DEMOCRACY AND THE ROLE OF THE SULTANATE SYSTEM IN MALAYSIA: THE ROLE OF THE MONARCHY

In this paper¹ I propose to discuss briefly the structural features of the system of parliamentary democracy in Malaysia and examine how it relates to the traditional system of the monarchy. The uniqueness of the Malaysian Constitution lies in the blending of the features of the Westminster export model and the indigenous characteristics of feudal Malay society called the 'traditional elements' of the Constitution. The origins of the Constitution may therefore be said to antedate the attainment of Independence by the country in 1957. In this regard the Constitution may be treated as evolutionary in character and not merely an Anglo-Malayan product as suggested in some judicial pronouncements.²

In moving the second reading of The Federal Constitution Bill on August 15, 1957, the first Prime Minister, Tunku Abdul Rahman, declared:

¹This paper was originally presented at a Law Faculty Seminar at the Queen's University of Belfast, Northern Ireland on the 13th June 1994.

²Eg Phang Chin Hock v Public Prosecutor [1980] 1 MLJ 70; Dato Menteri Othman v Dato Ombi (1981) 1 MLJ 29, 32.

It must be remembered that the freedom to which we aspire is the freedom to govern ourselves under a system in which Parliamentary institutions shall be exclusively representative of the people's will.³

The 1957 Constitution sought to establish in Malaya a parliamentary democracy based on the Westminster model. A bicameral legislature, a constitutional monarchy and the establishment of three distinct organs of State - Parliament, an Executive and the Judiciary - were the obvious characteristics of the vintage model that was adopted. However of equal importance were the dissimilarities which gave the Malayan Constitution a distinctive character.

In this respect, RH Hickling observed:

The ideas of Westminster and the experience of India have mingled with those of Malaya to produce a unique form of government.⁴

He also spoke 'of the Malay origins of the Constitution' embodied in particular in the offices of the Yang di-Pertuan Agong and the Rulers.⁵

Equally important was the underlying compact between the races. The Reid Commission was mindful of the multi-racial and multi-religious character of the population. The Commission therefore proposed the inclusion of a fundamental rights chapter in the Constitution providing for freedom of religion,⁶ liberty and equality of the person,⁷ and rights to education regardless of race or religion.⁸ The Reid Commission's recommendations on the race question were influenced by the

³Malayan Constitutional Documents (2nd Ed) Vol 1, p iv.

^{&#}x27;Hickling RH, "The Historical Background to the Malaysian Constitution" in Reflections On The Malaysian Constitution (Aliran Publication 1987) p 27. 'Ibid.

⁶Article 11.

⁷Articles 5 and 8.

^BArticle 12.

memorandum of the Alliance Party which was itself a coalition of political parties representing the three major races in the country. Thus the Constitution has been described as 'very much a product of ethnic bargaining and accommodation',9 Indeed, in a government publication, the Constitution is spoken of as 'a binding agreement solemnly entered into by all the races'.10 In brief the accommodation between the races is seen in the quid pro quo over the acceptance of citizenship rights for the non-Malays and the recognition of special privileges for the Bumiputeras. The balance of ethnic interests may also be observed in the recognition given to certain traditional features of Malay society and its incorporation structurally into the Constitution. The Constitution entrenched the special position of the Malay language as the National Language and inserted a special privileges clause for indigenous peoples. These features inter alia have been called 'the traditional elements' of the Constitution.11 The term has been used in relation to features of Malay society and culture that have been in practice long before the British colonial administration. These indigenous features have been identified as:

- (1) The Sultanate or Rulership
- (2) Islamic Religion
- (3) Malay Language; and
- (4) Malay Privileges¹²

The parliamentary system that the Reid Commission was asked to recommend was a federal form of government based on parliamentary democracy and a bicameral legislature.¹³ The mandate was evidently to use the Westminster model and

⁹Tan Chee Beng, "Ethnic Dimension in the Constitution",(1987) Vol XX No 3 INSAF 31.

¹⁰Towards National Harmony (Government Printers, 1971).

[&]quot;See Tun Salleh Abas, "Traditional Elements of the Malaysian Constitution" in Constitution, Law and the Judiciary (Malayan Law Publishers, 1986) at p 37 et seq.

¹² Ibid.

¹³See the Report of the Federation of Malaya Constitutional Commission 1957 at p 22 para 57.

adapt it to suit local requirements. The Commission had several previous models to work on.¹⁴ The final proposal showed that the form and structure of government recommended was largely modelled on the Indian Constitution. As Suffian FJ (as he then was) acknowledged in *Karam Singh v Menteri Hal Ebwal Dalam Negeri (Minister of Home Affairs)* ¹⁵: '...to a great extent the Indian Constitution was the model for our own Constitution'.¹⁶ There are nevertheless significant differences between the two which should not escape notice. As Hickling observes:

There is no proud preamble, declaratory of the will of the people; no constituent assembly hammered it out with the strange sorts of paradox to be found in the Indian Constitution; nor did any formal referendum set a popular seal upon its single but lengthy text.¹⁷

The point of similarity with the Indian Constitution, however, lies in the federal system and the distribution of legislative powers between a federal legislature at the centre and the various state legislatures. Both Constitutions attempt to demarcate legislative power according to subjects with respect to which the centre or state legislatures can enact laws. In Malaysia, the distribution of legislative power is closely tied with the scheme of the federation. In proposing a federation for the Malay Peninsula the Reid Commission recommended 'a strong central government with a measure of autonomy for

 $^{^{14}}$ Eg the Constitutions of India, Australia, Ceylon and the British North America Act of Canada.

^{15[1969] 2} MLJ 129 FC.

 $^{^{16}}$ Ibid at p 147. The alternatives suggested were the Ceylonese and the Canadian models: see Shafruddin Hashim, "The Constitution and the Federal Idea in Peninsular Malaysia" (1984) 11 JMCL 139 at p 140 n 2.

¹⁷Hickling RH in "An Overview of Constitutional Changes in Malaysia" in Suffian, Trindade & Lee, *The Constitution of Malaysia: Its Development 1957* - 1977 (OUP, 1978) at pp 2-3.

¹⁶For a comprehensive analysis of the position in India see Seervai HM, Constitutional Law of India, 3rd Ed Vol 11 Ch XXII (Legislative Power of the Union and the State) pp 1892 et seq.

the States'. 19 There was established a duality of government by which the Constitution provided for separate executive and legislative branches at both the federal and state levels.

The Federal Parliament itself is bicameral in character composed of an upper house of appointed senators and a lower house that is entirely elected. Like its English model, the executive government is formed out of the lower house called the Dewan Rakyat. The Yang di-Pertuan Agong appoints as Prime Minister a member of the Dewan Rakyat who in his judgement is likely to command the confidence of the majority of the members of the House (Article 43). The Prime Minister presides over a cabinet that is chosen from members of the Dewan Rakyat.20 Since the Yang di-Pertuan Agong is a constitutional monarch he is bound to act on the advice of the Cabinet save in some matters.21 The upshot of the whole scheme was the setting up of a Cabinet-style government based on the Westminster model. It was the obvious intention of the framers of the Constitution that the executive government should be subject to control by Parliament.

By Article 44, the Constitution vests the legislative authority of the Federation in Parliament. The procedure for the enactment of Acts of Parliament and the requirement for the royal assent before a Bill becomes law is given in Article 66. A person reading these provisions may be forgiven for concluding that the legislative process in Malaysia reflects the typical Westminster model. The reality is otherwise. In constitutional terms, Parliament does not enjoy exclusive legislative powers

¹⁹The Reid Report, supra n 13 at para 178, p 77.

²⁰The Constitution however also provides for appointment of members of the Senate to the Cabinet.

²¹There are 3 matters in which the King may ostensibly act on his own. They are (1) appointment of the Prime Minister (2) withholding consent to dissolution of Parliament, and (3) requisitioning a meeting of the Conference of Rulers. He will no doubt be governed by constitutional conventions in the exercise of his discretion in these matters: See generally, Tun Mohd Suffian, "Parliamentary System v. Presidential System - The Malaysian Experience" [1979] 2 MLJ lii.

but in a sense shares it with the Yang di-Pertuan Agong and the Conference of Rulers in the discharge of their quasi-legislative functions under the Constitution. This refers to:

- (a) the power of approval of legislation given to the Conference of Rulers in certain matters; and
- (b) the discretion whether to assent to Bills conferred upon the Yang di-Pertuan Agong under Article 66.

Under the Constitution, the position of the Yang di-Pertuan Agong is not merely ceremonial. Indeed at first blush, some of the provisions of the Constitution vesting powers in His Majesty would seem to place him as a ruler with a wide prerogative rather than as a constitutional monarch.²² A Malaysian Monarch himself once described the role of the King in wide terms:

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 by the Constitution. His role far exceeds those constitutional provisions.²³

Let us consider some of the provisions of the Constitution enumerating the functions of the Yang di-Pertuan Agong. Article 32(1) declares the Yang di-Pertuan Agong as the Supreme Head of the Federation' and Article 39 declares that the executive authority of the Federation shall be vested in him. Article 40(1) enjoins the Yang di-Pertuan Agong when exercising his power under the Constitution or under Federal law to act on the advice of the Cabinet. However, Article 40(2)

²²For a discussion of the royal prerogative in Malaysia see Hickling RH, "The Prerogative in Malaysia" (1975) 17 Mal L R 207.

²³HRH Sultan Azlan Shah, "The Role Of Constitutional Rulers: A Malaysian Perspective For The Laity" (1982) 9 JMCL 1 at p 17. Also published in Trindade & Lee, *The Constitution of Malaysia: Further Perspectives And Development* (OUP, 1986) under the title "The Role of Constitutional Rulers in Malaysia" at p 76 et seq.

says he may act in his discretion with respect to the appointment of a Prime Minister; withholding consent to dissolution of Parliament; requisition of a meeting of the Conference of Rulers when concerned solely with the privilege and honour of the Rulers. In matters where the security or the economic life or public order of the Federation or any part thereof is threatened, Article 150(1) empowers the Yang di-Pertuan Agong to issue a Proclamation of Emergency if he 'is satisfied' that a grave emergency exists. Under Article 153, the Yang di-Pertuan Agong is vested with the responsibility of safeguarding the special position of the Malays and the natives of the Borneo States (ie Sabah and Sarawak) and is for that purpose empowered to make reservation of positions in the public service or reservation of scholarship and other educational privileges and give general directions to the relevant authority charged with the issue of trade and business licences to ensure the reservation of such proportion of such permits or licences; in undertaking all the responsibilities aforementioned the Yang di-Pertuan Agong is authorised to act 'as he may deem reasonable'.

It has been observed that the office of the Yang di-Pertuan Agong is governed by the political, social and economic realities of Malaysia. In recommending the creation of the office of the Yang di-Pertuan Agong, the Constitutional Commission stated that 'he will be a symbol of unity of the country'. Certainly, the features of the monarchial institution in Malaysia are unique. It is the only monarchy anywhere providing for the election of the King. The King holds office on rotation with his brother Rulers. The body that elects the King is the Majlis Raja-Raja or Conference of Rulers. This body established under Article 38 of the Constitution, is composed of the Malay Rulers of the nine states and the Governors of Penang, Malacca, Sabah and Sarawak. The Governors however take no part in the election of the Agong or on questions relating to the

²⁴Hickling, supra n 22 at p 216.

²⁵The Reid Report, supra n 13 at p 22 para 58(i). The Yang di-Pertuan Agong is "a visible symbol of unity in a remarkably diverse nation": Groves HE, The Constitution of Malaysia (Malaysia Publications Ltd,1964) at p 42.

privileges, position, honours or dignities of the Rulers. The Conference of Rulers is undoubtedly a body *sui generis*. It is said to have no legislative, executive or financial power but 'is the most prestigious body in the country'.²⁶

By Article 38(2) the Conference of Rulers exercises the func-

tions of:

 electing, in accordance with the provisions of the Third Schedule, the Yang di-Pertuan Agong and Timbalan Yang di-Pertuan Agong (Deputy King);

(b) agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a

whole;

(c) consenting or withholding consent to any law and making or giving advice on any appointment which under this Constitution requires the consent of the Conference or is to be made by or after consultation with the Conference.

By Article 38(6) it has the following discretionary functions:

 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.

The powers of election and removal of the Yang di-Pertuan Agong and the Timbalan Yang di-Pertuan Agong make it clear that the King and Deputy King are accountable to the Con-

²⁰Tun Mohd Suffian, *supra* n 21 at p lvi. It has also been described as a constitutional body "with certain executive, deliberative and consultative functions" per Raja Azlan Shah Ag, LP in *Phang Chin Hock* v *Public Prosecutor* (No 2) [1980] 1 MIJ 213.

ference of Rulers whilst in office.²⁷ The powers of the Conference of Rulers increased after the May 1969 Emergency resulting from the outbreak of racial riots in Kuala Lumpur. It has been said pointedly of the powers of the body:

It stands outside Parliament, yet can veto certain bills and has legislative powers of its own in relation to certain religious observances in the States of Malaya, ... and it can discuss anything.²⁶

From the legislative standpoint, the significant changes to the powers of the Conference of Rulers came in 1971. By two amendments to the Constitution made in March 1971,29 after parliamentary rule was restored in the aftermath of the 1969 riots, Article 159 was amended to provide, by Clause (5), that the consent of the Conference of Rulers is required for any law that seeks to change Article 38 (Conference of Rulers), Article 70 (Precedence of Rulers) and Article 71(1) (the right of a Ruler to hold and exercise the constitutional right and privileges of Ruler of the State). Apart from these provisions relating to the position and status of the Royalty, by Article 159(5), consent of the Conference is also needed for any changes to: (a) Part III of the Constitution dealing with citizenship; (b) Article 10(4) providing for the passing of law in the interest of public order from prohibiting the questioning of the so-called sensitive issues like citizenship, national lan-

²⁷For an account of the election procedure of the Yang di-Pertuan Agong, see Trindade FA & Jayakumar S, "The Supreme Head of the Federation" (1964) 6 Mal L R 280 at p 282-84; Trindade FA, "The Constitutional Position Of The Yang di-Pertuan Agong" in Suffian, Trindade & Lee, *supra* n 17 at pp 103-105. The election would seem to strictly follow the electoral list according to the Third Schedule of the Constitution and is by secret ballot. For further readings on the election of the Agong, see Sinnadural V, "The Yang di-Pertuan Agong: The Appointment Process Under The Federal Constitution" (1989) 2 SCJ 65.

²⁶Sheridan LA & Groves HE, *The Constitution Of Malaysta* (MLJ Publication, 1987) 4th Ed p 131.

²⁹The Constitution Amendment Act 1971 (Act A 30) of 10 March 1971 and the Constitution Amendment Act (No. 2) 1971 (Act A 31) of 24 March 1971.

guage, the special privileges clause, and the position of the Royalty; (c) Article 152 establishing the Malay language as the national language; and (d) Article 153 relating to special privileges for the indigenous people of Malaysia. It will be noted that these matters are essentially those matters which was said to be the underlying compact between the races in producing a balance in the original or independence Constitution. The objective of giving this role to the Rulers would seem to be the maintenance of 'a cordial inter-ethnic relationship'30 in the country. However, another reason was that ventured by HRH Sultan Azlan Shah in a seminar paper on the position and status of the Rulers. He ascribes it to the traditional role of the Rulers in protecting Malay rights and the language.31 The objective behind giving this quasi-legislative role to the Rulers is obvious - to ensure that these important matters should not be subject to the vicissitudes of politics. From the constitutional standpoint, if the consent of the Conference is not obtained to any such bill it would have no legal effect and would not be law.32

Thus the Conference of Rulers is not a mere consultative body. In the constitutional sense and in the context of Article 159(5) it is part of the amending legislative process of Parliament.

³⁰See Azmi Abdul Khalid, "Role Of The Monarch: Influences Upon The Development Of Parliamentary Government", in *Reflections On The Malaysian Constitution supra* n 4 at p 44 et seq at p 45.

³¹See Raja Tun Azlan Shah *supra* n 23 at p 16. He further observes: "It is true that the Conference of Rulers act on advice in this matter. But one will not expect that the consent of the Rulers could be obtained easily in these matters" at pp 16-17.

⁵¹See *The Bribery Commissioner* v *Ranasinghe* [1965] AC 172; [1974] 2 All ER 785 PC, where the Privy Council struck down a purported amendment to the Constitution of Ceylon which had received the Royal assent but did not comply with the special procedure prescribed by the Constitution that the amending Bill should carry a Speaker's certificate that the Bill was passed with the requisite majority, per Lord Pearce: "where the certificate is not apparent there is lacking an essential part of the process necessary for amendment" (p 791A). See also *AG for New South Wales* v *Trethowan* [1932] AC 526 PC; *Rediffusion (Hong Kong) Ltd* v *AG of Hong Kong* [1970] AC 1136 PC; Australian High Court in *Cormack* v *Cope* (1974) 131 CLR 432.

A significant feature of the legislative process is the assent power of the Yang di-Pertuan Agong and the changes it underwent in the 1983-84 period. The 1983 amendments (The Constitution Amendment Act A566 of 1983) purported to make a number of changes to the Constitution.³³ However, the most important were those pertaining to the curtailment of the functions of the Yang di-Pertuan Agong and the State Rulers. The principal constitutional provisions affected were Article 66 and Article 150. The Constitution (Amendment) Bill purported to amend Article 66, dealing with the assent of the Yang di-Pertuan Agong to bills passed by Parliament before they become law, by providing for its dispensation if the Yang di-Pertuan Agong does not give his assent within fifteen days of it being presented to him.³⁴

As regards Article 150, the proposed change was by substituting the 'satisfaction of the Yang di-Pertuan Agong' to declare an emergency with that of the Prime Minister. The amended Article 150(1) read as follows:

If the Prime Minister is satisfied that a grave emergency exists where by the security, or the economic life, or public order in the Federation or any part thereof is threatened, he shall advise the Yang di-Pertuan Agong accordingly and the Yang di-Pertuan Agong shall then issue a Proclamation of Emergency making therein a declaration to that effect.

The other parts of Article 150 were likewise amended to reflect the change that it was the satisfaction of the Prime

³³There were 22 in all. Some of the changes were to increase the number of Parliamentary and State seats, and provision to establish a Supreme Court in place of the Federal Court upon termination of appeals to the Privy Council.

³⁴Article 66(5) was amended to read as follows:

A Bill shall become law on being assented to by the Yang di-Pertuan Agong. If for any reason whatsoever the Bill is not assented to within fifteen days of the Bill being presented to the Yang di-Pertuan Agong, he shall be deemed to have assented to the Bill and the Bill shall accordingly become law.

A parallel change was made to Paragraph 11 of the Eighth Schedule to effect a similar dispensation in respect of the Ruler's assent to state legislation.

37 Ibid at 52.

Minister that was operative and that the Yang di-Pertuan Agong acted merely on advice.

The objective behind the amendments to Articles 66 and 150 was to remove all ambiguity with regard to the purely constitutional role that the Yang di-Pertuan Agong plays in these matters. There can be little doubt that in assenting to a bill passed by Parliament, His Majesty acts as a constitutional monarch and cannot refuse to give his assent based on his private conception of the Bill.³⁵ Likewise on the question whether the Agong could act on his own in proclaiming a state of emergency under Article 150, all possible doubts should have been dispelled by the Privy Council's observation in *Teh Cheng Pob v Public Prosecutor* case:

...(The Agong's) functions are those of a constitutional monarch... he does not exercise any of his functions under the Constitution on his own initiative but is required by Article 40(1) to act in accordance with the advice of the Cabinet. So when one finds in the Constitution itself or in a Federal law powers conferred upon the Yang di-Pertuan Agong that are expressed to be exercisable if he is of opinion or is satisfied that a particular state of affairs exists or that a particular action is necessary, the reference to his opinion or satisfaction is in reality a reference to the collective opinion or satisfaction of the members of the Cabinet...³⁷

In the light of the obvious position that obtained prior to 1983 on these matters, the question is what prompted the Federal Government to act as it did? As Rawlings observed it

³⁵This has been the consistent view of all leading writers on the subject. Trindade in his article "The Constitutional Position Of The Yang di-Pertuan Agong" (see *The Constitution of Malaysia - Its Development: 1955 - 77* Sufflan, Lee & Trindade *supra* n 17 at p 101) concludes on this question that: "Nevertheless it does not seem possible for the Yang di-Pertuan Agong to withhold assent to a Bill passed by both Houses of Parliament." See also Raja Tun Azlan Shah (as he then was) in *supra* n 23 at p 14.: "In Malaysia, the role of the Rulers is specifically provided for in the Constitution and the Rulers have no power to refuse."

was the Federal Government's attempt at a 'pre-emptive strike' to provide against the future when it might have to deal with an 'unpredictable' monarch. 36 As events went, the 1983 amendments led to a crisis. The crisis broke out when the Yang di-Pertuan Agong refused to assent to the Constitution (Amendment) Bill passed by Parliament in August 1983. The disagreement of the Rulers was not confined merely to the changes to the Eighth Schedule. They also saw in the amendments to Articles 66 and 150 an infringement of Article 38(4) which reads:

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

It was no doubt a complex question as to whether the dispensation of the need for the Royal Assent under the Eighth Schedule and Article 66, or removing 'the satisfaction of the Yang di-Pertuan Agong' under Article 150 constituted an affront to 'the privileges position, honours or dignities of the Rulers', ³⁹

An impasse developed because the Constitution (Amendment) Bill 1983 passed by Parliament in August 1983 could not

³⁸Rawlings HF, "The Malaysian Constitutional Crisis of 1983" (1986) 35 ICLQ

³⁹For an excellent discussion of this question, see Lee HP, "The Malaysian Constitutional Crisis: Kings, Rulers And Royal Assent" 1985 Vol XVIII No 3 INSAF 7 at pp 13-16. Mr. Lee reproduces as an appendix to the article the opinion of the Attorney General (see also [1983] 2 CLJ 229) to the effect that: (1) the amendments to Article 66 does not require the consent of the Conference of Rulers because it is not mentioned in Article 159(5), (2) signifying assent to a bill passed by Parliament has no relevance to "the privileges, position, honours and dignities" of the Yang di-Pertuan Agong, and (3) the Yang di-Pertuan Agong cannot refuse to assent to any bill passed by Parliament. Mr. Lee takes the view that probably only the change to the Eighth Schedule would infringe Article 38(4).

⁴⁰According to Rawlings, the first suggestion came from the former Prime Minister Tunku Abdul Rahman to the effect that the Rulers give an assurance that they will not withhold assent to any legislation: see Rawlings, *supra* n 38 at p 250-251.

be brought into force on the existing law without the Royal Assent. Finally a solution was reached.⁴⁰ An agreement was reached between the Rulers and the Government whereby the Timbalan Yang di-Pertuan Agong as Acting King⁴¹ would give assent to the Amendment Bill in its existing form. The reason given was so that the electoral law changes could be immediately brought into force. In return the Government undertook to move a new Bill in Parliament to give effect to the terms of the compromise on Articles 66 and 150.

The compromise was contained in the Constitution (Amendment) Bill 1984⁴² which came into force as Act A584 on 20 January 1984. In short, the Amendment Act deleted the amendments made in 1983 to Article 150 and reinstated the provisions before they were amended. The Government's concession on Article 150, however, was a *quid pro quo* for the significant change to Article 66. The new Article 66 provides for the dispensation of the Royal Assent once Parliament has re-debated the Yang di-Pertuan Agong's initial refusal to give assent.⁴⁵ The significance of this change is undoubtedly far-

⁵¹The Yang di-Pertuan Agong was at the material time indisposed.

⁴²Reproduced in [1984] 1 CLJ 7.

¹³The new Article 66(4) reads as follows:

⁽⁴⁾ The Yang di-Pertuan Agong shall within thirty days after Bill is presented to him -

⁽a) assent to the Bill by causing the Public Seal to be affixed thereto; or

⁽b) if it is not a money Bill, return the Bill to the House in which it originated with a statement of the reasons for his objection to the Bill, or to any provision thereof.

⁽⁴A) If the Yang di-Pertuan Agong returns a Bill to the House in which it originated in accordance with Clause (4)(b), the House shall as soon as possible proceed to reconsider the Bill. If after such reconsideration the Bill is passed by the votes of not less than-two-thirds of the total number of members of that House in the case of a Bill for making any amendment to the Constitution other than an amendment excepted pursuant to Article 159, and by a simple majority in the case of any other Bill, with or without amendment, it shall be sent together with the objections to the other House, by which it shall likewise be reconsidered, and if similarly approved by members of that House, the Bill shall again be presented to the Yang di-Pertuan Agong for assent and the Yang di-Pertuan Agong shall give his assent thereto within thirty days after the Bill is presented to him.

reaching. In short, whilst the Government may have succeeded in precisely defining the royal function in the exercise of the assent power the Yang di-Pertuan Agong's 'right' of 'initial refusal' is now constitutionally recognised, something he did not, constitutionally speaking, possess previously. The end result is that the so-called constitutional crisis of 1983 saw: (1) Article 150 emerging unscathed, but (2) witnessed a radical change to Article 66 on the exercise of the assent power.

In the context of the legislative roles played by the Yang di-Pertuan Agong, one should have regard also to his lawmaking powers during a state of emergency as found in Article 150(5). It extends generally to all subjects except those limited by Clause (6A). Since the Emergency declared on 15 May 1969 continues in force, the emergency law-making powers have since been institutionalised under section 2 of the Emergency (Essential Powers) Act 1979 where His Majesty is authorised to enact essential regulations having the force of law, and with the capacity to override constitutional provisions, on a wide range of subjects dealing with peace, the good order of the government and to ensure the free and uninterrupted supply of goods and services. However, the significance of this legislative function must be seen in its proper context; His Majesty in the exercise of his functions under Article 150 is bound to act as a constitutional monarch, and thus the law-making under Article 150(5) is in reality law-making by the Executive.44 The restrictions to law-making under Clause (6A) are nevertheless of interest and may be stated for completeness. Clause (6A) declares that emergency law-making shall not extend 'the powers of Parliament with respect to Islamic law, the custom of the Malays, any matter of native law or custom of Sabah and Sarawak, and matters relating to religion, citizenship or language'. Clause (6A) read with Article 159(5) makes the provisions covered therein the truly entrenched provisions of the Constitution.

⁽⁴B) If a Bill is not assented to by the Yang di-Pertuan Agong within the time specified in Clause (4)(a) or (4A) hereof, it shall become law at the expiration of the time as specified in Clause (4)(a) or (4A), as the case may be, in the like manner as if he had assented to it.

[&]quot;See Privy Council in Teh Cheng Pob v Public Prosecutor supra n 36.

POSTSCRIPT: THE 1993 AND 1994 AMENDMENTS

In 1993, and again in May 1994, significant amendments were made to the Federal Constitution relating to the position and status of the Rulers. In particular, the 1993 Amendments made a significant in-road into the concept of the Rulers' immunity from suit and action. This immunity had hitherto been recognised as an important feature of the Constitution, and arguably, a product of the corpus of unwritten understandings leading to the establishment of the Independence Constitution in 1957. The sweep and range of the amendments leave little room for doubt that personal immunity was being abolished. A need for revision had been debated for sometime at constitutional reform forums largely as a result of the uncontrolled activities of some royal siblings and also the increased involvement of the royalty in business and finance. However, the immediate impetus for the Amendment was the alleged assault of a citizen by a member of Royalty in late 1992 leading to public outcry and outrage.45 The then immunity provisions of the Constitution prevented any form of action for the assault in spite of its gravity. The Government in a popular step moved amendments to remove the immunity. The Government measure enjoyed all party support for the first time in the parliamentary history of the country. In brief, a new Part XV of the Constitution was created providing for the establishment of a Special Court to deal with all civil and criminal actions by and against any of the Rulers including the Yang di-Pertuan Agong. Three features of the amendments may be noted for our immediate purpose: (1) by Article 183 no action, civil or criminal, may be instituted against the Rulers in the Special Court except with the consent of the Attorney General personally; (2) the Special Court is to comprise the Chief Justice of the Federal Court and the two Chief Judges of the High Court and two Judges to be appointed by the Conference of Rulers. Their decision is to be by a majority and is deemed final and conclusive; (3) the amendments do not delineate the type of civil and crimi-

⁴⁵For an account and background of the incident, see The Aliran Monthly 1992:12(12) at p 2.

nal actions triable before the Special Court. Ex facte all actions 'done or omitted to be done' be the Ruler 'in his personal capacity' (see Article 183) giving rise to criminal or civil liability would seem triable before the Special Court. There is however no room for doubt that the official acts of the Yang di-Pertuan Agong and the State Rulers will continue to enjoy immunity from action: see Article 32(1) and Article 181(2).

In May 1994, the ever-bedeviling problem (from the Executive's standpoint) of assent by the Yang di-Pertuan Agong and the Rulers to Bills passed by Parliament or the State Legislatures, raised its worrisome head again. In 1984, in what is often called the first constitutional crisis between the Rulers and the Executive, the question of Royal assent under Article 66 and the Eighth Schedule arose, as to whether in the constitutional scheme of things there could be a royal refusal to

⁴⁶The new Articles 182 and 183 read as follows:

^{182 (1)} There shall be a court which shall be known as the Special Court and shall consist of the Chief Justice of the Federal Court, who shall be the Chairman, the Chief Judges of the High Courts, and two other persons who hold or have held office as judge of the Supreme Court or a High Court appointed by the Conference of Rulers.

⁽²⁾ Any proceedings by or against the Yang di-Pertuan Agong or the Ruler of a State in his personal capacity shall be brought in a Special Court established under Clause (1).

⁽³⁾ The Special Court shall have exclusive jurisdiction to try all offences committed in the Federation by the Yang di-Pertuan Agong or the Ruler of a State and all civil cases by or against the Yang di-Pertuan Agong or the Ruler of a State notwithstanding where the cause of action arose.

⁽⁴⁾ The Special Court shall have the same jurisdiction and powers as are vested in the inferior courts, the High Court and the Federal Court by this Constitution or any federal law and shall have its registry in Kuala Lumpur.

⁽⁵⁾Until Parliament by law makes special provision to the contrary in respect of procedure (including the hearing of proceedings in camera) in civil or criminal cases and the law regulating evidence and proof in civil and criminal proceedings, the practice and procedure applicable in any proceedings in any inferior court, any High Court and the Federal Court shall apply in any proceedings in the Special Court.

⁽⁶⁾ The proceedings in the Special Court shall be decided in accordance with the opinion of the majority of the members and its decision shall be final and conclusive and shall not be challenged or called in question in any court on any ground.

assent to Bills passed by the legislature. The 1984 amendments, discussed above, reflected a compromise which *ex facie* had recognised an initial royal refusal to a Bill passed by Parliament which was then to be returned to Parliament for fresh debate. If it was passed on the second round, the Yang-di-Pertuan Agong was obliged to give his assent. The present Amendment obliterates the 1984 changes. Under the new scheme of Article 66, the Yang di-Pertuan Agong shall within 30 days after a Bill is presented to him assent to the Bill, failing which it shall become law at the expiration of the time specified in like manner as if he had assented to the Bill. The effect is obvious. The 1984 compromise is now de-recognised and there is instead an enhancing of the position that insofar as legislative measures are concerned the Rulers should not be allowed to block any measure.⁴⁷

These sets of amendments coming soon, one after the other, reflect an ongoing adjustment between the Executive and the

⁽⁷⁾ The Yang di-Pertuan Agong may, on the advice of the Lord President, make such rules as he may deem necessary or expedient to provide for the removal of any difficulty or anomaly whatsoever in any written law or in the carrying out of any function, the exercise of any power, the discharge of any duty, or the doing of any act, under any written law, that may be occasioned by this Article; and for that purpose such rules may make any modification, adaptation, alteration, change or amendment whatsoever to any written law.

¹⁸³ No action, civil or criminal, shall be instituted against the Yang di-Pertuan Agong or the Ruler of a State in respect of anything done or omitted to be done by him in his personal capacity except with the consent of the Attorney General personally.

⁴⁷It is open for consideration whether this amendment in turn would require the consent of the Conference of Rulers under Article 38 as a matter, *inter alta*, affecting their rights and privileges. Meanwhile, Article 66 as amended in Clauses (4) and (4A) reads as follows:

⁽⁴⁾ The Yang di-Pertuan Agong shall within thirty days after a Bill is presented to him assent to the Bill by causing the Public Seal to be affixed thereto.

⁽⁴A) If a Bill is not assented to by the Yang di-Pertuan Agong within the time specified in Clause (4), it shall become law at the expiration of the time specified in that Clause in the like manner as if he had assented thereto.

Rulers in a still evolving relationship.

CONCLUSION

The result of all this is the existence of an unique relationship between Parliament and the system of constitutional monarchy in the country, probably without parallel elsewhere. The quasilegislative role played by the Conference of Rulers signifies its importance in the legislative process and reflects the further insertion of a set of checks and balances within the Constitution. The significance of this lies in the fact that this feature is purely an indigenous creation and not a Westminster import. Thus the structure of the Malaysian Constitution, in particular the interaction between Parliament and the Monarchy in the legislative process, presents a role model of the adaptation of the Westminster system to suit the domestic requirements, culture and ethos of a people seeking to govern their own destiny by their own system.

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