

PERDANA DISCOURSE SERIES 9



# The Role of the Executive, Legislative, Judiciary and Constitutional Monarchy in the Governing of Malaysia

Keynote Speech By  
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PUTRAJAYA  
MAY 6<sup>TH</sup>, 2009



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# **“The Role of the Executive, Legislative, Judiciary and Constitutional Monarchy in the Governing of Malaysia”**



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PUSTAKA PERDANA



1007781

Perdana Leadership Foundation (PLF)  
Putrajaya, 2009



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University Publication Centre (UPENA)  
Universiti Teknologi MARA • SHAH ALAM • 2009

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Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Mahathir bin Mohamad, Tun, 1925-

The role of the executive, legislative, judiciary and constitutional monarchy in the governing of Malaysia / keynote speech by Tun Dr. Mahathir Mohamad, Honorary President Perdana Leadership Foundation, Putrajaya, May 6th, 2009. (Perdana discourse series ; no. 9/2009)

ISBN 978-967-305-444-2

1. Executive power -- Malaysia. 2. Malaysia -- Politics and government  
3. Speeches, addresses, etc. I. Title. II. Series.  
321.809595

Editors : Zarina Abu Bakar  
Sulaiman Mohd Noor  
Transcribers : Mohamad Zahid Ahmad  
Suhana Mat Tehor  
Cover design : Visual Print Sdn. Bhd  
Typesetting : Visual Print Sdn. Bhd  
Typeface : Helvetica /Times  
Typesize : 10/13

Printed in Malaysia by: Visual Print Sdn. Bhd.  
A-1-7A, No. 2, Jalan 12/144A  
Taman Bukit Cheras  
56000 Kuala Lumpur

Tunku Abdul Rahman Putra Al-Haj  
Tun Abdul Razak Hussein  
Tun Hussein Onn  
Tun Dr. Mahathir Mohamad

**Perdana Discourse Series No. 9/2009**

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# PREFACE

The Malaysian Constitution was promulgated on Merdeka day, August 31, 1957. It has to this day, been practiced under a parliamentary democracy and ruled as a constitutional monarchy. The federal constitution of Malaysia is divided into Executive, Legislative, and Judiciary authority. Throughout its history, it has seen many significant changes, which brings forth a lot of issues, especially in a racially diverse country that is Malaysia. There are many who wonder as to where the constitution stands in relation to Malaysians, and whether there is a need for reform in terms of the roles of the judiciary, the legislative and the executive, with regards to the separation of power. Many others, however, feel that the constitution is standing strong the way it has always been.

Much had been said and shared about the Executive, Legislative, Judiciary and Constitutional Monarchy in the Governance of Malaysia, and the importance of their roles to the nation during the ninth discourse series held on 6th May 2009, co-organized by the Perdana Leadership Foundation (PLF) together with the Institute of Quality and Knowledge Advancement (InQKA) of Universiti of Teknologi MARA (UiTM). The discourse was an interactive platform where participants who comprised of academicians, senior civil servants, educators, university students and members of youth associations, discussed issues relating to the role of Executive, Legislative, Judiciary and Constitutional Monarchy in the Governance of Malaysia.

The discourse started with a keynote address by Tun Dr. Mahathir Mohamed. This was followed by a discussion on the keynote speech, moderated by Dato' Dr. Mohd Yusof Ahmad. The discussants comprised Prof. Dr. Abdul Aziz Bari, Miss Tricia Yeoh, and Mr. Aliff Benjamin Suhaimi. Each presenter utilized their allotted time to share their thoughts on the topic, while other key issues were deliberated on during the subsequent group discussions. Students from various tertiary institutions participated by playing key roles as facilitators, scribes and presenters. The outcomes of the group discussions were then presented as a closing highlight of the discourse.



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# ACKNOWLEDGEMENTS

We would like to thank the Board of Trustees of the Perdana Leadership Foundation (PLF), the Executive Director of PLF, Tan Sri Nik Mohamed Nik Yaacob, and the Vice Chancellor of University Technology MARA (UiTM), Tan Sri Dato' Seri Professor Dr. Ibrahim Abu Shah for their continued support and confidence in PLF and Institute of Quality and Knowledge Advancement (InQKA), for yet another chapter of the series of joint publications. In this ninth discourse, we are very honoured to have Tun Dr. Mahathir Mohamad, who shared his ideas and opinions on the topic of 'The Role of Executive, Legislative, Judiciary and Constitutional Monarch in the Governing of Malaysia'. We are also grateful to have with us distinguished personalities of their respective fields: Dato' Dr. Mohd Yusof Ahmad, Prof. Dr. Abdul Aziz Bari, Miss Tricia Yeoh, and Mr. Aliff Benjamin Suhaimi, who further contributed to the development of knowledge on this topic. Our gratitude goes to Associate Professor Dr. Shireen Haron, the UiTM Assistant Vice Chancellor for her support and direct involvement in this series. We express our appreciation to all the participants who have contributed to the group discussions, the results of which have further enriched the knowledge gathered. We would also like to thank the staff of PLF, fellows and staff of InQKA and UiTM, for their tireless effort in making this discourse a success. Last but not least, we acknowledge the contributions made by the transcribers of PLF, and friends of InQKA and the University Publication Centre (UPENA) of UiTM, who have helped us with this ninth issue of the Perdana Discourse Series.

# PROLOGUE

The Federal Constitution of Malaysia divides the authority of the Federation into the executive, the legislative, and the judiciary. These three arms of the government are important because they provide the basis by which democracy is practiced, which is through the separation of power, checks and balances. The doctrine of the separation of powers is therefore relevant in establishing whether or not a country has a political system that is aligned with good governance. In this sense, the government is expected to operate in an environment of transparency and accountability that is aligned with the rule of law.

There has been much debate on the notion of separation of powers among the three branches of the government. For instance, there is growing sentiment that the executive branch may be exercising too much power and is influencing other spheres of the government, namely the judiciary. Some even claim that any blurring of lines between the three branches of government in Malaysia's version of the Westminster model had its antecedents in the colonial era. At this juncture, it is pertinent to highlight the role of the executive, the legislative, the judiciary and the constitutional monarchy in the governing of Malaysia. This give rise to certain points to ponder, which include:

1. What does the separation of power doctrine mean in the Malaysian context?

2. To what extent has there been separation of powers among the three branches of government, i.e. the executive, the legislative and the judiciary?
3. How is the doctrine of the separation of power a basis of administrative law?
4. How can the role of the executive, legislative and judiciary be defined to ensure good governance of Malaysia as well as the protection of the fundamental liberties of Malaysians?



**Keynote Address By Tun Dr. Mahathir Mohamad**  
Perdana Leadership Foundation,  
Putrajaya • May 6<sup>th</sup>, 2009

*Bismillahir rahmanir rahim, 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 neighbors. 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 Rajas, 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 recognized 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 neighboring 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 realized 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 need 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



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**WINNER**  
of the Prime Minister's  
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2008



ISBN 978-967-305-444-2



9 789673 054442



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