Political Instability and Enhanced Monarchy in Malaysia

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Malaysia’s King Sultan Abdullah Sultan Ahmad Shah and Queen Tunku Azizah Aminah Maimunah attending the enthronement ceremony of Japan’s Emperor Naruhito at the Imperial Palace in Tokyo on 22 October 2019. Picture: Carl Court/POOL/AFP.

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EXECUTIVE SUMMARY

• In relation to the power and functions of the Yang di-Pertuan Agong (the Federal Monarch) and the nine State Rulers, the Malaysian Constitution is largely fashioned on the British model of a constitutional monarchy but with local adaptations. Save in some enumerated situations in which royal discretion is explicitly conferred, the King is required to act on the advice of the Prime Minister.

• Lately, however, this view is being increasingly challenged. Due to a trust deficit by the citizens in most political and public institutions, there are calls for the monarchs to provide leadership, play an enhanced role, become constitutional auditors and provide a check and balance against discredited political institutions.

• Royal assertiveness had been growing since the resignation of the strong-willed Prime Minister Mahathir Mohamad in 2003. The devastating Covid-19 crisis and the political instability that engulfed the nation after the fall of the Pakatan Harapan government in February 2020 enhanced the role of the federal and State monarchs significantly.

• Are these changes an ephemeral response to passing events or do they reflect an evolution from Westminster-based monarchic restraint to an “Eastminster type” of autochthonous constitutional arrangement? The ultimate shape of things will depend on a number of factors outlined in this Perspective.
INTRODUCTION

In Malay history, the Rulers enjoyed nearly absolute powers. However, the British colonial government reduced their role into a ceremonial one except on matters of Islam and Malay custom. It was the Malay revolt against the Malayan Union which took place in 1946 which halted the attempt to marginalise the Malay Rulers further.

When Malaya gained independence in 1957, the Merdeka Constitution provided for a largely Westminster-style constitutional monarchy. However, the Constitution did bestow some discretionary powers in critical areas on the federal King, the State Rulers and the Conference of Rulers. Several laws protect the royal institution against any challenge to its existence and continuity.

From 1957 to 1983, the monarchy, at least at the federal level, attracted very little controversy. However, during the premiership of Mahathir Mohamad from 1981 to 2003, conflicts arose between the Rulers and the Government. The resulting constitutional amendments caused a serious decline in the prestige and powers of the monarchy. However, the devastating Covid-19 crisis and the political instability that engulfed the nation after the fall of the Pakatan Harapan government in February 2020, brought about a vastly enhanced role for the federal King and the Conference of Rulers in several critical areas of constitutional law. This Perspective provides an overview of the role of the Malaysian monarchy in a historical as well as a contemporary context.

MALAYSIA’S DISTINCTIVE CONSTITUTIONAL MONARCHY

Unlike the absolute monarchy in Brunei or Arabia, the constitutional monarchy in Malaysia is modelled on the British Westminster system albeit with many local modifications.

First, the unique institution of the Conference of Rulers is conferred with significant powers to deliberate on issues of principle and policy that would be outside the powers of the British monarch.

Second, the federal monarchy is elective and the King can be dismissed by his brother Rulers.

Third, the State Sultans have considerable personal powers under their State Constitutions, something that the UK monarch does not possess.

Fourth, constitutional conventions in the UK transformed an absolutist monarchy into a constitutional one. In Malaysia the role of conventions has been the opposite. A constitutional monarchy has been conferred personal discretions which the law did not envisage, for example, the power of the state Sultans over the appointment of State Chief Ministers (CMs).
Fifth, the Yang di-Pertuan Agong (King), though generally bound by the advice of the political executive, does not tamely rubber stamp all political and legal decisions if the Conference of Rulers, that has the power to dismiss him, instructs him otherwise.

Sixth, as in all other countries with a split executive (King-PM, President-PM) the King and the Sultans have some reserve, inherent, prerogative, and non-statutory powers which can be exercised in exceptional circumstances. The nature and extent of such powers are, however, a matter of contention.\(^7\)

After the racial riots of 1969, the royal position was strengthened further by the 1971 constitutional amendment to Article 63 which extended the law of sedition to proceedings in Parliament.\(^8\) However, the pendulum swung the other way after Mahathir Mohamad came to power in July 1981.

The eighties and nineties saw several confrontations between the State Rulers and the strong-willed Prime Minister. A constitutional amendment to Article 66 was passed in Parliament in August 1983 to bypass the King and the Rulers in the legislative process. The Conference of Rulers unanimously vetoed the amendment. The government then unleashed an intense media campaign to disclose the extravagant lifestyle, abuses and improprieties of some royal houses.\(^9\) A compromise Amendment Bill was then worked out in 1984 to allow the King and the Rulers to be bypassed in the legislative process after a multi-tiered process.\(^10\)

In 1993, the monarchs were humiliated again by being deprived of their personal and legal immunity in civil and criminal proceedings. Subsequently several civil suits were filed against the Rulers with one successful result.\(^11\)

**RESURGENCE SINCE 2003**

In the years after the resignation of Mahathir as Prime Minister in 2003, the monarchy, at least at the State level, began to reassert itself. There are on record some spectacular instances of royal assertiveness in the appointment of the State Chief Minister (CM) in Perak, Perlis, Selangor and Terengganu.

In some States, the royal view appears to be that the power to appoint a CM is an ancient, inherent, non-statutory, and prerogative power not regulated by the Constitution, notwithstanding the norm of parliamentary democracies that whoever commands the confidence of the Assembly, has the right to be invited.\(^12\)

In Perak in 2009 when Nizar Jamaluddin, the Pakatan Rakyat CM, lost his majority due to defections, he requested the Sultan to dissolve the Assembly and call for fresh elections. The Sultan declined the request, as was his undoubted power under Article 18(2)(b) of the Perak Constitution and allowed Barisan Nasional, under debatable circumstances, to form the new government.\(^13\) The “Nizar precedent” adds considerably to royal discretion in the matter of appointment of State Chief Ministers and (as it turns out) in the appointment of the federal PM during the period 2020-2021.
Islamic issues have provided Sultans with opportunities to make decisions that appeal to the Muslim masses. In 2013, Sultan of Selangor relied on a 1988 State law to decree that non-Muslims cannot use the word “Allah” in their holy books. In 2014, the government of Johor declared Friday and Saturday as state holidays in accordance with the wishes of the Sultan to make it easier for Muslims to offer their Friday prayers.

Royal assertiveness became more evident in the period after May 2018 when Barisan Nasional lost the General Election to the multi-racial Pakatan Harapan coalition led by Mahathir. The then King, the Sultan of Kelantan, waited nearly 21 hours to swear-in Mahathir as the PM. Even though Mahathir was the acknowledged leader of the winning coalition, the King first offered the premiership to Wan Azizah, who was the leader of the largest component in the victorious Pakatan coalition.

When PM Mahathir nominated the senior lawyer, Tommy Thomas, to the post of Attorney-General, the King referred the matter to the Conference of Rulers which opposed the nomination. It took several weeks for the King to give his consent. A similar delay was witnessed when the senior-most judge of the apex court, Tan Sri Richard Malanjum (now a Tun), who is a Christian from Sabah, was nominated Chief Justice of Malaysia. In 2019, when the Johor CM was ousted by defecting Assemblymen, the Palace asserted the right to nominate his successor.

In 2019, Malaysia ratified the Rome Statute of the International Criminal Court (ICC) but was forced to announce its withdrawal within a month of ratification due to strong opposition from the Malay Rulers. Royal objections were based on the allegation that the treaty would undermine Islam, the Malays, and the monarchy.

**POST-2020: ENHANCED MONARCHY**

The year 2020 was marked by a devastating Covid-19 pandemic, the resulting economic crisis, the 1-MDB related scandals, rising ethnic tensions, endemic party-hopping and the resulting political instability that engulfed the nation after the fall of the elected PH government in early 2020. With the weak Muhyiddin Yassin government unwilling to face Parliament and relying on royal support for survival, the monarchy exerted a vastly enhanced influence in a number of legal, political and administrative areas.

**Appointment of the Prime Minister**

If there is a vacancy in the office of the PM for any reason whatsoever, Article 43(2) mandates that the King must appoint an MP as the PM who “in his judgment is likely to command the confidence of the majority of the members of the House”. The words “in his judgment” lead some people to believe that the Monarch has unlimited and subjective discretion in the matter. Actually, Article 43(2) must be read along with the universal tradition of parliamentary democracies that if a party or coalition commands the confidence of an absolute majority of the members of the elected House, the Head of State has no choice but to choose its leader as the PM. However, if no party or faction controls a majority, and
the situation is one of a “hung Parliament” then the constitutional text provides very little guidance about the murky world of government formation.

This was the scenario in 2020-21 which saw repeated floor crossings, hung Parliaments and the collapse of two successive coalition governments, one in February 2020 and the other in August 2021. There was resignation of two PMs in less than 18 months.

In February 2020 on the resignation of Mahathir, the Yang di-Pertuan Agong adopted the unprecedented, admirable, but extra-parliamentary method of interviewing all MPs to determine who they backed as the new PM. The poll of MPs conducted by the Monarch was not made public.18 The King ultimately chose Muhyiddin Yassin as PM on March 1 but did not impose any requirement of convening Parliament within a time limit or seeking a vote of confidence or working out a Confidence and Supply Agreement. The King also rejected as unconvincing, Mahathir and Anwar Ibrahim’s later claims that they had gained a parliamentary majority.

Before the Budget session in late 2020, the King issued a strong public statement urging all MPs to subordinate politics to national interest and support the Muhyiddin government on Budget 2021. However, with the loss of support from factions within UMNO, Muhyiddin resigned on 16 August. This time around, the King consulted party leaders and came to the conclusion that under Article 43(2)(a), Ismail Sabri commanded the confidence of the majority of the Dewan Rakyat.

It is noteworthy that both governments since February 2020 were created at the Istana rather than as a result of the electoral process or a vote of confidence in the Dewan Rakyat.

**Governance and Parliamentary Affairs**

**Summoning of Parliament**

Under Article 55(1), the King shall from time to time summon Parliament. This power is subject to the advice of the PM. A constitutional dilemma arose during 2020-21 when PM Muhyiddin acted undemocratically to keep the legislature at bay. After his appointment as PM, Muhyiddin postponed the March session of Parliament to May. To comply with the 6-month time limit imposed by Article 55(1), he convened Parliament for two hours on 18 May to listen to the Royal Address and then adjourn without any debate or motions. He appointed a bumper Cabinet but kept avoiding Parliament. During 2021, there were repeated admonitions from the King to the government to convene Parliament as soon as possible.19 Muhyiddin set a September 2021 date but, under royal pressure, changed it to July 2021.

**Declaration of Emergency**

In October 2020, the King declined Prime Minister Muhyiddin’s advice to declare an emergency. This was perhaps the first time since independence that a Prime Minister’s advice on proclamation of emergency was ever refused. However, the King accepted the
PM’s advice in January 2021 to proclaim an emergency but with significant qualifications.\textsuperscript{20}

Refusal to Revoke Emergency Ordinances

Three days before parliament was to meet in July 2021, Prime Minister Muhyiddin advised the King to revoke some of the Emergency Ordinances in operation. The King refused on the ground that, as Parliament was about to come to session, the Proclamation and the Ordinances must be submitted to Parliament for scrutiny as the PM had promised.\textsuperscript{21}

Legislation and Policy-making

Amendments to Laws

In the last 10 years, a new development has come about that on constitutional amendments involving Islam and issues covered by Articles 38 and 159, many Royalists expect that no Bill shall be \textit{introduced} in Parliament without prior consultation with the Conference of Rulers. In 2017, the Bill to amend Act 355 (on Shariah courts’ jurisdiction) was laid before Parliament. Former MP, Tawfik Ismail, challenged it in a court of law on the ground that the Bill must first obtain clearance from the Conference because Islam is within the powers of the Sultans. In fact, the Constitution in Articles 38(4) and 159(5) provides for the Conference to exercise veto power \textit{after} laws are enacted, not \textit{before} they are tabled.

Issuing of Press Communiques

A significant feature of the last few years is that the Istana Negara issues periodic press statements expressing the King’s hopes and wishes on many issues. The PM’s Department is not consulted.

The Conference of Rulers has also for some time resorted to issuing press statements expressing the Conference’s views on such issues as race and religious relations.\textsuperscript{22} Individual Sultans especially the Sultans of Perak and Johor express their hopes and wishes for the nation and caution against extremism and intolerance.

Collective Leadership and Governance

Petitions from Citizens’ Groups

The activism of the King and the Conference of Rulers since 2003 has wide public support. Many citizens see the Conference as the only remaining constitutional institution that can provide check and balance in government and be a healer and reconciler of society’s conflicts. Most remarkably, the non-Malays see the Sultans as their last line of defence against the Malay-Islamist-Ketuanan ideology. The Malay ethnocratic and ethno-sectarian forces, likewise, see the Rulers as defenders of ‘Malay interests’.
From time to time, groups of citizens send petitions to the King or the Conference for urgent remedial actions. In late 2021, Nazir Razak, the brother to former PM Najib Razak, joined 55 other citizens to make wide-ranging proposals for institutional reform – most significantly by proposing that the Conference of Rulers establish a deliberative assembly to advise parliament. Whether the initiatives proposed are within the constitutional functions of the monarchy is a matter of doubt but what is significant is that many Malaysians of all races see the Sultans as more trustworthy than politicians and as capable of providing check and balance in government.

*Role of the Conference of Rulers*

Another important development under the present King, the Sultan of Pahang who acceded the national throne in January 2019, is that on most constitutional issues, he has sought the counsel of his brother Rulers. Whether it is appointment of the PM, the declaration of emergency, the revocation of a proclamation, or the proroguing or dissolution of the State Assemblies, the King exercises his powers after consultation with the Conference of Rulers. This fits well with Article 38(2), which stipulates that the Conference has the power to deliberate on questions of national policy and “any other matter it thinks fit.” This role contains tremendous potential. It invests the conference with a unique unifying and advisory role.

However, the recent practice of this deliberative function raises some constitutional issues. First, on several occasions recently, only the Malay Rulers were invited to these deliberations even though the four Governors too are part of the Conference of Rulers. Second, during the recent deliberations and consultations, the King and the Rulers were not accompanied by their PM or CM as is required by the Constitution’s Article 38(3).

**CONCLUSION**

Though the Constitution and the laws confer on the Conference of Rulers, the Yang di-Pertuan Agong and the State Rulers a vast range of powers and functions in the executive, legislative and judicial fields, and in matters of Islam, in reality most of these powers belong to the elected government of the day.

However, royal powers have resurfaced in recent years due to significant political and social developments. These include the following:

- The Barisan Nasional’s decline of political dominance since the General Election of 2008 has enabled the Sultans to play a decisive backstage role. Since 2020, the country has suffered serious political instability and the Rulers have filled the power vacuum.
- The quality of national and state leadership since 2020 has declined seriously and the citizenry seems to have lost confidence in the ability and the resolve of the leadership to tackle the many challenges faced by the nation.
- The position of the Rulers as guardians of Islam and defenders of the special position of Malays gives them a legitimacy and authority that remains unshaken.
In the altered political circumstances, with a weak and unstable government at the Centre, the States are likely to assert themselves and reclaim their rights against the federal government. In such a situation, the State Rulers may be tempted to play the role of statesmen and arbitrators.

Other factors attenuate the leverage of Malaysia’s monarchies.

The increasing involvement of the royal houses in business and commercial activities, logging and mining, is susceptible to conflict with the growing Malay corporate sector and the Malay political elite.28

One must also note the power of the social media to supply alternative information. There is also a political awakening amongst the youth demographic who are now armed with the right to vote at age 18. A number of new political parties, some youth-based, some multiracial, made an appearance in late 2021.

The burgeoning power of the Syariah establishment may also, one day, challenge the power of the Sultans in matters of Islam. It is being openly talked about that the authority of the State Rulers is often undermined by federal religious authorities.29

The extent and effect of the revival of royal power will depend on the balance of various factors. Among them, the character, personality and ideological leaning of future political leaders; the relationship (harmonious or discordant) between royal houses and the Malay corporate elite; the ruling party’s electoral strength; the unity or disunity between the major Malay political parties; the power of the mass media; and how the Rulers relate to the people.

In sum, the period 2018-2021 has seen a tremendous enhancement in the powers of the Yang di-Pertuan Agong and the Conference of Rulers, substantially departing from their Westminster-modelled constraints. Whether this was a temporary phenomenon in response to the political and economic challenges of the last few years or a lasting imprint on an “Eastminster Constitution” with an enhanced monarchy30, remains to be seen. Many welcome this royal activism and see it as a check and balance on an uncontrolled government. Others fear that this may tempt an overreach by a future monarch. While that is unlikely at the federal level, only time will show the shape of things to come.
In the performance of his functions under the Constitution and laws, the King is required mostly to act “on advice”, “in accordance with advice” or “after considering advice”: Federal Constitution, Articles 40(1) and 40(1A).

Each State has its own State Constitution.

The Sedition Act 1948; The Federal Constitution, Articles 10(4), 63(4), 63(5), 71, 72(4) and 72(5).


An incomplete list of such powers would be: appointment of a caretaker government under Article 43(2); refusal to follow the advice of the caretaker government on such issues as proclamation of emergency; dismissal of a PM if he loses confidence but refuses to resign as in the decided Nizar case; grant of honours; power of pardon; and refusing consent to unconstitutional legislation that disregards procedures in Articles 2(b), 38(4), 159(3), 159(5) and 161E.

The definition of sedition includes any questioning of the royal institution. Even MPs, in the performance of their parliamentary functions, are subject to the law of sedition.


In 1994, Article 66 was amended yet again to enable Parliament to bypass the King in the legislative process after 30 days if there was a delay or refusal of royal assent.


The Sultan’s decision attracted great controversy because BN was the loser at the election but had gained a majority with the help of party hoppers. The royal decision was challenged in the courts which ultimately ruled that in determining the question as to who commands confidence, a vote in the Assembly is not necessary and the Sultan was entitled to take note of factors outside the Assembly: Dato’ Dr Zambry Abd Kadir v Dato Seri Ir Hj Mohammad Nizar Jamaluddin [2009] 4 AMR 569.

The Sultans are constitutional heads of the religion of Islam and act on the advice of the State’s Council of Religion to aid and advise His Highness in all matters relating to religion. However, in practice, many Sultans are known to assert themselves in matters involving the Shariah. For example, in 2017, the Sultan of Johor forbade the Johor Islamic Religious Department from having any dealings with the federal Islamic authority, JAKIM.

It is not known whether anyone had a clear majority.

PM Mahathir alleged that critics of the Statute aimed to trigger tensions between Malaysia’s monarchy and the Pakatan Harapan government. What is significant is that the capitulation by the Mahathir government was followed by an appreciation post from Sultan Ibrahim Iskandar, Sultan of Johor, who thanked the government for taking the views of the Conference of Rulers into account.

It is not known whether anyone had a clear majority.
Emergency Ordinances before 1 August 2021, in accordance with Article 150(3) which was being flouted by the Muhyiddin government.  

20 The Proclamation of 11 January 2021 contained an unprecedented sunset clause to bring the emergency to an end on 1 August 2021. The Emergency (Essential Powers) Ordinance 2021 in section 2 appointed an Independent Special Committee to advise the King on the emergency. Sections 13 and 15 on Election and Sittings of the State Assemblies, conferred discretion on the King after consultation with the respective Ruler or the Governors. Assignment of such a role during an emergency to the State Rulers was unprecedented in Malaysian history.  

21 Istana Negara issued a strongly worded admonition on the Government’s claim that as the King is bound by advice, the Ordinances had been annulled by a decision of the Cabinet.  

22 This may well be within the powers of the Conference of Rulers under Article 38(2) “to deliberate on questions of national policy... and any other matter that it thinks fit”.  


24 On 16 June 2021 the Conference of Rulers issued a Press Release to advise against the extension of the nationwide emergency after its expiry on 1 August 2021.  

25 It is notable that this function is non-discretionary because the King, the Rulers and the Governors are to be accompanied by the Prime minister and the Chief Ministers and are bound by any advice tendered: Article 38(3). Further, the views of the Conference are not binding on the federal government.  

26 According to the Fifth Schedule, the Conference consists of the Malay Rulers plus the Governors of Melaka, Penang, Sabah and Sarawak. However, the Governors are excluded from the Conference for some matters, such as the election of the King: Fifth Schedule, Item 7.  

27 Clive Kessler, in an unpublished letter, observes that “the idea of Malay royal power at the head of an increasingly Islamic state is central to Malaysian politics today. It has enormous mobilizing power among the dominant yet resentful political majority with the mindset and resulting fears of a threatened minority”.  

28 Article 34(3) of the Federal Constitution stipulates that “the Yang di-Pertuan Agong shall not actively engage in any commercial enterprise”. There is no corresponding provision in any of the nine State Constitutions with Malay Rulers. However, on July 4, 1992, six out of nine Rulers signed a “Proclamation of Constitutional Principles” which in Proclamation 6.1 declares that “We shall not actively engage in any commercial enterprise except by way of Trust”. Proclamation 6.2 states that “His Royal Highness the Regent may through Trustees/nominees participate in any commercial enterprise” (Malaysianow.com, Jul 1, 2021). The Sultans of Johor, Kedah and Kelantan did not sign. Under the Fifth Schedule, Paragraph 8, the Conference decides by a majority. For further analysis see: Lim Teck Lee, Royalty and Business in Southeast Asia, 1991, Journal of Southeast Asia Business, Ann Arbor, Mich, Vol 7, 1991p. 79-87; Anuradha Raghu, Stuart Grudgings, “Once Reined in, Malaysia’s Royals Flex Political Muscle”, reuters.com/article/us-malaysia-sultans Oct 6, 2014; “Johor Sultan Defends Businesses, says can’t depend on RM 27,000 monthly allowance”, Malaymail.com/news/Malaysia/2015/03/18; azlyrahman-post.blogspot.com/2014/06.  

29 It is common knowledge that federal Shariah authorities often issue fatwas (religious rulings) which are unconstitutionally imported into the working of the State Shariah administration. Additionally, State religious authorities often issue fatwas even before the fatwa is approved by the Malay Ruler. In a host of political, religious or administrative decisions touching on Islam, the Malay Sultans are occasionally presented with a fait accompli rather than being consulted before hand. Among these actions are: advice to the Home Ministry to ban books; raids on churches to seize books or to stop proselytization activities; location of places of worship of other religions; arrest of people at forums and other intellectual occasions because of lack of accreditation through a taullah; defiance of civil court orders in hybrid cases where federal-state jurisdictions clash. As these decisions are made in the name of Islam, they reflect on the administration of justice in Islam and the wisdom and sense of fair play of the Head of the Religion in the State.
The phrase was recently used by Prof Andrew Harding at a seminar organized by the University of Malaya: “Does the Constitution Matter? Lessons from the Malaysian Constitution During Times of Crisis”, 11 Dec. 2021 [https://forms.gle/8dkHdjHC3qme1LVJG9].