

THE ROLE OF CONSTITUTIONAL RULERS: A MALAYSIAN PERSPECTIVE FOR THE LAITY

1. Malaysian Monarchy: a unique institution

Malaysia has one elected King (Yang di Pertuan Agong), nine hereditary Rulers and four appointed Yang di Pertua Negeri (formerly known as Governors).

The King is elected but he is a hereditary Ruler in his own State. He is elected not by universal suffrage as in the case of Members of Parliament, but by the other hereditary Rulers¹. His term of office is five years. He can be removed.

Each of the nine Malay States has a hereditary Ruler who reigns for life. In Perlis the Ruler is known as the Raja and in Negeri Sembilan he is called the Yang di Pertuan Besar. In other States they are known as Sultans. The rights of succession to the throne vary from State to State. The Yang di Pertuan Besar of Negeri Sembilan is elected by the four Ruling Chiefs (Undangs) and the Tunku Besar of Tampin. In Perak the succession rotates amongst the heads of three families. In other States the Rulers are succeeded by their eldest surviving sons.

Four States Malacca, Penang, Sabah and Sarawak have Yang di Pertua Negeri or Governors. A Governor is appointed for four years. Appointment is made by the Yang di Pertuan Agong after consultation with the Chief Minister of the State concerned.² Unlike Rulers, a Governor may be a commoner and need not be a Malay. Political considerations may enter in the appointment of a Governor but not in the case of a Ruler. He may be removed from office. He may also be re-appointed for a second or subsequent term.

The jurisdiction of the Yang di Pertuan Agong extends to the whole Federation. He cannot exercise his functions as Ruler of his State while in office except those as Head of the religion of Islam³. As the Yang di Pertuan Agong he is also the Head of the religion of Islam in four other States, namely Malacca, Penang, Sabah and Sarawak⁴.

¹ Federal Constitution, art. 34(3).

² *Ibid.* Sch. VIII, cl. 19A (i).

³ *Ibid.* art. 34(1).

⁴ *Ibid.* art 3(3).

A Ruler's jurisdiction is confined to his State only. Yet as a member of the Conference of Rulers, he deliberates and decides on matters affecting the whole Federation⁵

In many ways, the functions of the Governors are similar to those of the Rulers. Yet there are some differences. A Governor is not the Head of the religion of Islam in his State. He is a member of the Conference of Rulers, but not for the purpose of any proceedings relating to the election or removal of the Yang di Pertuan Agong or the election of the Timbalan Yang di Pertuan Agong or relating solely to the privileges, position, honours and dignities of Their Royal Highnesses or to religious acts, observances or ceremonies⁶.

2. Historical Background

(a) Traditional Role

Malay Kingship could be traced to the Hindu period. However as very little is known of the role of Malay Rulers during the Hindu period and as it has little or no relevance to the present role of the Rulers, that period is omitted. I begin with the role of the Malay Sultans during the Malacca period. It was during that period that Malay Kingship was at its apex.

A Malay Sultan during the Malacca period held absolute power and his subjects give him absolute loyalty.⁷ The Hikayat Hang Tuah and the Sejarah Melayu give numerous accounts of unquestioning loyalty of the Malay subjects to their Rulers. The Sultan declared war, decided on life and death of his subjects, administered justice and maintained law and order⁸. According to the Sejarah Melayu, Sultan Alauddin Riyat Shah even went out at night in disguise to ensure law and order was maintained and justice done⁹.

(b) Islamic Influence

Islam did not introduce monarchy but merely tolerated it. In Islam, the Head of State is the Head of the Government as well as the Religion. He is regarded as a successor to the Prophet. He must be learned in the teaching of the religion¹⁰. He is elected by consensus. He has the final say in matters of State as well as religion. He determines the law where it is not clear, in consultation with other scholars. He leads the prayers.

⁵*Ibid.* art 38.

⁶*Ibid.* Sch. V, cls 3 and 7.

⁷Zainal Abidin Wahid, *Glimpses of Malaysian History*, (1970) Chapter 4; See also Chandra Muzaffar, *Protector?* (1979), Chapter 1.

⁸Zainal Abidin Wahid, *Glimpses of Malaysian History*, (1970) p. 19.

⁹W.G. Shellabear, *Sejarah Melayu*, (3rd ed.) (1977), pp. 127-8.

¹⁰A Hasjmy, *Di mana Letaknya Negara Islam*, (1970), pp. 151-77.

However he has no absolute power. He is responsible to Allah and subject to the principles of Islam. "A Muslim ruler cannot expect loyalty from his subject if in carrying out the royal command he is required to violate the moral values of his religion. For as Muhammad is reported to have said, 'there is no obedience in sin. It is only in virtue.'"¹¹ When Abu Bakar As-Siddiq succeeded the Prophet as the first Caliph, he told the community:

"Behold me, behold me, charged with the care of government. I am not the best among you; I need all your advice and all your help. If I do well, support me; if I make mistake, counsel me As I obey God and His Prophet, obey me; if I neglect the Laws of God and His Prophet, I have no more right to your obedience."¹²

Of course, during the latter part of Islamic history, the office of the Caliph became a hereditary institution. In some cases, the title of "Sultan" was adopted. As hereditary Sultans are normally not men of learning and did not possess the qualities of earlier Caliphs, their role, at least as far as the head of religion, became nominal. Their functions were taken over by their officers.

As regards the Malay Sultanate, Professor Ahmad Ibrahim said:

"The Sultanate was the result of the assimilation of the spiritual and religious traditions originally associated with the institution of the Caliphate with the purely temporal authority that was the Sultan; the latter thus in addition to being a sovereign prince in the secular sense also came to maintain a close association with and responsibility for the Shariah."¹³

(c) *British Influence*

The British did not conquer the Malay States in the tradition of Alexander the Great or Kublai Khan. They colonised the States through intervention. They needed the power to rule the States. But they realised the usefulness of the Rulers and the sensitivity of the subjects regarding the position of their Rulers and the loyalty of the subjects to them. So, the British made use of the Rulers to rule the subjects. They stripped the Rulers of their powers but allowed them to retain those relating to their religion and customs. Religious matters were interpreted to refer only to ceremonies, rituals and personal law. Thus there was no conflict between religious matters which were within the powers of the Sultans and other matters taken over by the British. The British too had fought many wars for hundreds of years to curtail the powers of their Kings. So they extend-

¹¹Chandra Muzaffar, *Protector?* (1979), p. 31.

¹²*Ibid.*, pp. 31-32; See also Prof. Dr. Ahmad Shalaby, *Sejarah dan Kebudayaan Islam*, (1970), p. 273.

¹³Suffian, Lee and Trindade, *The Malaysian Constitution: Its Development: 1957-77*, (1978), p. 47.

ed the concept of constitutional monarchy to this country to suit their interests.

(d) *The Merdeka Constitution*

The British introduced to Malaya their system of Government and their principles of Constitutional Law. They were also responsible for the influx of the Chinese and the Indians. So, by the time Malaya was ready for independence, Malaya was saddled with opposing interests. The Rulers "were frightened about what might happen to them if the people had control of the country. They feared to share the fate of Heads of States as happened in India, Pakistan, Indonesia and elsewhere, where the people had chosen self-rule."¹⁴ The Malays "fear(ed) the domination especially by the Chinese who are economically stronger as happened in Singapore only a mile or two away."¹⁵ The Chinese and the Indians feared Malay domination and wanted a share in the Government of the country in which they had made their homes.

As a result, the Merdeka Constitution became a masterpiece of compromise. Every group gives something and gets something in return. The same applies to the Rulers. They agreed to independence and to hand over their powers to the people, but they have had their positions and privileges secured. Their functions were defined by the Constitution. In fact additional roles were assigned to them.

3. Constitutional Role of the Rulers

Sir Ivor Jennings, writing on the British monarchy made the following observations:

"The difficulty of explaining the process of government lies in the fact that it depends so much on intangible relationships which are more easily felt than analysed. This is particularly true of the Crown. On the one hand it is easy to exaggerate the influence of the monarchy by adopting a legalistic attitude and emphasizing the part played by the Crown in the theory of constitutional law. On the other hand it is easy to minimise the royal functions by stressing the great trilogy of Cabinet, Parliament and People. The truth lies somewhere in between, but it is not a truth easily demonstrated, nor is it constant in its content. So much depends on private interviews which political scientists do not attend, and so much on the personalities of those who do attend."¹⁶

The same is true in the case of Malaysian monarchy. Even though the role of Malaysian monarchy is more clearly defined in the Constitution, one cannot deny the role played by the Rulers behind the scene.

¹⁴Tunku Abdul Rahman, *Looking Back*, (1977), p. 27.

¹⁵Tun Mohd. Suffian, *Malaysia and India — Shared Experiences in the Law*, (1980), p. 43.

¹⁶Sir Ivor Jennings: *The British Constitution*, (4th ed.), p. 109.

According to Sir Ivor Jennings the "Queen (of England) has one, and only one, function of primary importance. It is to appoint a Prime Minister."¹⁷

That may be so in England as England has no written Constitution and the Parliament is supreme. It is definitely not so in Malaysia. This is because, in Malaysia, there is a written Constitution which lays down the powers of the Rulers and provides that in specific matters, the Rulers may act in their discretion. Let us examine these provisions:

"The Yang di Pertuan Agong may act in his discretion on the performance of the following functions, that it to say --

- (a) the appointment of a Prime Minister;
- (b) the withholding of consent to a request for the dissolution of Parliament;
- (c) the requisition of a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of Their Royal Highnesses, and any action at such a meeting; and
- (d) in any other case mentioned in this Constitution."¹⁸

Similar provisions, with necessary modifications, are to be found in the State Constitutions.¹⁹ Thus in para (a) the words "Prime Minister" should be read as "Menteri Besar" and in para (b) "Parliament" should be read as "Legislative Assembly".

However the various State Constitutions contain the following additional provisions as to their discretionary powers:

- (i) any function as Head of the Muslim religion or relating to the custom of the Malays;
- (ii) the appointment of an heir or heirs, consort, Regent or Council or Regency;
- (iii) the appointment of persons to Malay customary ranks, titles, honours and dignities and the designation of the functions appertaining thereto; and
- (iv) the regulation of royal courts and palaces.²⁰

(a) *Appointment of the Prime Minister*

Even in appointing the Prime Minister, the Yang di Pertuan Agong is not completely free. The Constitution requires him to appoint a member of

¹⁷ *Ibid.*

¹⁸ Art. 40(2), Federal Constitution.

¹⁹ See Art. VII, Second Part, Laws of the Constitution of Johore; Art. 39 (Kedah); Art. XI, First Part (Kelantan); Art. XL (Negeri Sembilan); Art. 6, Part II (Pahang); Art. XVIII, First Part (Perak); Art. 39 (Perlis); Art. LV (Selangor); Art. XIX, First Part (Trengganu).

²⁰ *Ibid.*

the House of Representatives who in his judgment is likely to command the confidence of the majority of the members of that House.²¹

Since independence 25 years ago there has not been any problem regarding the appointment of the Prime Minister. This is because, firstly, the same party has remained in power and has always won the General Elections by a big majority. Secondly when the party chooses its leader it is always with the understanding that if the party comes to power, he would be the Prime Minister. So, at Federal level, the role, so far played by the Yang di Pertuan Agong in appointing the Prime Minister, has been no more than giving constitutional endorsement to the decision of the party in power. Party here must be read to mean the major party in the governing coalition.

However at State level things have not been so smooth sailing. It was well known that the Sultan of Perak and his former Menteri Besar, Tan Sri Ghazali Jawi, were not on good terms. However as the Menteri Besar had the confidence of his party, there was nothing that the Sultan could do to replace him with another Menteri Besar. The Sultan "refused to attend any functions where Tan Sri Ghazali was present. The matter got so bad that the Sultan finally decided to sport a beard, and vowed that he would only shave it off after Tan Sri Ghazali had left the office of Menteri Besar."²² The crisis was solved when the Menteri Besar, on the advice of his party leaders, resigned from office. Another name was submitted to the Sultan and the Sultan appointed him as Menteri Besar.

A similar incident occurred in Pahang. The Regent of Pahang could not get along with his Menteri Besar, Datuk Abdul Rahim Abu Bakar. It was solved in the same way as in Perak.

There was another interesting incident in Pahang which happened in 1978. Tengku Ariff Bendahara, a younger brother of the Sultan announced that he intended to enter politics and allowed himself to be considered for appointment to the post of Menteri Besar. The Sultan then made it known that he would not have his brother as a Menteri Besar and claimed "that he had the right under State Constitution to oppose the appointment."²³ The statement of the Sultan was severely criticized by Tunku Abdul Rahman, the first Prime Minister.²⁴ However a crisis was avoided as the Tengku Ariff Bendahara did not go into politics.

Another incident involved the Sultan of Johore and Menteri Besar Datuk Haji Othman bin Saat. From reports in the press it seems that the Sultan could not get along with the Menteri Besar. His Royal Highness even ordered the Menteri Besar to vacate his office premises as he (the Sultan) wanted to occupy the office. The Menteri Besar vacated the premises. But as the general election was just round the corner, the Menteri Besar stayed on. However he did not seek re-election.

²¹Art. 43(2), Federal Constitution.

²²Tunku Abdul Rahman, *As a Matter of Interest* (1981), p. 30.

²³*Ibid*, p. 28.

²⁴*Ibid*, Chapter 4.

The Tunku also recalled an incident when the first Yang di Pertuan Agong, Tuanku Abdul Rahman was requested by an emissary of a Middle East country to sack him from the office of Prime Minister of Malaya. The emissary was astonished when the Yang di Pertuan Agong replied "Oh, I cannot, for he is appointed by the people and not by me. On the other hand he can sack me."²⁵ Of course the last sentence is an over-statement, legally speaking.

The Perak and Pahang incidents mentioned above were not protracted and did not lead to any serious constitutional crisis because the ruling party gave in. One could imagine the consequences if it had not. In fact it is well-known that in submitting a candidate for appointment as Menteri Besar the party always takes into consideration his acceptability to the Ruler.²⁶ This shows how important is the role played by the Rulers even in matters in which he has no absolute discretion, even though at times their actions are difficult to justify.

Party leaders should be complimented for their willingness to give in to avoid and to solve major constitutional crises with the Rulers. The Rulers too should reciprocate. As the Tunku puts it:

"Loyal people have accepted the institution, and, what is more, the Rulers have been given more rights than they had once enjoyed in British colonial days, at least as far as the Sultans of the former Federated Malay States are concerned. It is for the Rulers to reciprocate, to show their appreciation, and to play the role they are expected to, and have played so admirably well since our Merdeka."²⁷

As I was writing this article another incident occurred in Selangor. The General Election was held on 22nd April, 1982. The Barisan Nasional won 31 out of 33 seats in the State Legislative Assembly. Datuk Haji Ahmad Razali was one of the successful Barisan Nasional candidates. On 26th April, 1982, the Press²⁸ reported that Datuk Haji Ahmad Razali has been nominated by the party as the next Menteri Besar of Selangor. The report also said that the Sultan would have to decide whether to accept or reject the nomination and quoting sources in UMNO (one of the component parties of the Barisan Nasional) went on to say that it was highly unlikely that the Sultan would reject the nomination as Datuk Haji Ahmad Razali had close ties with the Sultan.

The report also quoted Datuk Haji Harun, the Selangor Barisan Nasional director of elections as saying that the State Assemblymen had unanimously agreed to Datuk Ahmad's nomination and that he (Datuk

²⁵Tunku Abdul Rahman, *Looking Back* (1977), p. 205.

²⁶See "How Candidates in Selangor were chosen," interview of Datuk Harun bin Haji Idris, Barisan Nasional Director of Elections for Federal Territory and Selangor by Dr. Tan Chee Khoon, *The Star*, 12th April 1982, p. 6 and *The Star*, 13th April 1982, p. 4.

²⁷Tunku Abdul Rahman, *As a Matter of Interest* (1981), p. 31.

²⁸*New Straits Times*, 26th April, 1982, p. 2; *Utusan Malaysia*, 26th April, 1982, p. 7.

Haji Harun) would present the name to the Sultan the following day. "Datuk Harun also said that he would not be able to decide whether the Sultan would accept or reject the proposal as the decision is the prerogative of the Sultan."²⁹ The news was also carried by the Malaysian television, a government agency.

The Sultan of Selangor was upset over the television news, it being a part of the government mass media. His Royal Highness cancelled the scheduled meeting with Datuk Haji Harun. The State Secretary told the press the Sultan would leave for a holiday in Australia on the following day and would deal with the appointment of the Menteri Besar on his return. "He (the State Secretary) would not say when the Sultan would return."³⁰

At 10.30 a.m., on the day the news of the Sultan's displeasure was carried by the Press (27th April, 1982), the Prime Minister had an audience with the Sultan. At the meeting, the Sultan agreed to appoint Datuk Haji Ahmad Razali as Menteri Besar. According to the State Secretary, the Sultan "appeared happy" after the meeting with the Prime Minister.³¹

In this incident, it is interesting to note that, firstly, there appears to be a misconception on the part of Datuk Haji Harun with regard to the "prerogative" of the Sultan in the appointment of Menteri Besar. It is true that appointment of a Menteri Besar is a prerogative of the Sultan. However the Ruler is not free to appoint anybody he likes. He must appoint a member of the Legislative Assembly who in his judgment is likely to command the confidence of the majority of the members of the Assembly.³² When the party which obtains the majority of seats in the general election decides to nominate one of its members of the Assembly for appointment as Menteri Besar, in my view the Ruler has no discretion but to appoint him. To disregard the wishes of the party and to appoint another member who cannot command the confidence of the majority of the members in the Assembly could lead to a vote of no confidence against him in which case the Ruler will have to either appoint another member or dissolve the Assembly.

Secondly, the existence of "close ties" between the Sultan and the nominee is not relevant. It is not a factor to be considered. The only consideration is whether he is likely to command the confidence of the majority of the members of the Assembly.

Thirdly, I see nothing wrong for the Press or even the government controlled mass media to report the decision of the party.

However, it appears that the real reason behind His Royal Highness' displeasure was the decision of the party to send Datuk Haji Harun to sub-

²⁹ *Ibid.*

³⁰ *New Straits Times*, 27th April, 1982, p. 2; *Utusan Malaysia*, 27th April, 1982, p. 1.

³¹ *New Straits Times*, 28th April, 1982, p. 1.

³² Art. LIII (2)(a), *Laws of the Constitution of Selangor*, 1959.

mit the name of the nominee to His Royal Highness. Datuk Haji Harun, though one of the Vice Presidents of UMNO held no government post. It would have been polite and proper if the incumbent Menteri Besar or the Prime Minister or his Deputy were to seek audience with the Royal Highness to submit the name of the new Menteri Besar, as was done in other States.

It was fortunate that the Prime Minister took quick remedial action to settle the misunderstanding.

(b) *Dissolution of Parliament*

The Yang di Pertuan Agong may also act in his discretion on the withholding of consent to a request for the dissolution of Parliament. The Rulers of the Malay States have a similar discretion in respect of the dissolution of State Legislative Assemblies.

Here again, there had not been any occasion when the Yang di Pertuan Agong in his discretion has withheld his consent to a request by the Prime Minister to dissolve Parliament. This is because no Prime Minister has ceased to command a majority in the Dewan Rakyat. Furthermore, even though the Constitution is silent, the Prime Minister, following the British convention is entitled to choose his own time to hold the general election within the statutory five-year limit prescribed by Art. 55(3) of the Constitution. "No Sovereign could constitutionally refuse to grant a dissolution of Parliament at the time of his choice."³³

The 1982 General Election was held one year ahead of time. In fact rumours of an early general election had started since the middle of 1981. The Press were even making predictions as to the exact date. One columnist³⁴ was wrong by only two days and that was because, for the first time the election was held on a Thursday, the week-end of the former Unfederated Malay States, instead of on a Saturday, the week-end in the other States. Of course, the columnist did say in jest in the same article that the Prime Minister might choose a different date, just to prove that he was wrong.³⁵

In fact, as the election fever was hotting up, the focus was only on the Prime Minister: which date would be most favourable to his party. There was no evidence, at least in the Press, that anybody ever thought of the possibility that the Yang di Pertuan Agong might withhold his consent.

This clearly shows that under normal circumstances, it is taken for granted that the Yang di Pertuan Agong would not withhold his consent. His role under such a situation is purely formal.

³³Wade and Phillips: *Constitutional Law*, (6th ed.), (1960), p. 79.

³⁴Subky Latiff: *Pilihanraya 24th April*, Watan, 2nd February, 1982.

³⁵The columnist is a PAS member and stood for the Parliamentary Constituency of Kemaman.

Only one incident had so far occurred at State level where a Ruler was requested by the Menteri Besar to dissolve the State Assembly because he had lost the support of the majority of the members. It happened in Kelantan in 1977.³⁶

The Federal Government was in the hands of the Barisan Nasional. The Government of the State of Kelantan was under the control of PAS, once and again now an opposition party and a bitter enemy of the Barisan Nasional. Even though, at the time of the incident, PAS was a component party in the Barisan Nasional, it was an open secret that UMNO, the strongest member of the Barisan Nasional wanted to wrest control of Kelantan from PAS.

There was a crisis within PAS in Kelantan. The Menteri Besar, Datuk Haji Mohamed Nasir, fell out of favour with his colleagues in the Legislative Assembly. On 15th October, 1977, they passed a vote of no confidence against the Menteri Besar and later expelled him from the party, hoping thereby that he would resign and another PAS member would be appointed Menteri Besar. But the Menteri Besar did not resign. Instead he advised the Regent to dissolve the Assembly. There was considerable political confusion in the State.

The Regent made no decision. On 9th November, 1977, the Yang di Pertuan Agong, who was incidentally the father of the Regent, on the advice of the Federal Government proclaimed a State of Emergency in the State. On the same day, Parliament passed the Essential Powers (Kelantan) Act 1977. All executive and legislative powers in the State were placed in the hands of the Prime Minister. However, the Menteri Besar remained in office though not in power. In the meantime with the blessings of UMNO he formed a new political party, Berjasa.

About three months after the emergency was proclaimed, on 12th February, 1978, the Yang di Pertuan Agong, again on the advice on the Federal Government, lifted the emergency and restored the power of the Menteri Besar. The following day the Regent dissolved the State Assembly, opening the way for a general election.

In this election UMNO won 23 seats, Berjasa 11 seats and PAS which by then had been expelled from the Barisan Nasional won only 2 seats. Thus ended eighteen years of PAS control of the State of Kelantan.³⁷

In this incident it appears that the Federal Government had some influence over the State Ruler in the exercise of his discretion with regard to the dissolution of the State Legislative Assembly.

³⁶The Kalong Ningkan affair is omitted as it involves a Governor even though the powers of a Governor on this aspect are the same as a Ruler.

³⁷See Tun Mohd. Suffian: *Malaysia and India — Shared Experience in the Law*, (1980), pp. 80-83.

(c) *Head of the Religion of Islam*

Art. 3(2) of the Federal Constitution, *inter alia*, provides:

"In every State other than States not having a Ruler the position of the Ruler as Head of the religion of Islam in his State in the manner and to the extent acknowledged and declared by the Constitution of that State, and subject to that Constitution, all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired . . ."

The Constitutions of the various States contain provisions that the Ruler of the State is the Head of the Religion of Islam in that State.³⁸ The Federal Constitution also requires that provision be made in the Constitution of the States of Malacca, Penang, Sabah and Sarawak conferring on the Yang di Pertuan Agong the position of Head of the religion of Islam in that State.³⁹ Such provisions have been made.⁴⁰ The Yang di Pertuan Agong is also the head of the religion of Islam in the Federal Territory.⁴¹

The various State Constitutions also provide that the Ruler of the State may act in his discretion in the performance of any functions as Head of the religion of Islam.⁴² A similar provision is not to be found in the Federal Constitution. Professor Ahmad Ibrahim is of the view that unlike the Ruler of the State, the Yang di Pertuan Agong may only act on advice in performing his functions as Head of the religion of Islam in Malacca, Penang, the Federal Territory, Sabah dan Sarawak.⁴³ Professor F.A. Trindade supports his view.⁴⁴

In practice, however, there seems to be no significant difference in the role of a Ruler as the Head of the religion of Islam in his State and the Role of the Yang di Pertuan Agong as the Head of the religion of Islam in the States not having a Ruler.

The role is actually confined to matters provided for by the State laws, in particular the Administration of Muslim Law Enactments of the various States. A Ruler may not, for example, play the role of the early Caliphs

³⁸ Art. LVIIA, First Part, Laws of the Constitution of Johore; Art. 33B (Kedah); Art. VI, First Part (Kelantan); Art. V (Negeri Sembilan); Art. 24 Part I (Pahang); Art. VI, First Part (Perak); Art. 5 (Perlis) [Added by Enactment No. 2 of 1964]; Second Part. Art. XLVIII (Selangor); Art. IV, First Part (Trengganu).

³⁹ Art. 3(3), Federal Constitution.

⁴⁰ Art. 5, Constitution of the State of Malacca; Art. 5, Constitution of the State of Penang; Art. 4A Constitution of Sarawak (added by O. 9/76).
The appears to be no such provision in Sabah, although Islam is stated to be the religion of the state — See. S.5A (added by E. 8 of 1973).

⁴¹ Art. 3(5), Federal Constitution.

⁴² See Note 20.

⁴³ Suffian, Lee and Trindade, *The Constitution of Malaysia: Its Development: 1957-77* (1978), p. 50.

⁴⁴ *Ibid.*, p. 114.

in the religion of Islam even though reciting sermons at Friday prayers is definitely proper.

In some States the prerogative of appointing the Mufti is exercised by the Ruler.⁴⁵ In other States he is appointed by the Ruler on the advice of the Ruler in Council or of the Council of the Religion.⁴⁶ The Ruler is also required to consult the Council of Religion with regard to the appointment of other religious officials.⁴⁷

In practice, appointments are made on the recommendation of the Council of Religion and the Ruler in Council. However the fact remains that the Ruler "does have a great deal of influence on the appointment of religious officials."⁴⁸

The Ruler does continue to play a role in the issue of fatwas or rulings on the Islamic religion and law. Under the various State Enactments relating to the Administration of Muslim law the power to issue fatwas is given to the Mufti, Fatwa Committee, or the Council of Religion. In issuing such fatwas the person or body issuing them is required ordinarily to follow the orthodox tenets of the Shafie school, but where the public interest so requires the fatwa may be given according to the tenets of other schools, but only with the special sanction of the Sultan.⁴⁹ However, as the Rulers are not normally learned in Islamic Law one would not expect them to do more than to endorse the views of the Mufti, Fatwa Committee or the Council as the case may be.

Some Rulers are very jealous of their role as Head of the religion of Islam so much so that we find that, through the influence of the respective Rulers, Kedah and Pahang have not participated in the National Council of Religious Affairs. This is most unfortunate as the Council was established with a view to, inter alia, advise the Conference of Rulers, State Governments, and State Religious Councils on matters concerning Islamic Law or the administration of Islam and Islamic education with a view to standardizing and encouraging uniformity in Islamic Law and administration.⁵⁰

The supreme prerogative of a Ruler as the Head of the religion of Islam in his State is illustrated recently in connection with the determination of the date for Hari Raya Idulfitri. This date which marks the end of the fasting month of Ramadan and the beginning of the following month of Syawal is determined according to Islamic Law by the alternative methods of falak,

⁴⁵See, for example, section 9, Administration of Muslim Law Enactment 1964 (Perlis).

⁴⁶See, for example, section 39(1), Administration of Muslim Law Enactment 1965 (Perak).

⁴⁷See, for example, section 10, Administration of Muslim Law Enactment, 1964 (Perlis), section 43 (Perak).

⁴⁸Suffian, Lee and Trindade: *The Constitution of Malaysia: Its Development: 1957-77*, (1978), p. 59.

⁴⁹For example, see section 42, Administration of Muslim Law Enactment, 1965 (Perak); Section 38 (Kedah).

⁵⁰Suffian, Lee and Trindade: *The Constitution of Malaysia: Its Development: 1957-77* (1978), p. 60; see also Othman Haji Ishak; *Fatwa Dalam Perundangan Islam*, (1981), p. 58.

i.e. astronomical computation, or rukyah, i.e. by the sighting of the new moon. The convention in this country has been to use the rukyah method and as the new moon was not sighted on Wednesday 21st July 1982 the Yang di Pertuan Agong with the concurrence of the Conference of Rulers determined that Hari Raya would fall on Friday 23rd July but the State of Perak celebrated Hari Raya on Thursday 22nd July on the decree of the Sultan of Perak. It is true that the second limb of Article 3(2) of the Federal Constitution provides that in any acts, observances or ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his capacity of Head of the religion of Islam authorise the Yang di Pertuan Agong to represent him, but the Sultan of Perak had in fact in the exercise of his inherent and constitutional power and prerogative as the Head of the religion of Islam in his State decreed the date for Hari Raya as 22nd July well before the announcement on the evening of 21st July by the Keeper of the Rulers' Seal that Hari Raya would fall on Friday 23rd July. A few years back a similar situation arose when the State of Kedah celebrated Hari Raya on a different day from the rest of the country.

It is a fact that Islamic Law and procedure contained in the Administration of Muslim Enactments vary from State to State. Even fatwas on many issues vary from State to State.⁵¹ The latter have not only confused the public but also affected the authority of the fatwas.

(d) *Ruler and Parliament*

The Yang di Pertuan Agong is a component part of Parliament.⁵² When a Bill is passed by both Houses, "it shall be presented to the Yang di Pertuan Agong for his assent."⁵³ The Yang di Pertuan Agong shall signify his assent to a Bill by causing the Public Seal to be affixed thereto.⁵⁴ Similar provisions are also to be found in the State Constitutions regarding the Ruler and the State Legislative Assembly.⁵⁵

In England it is only by convention that assent is not withheld. The right of veto has not been exercised since the reign of Queen Anne. It may be said to have fallen into disuse as a consequence of ministerial responsibility.⁵⁶

⁵¹For full discussion, see Othman Haji Ishak, *op. cit.*, n. 50.

⁵²Federal Constitution Art. 44.

⁵³*Ibid.* 66(3).

⁵⁴*Ibid.* Art. 66(4).

⁵⁵Art. XIV, Second Part, Laws of the Constitution of Johore; Art. 44 (Kedah); Art. XXVIII, First Part (Kelantan); Art. XLVII (Negeri Sembilan); 17 (Pahang); Art. XXVIII, First Part (Perak); Art. 44 (Perlis); Art. LXI (Selangor); Art. XXVI, First Part (Terengganu).

⁵⁶Wade and Phillips: *Constitutional Law*, (6th ed.), (1960), p. 125.

In Malaysia, the role of the Rulers is specifically provided for in the Constitutions and the Rulers have no power to refuse.⁵⁷ It is most unfortunate, therefore, that the Regent of Pahang, as reported in the Press recently, because of differences with the Menteri Besar, refused to signify his assent to a Bill passed by the State Legislative Assembly. Such refusal is clearly unconstitutional.

(e) *Role of the Rulers in matters where they are required to act on advice*

In matter where the Rulers are required to act on advice the role of the Rulers varies from mere formality to influencing the decision.

As the fountain of justice, appeals from the Federal Court in non-constitutional civil matters lie to the Yang di Pertuan Agong. By agreement between the Governments of Malaysia and the United Kingdom, such appeals are heard by the Judicial Committee of the British Privy Council. On receiving the advice of the Privy Council the Yang di Pertuan Agong is obliged by the Constitution to make such order as may be necessary to give effect thereto.⁵⁸ Here the role of the Yang di Pertuan Agong is purely formal.

With regard to the power of pardon, the Yang di Pertuan Agong or the Ruler acts on the advice of the Pardons Board.⁵⁹ However, as far as it is known, there are three cases which are of special interest. The first shows the influence of the Prime Minister. During the Indonesian confrontation, 11 Chinese were convicted and sentenced to death for consorting with the enemy. Some Chinese carried out a campaign to obtain a pardon for them. The then Prime Minister, Tunku Abdul Rahman publicly supported it. They were pardoned. This incident was one of the factors that led to the unpopularity of the Prime Minister amongst the Malays at that time.

Yet another incident shows the influence of the Sultan. The then Crown Prince of Johore was convicted of a number of offences. The feelings of the public were strongly against him. The public did not expect him to be pardoned. The Sultan however pardoned him. Even though the Crown Prince and heir to the throne was demoted because of the incident, just before his death the Sultan reinstated him to his former position. He became the Sultan after the death of his father.

These incidents show that in the exercise of the power of pardon, the ruler may be influenced by other factors, personal or political.

⁵⁷Federal Constitution, VIII Seb., Cl. 1.

⁵⁸Federal Constitution Art. 131(4).

⁵⁹*Ibid.* Art. 42.

(f) *Conference of Rulers*

“The members of the Conference of Rulers may act in their discretion in any proceedings relating to the following functions that is to say —

- (a) the election or removal from office of the Yang di Pertuan Agong or the election of the Timbalan Yang di Pertuan Agong;
- (b) the advising on any appointment;
- (c) the giving or withholding of consent to any law altering the boundaries of a State or affecting the privileges, position, honours or dignities of the Rulers; or
- (d) the agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole.⁶⁰

The role of the Rulers in electing a Yang di Pertuan Agong is of utmost importance. They, and they alone, in their discretion elect a Yang di Pertuan Agong according to the procedure laid down by the Constitution. To elect a Yang di Pertuan Agong who could not work with the Government within the framework of the Constitution could lead to a constitutional crisis and seriously affect the peace and stability of the country.

As elections of the Yang di Pertuan Agong are by secret ballot and proceedings of the Conference of Rulers are confidential, it is not known whether any Ruler has been passed over.

Professor Jayakumar⁶¹ tells us of two instances, the first in 1957 and the second in 1970 where the most senior Ruler was not elected the Yang di Pertuan Agong. He observed that “if these two Rulers did not voluntarily stand down they must have been passed over . . .”

However, Tunku Abdul Rahman seems to suggest that the Sultan of Pahang, in 1957, was passed over. He gives the following account:

“People have asked me from time to time as to why the Sultan of Pahang, who was one of the senior Rulers of the country, had not been appointed Yang di Pertuan Agong. Perhaps I might answer it in these terms. It was a question of either taking the Throne or winning the love of a woman, and I hope his descendants, particularly the present incumbent, will forgive me for saying so. When the late Sultan of Pahang expressed a wish to marry his fifth wife, Tun Abdul Razak and I went to see him in Istana Pahang in Kuala Lumpur and pleaded with him not to go through with it, because that would turn the people against him. He would, in our mind, make a very good Yang di Pertuan Agong as he was close to the people and very friendly and sporting. After some time with him he agreed to accept our advice. However, a few days afterwards, to my

⁶⁰*Ibid.* Art. 38(6).

⁶¹SulFian, Lee and Trindade: *The Malaysian Constitution: Its Development: 1957-77*, (1978), p. 104.

astonishment, we read a report in the newspapers that the Sultan had gone through with his marriage and was having his honeymoon in Hong Kong."⁶²

It is not known whether the Prime Minister and his Deputy were acting as emissaries of the other Rulers when they went to see the Sultan to "plead" with him not to go through with the marriage. If they were, we cannot impute their influence on the Rulers in deciding not to elect the Sultan. It would be different if they acted on their own initiative.

The Conference of Rulers must be consulted for appointments of the Lord President, Chief Justices, Judges, the Auditor General, Members of the Public Services Commission, members of the Armed Forces Council, etc.

It is not known whether any appointment has been aborted because of disagreement by the Conference of Rulers. Legally, such appointment may be made even in the face of opposition by the Conference of Rulers. However, one can safely say that the views of the Rulers play a very important part in such appointments.

Regarding (c) and (d) above, it appears that the discretion of the Rulers is absolute, though no doubt a strong and popular Prime Minister might be able to influence the Rulers in the exercise of their discretion.

The consent of the Conference of Rulers is required for any law making an amendment to Art. 10(4), any law made under Art. 10(4), the provisions of Part III of the Constitution Art. 38, Art. 63(4), Art. 72(4), Art. 70, Art. 71(1), Art. 152 and Art. 153.⁶³

Art. 152 deals with the national language and the use of other languages. Art. 153 deals with the special position of Malays and natives of Borneo and the legitimate interests of other communities. It is here, at least to the Malays and the Natives of Borneo, that the role of the Rulers is most important.

As stated earlier, the Malays feared that with a lot of non-Malays becoming citizens after Merdeka, the importance of the Malay language would be lost, and that they would be dominated by the non-Malays, especially the Chinese who are economically stronger. Hence the two articles were inserted. But they felt that the guarantees would not be strong enough if they could be repealed easily. This is particularly so as they envisaged a lot of non-Malays would become citizens after Merdeka and have a right to vote and be elected to the Dewan Rakyat. In order to entrench the guarantees, the consent of the Conference of Rulers was made a condition precedent to any amendment to them. With that condition the Malays feel safe. It is to the Rulers that they entrust the role of protecting their rights as the Rulers must necessarily be Malays and are above politics. It is true that the Conference of Rulers acts on advice in this matter. But one will

⁶²Tunku Abdul Rahman: *Viewpoints*, (1976), pp. 72-73.

⁶³Federal Constitution, art 159(5)

not expect that the consent of the Rulers could be obtained easily in these matters. Any government trying to force these issues on the Rulers would be courting trouble as the Malay masses would definitely back the Rulers when it comes to the question of preserving their special privileges.

Conclusion

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

Professor Groves, writing in 1964 commented that the Yang di Pertuan Agong is "a visible symbol of unity in a remarkably diverse nation."⁶⁴ Professors F.A. Trindade and S. Jayakumar, also in 1964, wrote that "it [the office of the Yang di Pertuan Agong] has provided for the first time a living national symbol to a society whose peoples differ racially, culturally and linguistically."⁶⁵

Writing again in 1978, Professor Trindade described Professor Groves' statement as fair.⁶⁶

We, Malaysians, living in Malaysia since the office of the Yang di Pertuan Agong was created 25 years ago, seeing the crowd at the Palace "open house" on Hari Raya days, seeing the crowd that line the streets to see the Yang di Pertuan Agong and the Raja Permaisuri Agong pass by on their installation day, seeing the reactions of the crowd whether at a football or hockey match, at a National Day parade or at the National Mosque when the Yang di Pertuan Agong is present cannot help but agree with the statement.

Malaysians do not only differ racially, culturally and linguistically, but, prior to Merdeka and the creation of the office of the Yang di Pertuan Agong, even the Malays did think regionally, as Kelantanese, Kedahans and so on. Their sentiments lay with their home States and their loyalty lay with their State Rulers. Such feelings appear to be on the decline now. Now, when they think of their Sultan, they also think of the Yang di Pertuan Agong who takes precedence over their Sultan. In fact they are proud when their Sultan becomes the Yang di Pertuan Agong. For those in States without Rulers, for the first time they feel that there is a Ruler who fills the vacuum in their States.

⁶⁴Groves: *The Constitution of Malaysia*, p. 42.

⁶⁵F.A. Trindade and S. Jayakumar, *The Supreme Head of the Malaysian Federation*, (1964) Vol. 6 No. 2 Mal. L.R. 302.

⁶⁶Suffian, Lee and Trindade; *The Constitution of Malaysia: Its Developments: 1957-1977* (1978), p. 101.

It may be that the sentiments of Malaysians as regards the Yang di Pertuan Agong may not as yet be as strong as that of Britons towards their Queen. This is quite understandable as the office of the Yang di Pertuan Agong is barely 25 years old, as the Yang di Pertuan Agong changes every five years and there are eight other Rulers to share those sentiments of loyalty. It may be that because of these factors, Malaysians may not as yet be able to say "we can damn the Government and cheer the King" as Englishmen are apt to say. But there is no denying that the office is the symbol of unity, the fountain of justice, mercy and honour — a role which neither the President of the United States nor Napoleon could ever dream to play.

In his book published in 1978 Tunku Abdul Rahman said:

"Never once did I have any occasion to regret my role as the man who suggested the institution of Kingship in Malaysia, as I was convinced that this institution would have great influence on the well-being, peace, and glory of this nation."⁶⁷

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⁶⁷Tunku Abdul Rahman: *Viewpoints*, (1978), p. 72.