

## **Shattered Symbiosis: The Road to Conflict between Malay Nationalism and Monarchy**

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The monarchical politics of Malaysia is interesting to both the historian and the sociologist, not least because a traditional institution, kept in being essentially for passive legitimation, has shown a capacity for expanding its role and posing challenges to the more modern political sector which it is supposed to serve. This has occurred despite the nine-part federalistic fragmentation of the institution, the absence of any significant powers vested in the Supreme Ruler (Yang di-Pertuan Agong), and the rotating incumbency of this central office. The capacity for challenge is closely connected with the fact that the legitimation which Malay monarchy has served relates above all to a system of 'universal corporate ranking' in a plural society. This function has enabled monarchy to appeal to a powerful, ethnic vested interest, or 'Malay nationalism', in support of its own perpetuation.<sup>1</sup>

Of course, it is a sociological commonplace that racial appeals and ethnic incorporation provide a basis for solidarity in any plural society across would-be class lines, to the benefit of economically privileged strata. But in the case of Malaysia the Malay middle-class and property-owning interests which benefit from such phenomena do not depend solely on the actions and words of their political party to keep ethnic solidarity alive: they may be said to have tapped the resources of

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1 Thus began an earlier draft of this study, with a different title, completed in mid-1992. Owing to the dramatic events at the end of the year and early in 1993 (referred to hereinafter as 'the 1993 constitutional crisis') the study has had to be substantially rewritten, but the author has benefited, at the same time, from the critical comments of Khoo Boo Teik, Dr Shafruddin Hashim and Professor Hans-Dieter Evers on the earlier draft. Their expenditure of time and trouble is much appreciated. The study was written in Brunei, where the Malaysian press and television are accessible on a daily basis. The government media give only superficial coverage to opposition thinking, but it is hoped that this will not constitute a disadvantage (even in the final section, dealing with the 1993 crisis) for a study not concerned with ideas first and foremost.

monarchy for the same purpose too. The role of monarchy in delivering a more traditional kind of legitimacy to the modern Malay elite by proxy, in return for secure wealth and status, may be characterised as one important but unwritten 'social contract' and 'sociological symbiosis' of contemporary Malaysia - though ostensibly the monarchs uphold the 'privileges' of the Malays as a whole.<sup>2</sup>

Basically the Sultans in their individual domains - the nine Malay States - symbolize, rather than sustain, Malay supremacy.<sup>3</sup> Thus the custodial role seems to be located, constitutionally, with the Conference of Rulers. In their collective capacity they are empowered to veto any legislation which detracts from the 'Special Position of the Malays' (including their own privileges and position). In retrospect, a crucial factor in the making of the Constitution in 1957 was the scepticism of Malay nationalist leaders as to whether Westminster-style democracy would allow the political supremacy of the economically backward Malay race to be maintained. Anxiety about the consequences of any future non-Malay dominance of the legislature lay behind Tunku Abdul Rahman's rejection of the Reid Commission's proposal that Special Rights should be subject to a time limit of 15 years. It is highly relevant to the mood of the Independence period that the enfranchisement of the majority of Chinese still lay ahead and that there was a presumption in favour of increasing the number of urban constituencies at the next delineation, as the urban electorate increased.<sup>4</sup>

In the event, however, the permanent ruling party, the United Malays National Organisation (UMNO), has both defended and advanced the Malay position with utmost effect. Thus the Conference of Rulers never faced a situation (at least until 1983) where the use of its veto might have been applicable. Yet even as of 1971 the political system was very far from delivering a strong sense of security to Malay sentiment. Even in the midst of post-13 May 1969 'restructuring', as the dominant coalition

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- 2 An important commentary during the 1993 constitutional crisis was to point out that the most frightening aspect of the amendments for the rulers was that once subject to normal judicial process, they could be threatened, as debtors, with bankruptcy proceedings: A. Kadir Jasin, "Other Thots: Time to meet royalty issue head-on", *New Sunday Times*, 17 January 1993.
  - 3 The Federation was created simply to accommodate the Sultanates as separate entities; or in other words, "It is not communalism which maintains the States": see B.H. Shafruddin, *The Federal Factor in the Government and Politics of Peninsular Malaysia*. Singapore, O.U.P., 1987.
  - 4 Only in 1962 did this spectre disappear, when the Constitution was amended to allow a 50% instead of 15% disparity between the population size of constituencies.

was being broadened and a New Economic Policy devised, it appeared to Tunku Abdul Rahman's immediate successors (led by Tun Razak) that the constitutional safeguards should be further consolidated, despite their patent lack of relevance and effectiveness in the eyes of Malay radicals (led by Dr Mahathir).<sup>5</sup> So the Constitution was amended in ways which lent additional strength to the institution of monarchy. At the very least it was a psychological turning-point, since the Sedition Act thereafter included in the scope of 'sensitive matters' which could not be questioned - even in Parliament - the position of the Malay rulers; while their veto power was itself defined as a feature of the 'Special Position of the Malays', subject to the collective veto.<sup>6</sup>

Nevertheless, today Malaysia looks back on two decades of New Economic Policy and has seen a profound transformation of Malay society. Dr Mahathir, a prime architect of that transformation even in the early 1970s when he was a radical out of office, has now been Prime Minister for over 12 years. It is hardly a coincidence that the latest of several constitutional crises marks a substantial shift away from Malay nationalist dependence on royalty: indeed the 'elective power' now vaunts its self-sufficiency, and has played up abuses of royal privilege in order to remove the rulers' legal immunity and simultaneously strengthen the standing of UMNO with the Malay electorate as well as other races. In fact, the monarchs and their families have come to be seen as rivals to the non-royal Malay elite, not only politically but economically.<sup>7</sup> This essay will sketch the outline of the mini-revolution of 1993, after first rehearsing some salient events which seem in one sense or another to have paved the way towards it.<sup>8</sup>

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- 5 Dr Mahathir's celebrated work on Malay backwardness (Mahathir Mohamad, *The Malay Dilemma*. Singapore, Asia Pacific Press, 1970) links the 'sham' of special rights to residual aristocratic influence in business and the civil service.
  - 6 In Malaysian constitutional terminology, the veto had become 'entrenched'. See Federal Constitution, Article 159 (5).
  - 7 The theme of economic rivalry if not class conflict is evinced in a commentary from Singapore during the 1993 constitutional crisis: Ismail Kassim, "Malaysia's battle royal", *The Sunday Times*, 17 January 1993.
  - 8 The author has previously written on Malaysian monarchy in "In Memoriam Sultan Yahya Petra of Kelantan, Yang di-Pertuan Agong of Malaysia", *Contemporary Review*, No. 1361, June 1979: 298-304 (repr. in *The Changing Face of Monarchy in Southeast Asia. Three Political Portraits*. London, Contemporary Review Reprint, 1979; pp 28-34 [with supplementary Preface, pp 5-8]; and "Malay Monarchy since Yahya Petra: Riding for a fall?", *Contemporary Review*, No. 1424, September 1984: 113-120. The opportunity is taken in the next section - an episodic review of some earlier crises - to elaborate on a few matters discussed in those two essays. Readers

But before getting down to historical business, we might do well to highlight in advance one further, interwoven strand: the tension between UMNO's centralizing imperative and 'federalism', i.e. the autonomous prerogatives and integrity of Malaysia's member States. In the twelve months immediately preceding the 1993 constitutional crisis, Dr Mahathir and his party faced a challenge to their vision and pretensions which recalled the period of Parti Islam dominance in Kelantan in the 1960s. The important difference, today, is that the present Sultan of Kelantan seems to be more actively engaged in defence of States rights than his late father was. Thus the confrontation with the Kelantan State Government has become absorbed or overlaid by the conflict with monarchy. This is not without advantage to the Prime Minister, if royal misbehaviour diverts public attention from - or becomes an alibi for - the over-concentration of power at the federal centre, especially in the hands of one man. But it also suggests that while (if not because) the States as such have never had a role in sustaining Malay supremacy, an idealistic ruler is free to become active (at least *de facto* and with the help of the post-1971 immunities) as a defender of other kinds of rights, against Prime Ministerial power - a power whose constant increase is less and less convincingly justified by reference to a centralized struggle for Malay supremacy already crowned with success. Alternatively expressed, the Sultan of Kelantan is not just an irrelevance to Malay supremacy; nor an embarrassment to non-royal leaders because of misbehaviour which taints them by association; but rather, a taunter of new central power on the strength of a modest personal activism and impeccable personal reputation, in the context of opposition control of a State Government. This is a challenge far more serious than where Sultans have withheld cooperation from UMNO State Governments in order to extract personal pecuniary benefit. In fact, it creates a need for incidents of the

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interested enough to refer to the latter should consult both, mainly because of the continuity between them, but also because a few errors in the first have been corrected in the second. The second, fortunately, has 'stood the test of time', apart from the need to clarify an item in note 5, p 119, which was quoted correctly and in good faith but has proved to be misleadingly incomplete. (The record is set right in note 15 below.) Also, for avoidance of all ambiguity in the matter of the veto, line 9 of paragraph 2, p 113, should refer to the entrenchment of the rulers' 'veto' in 1971 rather than simply their 'position'. And lastly, a misprint: on p 116, line 23, read 'break with'. The best general introduction to the Malaysian political system up to the mid-1970s, including the functions of the rulers, is R.S. Milne, Diane Mauzy, *Politics and Government in Malaysia*. Singapore, Federal Publications, 1978.

latter type in order to justify reduction of the monarchs' powers by constitutional amendment.<sup>9</sup>

### Early crises revisited

The new political activism of the Malay royalty made its appearance in the mid-to-late 1970s. Let us take as a first example the intervention in the 1977 Kelantan crisis by the Sultan of that State (and incumbent Agong at the time), which only helped the federal government in an unintended way. The essence of the case was that the Sultan persuaded the Regent (his son and Crown Prince) to postpone a dissolution of the State Assembly, which the Chief Minister (Datuk Muhammad Nasir) had requested following a vote of no-confidence by his own Parti Islam (PAS). The Sultan's aim was to find a replacement from the same party without the need for elections, which would almost certainly favour UMNO. (As the minority coalition partner of PAS, UMNO had contrived to bring Datuk Muhammad more under its own influence - hence the vote of no-confidence - but was now in a position to exploit popular sympathy for him.) In the hiatus, public disorder quickly took over and played into the hands of centralizing elements which saw a state of emergency as their best way forward. The upshot was an even more crushing defeat for PAS, in the elections which followed the emergency and four months of efficient federal rule.<sup>10</sup>

9 On the east coast as a bastion of an 'alternative vision' in the 1960s and early 1970s - up to the eve of the 1977 Kelantan crisis covered in the next paragraph - see Roger Kershaw, "The 'East Coast' in Malayan politics: episodes of resistance and integration in Kelantan and Trengganu", *Modern Asian Studies* 11 (4), November 1977: 515-541. (It is regretted that besides imposing the peculiar articulation of "U.M.N.O." with full-stops, the editors of *MAS* did not see their way to incorporating a late addition to p 521, note 18, describing the attempts of PAS to attract Parti Negara into coalition in Trengganu in 1961, before UMNO succeeded in doing so - an episode recounted to the writer by Ustaz Abu Bakar Hamzah, PAS National Commissioner at the time.) The growth of Prime Ministerial power is the subject, felicitously, of a recent article in this journal: Ho Khai Leong, "Aggrandizement of Prime Minister's power. The transformation of the office of Prime Minister in Malaysia", *Internationales Asienforum* 23 (1-2), 1992: 227-243.

10 On the Kelantan crisis see also "In Memoriam", pp 302-303 / *The Changing Face*, pp 32-33. For the academic record, in 1982 the author had the privilege of an interview with the new Chief Minister who confirmed the role of the Agong in causing the fateful delay of the dissolution. Apparently the late ruler had perceived the whole crisis as a manoeuvre on the part of UMNO, which he was loath to allow to bear

At the same period, relations between UMNO and the Sultan of Pahang deteriorated to the point at which State money Bills were not being signed. This crisis dragged on from the Premiership of Tun Hussein Onn into that of Dr Mahathir (1981-), and UMNO's nominee as Chief Minister was forced to step down. The Pahang case illustrates, in an extreme form, the growing economic nexus in ruler/executive relations in virtually every Malay State (an ironical, early by-product of the New Economic Policy): for this Sultan in his private capacity had developed an insatiable appetite for timber concessions.<sup>11</sup>

It seems natural enough that precisely the concentration of power and vital functions at Federal Government level will push a Sultan, if nostalgic for absolutism, towards self-assertion in that narrow sphere of action still remaining to him: his own State.<sup>12</sup> Another example of the

such easy fruit. In 1987 the author was also able to talk with Datuk Nik Man bin Nik Mohamed, the Agong's candidate to replace Datuk Muhammad Nasir. Datuk Nik Man recalls being put on 'stand-by' twice: once before the no-confidence vote, when Datuk Muhammad Nasir himself wanted to resign (but was dissuaded by UMNO); once after it, when the Agong wanted him to rather than resort to a dissolution. (It must be noted that the 'centralizing imperatives' of UMNO were not centrally directed in the phase just after the no-confidence vote - the tug-of-war over the dissolution - but were personified by certain elements in Kelantan UMNO, not necessarily controlled by Tengku Razaleigh: the Minister of Finance, Chief of Kelantan UMNO, and uncle to the Regent and future Sultan.)

- 11 On the Pahang crisis, see "In Memoriam", p 301/*The Changing Face*, p 31; "Riding for a fall?", p 114. (From 1979-84 the Sultan of Pahang was Agong, like the late Sultan of Kelantan just before him). The writer, however, went into no detail about the location of the main royal logging interest: Endau Rompin, scheduled at that time as a National Park (and as such a major factor in the clash of State and Federal will) but now synonymous with environmental rape on a grand scale. (On the crisis from the point of view of federalism - but with the autonomous role of monarchy undocumented - see Shafruddin, *op. cit.*, Chapter 9. For a retrospective glimpse of royal intimidation of State politicians, see "MB, Exco Pahang dimarah pada 1978", *Berita Harian*, 30 January 1993.) Despite his pecuniary gain from this political victory, the Sultan of Pahang did not scruple to present a bill to the Federal Treasury for his gambling debts in the early days of Dr Mahathir's premiership. Could this have been the basis for the latter's understanding that the Agong was at first amenable to the 1983 constitutional amendments?
- 12 Although it has been noted that the Sultans would exercise their pro-Malay veto as a centrally instituted and collective body (thus benefiting, notionally, from centralization), the need is almost totally hypothetical, given the parliamentary dominance of UMNO. One Malaysian scholarly reader of the earlier draft has pointed out, on the other hand, that a State ruler can lend individual support to 'Malay defence' at national level, as in the incident of the stripping of a Selangor Datukship from the Malaysian Chinese Association Deputy President, in connection with a confrontation over Chinese cultural rights in the second half of 1987.

trend towards 'activism' at State level, up to 1983, was the behaviour of the 'most likely next Agong' himself: Sultan Idris Shah of Perak. He had forced the Chief Minister of his State to resign in 1977 through an assiduous campaign of complaints and public ostracization.<sup>13</sup> Nor had he been slow to step into the limelight when a group of six opposition State Assemblymen of the predominantly Chinese Democratic Action Party declined to swear an oath of allegiance after the 1978 general election. The Sultan vied with the elected politicians of UMNO to fly the standard of Malay communal solidarity, and declared the six recalcitrants to be no longer his subjects.<sup>14</sup> As if this were not enough, in 1982 both the Sultan of Perak and the Sultan of Johor, next in line for the office of Agong after Perak, began to assert themselves in their capacities as Head of Religion in their States, by determining the timing of the fasting month locally and by astronomical calculation (i.e. independently of the Conference of Rulers), with the effect of achieving a 29 instead of 30-day Ramadhan.<sup>15</sup>

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- 13 "In Memoriam, p 301/*The Changing Face*, p 31. See also p 299/p 29 on a clash with elective authority in 1963.
- 14 This account enlarges on an observation in *The Changing Face*, Preface, p 7.
- 15 Further to "Riding for a fall?", p 115 and p 119 (note 5): the *fatwa* (religious ruling) of 1977 on which the two Sultans turned their backs was less traditionalist in its wording (it only insisted on the use of sighting in clear sky conditions) than the actual practice of Malaysia between 1977-82, which ignored astronomical calculation at all times. Dr Othman Hj Ishak, "The new moon should be seen by astronomers" (in Malay), *Utusan Malaysia*, 7 August 1982, and *Fatwa dalam Perundangan Islam* ("Fatwas in Islamic legislation"). Kuala Lumpur, Fajar Bakti, 1981; pp 136-138, is misleading in leaving the overriding impression (despite an oblique hint on p 138 of the book) that the 1977 *fatwa* was implemented literally. Regrettably, Dr Othman, now a religious consultant in Brunei but still an adviser to the Malaysian Council of Rulers, has not seen his way to enlightening the present writer either as to how the Council came to adopt a totally traditionalist position in practice, or why his writings have not mentioned that it did. The actual practice is recorded in *Kaedah menetapkan awal Puasa dan Hari Raya Puasa di Malaysia* ("The method of determining the start and end of Fasting Month in Malaysia"). Kuala Lumpur, Office of the Prime Minister, 11 September 1990; mimeo., 4 pp. The present writer does have some reason to believe that these rulings are written to face both ways simultaneously, in order to satisfy two schools of opinion, whatever the intended, one-sided practice. Another example of such dualism would be the announcement by Deputy Prime Minister, Datuk Musa Hitam, of the position adopted by the Council of Rulers in October 1982 - see *Berita Harian*, 30 October 1982 - which implies that astronomy would only be used if the skies are shrouded, albeit the practice since 1982 (at least after further agitation from Perak and Johore in 1983) was one-sidedly astronomical (with a further simplification by 1988) until the rise of coordination between four Southeast Asian states in 1992.

It may be worth noting, at this point, that although the Sultan of Perak had declined to be nominated as Deputy Agong both in 1975 and 1979, his precedence in relation to the supreme office was not affected. Meanwhile, if there had been any doubts among his fellow rulers as to his suitability to become Agong, it is very possible that the prospect of a 'Johorean succession' was sufficiently alarming to some Sultans for a more tolerant view of Perak to have become prevalent by 1983. In this case, of course, it was not the Sultan of Perak's 'reluctance' that had been overcome, but the reluctance of his peers and the politicians. In the event, however, His Highness passed away on the eve of the electoral conclave.<sup>16</sup>

In this situation, the vote favoured Johor, upholding precedence. Yet the Sultan of Johor had a record of criminal behaviour stretching back many years. With the spate of belated revelations appearing in the Malaysian press in the course of the 1993 crisis, it is hardly necessary to go into great detail, but the major incidents of which the present writer had become aware by 1990 were all well known to the other royalty at the time of Sultan Mahmood Iskandar's election as Agong. This is more significant - because it shows the overriding importance of precedence in spite of such a record - than the actual fact that the record existed. The author's check-list, based on information which was still in some cases highly confidential at the time, comprised the incarceration of a policeman in a dog kennel, in about 1961;<sup>17</sup> the strip-search of a Trengganu princess at the Johor-Singapore border check-point in about 1969 or 1970 (during her father's tenure as Agong), arising from a misapprehen-

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16 In connection with the retention of precedence by the Sultan of Perak although never serving as Deputy: the Ruler of Negri Sembilan, Deputy Agong from 1979-84, was the unsung 'loser' if Perak - or Johor - succeeded to the national throne. There are speculative comments on the reasons for the Sultan of Perak's reluctance as of 1975-79 in "In Memoriam", pp 302, 304 (note)/*The Changing Face*, pp 32, 34 (note) and Preface, p 7. It is now possible to report with more confidence that there was indeed a problem of life-style: would he be able to bring all four of his wives to Kuala Lumpur? According to a belief in some circles, he had even exceeded by one wife the normal Muslim limit. In the 1970s the Agong was expected to give a much better example than this (even two wives could be regarded as excessive, as the Sultan of Kedah found in 1974: "In Memoriam", p 303, note/*The Changing Face*, p 33, note).

17 As recounted, this occurred as a punishment for pursuing a privileged fugitive into the palace; and this incident led to the deprivation of the title of Crown Prince, at the urging of Tun Razak. There is, however, a similar but not quite identical incident, of 1959, described in *Berita Harian*, 1 February 1993. Confusion is possible here.



sion that she was a commoner claiming immunity from customs duty as a member of the Johor royal house;<sup>18</sup> an assault on two Malaysian Indian motorists, and infliction of 'third degree practices' on certain smugglers (1971 or 1972);<sup>19</sup> and the shooting to death of a Chinese suspect in an anti-smuggling operation in 1976.<sup>20</sup> Also relevant to the new Agong's reputation was the mysterious way in which he had been restored, in May 1981, to the Johor succession by a dying father - alleged by some to have been already in a coma at the hour of the purported change.<sup>21</sup>

Dr Mahathir, for his part, had not sat passively by as the prospect of a wilful and politicized Agong crystallized into certainty. The first major national crisis of the Mahathir premiership began with his attempt to spell out the obligation of royal consent to legislation, by way of an amendment to the Federal Constitution. (The bitter experience with the Sultan of Pahang in particular would sufficiently explain Mahathir's motivation in this respect.) He also sought to vest the emergency power in himself as Prime Minister, presumably in view of the boastful talk of

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- 18 The Agong insisted that the ensuing prosecution for assault be handled by Tan Sri Salleh Abbas, the Solicitor General (of whom much more later). Raja Azlan Shah, a member of the Perak royalty (of whom, also, more later) was on the bench. A three-year prison sentence was handed down but the offender's father exercised his prerogative of pardon.
- 19 These cases have become fairly widely known through the report of the appeals case in *Malayan Law Journal*, 1973: 128-129. The prosecution appeal, lodged by Tan Sri Salleh Abbas (still Solicitor General) against sentences deemed too light, was heard by Raja Azlan Shah. The judge (who by a twist of fate was to become Sultan of Perak in 1984 and Agong in 1989) delivered a number of memorable remarks on the behaviour of the accused. (He was constrained to describe the accused as a first offender because of the royal pardon overriding the earlier sentence.)
- 20 The sentence in this case was six months' imprisonment for 'culpable homicide', but the offender was again subsequently pardoned by his father. The incident is mentioned in David Jenkins, "Sultans as symbols", *Far Eastern Economic Review*, 30 June 1983. Also of significance in the light of later events is the fact that again Tun Salleh Abbas prosecuted, as is mentioned by Gordon P. Means, *Malaysian Politics. The Second Generation*. Singapore, Oxford University Press, 1991; p 272 (citing *New Straits Times*, 8 April 1977). The involvement of a private army - the Johor Military Force - in anti-smuggling operations (the responsibility of the Federal Police and Customs Service in other Malay States of the Peninsula) is a matter of considerable constitutional interest. The present writer is not aware of any published study on the subject. The future of the Johore Military Force has come under a cloud in the 1993 crisis. For a summary history of the Force, see *The Straits Times*, 12 December 1992.
- 21 The forcing from office of the Johor Chief Minister following the succession ("Riding for a fall?", p 115) was connected with his reservations about the latter event, as one Malaysian scholar has reported: V. Selvaratnam, "Malaysia in 1981. A year of political transition", *Southeast Asian Affairs* 1982: 245-272 (see p 251).

one, if not both, of the two Sultans next-in-line, about declaring an emergency and usurping the power of the elected politicians. But owing mainly to disunity in UMNO, the crisis ended in compromise. The Agong's duty of legislative consent was spelled out, but also a new, explicit power of delay by a formal 60 days.<sup>22</sup> No change was effected regarding the State rulers' powers, nor in the emergency power.<sup>23</sup>

Thus it may seem that the reign of the Eighth Agong commenced, in February 1984, under the shadow of 'unfinished business' from the Prime Minister's point of view. Of particularly enduring interest, however, is the fact that Dr Mahathir denied throughout the constitutional amendments crisis that there existed any obligation to obtain the consent of the Conference of Rulers to the proposed derogation from their powers. In the event, because the Agong had changed his mind (reputedly over this principle first and foremost) and refused to sign the original Amendment Bill into law, a process of negotiation did ensue, but it was carried out informally and the compromise solution does not appear to have been ratified by any formal session of the Conference of Rulers.<sup>24</sup> Yet it might

22 "Riding for a fall?", pp 116, 120 (note). For a lawyer's commentary, see H.F. Rawlings, "The Malaysian constitutional crisis of 1983", *International Comparative Law Quarterly* 35, Part 2, April 1986: 237-254.

23 For complete clarity regarding the emergency power, it must be noted that the Agong's obligation to consult the Cabinet, mentioned in "Riding for a fall?", pp 114, 116, had never actually been spelled out in Article 150 of the Constitution. On this and other aspects of the emergency power, such as the invariable enhancement of the institution of monarchy (as well as executive power) which every State of Emergency bestows, see Vincent Lowe, "Symbolic communication in Malaysian politics: the case of the Sultanate", *Southeast Asian Journal of Social Science* 10, Part 2, 1982: 71-89 (esp. pp 81, 83). On the fact that the rulers' agreement, at the end of the 1983 crisis, that the Agong would always consult the Cabinet, was only by verbal assurance, see Rawlings, *op. cit.*, p 251. It is also relevant that the 1981 constitutional amendment which Dr Mahathir 'inherited' from the previous cabinet had potentially enhanced the Agong's power not only by taking away parliamentary review of proclamations of emergency but by making the Agong's belief in a merely 'imminent' danger to public order a sufficient ground for such a proclamation: cf H.P. Lee, "Emergency powers in Malaysia", in F.A. Trindade, H.P. Lee (eds.), *The Constitution of Malaysia. Further Perspectives and Developments*. Petaling Jaya, Fajar Bakti, 1986; pp 135-156 (see pp 147-148); and Ho, "Aggrandizement of Prime Minister's power", *op. cit.*, p 233.

24 The extraordinary informality of the contacts between ruling party and rulers during the crisis is well described by Michael Ong, "Malaysia in 1983. On the road to Greater Malaysia", *Southeast Asian Affairs* 1984: 197-230. (Above all, during these contacts, when they had reached an impasse, Dr Mahathir threatened to go ahead with the amendments without royal agreement: Rawlings, *ibid.*) Not surprisingly, during the 1993 crisis royalists would maintain that the abolition of the Agong's

be argued that the rulers' custodial function under the Constitution implies a duty to defend and uphold their collective right to proper consultation, even more rigorously than their merely implied (and highly questionable) individual power to refuse legislative assent which was the overt target of the principal amendment. It is suggested that the status of the Conference was signally weakened by the 1983 crisis.<sup>25</sup>

### The Eighth Agong: a comity of interest

If the Premier was capable of ignoring the Conference of Rulers, at least in an issue concerning the powers of monarchy itself, and reluctant to seek judicial support by way of a reference to the Federal Court, events during the incumbency of Johor were to reveal a capacity for manipulating that royal individual and his prerogatives in order to weaken the judiciary, as an object of policy. It was as if the judiciary had temporarily taken the place of monarchy as the chief obstacle to executive goals in

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putative power of dissent in 1983 was illegal because never formally agreed to by the Conference: see *The Straits Times*, 23 January 1993. But part of the strength of Dr Mahathir's position in 1983 was possibly that the Constitution nowhere specifies the modalities of the exercise of the Conference's veto, not even indicating that the Agong would act as mouthpiece for the Conference in any matter, let alone this one. Nor did an academic study of the position of the Agong in 1978 remark on this lacuna (i.e., with regard to the articulation of the veto power of the Conference), let alone propose that it be filled by bestowing some such function on the Agong: F.A. Trindade, "The constitutional position of the Yang di-Pertuan Agong", in Tun Mohamed Suffian, H.P. Lee, F.A. Trindade (eds.), *The Constitution of Malaysia. Its Development 1957-1977*. Kuala Lumpur, O.U.P., 1978; pp 101-122.

- 25 The view that the Conference should have been consulted on any amendment affecting their powers - as enshrined in Article 38 (4) of the Federal Constitution since Independence in 1957 - has been voiced in "Riding for a fall?", p 120 (note); proposed for consideration by Rawlings, *op. cit.*, p 249; and extensively argued by H.P. Lee, "Postscript. The Malaysian constitutional crisis: Kings, Rulers and royal consent", in F.A. Trindade, H.P. Lee (eds.), *op. cit.*, pp 237-261 (see esp. p 245: the consent of the Conference should be obtained first; though on p 247, strangely, Lee toys with the idea that the new system of consent, under time limit, by the Agong, overrides the veto power of the Conference). Lee also points out (*ibid.* p 249) that the whole crisis could have been avoided by applying to the Federal Court for a ruling on the implied right to refuse legislative assent. In the light of events to be discussed below, it may be legitimate to surmise that constitutional amendment appears to Dr Mahathir as a more effective way of achieving the executive will, since the executive has always commanded the requisite two-thirds majority for constitutional amendment, and besides, direct 'appeal' to Parliament avoids the uncertainties of judicial process.

the Prime Minister's mental scenario. But it might be wrong to assume that such a scenario had taken shape by 1984. There could be sufficient cause in the subsequent internal crisis of UMNO, which stemmed from a 'disputed succession' among the politicians.

Mahathir's arch-rival was Tengku Razaleigh Hamzah of Kelantan. Although conspicuously groomed for the succession by Tun Razak in the mid-seventies, the death of the latter in 1976 left Razaleigh without a patron. The succession passed then through Tun Hussein Onn to Dr Mahathir by 1981. The UMNO General Assembly in that year also withheld support from Razaleigh in the contest for the party's Deputy Presidency, preferring Mahathir's tacit nominee, Datuk Musa Hitam.

When Tengku Razaleigh contested the Deputy Presidency for the second time, in May 1984, it was superfluous to speculate whether Dr Mahathir had become more favourable towards him. This could hardly have happened, in view of the fact that the young Sultan of Kelantan (Ismail Petra) was known greatly to respect Tengku Razaleigh as his uncle and political confidant, and had been among the more easily identifiable opponents of the 1983 constitutional amendments.<sup>26</sup> Nevertheless, a new and more promising opportunity was to arise by the time of the party's next triennial elections, owing to the bizarre case of Musa Hitam's alienation from Mahathir and resignation as Deputy Prime Minister (February 1986).<sup>27</sup> Thus in April 1987 Musa defended his Deputy Presidency - unsuccessfully - against the new Deputy Premier, Ghafar Baba, while Dr Mahathir defended his Presidency - successfully -

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26 The Sultan was in fact deeply embittered by Dr Mahathir's attempt - unsuccessful though it had been in the event - to emasculate the legislative prerogatives of the monarchs within their States, since as Regent in the 1977 crisis he had bowed to UMNO's centralizing imperatives and opposed neither a dissolution of the Kelantan State Assembly when requested by Datuk Muhammad Nasir (albeit his father intervened to postpone it), nor the subsequent emergency and suspension of the State Constitution. Friends of the Sultan identify him, rather than Azlan Shah, as the man who warned the Agong in 1983 of the terrible significance of the constitutional amendments and galvanized him into rejecting them.

27 Apart from any souring due to later disagreements, Musa, a Johorean, had somewhat prevaricated over the 1983 constitutional amendments - until a famous rally at Batu Pahat, his enemies allege - and then had been at conspicuous pains to repair his relationship with his Sultan, e.g. by way of a public apology at the National Mosque on the occasion of Friday prayers. Cf *The Sunday Times* (Singapore), 1 July 1984. Informed observers also report that Musa had, during a period of marital estrangement, shown the Ruler the considerable courtesy of dating the young widow of Mahmood Iskandar's late father, though ultimately no engagement or marriage transpired.

against the challenge of Tengku Razaleigh. It was an extremely narrow and thus pyrrhic, victory for the incumbents.<sup>28</sup>

It might be expected that the worsening of Musa, now on good terms with the Agong, no less than the challenge to Mahathir by a Kelantan Prince, would have found the Agong's sympathies veering firmly to the side of the so-called 'B'-team (i.e., the UMNO out-group, led by Razaleigh and Musa). From the beginning, the Agong had made no secret of his contempt for Mahathir on the grounds of mixed blood, calling him, to his face, 'Mamak' (a derogatory nickname for those of Indian Muslim ancestry). During the early part of his tenure as Agong he had defied protocol by failing to give full and proper effect to the transmission of State powers to a Regency. Apart from residing at the Johor palace in Kuala Lumpur instead of the official residence of the Agong (Istana Negara), he regularly spent his weekends in Johor. He had interfered improperly in public administration by encouraging one of his State subjects, Datuk Mohamed Rahmat, the Malaysian Ambassador to Jakarta, to neglect his official duties in Indonesia in order to be with him in Johor on these occasions. But Dr Mahathir had proven more than a match for this difficult Sovereign. Having got the measure of the King's essential vanity and exhibitionism, he prudently pandered to it, even to the extent of placing a more convenient Royal Malaysian Airforce helicopter at his permanent disposal to fly him down to, and around in, Johor, instead of the government's executive jet. After Musa had been narrowly defeated as party Deputy President - with the help of a vital, small block of Johor votes swung to Mahathir by Datuk Mohamed Rahmat - and Dr Mahathir then created a number of Cabinet vacancies by sacking 'B'-team Ministers, it was possible to both repay a debt and

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28 For an account of the origins, progression and outcome of this election, see Roger Kershaw, "Within the family. The limits of doctrinal differentiation in the Malaysian ruling party election of 1987", *Review of Indonesian and Malaysian Affairs* 23, 1989: 125-193. (The specialist reader may wish to note the following, more serious typos - herewith corrected - in the published text: p 127, central para, l 11, also the increasingly; p 129, l 43, confidant; p 133, l 28, claim of reasonableness; p 142, l 39, rationale; p 144, l 14, the condition of; p 150, l 1, life *jasmani*; p 155, l 12, natural justice; p 157, l 5, upstream; p 160, n 1, l 15, ballot for; p 162, n 10, l 6, March 1987; p 171, n 52, l 8, 11 April; p 182, n 142, l 7, note 137; p 183, n 147, l 12, Section (c). The basic intra-party events, up to and including the 1987 election, are enumerated in the said article but not the interplay between party and royalty mentioned in this paragraph, nor the fact that Tengku Razaleigh's bitterness at his treatment also stemmed in some measure from the 1977 Kelantan crisis, in the sense that his contribution to UMNO on that occasion had seemed to count for nothing.

build a new 'bridge to Johor' by appointing 'Rahmat' as Minister of Information.<sup>29</sup>

Still, although Dr Mahathir had a totally loyal Cabinet, he now enjoyed much less public credibility, on account of the extremely narrow victory in the party elections. And since Dr Mahathir's team had been planning to challenge an adverse result in the courts, it is not surprising that Tengku Razaleigh's faction decided to do the same after their defeat. It was events in the courts, threatening the very existence of UMNO or at least Dr Mahathir's control of it, that were to provide Dr Mahathir with a solid reason for acting against the Lord President in 1988 - though it was obvious to all his associates that his existing authoritarian and autocratic leanings (with a strong dash of Anglophobic animosity towards the Common Law tradition) already disposed him towards it.<sup>30</sup>

The enabling pretext for Tun Salleh's suspension on 26 May 1988 was his umbrage - expressed especially in a letter to the Agong - at a series of threatening public statements by the Prime Minister. One such statement was made in the parliamentary debate on the constitutional amendment of 18 March 1988, which removed from the courts their powers of legislative review. But the most critical, forthcoming event in the courts (with *no* connection with judicial review, but a strong connection with Common Law principles) was the appeal by the UMNO dissidents against the

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29 The exhibitionism of the Johor Ruler and Agong, as well as the Malaysian government's indulgence towards it, was well attested on television screens - as in the case of the Agong's flamboyant appearance at a public ceremony, riding a police outrider's motorbike, which was duly included as a 'scene from national life' in a 'patriotic TV spot' during his tenure. His late arrivals at National Day parades were a particular slap in the eye for the elective national leadership.

30 A source close to the Prime Minister indicated to the writer in mid-October 1987 that action against the judiciary was being contemplated. This was four months after the UMNO dissidents had brought their suit against the party elections, but the Aliran conference, 'Reflections on the Malaysian Constitution: 30 years after Merdeka' (held in Kuala Lumpur on 16 August and addressed by Tunku Abdul Rahman) and the University of Malaya Faculty of Law conference, 'The Malaysian Constitution after 30 years' (22-23 August, and addressed by Sultan Azlan Shah of Perak) may have added to the sense of alarm in executive quarters (a reply to propaganda branding the first conference as 'anti-Constitution' is included in the published collection of its papers: see Chandra Muzaffar, "Constitution review: response to hostile reactions", in *Reflections on the Malaysian Constitution*. Penang, Aliran 1987; pp 310-314). At the end of the year there was also an intractable *habeas corpus* case involving an opposition M.P. (see Means, *op. cit.*, p 237). On other 'irritants', see Andrew Harding, "The Malaysian Judiciary crisis of 1988", *Commonwealth Judiciary Journal* 8, 1989: 3-9.

February 1988 decision dismissing their petition for new elections. The outcome of that petition had been far more dramatic than a decision in favour of the appellants: not just the party elections were declared invalid, but UMNO as such was found to be an illegal organisation on the grounds of long-standing breaches of the terms of registration! Once Dr Mahathir had brilliantly turned this disaster to good account by starting to reconstitute the party without the dissidents, it became Tengku Razaleigh's urgent need to overturn the decision and have UMNO revalidated - with its membership, but also its office-holders, restored to the pre-April 1987 *status quo ante*. It then became Dr Mahathir's priority, in turn, to change the composition of the High Court which was to sit on the appeal on 13 June. This was the more immediate objective behind the suspension of the Lord President, but in the longer term the achievement of a 'responsive' High Court under an 'accommodative' Lord President was a gain equal to the control of the emergency power which had eluded Dr Mahathir in 1983. The suspension of Tun Salleh Abbas was effected under a prerogative of the Agong.<sup>31</sup>

The political reasons for suspending and later dismissing the Head of the Malaysian judiciary, and the means employed, have excited world-wide commentary. But the possibility that the Agong was acting out a personal grudge due to previous encounters in court, has been generally handled with delicacy.<sup>32</sup> Such speculation defies proof as persistently as it springs to mind. Yet it will be even more difficult to substantiate the suspicion that a physical attack on a golf caddy, a few months prior to the moves against the judiciary, had a bearing on the Agong's willingness to

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31 The effect of suspension was to enable the appeals hearing to be postponed. It went ahead on 9 August - and confirmed the illegality of UMNO - after Tun Salleh was definitively removed from office following a tribunal. Two other judges were removed by another tribunal. For an extensive legal - but also politically perceptive - analysis of the whole affair, see A.J. Harding, "The 1988 constitutional crisis in Malaysia", *International and Comparative Law Quarterly* 39, 1990: 57-81.

32 Means, *op. cit.*, pp 238-239, merely notes that it was an 'ironic twist' that Tun Salleh should have appealed (regarding the intimidating behaviour of the executive) to the man whom he had sentenced, in 1977, to six months in jail. One will notice also that, in a retrospective comment on his dismissal in 1988 (see Tun Salleh Abbas with K. Das, *Mayday for Justice*. Kuala Lumpur, Magnus Books, 1989; pp 314-315), Tun Salleh refers to the 1973 case only as a 'possible cause' of the King's anger. At the same time, he asserts that the King's 'anger' was essentially manipulated by another party. For his part, however, Dr Mahathir told Tun Salleh that the dismissal was purely the King's idea (Tun Salleh Abbas, *The Role of the Independent Judiciary*. Kuala Lumpur, Promarketing Publications, 1989; p 37).

help to enhance Dr Mahathir's power in such a dramatic way. Unless and until the lid is completely lifted on discussion in the Malaysian media, and in the absence of eye-witness testimony, one even hesitates to describe the event in detail. Nevertheless, the accounts of Kuala Lumpur taxi drivers do not differ in substance from what was circulating in political circles and University Senior Common Rooms around October 1987; and one non-Malaysian writer has had the courage to record the event, since it was spoken about openly by Tunku Abdul Rahman at the Aliran constitutional conference and prompted the Tunku to propose a Court of Peers to try royal crimes. The writer in question has not, however, inferred any connection between *casus infaustus* and the removal of the Lord President.<sup>33</sup>

In order to reinforce the inference that the Agong felt himself obliged in some way to the Prime Minister and allowed the Prime Minister to divert royal activism to his own good account, it is necessary to look back again to the middle months of 1987. At that time the continuing challenge to the Prime Minister was stimulating the democratic aspirations of an intelligentsia exasperated and sickened by a series of high-level financial scandals, so that there was already a tangible mood for change, not least among non-Malays, and an expectation that it could be achieved. This is the kind of atmosphere in which the more nationalistic kind of UMNO politician, and assorted opportunists, invariably sound warnings of a 'threat to Malay rights'. An irregular and misdated (and thus gratuitously provocative) forty-first UMNO anniversary rally was called for 1 November. The Special Branch of the Police was fully alert to 'scenarios of insecurity' as racial tension increased, but with special reference to the intentions of critics of the regime. Pessimistic appraisals began to reach the Prime Minister's Office, confirming Mahathir's existing conspiratorial perception of all manifestations of opposition to himself. Nothing could have better suited the needs of a party leader on the defensive, or the party itself, since the advice to defuse the situation 'in the interests of the nation' pointed precisely to the kind of preventive

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33 Means, *ibid.*, p 220 (note). On the Tunku's proposal for a special court, see "Opening speech of YTM Tunku Abdul Rahman", in *Reflections on the Malaysian Constitution*, pp 18-20. In fact, although the golf-course incident has not been aired in the news columns seen by the present writer, a letter by 'Tongkat Semambu' (pseud.) in *Berita Harian*, 26 December 1992, called for 'the killing of a caddy', and 'the allegedly related case of Private Adam', to be investigated as a matter of urgency. (On Private Adam, see paragraph after next, and note 35.) On a (censored) parliamentary speech, see note 50, below.



action against individuals and the independent press which would facilitate the subsequent (but already envisaged) moves against the judiciary. Thus, on 27 October a series of arrests began, which placed a cross-section of opposition activists, including writers, in preventive detention. More importantly, three leading independent newspapers were closed next day and remained closed for many weeks, until their owners had accepted new 'guidelines' as a condition of renewal of licence under the Printing Presses and Publications Act, amended before the end of the year.<sup>34</sup>

What was completely 'unprogrammed' and unforeseeable, however, prior to the pre-emptive strike of late October, was a gratuitous, double-value bonus for Mahathir in the form of an incident of amok on Sunday afternoon, 18 October, in Chow Kit, a northern section of Kuala Lumpur, where a Malay soldier shot a stall-holder dead with an M-16 rifle. This would-be augury of worse violence to come - which most citizens in the capital city were apt to read as such - was actually, and by almost incredible coincidence, a 'cry of despair' on the part of a young man whose brother had fallen foul of *casus infaustus*. But since the latter could not be publicized, neither could the real nature of the amok in Chow Kit. Thus it was allowed to serve the popular presumption that turbulence was brewing and that only firm action could avert bloodshed.<sup>35</sup>

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34 Since action against the judiciary was already being contemplated in 1987, it seems reasonable to assume that action against the press was viewed partly as a defensive precaution in that context. In the event, developments during 1988-89 certainly showed the advantages, for the executive, of a silent press: cf *Mayday*, p 44, and *Independent Judiciary*, p vii; also K. Das, *Questionable Conduct. Over that Mayday Capers*, Kuala Lumpur (pub. K. Das), 1990; p 61.

35 Subsequently, Private Adam Jaafar was put on trial, in the interests of (formal) justice; but in the interests of (informal) justice, as it were, appeared to be exonerated in the light of 'psychiatric evidence', which invoked the trauma of degrading acts forced upon him as a recruit in the course of ragging (*The Star*, 27 September 1990), as well as hereditary epilepsy (*Berita Minggu*, 4 November 1990) - arguments against which the prosecution mobilised no refuting testimony. (At the time of writing, however, the trial for murder awaits its conclusion, having been postponed ten times: *Berita Harian*, 27 February 1993.) A scholarly Malaysian reader of this paragraph in draft strongly disputes that the Chow Kit incident 'sensitized' the public to 'firm action', as there had been an assurance in Parliament that it had no connection with the current political situation. However, the claim that the incident at least contributed to an intensifying state of 'nerves' is supported by Kenneth James, "Malaysia in 1987. Challenges to the system", *Southeast Asian Affairs 1988*: 153-169 (see p 163).

But this was only the first part of the 'bonus'. Far more crucial, arguably, for Dr Mahathir's purposes would be the fact that the Chow Kit incident demonstrated to the Agong the acute potential for public exposure of his own misdeed, and thus his continuing dependence on the executive for discretion. Even the fact that he was already totally beholden to the Prime Minister for the original cover-up, including generous compensation from government coffers for the family of the ill-fated citizen in question, was now in danger of being exposed if Private Adam failed to hold his peace in return for the kid-gloves prosecution in his trial.

At all events, and for whatever combination of reasons, Dr Mahathir seems to have found an eager enough accomplice at the Istana Negara when his campaign against the judiciary reached a climax the following year. A strong spirit of bonhomie between Dr Mahathir's faction and the Sultan of Johor was even manifest after the Agong had stepped down (with reluctance!) in 1989, for, two weeks later, in the grounds of his palace at Johor, he hosted a lavish celebration of the (true) 43rd anniversary of the foundation of UMNO, and in this way lent his support to the party in its contest for Malay loyalty against 'Spirit of '46'.<sup>36</sup>

In the light of these events it was already apparent that in modern Malaysia, even those who were legally above the law were not immune from political constraints on behaviour which was grossly illegal, as well as deeply abhorrent, for their subjects. At least a serious breach of legal or moral norms could be politically erosive, in the sense of forcing the perpetrator into a relationship of dependence on those who were in a position to protect his 'good name'. At the same time, there might be a price to pay on the part of the institutions willing to deliver such protection: the loss of *their* good name and credibility as upholders of probity in public life. Although intellectuals nurtured in a certain legal culture may regard a calculated onslaught on judicial independence as a more serious

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36 Pictures of the event, 11 May 1989, are contained in S.H. Alattas, *Revolusi Istana dan Rakyat* ("The royal revolution and the people"). Kuala Lumpur, Al-Suhaimi, 1989; pp 152-155, 157. Although the party that Mahathir was trying to reconstruct was called 'New UMNO', it claimed to be the only true heir to the old one and thus alone entitled to celebrate its anniversaries. The emotional significance of the foundation of the original party in 1946 is evinced by the title of Tengku Razaleigh's dissident movement, under which the latter was officially registered in June 1989. (In implicit connection with the hopes of Mahmood Iskandar to see his term extended, there was a report of 'rumours that Dr Mahathir was seeking an extension' for him, together with the Deputy Prime Minister's denial thereof, in *The Sunday Times* [Singapore], 7 October 1988.)

matter, the majority of the Malaysian public might be more outraged (or at best, cynical, like the intelligentsia) about the immunity from prosecution of the traditional rulers, and the appearance of connivance by the supposedly 'democratic' political elite: in sociological terms, a case of all too conspicuous 'symbiosis'! This was a problem for Dr Mahathir to ponder as he faced the need to discredit another Sultan: one whose moral and constitutional virtues were uncontestable, but whose political emotions favoured Spirit of '46 and PAS, as well as States autonomy. But Dr Mahathir's situation was not without potential. In retrospect the 1988 judiciary crisis may be seen as the high-point of the revival of royal prerogative, since this crisis enhanced the power of the Prime Minister, not that of monarchy; it rendered the monarchy both a more vulnerable prey (likely to lack the collective will to fight for institutional pluralism single-handed) but also a more provocative target (being the last bastion of such pluralism), after the judiciary was bloodied; but at the same time it created no obligation on Dr Mahathir's part, merely the need to cover up the collusion and take his distance from royalty as a whole, the better to tackle any ruler rash enough to fight!

### Parting of the ways

We turn again to the politics of Kelantan. In December 1988 relations between the Sultan and his UMNO Chief Minister reached breaking-point. This crisis was not due to the dissidence of Tengku Razaleigh; nor was the conflict of prerogative over State civil service postings anything more than a symptom of an already deteriorated relationship. At the root of everything was the Sultan's concern about the Chief Minister's close association with logging interests, and a gratuitous attack on the Sultan by a young Kelantanese politician, Annuar Musa, at the October 1988 UMNO General Assembly. Matters came to a head in a fateful meeting at the palace, where the Chief Minister claimed that the Sultan was plotting his overthrow, while His Highness asserted that the reason for certain UMNO Divisions in Kelantan making an issue out of the State civil service transfers (after an official list had been agreed between Sultan and Chief Minister) was that Tan Sri Mohamed Yaacob was lacking the respect of his party, on account of being '*bapa rasuah*' (the corruption king-pin). Tan Sri then offered to swear the contrary on the Holy Book, and (according to one account) actually did so. The Sultan,

firm in his conviction of impropriety, saw this as an act of perjury and employed a porcine epithet.<sup>37</sup>

The split in Kelantan UMNO finally became irrevocable with the registration of Tengku Razaleigh's new party in June 1989. And by allying with PAS, Spirit of '46 helped the Islamic party to victory in the October 1990 general elections for the State Assembly. Dispassionate Kelantanese observers attribute UMNO's disaster principally to the fact that the party was led into the election by a Chief Minister discredited not only by suspicion of corruption but by his heavy dependence on Dr Mahathir. Sympathy for the Sultan may have influenced a few votes, but obviously the ruler lacks the power to determine election outcomes on any significant scale, and nor did he try. However, Dr Mahathir and his supporters blame the defeat of UMNO on 'political interference by the Sultan'. In December the UMNO General Assembly duly staged a hostile debate on monarchy. Out of a second, similar debate a year later grew an initiative for a 'code of conduct': the extra-constitutional 'Proclamation of Constitutional Principles' which was eventually promulgated by the Agong on 4 July 1992 after being signed by six of the nine Sultans.<sup>38</sup>

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37 Accounts inevitably differ as to the exact nuances of the epithet. Those who deny that the Sultan could have allowed himself to become crudely abusive maintain that he was using the word *babi* in the mild, colloquial sense of 'stupid'. Anyway, leaflets were soon circulating with a picture showing the Sultan's head on the body of a pig and a text which described the ruler as *gila babi*: literally, 'epileptic'; colloquially, 'illiterate, intensely stupid'. Lately, the encounter has been recounted in the press in a way which casts the Sultan in the least favourable light: Mokhtar Alias, "Sultan hina bekas MB", *Berita Harian*, 11 February 1993.

38 Further regarding the enmity between the Prime Minister and the Sultan of Kelantan: an 'insider' report indicates that at a meeting with the Kelantan UMNO leadership in April 1989 the Prime Minister had referred to the need to indoctrinate the grassroots on 'the dangers of monarchy'; and there have been indications (for instance in remarks made to journalists during the 1993 crisis) that the late 1990 and late 1991 UMNO General Assembly debates on the monarchy were part of a conscious 'softening up' process, designed to accustom Malay opinion to the possibility of criticising royalty. Friends of the Sultan of Kelantan, meanwhile, believe that Dr Mahathir is consumed with frustration because the Sultan is religious and has not risen to the bait of business opportunity with which Dr Mahathir has lured other rulers into compromising activity. While some Sultans have provoked the rage of Malay businessmen by helping Chinese business partners to side-step racial quotas (a hot issue at the 1991 party congress), the Sultan of Kelantan, advised by his own Muslim Council, could invoke Islamic law as his sole constraining authority when refusing to accept a code of conduct (see *Mingguan Malaysia*, 10 May 1992).

It is certainly questionable whether UMNO gained much from the Proclamation. Firstly, Johor, Kedah and Kelantan withheld consent. Secondly, although the agreement specified that the majority party in a State Assembly would nominate the Chief Minister and that the Sultan would act on the 'advice' of the latter and the State Executive Council (while avoiding involvement in both 'politics' and business), the cumulative effect of a number of modest privileges would be to allow any activist Sultan to 'stay in the game'. Thirdly, there was no reference even to a 'conventional' obligation to sign laws passed in the State Assembly, let alone a legal obligation - the requirement which Dr Mahathir had been forced to drop from his 1983 constitutional amendment. Lastly, and above all, the Proclamation lacked any constitutional force.<sup>39</sup> Yet, on the contrary, Dr Mahathir will have felt a need to gain a clear psychological advantage and also limit royal power by legal action at that juncture, seeing the Sultan of Kelantan's unshaken sympathy for his State Government as PAS began to talk seriously about introducing Islamic punishments into Kelantan (possibly even for non-Muslims) and mounted a campaign of obstruction to the central government's hydro-electric scheme at Pergau.<sup>40</sup> In the short term, the stakes were actually higher than binding Sultans to sign democratically enacted laws.<sup>41</sup>

It was to be the streak of violence in the House of Johor that enabled shadow-boxing to give way to a serious, and historic, confrontation which played substantially, though not completely, into the hands of Dr Mahathir. Not the least of Dr Mahathir's assets as the crisis gathered pace was that he was quickly liberated from the stigma of his role as accessory to Johor's previous excess. It stretches credulity, yet is true, that the very same Sultan of Johor played into his hands again, but this time from the position of an overt adversary.

### The 1993 constitutional crisis: a preliminary assessment

The crisis had its 'humble origins' in an assault on the goal-keeper of a Perak hockey team on 10 July 1992, by one Tengku Majid - Tengku

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39 The terms of the Proclamation can be read in *The Straits Times*, 6 July 1992.

40 And see the opposition of the Kelantan State Government to the proposal for federal control of water management for the whole country: *The Strait Times*, 16 November 1992.

41 These issues dominated the Kelantan-related news in the Malaysian press in 1992 more than the 'code of conduct', or alleged royal tax evasion on a Lamborghini.

Bendahara of Johor and a son of the Sultan. The affair began to have the makings of a 'national' issue when it was discussed by the Malaysian cabinet on 12 September. A warning was issued that royalty could not expect criminal behaviour to be covered up. As a report had already been lodged with the police on 30 July (and there had been many prosecutions of non-reigning royalty in Malaysia, including Tengku Majid's father before his succession), the statement had a seemingly superfluous air. On the other hand, it is clear that the police did not complete their investigation and report on the case till shortly after the cabinet statement; in fact, the involvement of Federal Police Headquarters may have been quite belated. One may speculate whether the Malaysian Hockey Federation would have proceeded to ban the prince from the sport for five years, on 18 October, had the police investigation not been pursued to its conclusion by then.<sup>42</sup>

It is of course possible that the involvement of the Federal Government was seen as a matter of honour, or manifest duty, following the Sultan of Johor's refusal to sign the July Proclamation. Should we suspect a trap for the Sultan if the Sultan himself behaved as if unaware of it? Yet some kind of 'erratic' reaction from the Sultan was predictable by any amateur psychologist; his very unawareness of danger (conspiratorial or otherwise) was characteristic. In the event, he certainly showed no inclination to 'let justice take its course' after the ban on his son, but in protest put intense (and effective) pressure on a number of Johor hockey teams to withdraw from national tournaments.<sup>43</sup>

Matters came to a head on 30 November when Douglas Gomez, the hockey coach of a leading Johor secondary school, was summoned to the

42 The long-serving President of the MHF, Sultan Azlan Shah of Perak (the Agong), would surely, at the least, have cleared the decision to proceed at the highest political level. And it is again quite striking that the Attorney-General did not order the police to arrest the prince till 11 December, after Parliament had resolved to take action to stop violence by reigning royalty. (The salient events in this and the next two paragraphs were reported in *New Straits Times* [Malaysia] and *The Straits Times* [Singapore] on various dates during the second half of the year.)

43 With regard to possible tactical intent on the part of Dr Mahathir, one should probably be cautious about seeing special significance in the extraordinarily low key of the Prime Minister's, and party members', comments on the monarchy at the UMNO General Assembly, 5-7 November. For one thing, since the prince had won a judicial restraining order in respect of the ban, on 26 October, the case was arguably *sub judice* and any new warning to the Johor royal house would have been improper on that count. Still, the first boycott of a hockey match had already occurred the previous month (in Ipoh), and could have been expected to attract angry comment at the party congress in normal circumstances.

palace by the Sultan to explain his complaints about the enforced isolation of Johor teams from national hockey. He was assaulted, and after receiving moral support from the cabinet - indeed, specific 'advice' from Dr Mahathir - lodged a police report on 6 December. The UMNO-controlled press at once became a forum for long pent-up popular outrage in its correspondence columns, under a tacit suspension of the Sedition Act. Posing as the saviour of the monarchy, not its enemy, the elective leadership warned that 'the anger of the masses' would not be containable unless reforms were instituted immediately. As early as 10 December the Lower House of Parliament was convened in special session and passed an unprecedented, unanimous resolution in favour of 'all necessary action' to curb abuses of power by Malay rulers. (Of electrifying effect in the House - greeted by a collective gasp and then the stamping of feet by the parliamentarians - was the Deputy Prime Minister's declaration that rulers should not be able to kill their subjects with impunity.) And on 19 January 1993 the Lower House passed a constitutional amendment which not only removed judicial immunity from rulers in their private capacity and imposed limitations on the prerogative of pardon in cases involving royalty (Johor beware!), but also abolished immunity from political criticism in Parliament and the State Assemblies (Kelantan beware!).

This summary, however, only tells part of the story. Although Dr Mahathir had claimed at the outset that the rulers' consent was not required, the rulers soon placed the government on the defensive by convening informally on 27 December to discuss the proposed Amendment Bill. The Sultan of Johor attempted to mobilise popular support by calling a rally at his palace (it was ultimately cancelled, but only after intense government pressure). Kelantan was also the scene of considerable opposition activity. The government began to show clear signs of nervousness lest the rulers should refuse consent.<sup>44</sup> Indeed they withheld consent, following a formal session of their Conference on 16 January (from which they excluded the Chief Ministers and Prime Minister) and informal meetings among themselves over the next two days. They asked for 'adequate time for consideration' of a constitutional change which had such 'unprecedented significance', especially with re-

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44 The rulers were briefed on the amendments by the Prime Minister and UMNO Supreme Council on 9 January, and Dr Mahathir was reported as saying he hoped they would agree (*Utusan Malaysia*, 9 January 1993). The original proposed draft was printed in *New Straits Times*, 13 January 1993.

gard to 'the relationship between Federal Government and the States'. In fact, they refused consent even though a further clause had been included, after negotiation, providing for a special court for rulers.<sup>45</sup>

The Lower House special session of 18-19 January took place, in other words, under the shadow of a looming crisis of much greater proportions. Dr Mahathir duly revived his claim that the rulers' consent was not necessary anyway. But yet again the UMNO leadership went on the defensive, with a further round of negotiations. In the event, however, the leadership made no concession on the restoration of 'parliamentary privilege', permitting criticism of rulers (though for some bizarre reason it claimed that it had).<sup>46</sup> The only changes appearing in the version debated and passed by the Lower House on 8 March were the new provision that rulers should surrender their functions to a Regency, if a prosecution is pending; the deposition of a ruler sentenced to prison for more than one day; and the explicit exclusion of retroactive effect.<sup>47</sup>

The provision for suspension from office had actually been demanded by the rulers themselves in their rejection of the original Bill on 18 January (i.e. on the very morning of the day set for the presentation of the Bill in Parliament). But although the confirmation, 'for removal of doubt', that the law would have no retroactive application reflects an objective need of the rulers, the provisions for suspension and deposition from office seem, at best, 'neutral' in terms of advantage to either side. If the rulers saw patent benefit for themselves in these provisions, why were they not proposed a few days earlier, at the same time as the special court (which the government had time to incorporate into the Bill by 18 January)? A possible answer - though an intuitive one on the author's part, at this stage - is that the eleventh-hour rejection, with measured constitutional reasoning, was designed (a) to establish beyond doubt the indispensable role of the Conference of Rulers as custodian of the Constitution; and (b) to cast the Yang di-Pertuan Agong in the role of a mouthpiece or agent of the rulers' veto (which the rulers previously lacked), taking advantage of the Agong's post-1984 power to send back

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45 For the text of the rulers' statement, along with the relevant content of the Amendment Bill following the negotiations, see *New Straits Times*, 19 January 1993. In the parliamentary vote, two opposition parties - PAS and DAP - abstained; Spirit of '46 had walked out on the first day of the debate, PBS stayed away on the second.

46 The Deputy Prime Minister in *Berita Harian*, 12 February 1993.

47 The new draft may be read in *New Straits Times*, 10 March 1993. In the vote after this debate, DAP and PBS supported the Bill (as it had now received the consent of the Conference of Rulers); PAS abstained; and Spirit of '46 was again absent.



legislation once, with a mandatory statement of reasons. Aspect (b) takes substance from the fact that the Agong did not himself pass on the statement of the Conference on 18 January (a statement which anticipated the vote in Parliament and could not therefore serve as comment on a piece of legislation at that juncture) nor sent the Bill back at all quickly, but awaited the outcome of the further negotiations. The objections attached to the returned Bill were the reasons articulated by the Conference! Thus it was at least indirectly the Conference of Rulers which activated the process of reconsideration in Parliament.<sup>48</sup>

Following the rejection on 18 January the government was at pains to propagate an image of the suicidal folly of Malay monarchy in opposing a Bill which so clearly represented 'the will of the people'; continued the campaign of exposure of individual records of material greed if not criminality, including the nexus between royal logging and Chinese entrepreneurship; and began to withdraw a number of extra-constitutional perquisites previously granted by the Federal Government and UMNO-controlled State Governments (air transport, outriders, special hospital wards, and the like). The possibility has to be considered that this was a campaign of pressure designed to make the Conference change its mind. But since the rulers' statement had specifically accepted the main principle behind the Bill (the need to do away with the dual system of justice) and had not spelled out any objection to freedom of criticism in Parliament and the State Assemblies - while the campaign gave further, embarrassing prominence to the executive's acceptance of the necessity of Conference consent - one might surmise that Dr Mahathir was really seeking to win or hold 'the moral high ground' in the eyes of his supporters, in a crisis which had exposed not a little division in UMNO over the legitimacy of Dr Mahathir's actions, as in 1983.<sup>49</sup>

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48 The further session of the Conference which agreed to the revised draft of the Amendment Bill had taken place on 11 February. The Agong returned the original Bill to the Speaker of Parliament not long after this.

49 Beyond the ranks of UMNO, the most aggressive Malay criticism came from Tengku Razaleigh's Spirit of '46, but apparently on the classic, communalist grounds of 'the vital role of monarchy in symbolising Malay supremacy', not in the name of constitutional pluralism and balance of power. Traditionally anti-royalist PAS was, at best, ambivalent because of its position in the Kelantan government and cordial relationship between the Chief Minister and the Sultan. DAP likewise was torn between conflicting emotions: the democratic desire to dismantle an archaic institution, and the perception that to vote for the Bill would further strengthen the power of Dr Mahathir to deal roughly with opposition parties (but the decision not to support the original Bill was facilitated by DAP's alliance with Spirit of '46 as much as

In conclusion, there is no denying that 'Malaysia will never be the same again' after these events. The fundamental, institutionalised taboo on criticism of royalty was broken by many actions during the crisis, and this included the irrevocable exposure of a history of abuses to a previously unsuspecting public. The executive also gave free rein to Islamic criticism of monarchy, which has 'unhealthy' implications for the long-term survival of the institution in any form. The withdrawal of unwritten privileges after 18 January, which will presumably not be reversed, has detracted further from the aura of royalty. And lastly, thanks to the constitutional amendment itself, the rulers are no longer immune from the criminal law or (more importantly) from political criticism in elective assemblies. Yet again Dr Mahathir has revealed the strength of his political will and skills as a political fighter: an adversary whom few may be willing or able to challenge for several years to come, either within or outside the ruling party. The fact that it was he alone who was able to unleash public criticism and launch the constitutional reform shows the unique concentration of power in his hands.

On the other hand, as has been argued above, Dr Mahathir lost the battle over the power of assent of the Conference of Rulers. The crisis has defined and confirmed this function, in a mode which at the same time turns the referral power of the Agong into an 'active' part of the Constitution. More diffusely, Dr Mahathir was constrained to uphold constitutional monarchy as such; he even conceded a special court for royalty, including two judges to be nominated by royalty; and he ultimately upheld the taboo on discussion of *casus infaustus*.<sup>50</sup> All this surely reflects not only the residual strength of royalism among sections of UMNO and in the wider Malay society, but also a sense in Dr Mahathir's mind that the institution of monarchy is still symbiotically 'functional', in some degree, to Malay supremacy vis-à-vis other races. In

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by constitutional principle). Thus Dr Mahathir's most dangerous adversaries were the Malaysian Bar Council and two former Heads of Judiciary: Tun Suffian and Tun Salleh Abbas (all in inverse proportion to the coverage of their ideas in the press, needless to say; but an important editorial of the Bar Council's organ, *Insaf*, December 1992, was reprinted in *New Straits Times*, 13 January 1993).

50 The Minister of Information barred television from the Lower House during the debate from the floor on 19 January, 'to avoid untoward developments', while the press was not allowed to print in full a catalogue of 15 crimes committed by the Sultan of Johor before and after his succession, which Shahidan Kassim, M.P., recited to the Lower House. (For a partial list, see *New Straits Times*, *Berita Harian*, 20 January 1993; the latter revealed in a footnote that the golf-course incident was included but that censorship had been imposed.)

other words, the institution of monarchy is functional for the UMNO elite themselves, in the light of the legitimacy they can derive from it in both Malay and non-Malay eyes. But this implies a degree of dependency. And within such dependency lurks a further weakness, which potentially counterbalances the legitimacy gained: the cynicism of educated Malaysians of all races in view of two types of executive connivance which are now common knowledge. Or, phrased as a question: if he had the unique power to initiate the reform, why did he wait so long?

Firstly, there has been at least an oblique admission that a homicide was 'protected' a few years ago by some kind of cover-up, besides the legal immunity allowed to monarchs by the Constitution. The present article has surmised that such an action generated a benefit to the protector, reciprocally. Secondly, it has become clear that Dr Mahathir did nothing to halt royal destruction of forests in an UMNO-controlled State, Pahang, even while branding foreign concern about deforestation as a Western lie designed to discredit and weaken Malaysia. Here the reciprocal benefit is much less easy to identify, but it will be difficult to believe that there was none, considering how powerful Dr Mahathir had become in the course of his tenure, with no shortage of options. Intellectuals will therefore be asking whether the aggrandizement of executive power at the expense of other Malaysian institutions has been an end in itself - held back only by the tactical restraints of a 'personal symbiosis' with certain rulers, through which known discreditable actions and hidden reciprocities were strengthening Dr Mahathir's hand for a coup against the constitutional paragons at a later date. Has the monarchs' insidious nostalgia for power, which led to the abuse of a 'social contract', infected the very man who set out to correct the abuse?<sup>51</sup>

Now given the extent of concentration of power in Dr Mahathir's hands, both revealed and consolidated by his role as the great orchestrator, it might be thought that the recent crisis has made further

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51 Not the least of the mysteries surrounding the State of Pahang is an incident that stayed remote from the agenda of public exposure and discussion even during the recent crisis: the crash of a light aircraft on its way to a rendezvous at Kuala Lipis just over a decade ago. Meanwhile, the notion that UMNO leaders have inherited the cloak of absolutism from Malay monarchy was argued some time ago by Chandra Muzaffar, *Protector?*. Penang, Aliran, 1979. But, ironically, according to the reading of the editors of *Utusan Malaysia*, which published a series of extracts from the book during the recent crisis, only the monarchy has sought and received deference. A Mahathirian defence of the recent crisis would emphasize the healthy decline of 'feudalistic attitudes' and 'culture of fear', with no transposition to a new object of awe.

conflict futile for the opposition and unnecessary for the leader himself. Admittedly, the cynicism of intellectual 'gadflies', either at home or abroad, in no way threatens to weaken Dr Mahathir's position or correct the imbalance of power. Yet the experience of this premiership has shown the incumbent's truly absolutist abhorrence of either criticism or division of powers, with a concomitant capacity to act pre-emptively against any perceived challenge. This has included the challenge of foreign criticism since his philosophical horizons and political arena became internationalised. It is not inconceivable that a combination of intellectual criticism with other factors (the somewhat conditional triumph of the recent crisis and ambivalence of party support; any future challenge, real or imaginary, from royalty and federalism; or simply the frustration of residual dependency on royal charisma) could help to maintain conflict with monarchy as a semi-permanent 'process', a road on which Malaysia has already come some way, but still has a mile or two to go.<sup>52</sup>

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52 Postscript: the Sultan of Kelantan rejected the revised (March) amendment on the grounds that he had never given his proxy vote to the Sultan of Kedah (contrary to what the latter maintained) for the meeting of the Conference on 11 February, and that the passing of the original version of the amendment on 18 January was invalid anyway because it did not receive the consent of the Conference of Rulers in advance, as the Constitution stipulates. Dr Mahathir thus used his parliamentary speech on the revised amendment to question the legitimacy of the Sultan of Kelantan's succession, and in the following weeks the press was filled with the drama of a pretender, whose father's right had been lost in 1948 to Tengku Yahya (later Sultan Yahya, who died in 1979, father to the present Sultan Ismail).