

LETTER | Malaysia has constitutional monarchs, not executive rulers

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LETTER | It is ironic that it was with the victory of “Reformasi” in 2008 that we began to see a conceptual shift from the established norm with the ceremonial constitutional monarchy suddenly being regarded as “executive rulers”. That perception remains evident in recent opposition calls for the Yang di-Pertuan Agong to use his discretionary powers to reconvene Parliament. This is but another instance of the erosion of the peoples’ democratic processes and interests.

As in other countries, our constitutional monarchy is a remnant of our feudal past. Nonetheless, the democratic system we fought for at independence has clearly demarcated the limits of that constitutional monarchy.

Our system is closely modelled on the British system in which the royalty is limited to official, ceremonial, and representational duties, non-partisan duties such as bestowing honours, dissolving Parliament and appointing the prime

minister or chief minister. Even royal prerogative is used according to laws enacted in Parliament or within the context of convention or precedent. It is exercised on the advice of the minister responsible to Parliament, often the prime minister or menteri besar. The monarch may express his views as a constitutional ruler, but he must ultimately accept the decision of the chief executive and his cabinet.

Within the framework of a constitutional monarchy, the sovereign must appoint an individual who commands the support of the House, who is usually the leader of the party or coalition that has a majority in that House. Once that is done, all legislative power is exercised by and with the advice and consent of the legislative assembly. This includes the appointment of top civil servants, which is not a royal prerogative.

Principles of constitutional monarchy

According to one of the most important writers about constitutional monarchy, Walter Bagehot, the monarchy merely symbolises the unity of the national, or in our case, state community; from the point of view of political power, the sovereign in a constitutional monarchy has only three rights: “the right to be consulted, the right to encourage, the right to warn”.

Malaysia's most distinguished jurist, Mohamed Suffian Hashim in "An Introduction to the Constitution of Malaysia", spells out the role of rulers and governors as "acting in accordance with advice":

"A ruler, though sovereign, has no autocratic powers. A ruler and similarly a governor must act in accordance with the advice of the state executive council or of a member of the council acting under the general authority of the council, except as is otherwise provided by the federal or state constitution... The ruler or governor is entitled, at his request, to any information concerning the government of the state which is available to the executive council. The ruler or governor is not a member of the executive council. Members of the executive council meet only among themselves, and thereafter the menteri besar or the chief minister submits the executive council's advice to the ruler or governor..."

Nonetheless, a ruler does have discretionary power in the performance of the following functions including: the appointment of the prime minister or menteri besar; the withholding of consent to a request for the dissolution of the legislative assembly; request for a meeting of the Conference of Rulers; any function as head of the Muslim religion or relating to the custom of the Malays; the appointment of an heir; the appointment of persons to Malay customary ranks, titles, etc; the regulation of royal courts and palaces.

Deferring to the sultan: Pakatan set the precedent in 2008 and thereafter

After the 2008 general election, Pakatan Rakyat (PR) set the precedent by deferring the prerogative of selecting the menteri besar to the sultan. They pussyfooted over the choice of menteri besar of Perak and deputy menteri besar for Selangor by passing over this prerogative to the sultans in the two states. Instead of simply putting forward their candidates before the sultan for endorsement, as is required in our democratic system, the PR component parties bickered over their choice of menteri besar and in so doing, demeaned our parliamentary democracy by passing the buck to the sultans.

Again in 2011, the attempt by Pakatan Rakyat to pass a constitutional amendment in the Selangor state assembly to restore the power of appointing the state's top three civil servants to the sultan of Selangor was a retrograde step for the peoples' movement. In their political games with Umno, the PR government seemed to have lost sight of the interests of the people and the aims of the Reformasi movement.

Those were bad precedents in which the peoples' representatives passed on their prerogative to the sultan. This pandering to the sultan over the choice of menteri besar in Selangor and Perak was repeated in 2014 and unfortunately, this has added to the routinisation of "conventions" over the choice of MBs.

The battle royale in Johor over the choice of menteri besar in 2019 was a tussle between the Pakatan Harapan government and the monarchy over a constitutional principle. Then prime minister Dr Mahathir Mohamad maintained that the role of appointing the new Johor menteri besar lay with the party that won the election, not with the sultan of Johor. As our constitutional monarchy goes, the PM was right of course except that since the political tsunami of 2008, PR had blinked twice in this battle royale.

Peoples' democratic interests come first

Harapan's calls for the Yang di-Pertuan Agong's to use his discretionary powers to reconvene Parliament is but another instance of a backward trend in the erosion of the peoples' democratic interests. Certainly, PN's continued use of the emergency to suspend Parliament is unjustified. The continued spread of new cases of Covid-19 has shown that the declaration of emergency was a lame excuse to suspend Parliament.

Nevertheless, the sovereign's prerogative has limits under our constitutional monarchy. Any reform movement must take the peoples' interests further forward, not backwards. The peoples' interests cannot be mortgaged in Harapan's political games with UMNO to see who is more "Malay" or more deferential to the Malay rulers. Let us be clear, our constitutional monarchs are

not executive rulers.

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