

**KEYNOTE SPEECH BY TUN DR. MAHATHIR MOHAMAD AT  
PERDANA DISCOURSE SERIES 9 "THE ROLE OF THE EXECUTIVE, LEGISLATIVE,  
JUDICIARY AND CONSTITUTIONAL MONARCHY IN THE GOVERNING OF  
MALAYSIA" ON 6 MAY 2009 AT PERDANA LEADERSHIP FOUNDATION,  
PUTRAJAYA**

*Bismillahirrahmanirrahim, Assalamualaikum warahmatullahi wabarakatuh* and a very good morning to everyone.

The subject for today I think is topical and very interesting. We are seeing things happening that are based on the subject that we are going to talk about today. I think it would be good for us, for me at least, to go back into the past, because only then can we see the changes that have taken place and to see how we have been able or not, to adapt to these changes.

The Malay states of the peninsular are like all the other states in the Malay Archipelago that were feudal states. They were all ruled by the Rajas of the different states with the Rajas themselves being accorded total loyalty by their subjects, people who have considered politics as something that only the rulers should be involved in. They feel that ordinary people should stay off politics.

We used to leave everything to the rulers and it was up to them to decide what the political changes in our country should be. As a result of this the Rajas' position became weakened. Despite this loyalty accorded to them, they felt their position was very weak. This was because they could not be sure whether their decisions would actually receive the support of the people. And feeling weak, they tended to succumb to any little pressure that they might faced. That is why for a long time the Malay states of the peninsular were subservient to their more powerful neighbours. We positioned ourselves as a minor player in the power structure of the nations in South East Asia. We were subservient to Siam, to China, to Majapahit, and for a time to Malacca, which became the most powerful of the Malay kingdoms. So it was a feudal setup in which the people had no say at all. The rulers were free to decide what to do with the nation and if they felt that they must submit to another country, that's their choice to make. No question was asked by the people as the Malays do not revolt against their rulers because of the belief that they must always be loyal to their rulers: "Melayu takkan menderhaka kepada Raja". That is the code that they lived by.

So whatever the rulers did the people gave their support or at least they didn't protest. There is no history of rebellion or revolution in the Malay states (the only ruler assassinated was a ruler of Johor, Sultan Mahmud, and that was the one and only occasion when a Sultan was assassinated). Otherwise once someone becomes Sultan or Raja, he will continue to be so until he dies. Of course after his death there may be a power struggle but once a ruler is chosen, elected or has forced himself to be recognised as the ruler, no more questions are asked. So we see them sometimes giving away chunks of their kingdom. We know of course that in the case of Malacca it was not given away, but was actually lost (in a war). Singapore was given away for free. The Penang province of Wellesley and Dinding were also given away. On top of that, the rulers did not really know the extent of their own state boundaries. They did not know the geographical extent of their states and sometimes, because of this reason, territories were lost. Large portions of their original states are now occupied by neighbouring countries because of the failure to survey and mark out the borders between their land and neighbouring lands.

This was the state of affairs which existed before we became independent. We know that the rulers chose to place their states under British rule, not because of war as the British did not invade Malaysia or fight against Malaysians. Except for Malacca all the other states very willingly signed treaties to place themselves under British protection.

As you know, when you ask the British to protect you they believe that this means taking over the states. So they ruled this country literally as colonies. Still the people never said anything because they had no say in the matter. I still remember hearing, when I was young, people saying that politics was none of our business that politics was for the rulers and the elites, that people have no say.

So for centuries the people knew no politics. Then at a very crucial stage, the rulers finally realised that they were in a very weak position as they did not have the backing of the people. This was the period after the Japanese occupation. The British had come back and persuaded or rather arm-twisted the rulers to surrender their states, in order for the British to create what they called the Malayan Union, over whose domain

they could exert their authority and prevent the rulers from ruling. This was the British way of making people feel secure, but actually the people were placed in acute danger (of losing their independence). Because when the British give advice, you are expected to follow. It's like in the army; the soldiers are not advised to march forward or to attack, but they are commanded to do so (when you advise and people are expected to follow, it is a command). The rulers of course cannot be allowed to rule so the British came back after the war threatening not to recognize the Malay rulers unless they surrendered their states to the British and signed a treaty. They would continue to be called Raja, they would be called Sultan, they would be given Roll Royce cars, yellow umbrellas, Istanas and all that, but they would have no say in the governance of this country.

Because the rulers were weak and had no support from the people, they signed this treaty. However for the very first time the people had decided that even though politics was not their business they decided to make it theirs. And so when the British forced the rulers to sign this treaty, the people, the Malays, the subjects, formed a political party and behaved like politicians, making demands so that the treaty could be thrown out and the country reformed from a Malayan Union into a federation of Malaya. Subsequently they demanded elections and the people won a big majority, more than half the number of seats in the legislative council and effectively they became the government of the country, although still under British rule.

As we all know, in 1957, the demand for independence was met and the country became independent. To be independent we have to change things a bit. We cannot very well go back to the feudal system like before, and we cannot have a situation where the rulers would rule and the people would continue to have no say in politics. The people have realized that if you have a feudal system where the people are not involved then it is likely that the rulers will surrender their lands to other people again. So this time the people wanted to have a say in the politics of this country. In fact, they insisted on having a say, irrespective of what the rulers feel about it. But having decided that they should be involved in politics, gain independence and not wanting to go back to the feudal system, the question is what system should be adopted?

The choice was for democracy, but then democracy is a system of rule by the majority of the people. How to effect that becomes a problem. Therefore we decided to

have a Constitution and since we have no history of a constitutional government, we decided to look toward the most familiar country for inspiration, as to how the Constitution should be shaped. And so the Constitution of Malaysia was based on the British model of a constitutional monarchy assisted by a parliament. It would have an administration, a judiciary system, etc. The British Constitution, which we decided to adopt, unfortunately, is not a written constitution. The British rely on their traditions for their Constitution and somehow they managed to make it work. In our case, we didn't have a tradition to fall back on, something to refer to.

So we needed to have a written Constitution and an element of this Constitution, which is most important for politics, is the division of labour; the separation of power between 3 recognized institutions in the system of government: the legislative, the executive and the judiciary. On top of that we have a monarch, which although not constitutionally bestowed with executive power, yet is a signatory for all documents before these become law. In the case of the British, this requirement is not written down but there has been no instance when a ruler has refused to sign any piece of legislation passed by parliament. In Malaysia we have no such tradition, so it's therefore written in the Constitution that for any piece of legislation to be official then it must be signed by the Constitutional Monarch. This later raises some problems but if we were to follow the practice in England there should be no problem; the people will elect the legislative body and the party forming the majority will then be recognised by the monarch officially as the government of the day.

On the legislative part, the government of the country is concerned with formulating and passing laws, but for the legislation to be effective we need a body to carry out the instructions of the legislators. That is the job of administrators who are supposed to take orders from the legislative body and carry out whatever instructions they receive. If anybody breaches the law or does something that is unconstitutional, then the judiciary will be given the task of making judgment of what is right or wrong based on the laws passed by the legislators, indicating the kind of punishment to be meted out against the people who broke the law. The roles seem very clear-cut: one is the legislative, the other one is the executive, then we have the judiciary, and on top of it all, in order to make everything official, the monarchy signs and acts on the advice of the head of the legislator.

It's all very clear but then there are overlaps in their functions. That's where the problem is. The people who are elected as legislators have to form a body called the government. There is some vagueness as to whether the government is a legislative or an executive group. Obviously it is going to carry out certain activities and when certain things are decided and carried out by the government it becomes very nearly an executive body. In fact it gives orders to the executive to do things and of course, it interferes with the executive to a certain extent. Sometimes they overstep their bounds and they abuse the power that they have. For example, there was this case where a police officer was instructed by a member of the government to frighten off some people (the Malay word for this is gempak). Of course later on this case was brought to court. But it does not mean that this happens very often. Occasionally there is a tendency to abuse power by instructing the executive to do things which are not provided for by the Constitution, which therefore is wrong.

So this part is not very clearly stated and people find that they cannot just quote the Constitution. An officer from the executive branch cannot just tell the Prime Minister, "Sorry, Sir, what you are asking me, I cannot do because it's not in the Constitution." The Prime Minister may say, "Well I don't care what you say. If you don't carry out this thing I will have you transferred." That is also not within the power of the Prime Minister; it's within the power of the chief of the executive branch and the Prime Minister has a strong influence over the executive branch. So people can be put into cold storage if they don't obey the Prime Minister. The Prime Minister and maybe other ministers as well, may assume the powers of the executive. So this is something that is actually against the Constitution.

However, our character is such that we don't like to say no to someone, even when you know the person is asking you to do something wrong. We carry it out regardless. We know of an instance where a Deputy Prime Minister had instructed a police officer to frighten off some ladies. This case appeared before the court and the person, having ceased to be the Deputy Prime Minister, was found guilty. But that was just one instance. There must be a lot of other instances where the Prime Minister would appear to operate like an executive. So the division is not as clear-cut as it's made out to be.

The legislative branch actually has some executive powers over the executive and the executive too can go against the decisions and policies of the legislative. They can do other things on their own, in very subtle ways, to circumvent the decisions made by the legislative. So again, there is this overlapping in function which allows the executive to actually disregard the legislative. This is where problems arise.

Sometimes if the government is very strong then the tendency is to take action against the executive. The executive also has its own little quarrels within itself so that the government body (or the part of the legislative body which forms the government) can actually make use of these rivalries to get the wrong things done. So these overlaps do cause a lot of confusion and it does not make governing the country as smooth, although the Constitution makes it appear that everything is fine and the divisions are clear-cut.

Then, there is the judiciary which makes judgments on whether the actions taken by individuals or even by the government, is in accordance with the law. Those who break the law can be arrested and brought to court to be judged as to whether the person is guilty or not. There are times when people can take action against the government including the legislator, the governing body and the executive, if they feel that these people have not abided by the law. So in such cases, it is for the judiciary to decide. The judiciary is a special body in our society which may not be criticized. In other countries they do criticize the judiciary, even the judgments made by the court. In fact they write books against certain judgments and this is not considered as disrespecting the judiciary. But in Malaysia we find that if a judge says something, you are not supposed to criticize what he says. He's sort of a superior being whose pronouncement must be accepted without question. In a way this is good because at some stage somebody must pass judgment. If you keep on questioning the judgments there'll be no end to it. So the judiciary tries to cater for this by having 2 or 3 tiers of appeal to the next higher body and even then you can appeal again to the highest body of the judiciary, and up to the pardons board. So the people should find that the judiciary functions very well.

As I have said just now, the task of the judiciary is actually to pass judgment on the laws that have been passed in Parliament. Parliament makes the law; the judiciary then interprets it and passes judgment on cases involving breaches of the law. If there is a problem in the system, the problem is one of interpretation of the laws. When a legislator passes a law, it does so because it has a certain intention, a certain objective. The law is meant to do certain things, to solve some problems within society. For example, there is a lot of drug-addiction and drug-selling in the society and this is causing a lot of problems. So the legislator passes a law against drug abuse or sales of drugs, and then when a person breaches this law, the judiciary can then decide whether he has in fact breached this law. The punishment for the crime initially was either a life sentence or death sentence. Such is the severity of the crime that the punishment is made very severe. However judges feel very unhappy about hanging people. They do not like passing death sentences. So invariably, when there is a choice between hanging and a life sentence, they will give the latter. The duration of a life sentence is actually about 20 years, not a whole lifetime. There is another punishment which requires serving the entire lifetime in jail, but when you do give a life sentence, you are actually giving a sentence of 20 years and if you behave yourself, you can reduce that to about 13 years. So it's not really the same as a death sentence. It's very much lighter but since many judges do not like the death sentence, they decided that the appropriate punishment should be for a life sentence.

The legislators however find that this is not a good deterrent. When people peddle drugs they cause a lot of problems. The people who are drug addicts are actually the 'living dead'; they are useless, cause problems to society and they commit crimes, even murder. They are themselves very unhealthy. So the legislator feels that there must be a very strong punishment for this crime. If you peddle a certain amount of drugs, then you should be given the death sentence. To ensure that this is actually carried out, the legislators took the decision out of the hands of the judiciary by making it mandatory. Once it is determined that a particular drug law has been breached, a judge cannot pass any other than a death sentence. It's actually the law which sentences a person to death, but the judges are still unhappy with this.

I hope that the bar council doesn't hear me say that, are there any members of the bar council here? They don't like me but that's alright, they don't like the death

sentence either. Their conscience is not clear. It's a very nasty thing to sentence a person to death. However, the final say is not really with the judge or with the legislator, but with the pardons board. All death sentences must go before a pardons board, and it is this board that confirms whether the death sentence should actually be carried out or not.

We find that the judiciary sometimes causes the charges to be amended in such a way that they don't have to pass the death sentence. This frustrates the legislator and is one way that the judiciary actually negates the intention of the legislator. There are other ways of course, in which judges interpret the laws differently from the legislator, without taking into consideration the objective of the law. They read the words of the law according to how they interpret the law, in a way that sometimes negates the objective of having the law. What is worse is when a judge passes sentence in a case that becomes a precedent and is then quoted in future cases. So and so, this judge says, interpreted the words of the law this way, and effectively that judgment becomes law. As you know, laws are supposed to be the prerogative of the legislator and not of the judiciary, but by doing this they have effectively created a law and they have perverted the role of the legislators. The legislators are of course unhappy with this. However we are not supposed to say anything about this, except in the case of a notable Prime Minister who opened his mouth too often and got into trouble for interfering with the judiciary.

As you can see, there is still a lot of overlap in which the judiciary can actually make laws. They then abide by such laws that they make, which is actually not the laws enacted by legislators. To reiterate, it is the legislative branch which is supposed to make the law. It is up to the judiciary to take the law and determine whether it has been breached or not. But you can see now that the judiciary has more power in some cases, and you cannot criticize the judiciary for fear of being in contempt of court. Sometimes they do exceed their authority and we cannot say anything about this.

There have been cases where people have been sentenced to death who were not guilty, but you cannot say anything and sometimes of course some of the judgments made were seen by the public as not being correct. But you cannot say anything about this. People say that if you choose your judge correctly, even if you murder people, you can get away with it. But you mustn't say it publicly because if you do, you may be

annoying many judges and one day you may appear before one and then you'll regret making such comments.

Judges should never pass sentence or declare against a person who has not been given a hearing. It is a principle of law that no one should be found guilty of anything unless he is given a chance to appear before a court and give his views of things. Of course there have been cases where people are tried in absentee, where the person has not been caught and made available for trial. Yet a judge may pass judgment on him and say that he's guilty of this and that. That in principle is wrong. In a particular case that I know, a judge passes judgment on this person for doing something wrong although he was not given a hearing. Eventually he appealed against this judgment and won. But in order to do that he had to hire expensive lawyers (lawyers are more expensive than doctors) to defend him. He had to spend about a million dollars in fees in order to prove to the court that he was not in the wrong. But he cannot recoup his costs against the court. So unfairness can be seen here but you are not supposed to say anything about it. I will however say this, whatever Madam Ambiga wants to say she can, but I'll have my say today at least. If you don't go and tell her, I will be very grateful.

So this is the problem of the Constitution, dividing the 3 different branches of the government: the legislative, the executive and the judiciary. Then we have the monarch in our system of constitutional monarchy. The monarch has no executive power. It cannot make a decision except in 3 areas: whenever the legislator wants to pass something that concerns the rulers, then they have a right to have their say. There are 2 other things that concern them which they have the right to decide. But on other matters they have no right. However, we have decided that rulers should be privileged. By privileged, we mean that for some things they are above the law. You cannot charge them in court for some misdemeanour, which I think is fine because we have to show respect to the rulers. We cannot look up to somebody that we have no respect for. So that is good but the assumption is that when privileges are given, they are not abused and so there should be no problem. But supposing they abuse their privileges? What happens when a ruler, for example, steps beyond his authority or does something that is obviously against the law? What do you do? Supposing a ruler was to kill a person. You can say well he's a ruler; he has the right to kill people. Would you accept that? I'm quite sure we won't. Supposing you inadvertently overtake a car and you discovered that the

overtaken car belongs to a ruler, you are taken to the police station and slapped. Would you like to live in a country where that happens? I don't think you would. So we are faced with a problem which we need to resolve. We need our rulers, we want them to play the role of rulers, but we cannot have them abusing the privileges accorded to them. And so it was decided that a special court should be set up to try cases involving abuse of privileges by royalties. We hope that this court will not be convened at all but there has been one instance where it was convened and the court had decided against the ruler.

I think people would feel more comfortable if they know that they can seek redress through the judicial system. But if you find that you are not able to seek redress at all even when harm is done to you, then I think you would be living in a state of constant fear. So while we want to have a constitutional monarch, we must assume that the monarch will not break the law or abuse their privileges. That is very important. So amendments were made to the Constitution and a special court was set up to try cases involving breach of the law by the monarch or if the monarch does something criminal.

The power of the monarchy is clearly stated with regard to the formation of the government. There is an interim period after a government decided to have an election, during which time the current government is no longer in power. Whether the previous government comes back or another group takes over power depends on the election. The people will decide who should have the majority to form the fixed government. If there is a clear majority then the party with the majority can submit the name of its leader to the ruler, to become the chief minister, the menteri besar or the prime minister. That is quite clear to most people. But there would be instances when the majority is not so clear.

Supposing there are 3 parties contesting the election and none of the parties get more than 50% of the seats, then it's not clear as to who should form the next government. We will have a situation where we need to have a minority party be made government, and the ruler has to consent to this before the government is legitimized. That is okay as long as the others don't raise any objection. But there are cases where the others have resorted to calling for votes of no-confidence. If somebody is appointed who does not command the support of the majority, and if he goes to a meeting of the legislators where a vote of no-confidence is moved against him, then he loses his

position. So, if a ruler decides to appoint somebody that has not been recommended to him by the majority party, he can do so and the person can become the head of government. However his tenure would be very short because once the legislator sits, and moves a vote of no-confidence against him, this would result in his removal. However in Malaysia if the ruler chooses somebody, out of respect for the ruler, the people do not usually move votes of no-confidence against the ruler's choice. Now however, this matter is being tested. I don't know whether there are different constitutional provisions in different states, but in general if a person who does not have majority support heads the government, then he has a good chance of losing his place when a vote of no-confidence is moved against him.

So ultimately it is the person, party or group representing the people as a whole, and elected by the people, who will determine who will form the government. This concept appears to be very clear but now it is being questioned. We have to wait for the decision of the courts. In this country, as you know, it is the courts that decide and we have to abide by the decision. If we find that it is not palatable then what we need to do is to urge our legislators to change the laws. To change the laws involving the Constitution requires a two-third majority. So a party that does not have a two-third majority cannot change the Constitution. They can change other laws but not laws relating to the Constitution.

So that is the situation in this country. Although the Constitution tries to be very clear-cut in dividing the authority of each of the different branches of the government, in effect there are many overlaps in jurisdiction. The legislative through the appointed government can interfere with the executive, and the judiciary can interfere with the legislative and the executive. Moreover a lot of influence exerted which may not be constitutional may be felt by the country as a whole. The King or the ruler must sign a bill before it becomes a law. He has only to append his signature but it is a very significant act because if he does not, there is no provision in the Constitution to compel him to do so. That is why it is desirable that the Constitution be amended to require the ruler to explain the reasons for not signing the bill and to ask for amendments to the bill (if he does not sign the bill). The legislator can then review the law and maybe change it to be in conformity with the views of the ruler. Subsequently, if the ruler still does not sign the

amended bill then it becomes law after a period of 60 days. So that is the provision to be incorporated.

Again you see that although the ruler or the monarch is not an executive he has certain authority through the right to append his signature, which makes him somewhat more than just a constitutional monarch. That is the situation that we find in Malaysia.

All considered, we have done very well really because the concepts of democracy and constitutional monarchy with a parliament are not something that we were used to. We were more familiar with the feudal system of government. But despite our lack of experience and traditions we have made this Constitution work well over many years. However it involves a lot of understanding of the past and of the things that are allowed under the Constitution. So it is very important that all legislators attend this morning's talk, otherwise they may be guilty of exceeding or abusing their authority (and not know it). The present system is done in this way in order to balance the power of the government. If any branch of the government is not checked by the other branches then the tendency for abuse is very great. Even with the provisions of checks and balance we still see instances of abuse of power. But if no division and no clear-cut power separation is exercised by the government at all, the abuses perpetrated would be very frequent and much worse, and eventually we may become an anarchy. There would practically be no government. So it is very important that we adhere to the provisions of the Constitution and also the division of power between the 3 branches of government: the legislative, executive and the judiciary. The rulers must also understand their powers, which although limited, are still very powerful.

Of course certain amendments to the Constitution have been made which makes things more clear-cut, but apparently there are still many people who may not fully understand the meaning of the Constitution and continue to breach its provisions.