	Protecting oneself from sin.
<i>Tudung</i>	Hijab.
<i>Ulama</i>	Muslim scholars.
<i>Ultra vires</i>	Beyond legal power of authority.
<i>Ummah</i>	Muslim community.
<i>Umrah</i>	The religious pilgrimage to Mecca; a smaller pilgrimage as opposed to the hajj.
<i>Wayang kulit</i>	Traditional Malay shadow-play.
<i>Yang di-Pertuan Agong</i>	King.
<i>Zakat</i>	Tithe.