

Hereditary Rulers and Legal Immunities in Malaysia

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Introduction

Confucius said, "A sovereign who governs a nation by virtue is like the North Pole Star, which remains in its place and the other stars revolve around it". (Lin Yutang (ed), *The Wisdom of Confucius*, 1938.)

A recent tussle in Malaysia has further underlined the dominance of the executive government in the constitutional framework of that country. The latest constitutional spasm arose from the determination of the government of the Prime Minister, Dr Mahathir Mohamad, to effect a change in the immunities conferred by the Malaysian Constitution upon the hereditary Rulers.¹ The episode signals an on-going erosion of royal influence in Malaysia.

Some Aspects of the Constitution of Malaysia

The Federation of Malaysia operates under its Constitution a "unique" system of kingship.² Every five years, the nine hereditary Rulers constituting the "Conference of Rulers" elect one from among their numbers to be the next *Yang di-Pertuan Agong* or King of the Federation.

The "executive authority" of the Federation is vested in the King and is exercisable by him or any Minister authorised by the Cabinet. Unless expressly provided by the Constitution, the King acts in accordance with the advice of the Cabinet or of a Minister

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1 See Shad Saleem Faruqi, "The Sceptre, the Sword and the Constitution at a Crossroad (A Commentary on the Constitution Amendment Bill 1993)" [1993] 1 *Current Law Journal* (March), xlv; Harding, AJ, "The Constitutional Evolution of the Malaysian Monarchy" (SOAS Law Department Working Paper No 4, June 1993).

2 See Raja Azlan Shah, YAM, "The Role of Constitutional Rulers in Malaysia" in Trindade, FA and Lee, HP (eds), *The Constitution of Malaysia: Further Perspectives and Development*, 1986, at 76 - 91; Trindade, FA and Jayakumar, S, "The Supreme Head of the Federation" (1964) 6 *Malaya Law Review* 280; Trindade, FA, "The Constitutional Position of the Yang di-Pertuan Agong" in Suffian, Tun M, Lee, HP and Trindade, FA, *The Constitution of Malaysia: Its Development: 1957-1977*, 1978, at 101 - 122; Sheridan, LA and Groves, HE, *The Constitution of Malaysia*, 4th ed, 1987, at 121 - 132.

acting under the general authority of the Cabinet. The King may act in his discretion in the performance of the following functions:

- (a) the appointment of a Prime Minister;
- (b) the withholding of consent to a request for the dissolution of Parliament;
- (c) the requisition of a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of Their Royal Highnesses, and any action at such a meeting. The King may also act in his discretion in any other case mentioned in the Constitution.

Apart from electing the King and Deputy King (or *Timbalan Yang di-Pertuan Agong*) and agreeing or disagreeing to the extension of any "religious acts, observances or ceremonies to the Federation as a whole", the Conference of Rulers is entrusted with the function of "consenting or withholding consent to any law and making or giving advice on any appointment which under [the] Constitution requires the consent of the Conference or is to be made by or after consultation of the Conference". Article 38(4) provides as follows:

No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.

Article 38(6) reinforces the discretionary nature of the power vested in the members of the Conference of Rulers in relation to Article 38(4). The key provision at the heart of the controversy is Article 181(2) which originally conferred an immunity from judicial proceedings against the Ruler of a State in his personal capacity. Article 32(1) also provided, prior to this crisis, that the King "shall not be liable to any proceedings whatsoever in any court".

A Motion in Parliament

The constitutional tussle began on 10 December, 1992, when the following substantive motion was passed unanimously by the *Dewan Rakyat* (or House of Representatives) of the federal Parliament:³

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

That the House decides that the incident was an abuse of power which goes against the spirit of the federal Constitution and was contrary to the aspirations of the laws of the country which are

3 The motion was tabled by the Deputy Prime Minister, Abdul Ghafar Baba: see *New Straits Times*, 11 December, 1992, at 2.

based on the system of constitutional monarchy and parliamentary democracy.

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

The Prime Minister, both in and outside Parliament, indicated that the Constitution would be amended if such action was necessary in order to prevent any recurrence of the incident.

Background to the Crisis: the "Gomez Incident"

What apparently triggered off the crisis was a reported assault by the Ruler of the State of Johor of a school hockey coach. This alleged assault was linked to an earlier chain of events. Tunku Majid (one of the sons of the Sultan of Johor and a member of the Johor hockey team) had, after the Johor team had lost to the Perak team, allegedly assaulted the Perak hockey goalkeeper. In consequence, Tunku Majid was suspended for five years by the Malaysian Hockey Federation's disciplinary committee after it had conducted a hearing which he did not attend. Soon after his suspension, a number of hockey teams from the State of Johor began to withdraw suddenly from various competitions organised by or associated with the Malaysian Hockey Federation. Mr Douglas Gomez, the college hockey coach of Maktab Sultan Abu Bakar (English College) decided to speak out against the "forced" pullout of his college's hockey players from a prestigious national competition (the Malaysian Hockey Federation - Milo Champion Schools Trophy). Mr Gomez called for the resignation of all Johor Hockey Association office-bearers and bravely said:⁴

I do not mind taking this stand even if it means putting my neck on the line. I know I will be victimised for my outburst but I am prepared to accept any consequences and will go all the way.

Shortly after that, Mr Gomez was summoned to the Istana Bukit Serene, a palace of the Johor Ruler. It was reported that he was taken by a palace official in a car to the palace and that he was at the palace for four hours. In the late afternoon of the same day (that is, Monday, 30 November, 1992), Mr Gomez left a handwritten statement in the Johor Baru office of the *New Straits Times* in which he said:⁵

I, Douglas Gomez, hockey coach of Maktab Sultan Abu Bakar, Johor Baru, wish to inform you that what has been reported in the Press over the last few days is not true and the situation has been blown out of proportions.

4 *New Straits Times*, 29 December, 1992, at 1.

5 *New Straits Times*, 1 December, 1992, at 2.

The next day, Mr Gomez sought medical treatment at a private clinic for "facial cuts and bruises" and was given medical leave. Subsequently, Mr Gomez, possibly moved by encouragement from the government, lodged a police report alleging that the Sultan of Johor had assaulted him at the palace. Thus a major confrontation was set in motion between the government and the Malay Rulers.

The Remedy Proposed by the Government

The day after the Dewan Rakyat had unanimously passed the motion tabled by the Deputy Prime Minister, the police were directed by the federal Attorney-General to charge the Sultan of Johor's son in respect of his alleged assault against the Perak hockey goalkeeper, and were further authorised to investigate assault charges against the Sultan himself.⁶

The United Malays National Organisation ("UMNO")⁷ supreme council at an urgent meeting resolved that the government should amend the Constitution. This proposal was adopted by the supreme council of the Barisan Nasional⁸ at an emergency meeting. The Prime Minister, after chairing the meeting, announced that a special session of Parliament would be called in a month's time to effect the constitutional changes. On 6 January, 1993, the Cabinet unanimously approved a draft of the proposed constitutional amendments.

Why was it necessary to amend the Constitution to deal with a case of criminal assault? The answer lies in Article 181(2) which provided as follows: "No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity."

This Article has lain dormant within the Constitution for the first 25 years since the attainment of independence in 1957. However, disquiet began to surface regarding the scope of this

6 On 26 January, 1993, Tunku Majid and the Perak goalkeeper agreed to "compound" the offence: Tunku Majid also paid \$1,000(RM) to the goalkeeper. The Court consented to the settlement: *New Straits Times*, 27 January, 1993, at 1.

7 The dominant political party in Malaysia.

8 Barisan Nasional or "National Front" is a coalition of a number of political parties. The dominant party is UMNO. The other major parties are MCA (or "Malaysian Chinese Association") and MIC (or "Malaysian Indian Congress").

Article. Tunku Abdul Rahman, the first Prime Minister of Malaysia, as far back as 31 August, 1984, had written as follows:⁹

[A] Ruler who commits a breach of any federal law is not subject to the jurisdiction of the courts.

At federal level, therefore, nothing can be done in relation to, for example (taking an extreme case), a Ruler maliciously killing a citizen - although subsequent public outcry may well give rise to a need to amend the law. ...

What will happen, I repeat, if a Ruler shoots down in cold blood a citizen of the state, or if he in an extreme case of recklessness knocked down a person on the road and injured or killed him? As far as I can see, no action can be taken against him.

The Tunku then added:¹⁰

In this democratic, egalitarian age it is undesirable that anyone should be completely above the law. If the Ruler is to be made liable, as in the case of a private person, under the provision of the criminal law of Malaysia (which is a federal law), then appropriate constitutional amendment is necessary.

He called for the appointment of a Royal Commission to review the Constitution.

The Tunku reiterated his concern when he declared open an Aliran Conference on "Reflections on the Malaysian Constitution: 30 years after Merdeka" on 15 August, 1987. He said:¹¹

What I am concerned about is the position of His Majesty the Yang Di-Pertuan Agong and the Rulers who are above the law, which means that they are free to commit crime without being subject to prosecution under the law. ...

Firstly I feel that no person should be exempted from the law but a special court might be provided to deal with the offences committed by those above the law. This court should be made up of their brother rulers whose decision shall hold good. This is done in order to protect the fundamental rights of all citizens of this country.

The Proposed Changes

The draft Constitution (Amendment) Bill which was approved by the Cabinet on 6 January, 1993 ("the first draft") was submitted to the Malay Rulers during an informal meeting with Dr Mahathir and other UMNO leaders on 9 January, 1993. The Rulers requested a

9 Tunku Abdul Rahman Putra, *Challenging Times*, Pelanduk Publications, 1986, at 36.

10 See footnote 9.

11 *Reflections on the Malaysian Constitution*, Aliran, 1987, at 20.

week for them to formulate a stand on the proposed constitutional amendments to remove their immunities.

At an informal meeting with the Rulers on 17 January, 1993, it appeared that agreement was reached between four Rulers and two Regents¹² and a government delegation led by Dr Mahathir. It was also reported that the Rulers present had made some proposals to modify some of the proposed amendments which were agreed to by the government.

The government received a jolt when the next day, 18 January, 1993, the Conference of Rulers at a special meeting unanimously decided that it was not "in a position at this stage to give its consent to certain proposals in the original Bill and to the subsequent amendment thereto without further deliberation and consultation with the government".¹³ The Conference of Rulers expressed the view that, having regard to the far-reaching consequences of the radical changes on the sovereignty of the Malay Rulers and on the power of the States pertaining to the Malay Rulers, it was desirable that "a more detailed study of the principles and the mechanisms involved in the proposed amendments incorporated in the Bill be made".¹⁴

A major concession made by the government in the second draft was the establishment of a Special Court to try offences committed by the King or a Malay Ruler and all civil cases involving them. The Conference of Rulers responded to this concession as follows:¹⁵

The Conference of Rulers is of the view that such a court is not the most suitable forum for such a purpose. The Conference of Rulers recommends that an Advisory Board be established whose function would be to make recommendations to the appropriate state authority for the removal of the Ruler before he is charged or sued.

The mechanics and the details relating to the Advisory Board and of the said state authority, together with its powers and composition are matters which need further consideration and discussion. Such an important issue cannot, in the view of the Conference of Rulers, be decided in haste, without mature deliberation and consultation.

Undeterred by this eleventh hour declaration of its stand by the Conference of Rulers, Dr Mahathir proceeded to table the

12 The Sultans of Kelantan, Johor and Kedah were absent from this informal meeting.

13 See *New Straits Times*, 19 January, 1993, at 2, for full text of the statement issued by the Keeper of the Rulers' Seal.

14 See footnote 13.

15 See footnote 13.

Constitution (Amendment) Bill 1993 at a special sitting of the Dewan Rakyat. The Bill was passed with the requisite two-thirds majority on 19 January, 1993 and was also passed by the Dewan Negara the next day. The topic of speculation was whether the King would ultimately assent to the legislation. In response to a journalist's question, Dr Mahathir was reported to have said as follows:¹⁶

If the King refuses to give his assent, the Bill goes back to Parliament and once approved by both Houses will become law with or without the royal assent. ...

If the process is disputed, then a decision can be made by the courts. As a government which strongly upholds the rule of law, we will abide by the court's decision.

The King returned the Bill to Parliament with some proposed modifications agreed to by the Conference of Rulers. The Bill with the proposed modifications ("the third draft") was passed by the Dewan Rakyat on 9 March, 1993.¹⁷

The central aim of this third (and final) draft Constitution (Amendment) Bill 1993 was to bring about an *effective* removal of the Rulers' *personal* immunity:

(1) Article 32, clause (1) originally provided as follows:

There shall be a Supreme Head of the Federation, to be called the Yang di-Pertuan Agong, who shall take precedence over all persons in the Federation and shall not be liable to any proceedings whatsoever in any court.

This clause has been altered by the addition of the following words after "court": "Except in the Special Court established under Part XV in respect only of anything done or omitted to be done by him in the exercise or purported exercise of his functions under any written law." The scope of the original Article 32(1) was subjected to different interpretations: did it confer a "complete immunity" (that is, in relation to acts done in an official or personal capacity); or was it protecting the King in respect of his personal capacity only?¹⁸

16 *New Straits Times*, 19 January, 1993, at 1.

17 The Bill with the modifications was passed by 167 votes out of a total of 180. Six Pas members abstained while one was absent; six Semangat 46 members absented themselves from Parliament. See *New Straits Times*, 10 March, 1993, at 1.

18 For a discussion, see Trindade, "The Constitutional Position of the Yang di-Pertuan Agong" in work cited at footnote 2, at 107 - 108.

The effect of the change is to make it very clear that the immunity of the King from the legal process relates only to the performance of his official duties.

- (2) Article 181(2), which was the main bone of contention, was amended to read as follows:

No proceedings whatsoever shall be brought in any court against the Ruler of a State except in the Special Court established under Part XV in respect only of anything done or omitted to be done by him in the exercise or purported exercise of his functions under any written law.

The removal of the Malay Rulers' personal immunity by the amended Article 181(2) was reinforced by the new Article 181(3) which renders void "any law which provides for the immunity of the Ruler of a State in his personal capacity from any proceedings whatsoever in any court or attaches sanctity to his residence".

- (3) To make the removal of personal immunity of the Malay Rulers effective, it was necessary to effect changes to their power to grant pardons. Under the original terms of Article 42, the King is invested with the power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial and all offences committed in the federal territories.¹⁹ The Ruler or the *Yang di-Pertua Negeri* of a State has power to grant pardons, reprieves and respites in respect of all other offences in his State. Under Article 42 in its unamended form, if, for instance, the son of the Sultan of Johor had been convicted of the assault on the Perak goalkeeper, it was possible for the Sultan to immediately pardon him. Similarly, if the Sultan himself had been convicted for the alleged assault on Mr Gomez, he could have simply pardoned himself. As a result of the new clause (12) to Article 42, a Ruler is precluded from hearing an appeal on his own behalf, and from pardoning himself. In the case of the King or a Ruler or his consort seeking pardon, the case will be heard and decided by the Conference of Rulers. However, the Conference of Rulers, before arriving at its decision, is obligated to consider any written opinion of the Attorney-General. A Ruler is also precluded from hearing an appeal for, or pardoning, his children. In such an instance, the Conference of Rulers will elect another Ruler to hear and decide the matter, who shall act in accordance with the advice of the relevant Pardons Board. In the case of the *Yang di-Pertua Negeri* of a State, or his wife, son or daughter, the power to grant pardons, reprieves and respites, is to be exercised by the King acting on the advice of the Pardons

19 Kuala Lumpur and Labuan.

Board constituted for that State in accordance with the provisions of Article 42.

- (4) The second thrust of the amendments aimed at securing the effectiveness of the removal of personal immunity was the amendment of Articles 63 and 72 of the Constitution, which deal with the privileges of the federal Parliament and the State Legislative Assemblies respectively. Under these Articles, as amended by the *Constitution (Amendment) Act 1971*, members of these legislative bodies could not be protected by parliamentary privilege in respect of utterances made in any proceedings of these legislative bodies or their committees if such utterances constituted an offence under the *Sedition Act 1948* as amended by the *Emergency (Essential Powers) Ordinance No 45, 1970*. The amended *Sedition Act 1948* makes it seditious, even in the legislatures, to question the sovereignty or prerogative of the Rulers. Members of these legislatures tread a fine line between permissible speech and sedition in the debates over the legal immunity of the Rulers. Their protection prior to this amendment lay in the fact that the consent of the Attorney-General is required before a prosecution for sedition could be initiated. Although the freedom of the elected representatives to criticise the Malay Rulers has been restored, the freedom does not extend to the advocacy of the abolition of the constitutional position of the King as a Supreme Head of the Federation or the constitutional position of the Ruler of a State.
- (5) A concession made to the Rulers was the establishment of a Special Court after they suggested to the government that they should not be tried in an ordinary court of law. A new Article 182 provides for this Special Court. It shall consist of the Lord President of the Supreme Court, the Chief Justices of the High Courts, and two other people who hold or have held office as judge of the Supreme Court or a High Court appointed by the Conference of Rulers. The Special Court is vested with exclusive jurisdiction to try all offences committed in the Federation by the King or a Ruler and all civil cases by or against the King or a Ruler. It shall have the same jurisdiction and powers as are vested in the inferior courts, the High Court and the Supreme Court by the Constitution or any federal law, and shall apply the practice and procedure of these Courts unless Parliament legislates to the contrary. It is also provided in clause (6) of the new Article 182 that the proceedings in the Special Court shall be decided in accordance with the opinion of the majority of the members. Furthermore, the decision is final and conclusive and shall not be challenged or called in question in any court on any ground.
- (6) The final version of the Constitution (Amendment) Bill 1993 contained modifications proposed by the King and which had

been agreed to by the Conference of Rulers. The modifications consisted of two additions to the Bill. First, a new Article 33A states that if the King is charged with an offence under any law in the Special Court he ceases to exercise his functions. By adding a new s 1A to Part I of the Eighth Schedule to the Constitution, the same applies in respect of the Ruler of a State, that is, he ceases to exercise the functions of the Ruler of the State. These functions in such an event are to be exercised by a Regent or a Council of Regency, as the case may be, appointed in accordance with the State Constitution. It is also provided that where a Ruler is convicted and sentenced to imprisonment for more than one day he shall cease to be the Ruler of the State unless he receives a free pardon.²⁰

- (7) The second modification consists of a new Article 183 which provides that no action (civil or criminal) can be instituted against the King or the Ruler of a State without the consent of the Attorney-General. This modification seeks to ensure that the Rulers "are not dragged to court by people out to embarrass them or for unfounded reasons".²¹

The new Article 183 also declares that no proceedings whatsoever shall be brought in any court against a Ruler in his personal capacity in respect of anything done by him before the coming into force of this Act. This makes it clear that the removal of personal immunity was to operate prospectively. It would mean that the Sultan of Johor was protected from legal proceedings in respect of his alleged assault of Mr Gomez.

Reasons for the Rulers' Backdown

It took less than a month for the Rulers to beat a retreat from their unanimous rejection of the Bill on 18 January, 1993. The Rulers were in a vulnerable position: all channels of popular communications (the press, the radio and television stations) were controlled by or under the influence of the government. Everywhere there were

20 The Prime Minister was reported as saying that the Rulers suggested these modifications "because it would be strange and unacceptable to the public and the Rulers if any one of them continued to exercise his functions after being sentenced or while serving a sentence handed down by the Special Court". Under Article 71(4) the State Constitutions must accord with the provisions of the Eighth Schedule. If the State Governments fail to amend the State Constitution accordingly, the federal Parliament is empowered by Article 71(4) to legislate to give effect to the provisions of the Eighth Schedule in the States concerned.

21 *New Straits Times*, 9 March, 1993, at 4.

“revelations of scandalous waste of public funds, misbehaviour of some Rulers and extravagant life-styles”.²²

These reports covered matters such as “white elephant” palaces constructed for some State Rulers; and the importation of an excessive number of luxury cars without paying import duties and obtaining “approved permits”.²³ Customs officers also began to seize luxury cars which were brought into the country without an approved permit.

The government also decided to withdraw all perks and privileges which were not provided for by law:

- (i) Royal privileges were reviewed by the Foreign Ministry which decided that only Rulers, Regents and their consorts would be issued with diplomatic passports. Other members of royalty would be dealt with on the basis of “deserving cases”.²⁴ This is in contrast to the past practice of five-year diplomatic passports being issued freely to all members of royalty. Furthermore, the new guidelines forbid foreign missions from entertaining the Rulers’ families during private visits abroad and carrying out tasks like booking VIP rooms and executing airport formalities for members of the royal families.
- (ii) The Deputy Health Minister announced that government nurses attached to palaces would be immediately re-deployed if their services were deemed unnecessary.²⁵ It was reported that four palaces were using the services of at least ten nurses daily. Six nurses were apparently used to babysit the King’s grandchildren around-the-clock. Under-utilised royal wards would be open to the public. Apparently, in one case, one Ruler had used the royal ward for only 45 minutes in a year.

22 Government sources were reported as saying that the current King had spent RM75 million since taking up residence in the National Palace in 1989: RM69.32 million were spent on renovating the National Palace.

Details were also provided as follows: \$2.5 million on bedspreads; \$300,000 on constructing a store to keep the bedspreads; \$750,000 for a TV antenna; and \$220,000 to install a new royal crest.

It was also reported that much of the expenditure was incurred without prior consultation with the government. The front-page report of the *New Straits Times* went on to say: “It is estimated that the RM75 million can buy 3,000 units of low-cost houses or two hospitals ... or 46 rural clinics or 46 primary schools ...” (see *New Straits Times*, 23 January, 1993).

23 *New Straits Times*, 3 February, 1993, at 2.

24 *New Straits Times*, 9 February, 1993, at 2.

25 *New Straits Times*, 8 February, 1993, at 2.

- (iii) Notification was given that services provided by the Royal Malaysian Air Force to fly and maintain aircraft of some Rulers (Johor and Pahang) would be terminated. Apparently, 23 RMAF pilots and technicians were on secondment to provide such services.²⁶
- (iv) Guidelines were issued by the Prime Minister's Department which directed federal and State Government officers to ignore certain royal directives and requests, such as orders to transfer officers, discipline them or greet returning royalty during working hours.²⁷
- (v) Free postage facilities previously enjoyed by members of the Royal Family would be restricted or withdrawn altogether.
- (vi) Guidelines were issued to the television and radio networks of the Information Ministry to scale down coverage of royalty. Coverage would be restricted to official occasions and by reference to their news value.²⁸
- (vii) Public discussion was fostered in relation to the dropping of certain court language and terms which were regarded as degrading and contrary to Islamic teachings.²⁹

Reaping What They Have Sown

The Law Minister, referring to a report that certain members of royalty had told foreign news agencies that the Malaysian judiciary was not independent, said that members of royalty should place their confidence in the judicial system and that they should not distrust the system.³⁰

At the same time, an UMNO supreme council member (Datuk Abdul Kadir Sheikh Fadzir) painted a scenario of what would happen if the constitutional amendments were challenged in court. The government would be compelled to substantiate the reasons for the amendments. This would entail a greater revelation of wrongdoings by the Rulers and their families. The government would be compelled to prove these wrongdoings: in cases involving rape or torture the victims would have to be brought forward; witnesses would be produced in open court in relation to these

26 *New Straits Times*, 5 February, 1993, at 1.

27 *New Straits Times*, 5 February, 1993, at 1.

28 *New Straits Times*, 27 January, 1993.

29 *New Straits Times*, 27 January, 1993.

30 *New Straits Times*, 8 February, 1993.

matters and other matters such as "smuggling, refusal to pay loans, cheating and excessive spending".³¹

The Rulers were confronted with a dilemma. The threat of extensive revelations of misconduct on the part of some of the Rulers and their families diminished their appetite for a court challenge to the constitutional validity of the amendments. There was a clear irony in the whole situation in that Dr Mahathir had indicated that if the royal assent was not forthcoming he would nevertheless have proceeded to gazette the legislation³² and that he would leave it to the courts to decide the matter. The irony was that it was the Ruler of Johor who, when he was the King, contributed to the removal of Tun Salleh as Lord President of Malaysia. The failure by the Conference of Rulers to prevent the erosion of judicial independence during the "Salleh affair" left them now hoisted on their own petard: they were not prepared to place their faith in the judiciary to resolve the matter.³³

An Evaluation of the Crisis

The conclusion of the crisis marks a very important turning point in the shaping of the constitutional balance of powers in the Malaysian constitutional system. It also reinforces the clear wishes of the Malaysian people that the Rulers are expected to conduct themselves as constitutional Monarchs within a parliamentary democracy.

The confrontation was inevitable. Unlike the previous Prime Ministers of Malaysia, Dr Mahathir has no royal background. He is therefore not imbued with that degree of deference to the Rulers as to forsake the basic principle that the Rulers are, in fact, constitutional Monarchs. However, Dr Mahathir

31 *New Straits Times*, 5 February, 1993, at 2.

32 Dr Mahathir was seeking to exploit the change in the law-making process which was brought about by the *Constitution (Amendment) Act* 1984. When this legislation was first mooted in 1983 it sparked off a major confrontation between the government and the Rulers: see Lee, HP, "The Malaysian Constitutional Crisis: King, Rulers and Royal Assent" (1984) *LAWASIA* 22 (reprinted in Trindade and Lee (eds), work cited at footnote 2, at 237 - 261; Rawlings, "The Malaysian Constitutional Crisis of 1983" (1986) 35 *International Comparative Law Quarterly* 237.

33 See Tun Salleh Abas, *The Role of the Independent Judiciary*, 1989; Tun Salleh Abas with Das, K, *May Day for Justice*, 1989; Hickling, RH, "The Malaysian Judiciary in Crisis" [1989] *Public Law* 20; Trindade, FA, "The Removal of the Malaysian Judges" (1990) 106 *Law Quarterly Review* 51; Harding, AJ, "The 1988 Constitutional Crisis in Malaysia" (1990) 39 *International Comparative Law Quarterly* 57; Lee, HP, "A Fragile Bastion Under Siege - The 1988 Convulsion in the Malaysian Judiciary" (1990) 17 *Melbourne University Law Review* 386.

would not have achieved ascendancy over the Rulers had it not been for the fact that economic development and government policy have fostered the creation of a large Malay middle-class. Moreover, over the course of time since Independence, the Malays have come to realise that their political and material well-being depends on a strong and united UMNO, the dominant political party in Malaysia. The entry of a number of the Rulers into business ventures also meant competition between the Rulers and the politically well-connected Malays.³⁴ There was bred a sense of frustration and resentment against these Rulers for, in reality, the competition was clearly unfair. State Government ministers and bureaucrats were generally intimidated by their State Rulers. Dr Mahathir, when he initiated action to amend the Constitution, was able to carry the whole party and government with him. The showdown was intended to establish once and for all that true governmental powers lie with the executive arm of government and not the hereditary Rulers.

The Rulers' standing has been, to a considerable extent, diminished by the confrontation. This feature cannot be disguised by the "face-saving" formula embodied in the modifications to the amendment Bill. The diminution was caused to some extent by the backdown of the Rulers. However, the major factors were the disclosures in the media of the extravagance and the profligate use of public monies and the vast business ventures of some of the Rulers.

34 A "Code of Conduct for Rulers" was initiated by UMNO in mid-1992. This Code, which was accepted by the majority of the Rulers, provides in para 6 as follows: "6.1. We shall not actively engage in any commercial enterprise except by way of trust. 6.2. His Royal Highness the Regent may through trustees/nominees participate in any commercial enterprise." The observation was made that "[t]he need for the Code is emblematic of the tensions and adjustments being made to accommodate the proper role of the elected government on the one hand and the hereditary Malay Rulers on the other" (Das, Cyrus V, "The Monarchy in Malaysia: The Sultanate System - Rights, Privileges, And Relations With The Executive Government", Paper delivered at a Conference on "Powers and Functions of Executive Government", LAWASIA Comparative Constitutional Law Interest Group, Melbourne, 18-20 November, 1992).