

CONSTITUTIONAL MONARCHY

By

Tun Abdul Hamid Mohamad

England took hundreds of years to make her King a constitutional monarchy. The system developed to what it is today in the eighteenth century and the nineteenth century when daily powers of government were exercised by the Cabinet and Parliament elected by the people through elections. Under the system, the King acts as a Head of State, free from politics and in accordance with what is provided for by the Constitution. Apart from being a symbol of national unity, the King holds some power such as to dissolve Parliament, to appoint the Prime Minister and to assent to bills passed by Parliament. However, the exercise of these powers is subject to convention while others are a formality. The British political theorist Walter Bagehot in his book "The English Constitution" identified three main political rights which a constitutional monarch could freely exercise: the right to be consulted, the right to advise, and the right to warn.

When Malaya gained her independence in 1957, through the Reid Commission whose members were of common law judges, Malaya chose a constitutional monarchy system. That was a wise decision. It was accepted by the people and the Rulers (I am using the term Ruler(s) when referring to Malaysia). It became a contract between the Rulers and the people. The people agreed to accept the Rulers as their constitutional monarchs who would exercise their powers as provided by the Constitution. The Rulers also agreed with these conditions.

The model is the UK model. Thus, in interpreting the provisions of the Constitution, we also need to understand the background and the conventions. For example, the constitution may use the word "advice" such as "on the advice of the Minister". By convention, the King is required to follow the advice.

As a result of two "constitutional crisis" during the period when Tun Dr. Mahathir was the Prime Minister, two amendments were made to the Federal Constitution which, I believe, could be the first of their kind in the world. First, the provision that the Ruler must sign a bill passed by Parliament within 30 days, otherwise it will automatically become law. (Article 66 (4A)).

This amendment would not have been necessary if the Ruler understood his role, including the conventions. Signing the bill is a formal job. A King or a Ruler should not block any law made by Parliament. The legislative power has given to the Parliament.

Secondly, the establishment of the Special Court. Originally, like the King of England, the Rulers in Malaysia were above the law. They could not be sued or prosecuted.

But, when a Ruler assaults and hurts someone, when Rulers begin to get involved in business and incur large amounts of debts, then remedies has to be given to the other party. Otherwise it is not fair. The Constitution was amended to establish the Special Court. (Article 182).

As Chief Justice, I had presided the first case involving a Ruler that went through a full trial, from the beginning till judgment. (See the first judgment on my website www.tunabdullhamid.my). In that case, the former Ruler of Malaysia and a reigning Ruler of a State at that time, was ordered by the court to pay US1 million to a bank. The Ruler complied with the order and paid the sum. That is an example that Malaysia should be proud about. The case is the best illustration of the independence of the Judiciary and the rule of law in Malaysia.

In the last 56 years, apart from two "crisis", the system had worked well. Malaysia should be proud of it.

However, sometimes, there is a misunderstanding about the role of the Ruler. In one case in the Syari'ah Court in a state in Peninsular Malaysia, the Judge referred the issue of apostasy to be decided by the Sultan. That is a mistake. No one other than the Court's judges (including the Judge himself) has jurisdiction to decide the issue. The Sultan is a constitutional monarch and should not be equated with Caliph or a Sultan in the past. Judicial power has been given to the Syari'ah Court. That should be understood.

Other than that, there are times when we hear groups calling for a matter to be referred to the Conference of Rulers or who try to seek the intervention of the Conference of Rulers in a matter. I think this is also incorrect. They should not try to involve the Conference of Rulers and the Conference of Rulers should not get involved in such matters. It is different where the Constitution provides for the consent of the Conference of Rulers for an amendment.

According to news reports, the Johor Real Estate and Housing Authority Bill will be tabled in the Johor State Legislative Assembly for approval. It is interesting to note that the bill contains provisions to give administrative powers to the Sultan of Johore. The Sultan will be given the power to oversee the accounts of the board, dismiss and appoint a new board, determine the amount of their remuneration and allowances and "to appoint a director who could be chosen as chief executive" of the board.

I do not want to comment on the proposal in detail because I have not seen the bill. But even what is mentioned in the newspapers is disturbing enough. Are we moving away from constitutional monarchy and heading for absolute monarchy as in Brunei or heading towards anarchy? We have nine Rulers. Which direction are we going?

Involvement of Rulers in the administration would create all kinds of problems. They may be sued. That may compromise their positions.

I am concerned that the officers of the board will only be "yes-men" for fear of being dismissed. They will not be able to make decisions in a professional manner.

The bill must not violate the Federal Constitution and the State Constitutions. The concept of constitutional monarchy must be upheld

What I have mentioned so far is based on the assumption that the Ruler is honest, that there is no abuse of power, embezzlement, corruption, self-interest and so on,

and also that there is no party behind Ruler who uses the Ruler's position to make profit. Otherwise, I fear that the contract between the people and the Rulers mentioned at the beginning of this article will be fall apart.

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tunabdulhamid@gmail.com

www.tunabdulhamid.my