

**THE MALAY RULERS'  
LOSS OF IMMUNITY**

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# THE MALAY RULERS' LOSS OF IMMUNITY

## I. Introduction

From its inception in 1957 the Constitution of Malaysia has provided an immunity to the Malay Rulers (or Sultans) against civil actions or criminal prosecutions. Early in 1993 the Constitution of Malaysia was amended to remove this immunity. Although the federal Constitution of Malaysia and the constitutions of the states of Malaysia leave the Rulers as mere constitutional monarchs they have wielded considerable influence due, in part, to the traditional reverence of the Malay people for their Rulers. The ability of the Government to bring about these constitutional amendments is noteworthy in light of the traditional reverence Malay people have for the Malay Rulers. The apparent public support for the changes suggests a shift in traditional Malay cultural values that appears to have irrevocably reduced the significance of the Malay Rulers in Malay society and in the politics of Malaysia.

This paper traces the events leading to the constitutional amendments of 1993 in the context of the significance of the Malay Rulers in Malaysian politics and Malay culture. The paper begins, in Part II, by providing a brief historical background to the Malay Rulers and their importance in Malay culture and tradition. It also outlines the position of the Malay Rulers under the constitution as it stood prior to the recent amendments. Part III describes the events leading up to the recent amendments and the nature of the amendments that were finally made. Part IV discusses how the amendments signal a change in the attitude of Malays to the Malay Rulers which allowed the government to act when it did and which has substantially reduced the significance of the Malay Rulers.<sup>1</sup>

## II. Historical Background of the Malay Rulers

### A. The Malay Rulers Prior to the British Intervention

#### 1. Origins and Structure of the Malay Sultanates

The history of the Malay Rulers can be traced back prior to the Malaka Sultanate during the 15th century.<sup>2</sup> However, most of what is known of the history of the Malay Rulers comes from the Malay Annals, stories of the Malay Rulers and accounts of travellers to the region.<sup>3</sup> These deal primarily with the period beginning from the time of the powerful Malacca Sultanate which was established in the 13th century and became a center for trade attracting Arab, Indian and Chinese traders<sup>4</sup> and later attracting the interests of the Portuguese, Dutch and British colonial powers.<sup>5</sup>

##### a. *Hierarchical Structure*

There were many differences in the structures of the Malay Sultanates that developed on the Malay peninsula. However, the Malacca Sultanate is said to have come the closest to covering the whole peninsula and subsequent Malay Sultanates probably tended to look to Malacca as a source of tradition and authority thereby giving a basic political structure notwithstanding local variations.<sup>6</sup> These Sultanates generally involved hierarchical organizational structures in which the Sultan ruled through a series of chiefs and sub-chiefs.<sup>7</sup> The Malay Rulers were not all-powerful. Enforcement was no doubt impeded by the difficulties of travel in the harsh terrain. There was generally also a lack of cultural homogeneity in the subjects of the state.<sup>8</sup> Power was thus decentralized among district chiefs who were often in conflict with one another and with the Ruler.<sup>9</sup>

This decentralization of power was mitigated in part by "the hard facts of trade, national defence and the need for law and order over a wider area than a district".<sup>10</sup> It was also mitigated by the indoctrination of a Ruler's chiefs and subjects with a strong sense of unquestioning loyalty to the Ruler.<sup>11</sup>

b. *Loyalty*

The concept of unquestioning loyalty to the Rulers was noted in the Undang-undang Melaka, which set out the qualities expected of Malay subjects as follows:<sup>12</sup>

The qualities required of a ruler's subjects are three in number. Firstly, (he is to be) honourable in all his behaviour; secondly, (he) abides by the commands of the ruler; whether he (the ruler) is tyrannical or not, he (the subject) shall follow his commands; thirdly, he desires mercy from his Lord.

Malays refer to this as *daulat* which calls for great respect for and loyalty to the Malay Rulers.<sup>13</sup> It has been said that:<sup>14</sup>

... *daulat*, as a concept of general Malay tradition comprised several related ideas. *Dualat* was the supreme expression of the quality of the "majesty", and its possession of a ruler constituted divine sanction of his reign. It was a stable, impersonal quality, beyond the influence of its holder's character or abilities. It could act arbitrarily and offensively to protect the ruler, his command and his dignity, and enabled him to accomplish acts of great magic. In short, *daulat* was a foundation of the ideology of legitimation.

Linked to the concept of *daulat* was the notion that the Malay Rulers possessed certain

mystical powers that would lead to misfortune to those who were disrespectful of or disloyal to a Malay Ruler.<sup>15</sup>

An English visitor witnessing a ceremony for the installation of ministers in the early 1820s recorded the event as follows:<sup>16</sup>

The Raja having requested my presence at the ceremony of administering the oath of allegiance to some ministers and officers, I accordingly attended at the hall. A large concourse of people were assembled. The chiefs and their attendants were seated on carpets and mats on the floor. In front of the sofa on which the Raja sat, were arranged the following articles, a low stool on which lay the Koran, and a large jar of consecrated water, on top of which was a model of a crown. The Raja advancing dipped the regalia, consisting of armour, in the water, and placed them against a pillow.

The new ministers and other officers then approached and had the oath tendered to them. This oath consists [of] two parts and is very short. The first part is the promise of fidelity, the second imprecates every calamity to afflict the juror and his family to remote generations should he betray the trust and confidence reposed in him ...

Malay annals also contain accounts of the unquestioning loyalty of the Malay subjects to their Rulers.<sup>17</sup> The extent of the loyalty to the Rulers is demonstrated in a passage in the Hikayat Raja-Raja Pasai referring to the time when the Sultan Mahmud of Melaka ordered his wealthy Bendahara put to death. The Bendahara is said to have prevented his followers from defending him by saying: "It is the custom of the Malays never to derhaka (to commit treason)."<sup>18</sup>

#### c. *No Division of Powers*

Although a Malay Ruler's power may have been decentralized through a system of chiefs and sub-chiefs, the Ruler, armed with the loyalty and respect of his subjects, maintained law and order, declared war, administered justice and decided on the life and death of his subjects.<sup>19</sup> There was no notion of a system of checks and balances between executive, legislative and judicial power. Indeed, it has been said that,<sup>20</sup>

In a Malay State the Ruler is an absolute monarch; he is the sole fount of honour, the sole source of justice and the sole repository of the executive and legislative power.

There is no distinction between executive and legislative acts such as we know under the English constitutional law.

d. *Fear Culture*

The scope of a Malay Ruler's authority coupled with notions of respect, loyalty, and perhaps mystical powers, are the source of what is often referred to by Malays as their "fear culture".<sup>21</sup> This "fear culture" manifests itself in a sense that authority is something that should be both respected and avoided. According to one commentator,<sup>22</sup> the Malay ideal of authority calls for sternness, dignity, and paternalistic concern; but it is also understood that those in authority can easily become angered and do irrational things. Hence it is imperative not to provoke authority but to stay out of its way as much as possible.

e. *Summary*

A Malay Ruler was traditionally the pinnacle of a hierarchy and was the sole source of judicial, executive and legislative power. His power was maintained and enhanced through the development of an unquestioning loyalty that has imbued Malay people with a strong sense of reverence for and fear of the Rulers.

2. The Rulers and the Islamic Influence

As well as being the Head of State, the Rulers were also the Head of the Religion. Islam had been introduced on the peninsula probably as early as the 7th century A.D. and was further promulgated during the 15th century under the reign of Parameswara who adopted Islam.<sup>23</sup> Islam did not introduce the monarchy but merely tolerated it.<sup>24</sup> In Islam a Monarch, or Sultan:<sup>25</sup>

is regarded as a successor to the prophet and must be learned in the teachings of the religion. Elected by consensus, he has the final say in matters of State as well as religion, and determines the law where it is not clear, in consultation with other scholars. He also leads the prayers.

Under Islam the Sultan "in addition to being a sovereign prince in the secular sense also came to maintain a close association with and responsibility for the Shariah."<sup>26</sup> However, in practice the role of the Sultans as heads of religion became nominal with their religious functions being taken over by their officers.<sup>27</sup>

Islamic principles became a source of legitimation for the Malay Rulers and the Ruler played an active role in the spreading of Islam throughout the Kingdom.<sup>28</sup> However, under Islamic principles a Ruler is not all-powerful but is responsible to Allah and cannot expect the loyalty of his subjects if they are required to breach Islamic moral values in carrying out the Ruler's command.<sup>29</sup>

Under Shariah law the Sultan was a servant of the law, was subject to the law and was not entitled to any special exemption from the provisions of the Shariah law.<sup>30</sup>

## **B. The British Intervention**

The Portuguese took Malacca in 1511 and brought an end to the Malacca Sultanate in Malacca.<sup>31</sup> The Dutch later wrested Malacca from the Portuguese in 1641.<sup>32</sup> For the most part the Portuguese and the Dutch confined their efforts to maintaining control of the area of Malacca itself and did not extend their influence inland on the peninsula.

The British obtained control over Penang in 1786 and Singapore was founded by Stamford Raffles in 1819.<sup>33</sup> The British also formally obtained control over Malacca from the Dutch under the Anglo-Dutch Treaty of 1824.<sup>34</sup> The British initially confined their interest to the straits settlements of Penang, Malacca and Singapore.<sup>35</sup> Unrest in the peninsular Malay states and fear of intrusion by other colonial powers that threatened British interests and trade in the region led to British involvement in the affairs of the peninsular states.<sup>36</sup> Under the treaty of Pankor in 1874 the Sultan of Perak was obliged to accept a British resident in return for settling disturbances and supporting the Sultan against the claims of other chiefs for the throne.<sup>37</sup> The British resident would advise the Sultan on all but religious matters and matters pertaining to Malay culture.<sup>38</sup> Similar British residency arrangements were set up in other states.<sup>39</sup> In 1894 the creation of the Federated Malay States brought the states of Negeri Sembilan, Selangor, Pahang and Perak together under a common overriding administration.<sup>40</sup>

Under the British residency system the British residents took on a role much greater than that of mere "advisors". Although the Rulers remained pre-eminent, the residents often, using the nominal powers of the Rulers, set up their own systems of government such that, as the Resident General of the Federated Malay States, Sir W.H. Treacher, put it,<sup>41</sup>

The position has in fact been reversed; instead of the Sultan carrying on the Government with the advice of the Resident ... the Resident carries on the administration with the reference when he considers it necessary for the advice of the Sultan.

The Rulers' powers in all but religious and cultural matters were thus considerably curtailed.<sup>42</sup>

## **C. The Malayan Union Struggle<sup>43</sup>**

After the Japanese occupation during the second world war the British sought to restore political control of the Malay states. A Malayan Union was proposed which the Malay Rulers agreed

to, although apparently under duress. Under the proposed Malayan Union scheme the states would be brought together and ruled by a Governor assisted by an Executive and Legislative Council with the British Crown as the unifying figurehead of authority. Former State Councils with independent powers were to be replaced by State Councils with delegated powers with respect to issues of purely local concern. The Rulers would preside over Malay Advisory Councils and would have jurisdiction with respect to the Islamic religion in their states. However, their legislative powers with respect to Islamic matters were subject to an overriding approval of the Governor. They would assist the Governor with respect to religion and with respect to such other matters as the Governor chose to seek their advice on.<sup>44</sup>

Besides further reducing the significance of the traditional Malay Rulers, the scheme also provided for liberal citizenship provisions that would have allowed for a substantial increase in the non-Malay population thereby reducing the political influence of the Malays.<sup>45</sup> Consequently, the proposed Malayan Union was very unpopular with the Malays<sup>46</sup> and the United Malays National Organization ("UMNO") was formed to oppose the Malayan Union scheme. UMNO claimed to be the protectors of the Malay Rulers and the struggle for the Malay Rulers came to represent the struggle for the Malays against British and non-Malay interests.<sup>47</sup>

A compromise was reached with the creation of the Federation of Malaya which set up a Federal system in which the Rulers were given a more significant role. In the States Rulers presided over Executive Councils and could choose not to follow the advice of the Executive Council as long as they gave their reasons in writing. A Conference of Rulers was created which was entitled to see draft bills of the Legislative Council and its assent to bills was required before they became law. The Conference of Rulers was also entitled to be consulted on matters of policy.<sup>48</sup>

The response of the Malays to the Malayan Union proposal suggested the beginnings of a change in the relationship between the Malays and the Malay Rulers. The Rulers had lost some prestige by initially agreeing to the Malayan Union proposals.<sup>49</sup> However, although UMNO became the substantive protectors of the Malays, the Malay Rulers became symbols of the Malay struggle and Malay identity.<sup>50</sup>

#### **D. The Rulers Under the 1957 Constitution**

The 1957 Constitution creating the Federation of Malaysia brought about a compromise between the Malays, non-Malays and the Malay Rulers. The Malays feared domination by the non-Malays who controlled the economy. The non-Malays feared political domination by the Malays and



the risk of not being citizens in the country they had made their home. The Malay Rulers feared that they would lose their position if the people had control of the country.<sup>51</sup>

In the Constitution's political compromise the Rulers were made Heads of State and Head of the religion of Islam in their own states.<sup>52</sup> A Conference of Rulers, originally created by the 1948 Federation agreement,<sup>53</sup> was provided for in the 1957 Constitution.<sup>54</sup> The Constitution also created the position of Yang di-Pertuan Agong (or King).<sup>55</sup> The King is chosen by the Conference of Rulers from among the Malay Rulers according to a rotational scheme and serves in office for a period of five years.<sup>56</sup> The King was given the power of assent to legislation.<sup>57</sup> However, instead of being required to give his assent to legislation, assent to legislation was left to his discretion.<sup>58</sup> A similar discretion to assent to state legislation was given to the Rulers of the Malay states.<sup>59</sup>

The King was also given the power to act in his discretion to appoint the Prime Minister (providing the person appointed, in his judgment, is likely to command the support of a majority of the House<sup>60</sup>), to withhold consent to a request for the dissolution of Parliament, and to requisition a meeting of the Conference of Rulers concerned with the privileges, position, honours and dignities of the Rulers.<sup>61</sup> The Rulers of the States were given similar discretionary powers having discretion to appoint the Menteri Besar (Chief Minister) of the State, and to withhold consent to a request to dissolve the State Legislative Assembly.<sup>62</sup> The State Constitutions also provide that the Rulers function as Heads of the Islamic religion in their respective states,<sup>63</sup> and have discretion in the appointment of a consort,<sup>64</sup> a Regent,<sup>65</sup> the appointment of persons to Malay customary ranks, titles, honours and dignities,<sup>66</sup> and in the regulation of royal courts and palaces.<sup>67</sup>

In other matters where powers are granted to the King he must act on the advice of cabinet or of a minister of cabinet with the general authority of the cabinet.<sup>68</sup> For instance, the King appoints the cabinet on the advice of the Prime Minister,<sup>69</sup> and appoints the Lord President of the Supreme Court, the Chief Justices of the High Courts and other judges of the Supreme and High Courts on the advice of the Prime Minister.<sup>70</sup> Similarly, the Rulers of the states, subject to powers such as those mentioned above,<sup>71</sup> must act on the advice of the Executive Council (state cabinet) or a member thereof.<sup>72</sup>

The Constitution continued the existing position of the Rulers by providing that the "sovereignty, prerogatives, powers and jurisdiction of the Rulers ... as hitherto had and enjoyed shall remain unaffected."<sup>73</sup> The Constitution also provided for an immunity of the Rulers from proceedings in court. Article 32 provided that the King "shall not be liable to any proceedings whatsoever in any court" and Article 181(2) provided that "[n]o proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity."

The Constitution provided that changes in the Constitution with respect to the privileges or position of the Rulers would require the consent of the Conference of Rulers. In particular, article 38(4) provided (and continues to provide) that,

No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.

Curiously, a more specific provision with respect to the consent of the Conference of Rulers makes no reference to the immunity provided by articles 32 and 181(2). It provides that,<sup>74</sup>

A law making an amendment to Clause (4) of Article 10, any law passed thereunder, the provisions of Part III, Article 38, 63(4), 70, 71(1), 72(4), 152, or 153 or to this Clause shall not be passed without the consent of the Conference of Rulers.

This was said to give a measure of protection to the Malays in that changes to matters of considerable importance to them, such as citizenship, language, and quotas for Malays would be subject to the consent of the Malay Rulers whom they could expect would defend their interests.<sup>75</sup>

The Rulers were also given powers to grant pardons in respect of offences committed within their state.<sup>76</sup> With the creation of the Federal Territories of Kuala Lumpur and Labuan, the King was given similar powers with respect to those territories.<sup>77</sup> The Ruler is required to exercise his power of pardon on the advice of a Pardons Board<sup>78</sup> which is to consist of the Attorney General, the Chief Minister of the State and up to three other members appointed by the Ruler.<sup>79</sup> The Pardons Board meets in the presence of the Ruler and is required to consider any written opinion of the Attorney General.<sup>80</sup>

Although the Constitution has been amended several times since 1957, there have been relatively few amendments which have affected the powers or position of the Rulers. However, two significant changes prior to the 1993 amendments were the changes in response to the May 13, 1969 riots and the changes that brought about the "Constitutional crisis of 1983".

### **E. The 13 May 1969 Riots**

In the general elections of May 10th, 1969 the ruling coalition, dominated by UMNO, the main Malay political party, suffered a dramatic loss of support while non-Malay opposition parties enjoyed gains. The ruling coalition maintained a majority but did not retain their coveted two-thirds majority which allowed them to amend the Constitution.<sup>81</sup> This concerned Malays who, despite hopes and promises, had not seen their social and economic situation improve substantially from the time of independence. On May 11th and 12th the non-Malay opposition parties held victory parades in Kuala Lumpur in which they were said to have uttered expressions and carried on in ways

that provoked Malays. A large gathering of Malays on May 13 erupted into violence apparently upon receiving reports that a group of Malays had been attacked by non-Malays. The resulting mayhem left many dead and injured. On May 17, 1969, a national emergency was declared. Parliament was suspended and the country was put under the control of a National Operations Council.<sup>82</sup>

Parliament was not reinstated until March 1971.<sup>83</sup> In the hopes of averting further violence, measures were taken to improve the condition of the Malays. The Constitution was amended to provide for additional quotas for the Malays with respect to education.<sup>84</sup> The New Economic Policy was adopted which sought to increase Malay involvement in the economy.<sup>85</sup> The questioning of this policy was prohibited by amendments to the Constitution and consequential amendments to the Sedition Act which deemed such questioning to be seditious.<sup>86</sup> The questioning of the privileges, position, powers or prerogatives of the Malay Rulers, who were a symbol of Malay unity and the Malay struggle against non-Malays, was also prohibited by amendments to the Constitution and the Sedition Act.<sup>87</sup> Amendments to the Constitution with respect to these provisions were also made subject to the consent of the Conference of Rulers.<sup>88</sup>

#### **F. The 1983 Constitutional Crisis**

In 1983 the government proposed amendments to the Constitution which for the first time brought the Rulers openly into conflict with the government and with UMNO, the party which had claimed to be the protectors of the Rulers since the time of the Malayan Union struggle.<sup>89</sup> The proposed amendments altered the provisions with respect to the King's assent to bills deeming the King to have assented to any bill which the King had not given his assent to within fifteen days.<sup>90</sup> A similar amendment would have been required in each of the state constitutions.<sup>91</sup> The proposed amendments would also have provided for a change in the power to declare an emergency. The emergency powers give broad powers, upon the declaration of an emergency, to promulgate ordinances having the force of law at any time Parliament is not sitting.<sup>92</sup> Prior to the proposed amendment it was the King, upon satisfaction that a grave emergency existed, who had the power to declare an emergency.<sup>93</sup> The King was to act on the advice of cabinet.<sup>94</sup> The proposed amendment would have given the Prime Minister the power to instruct the King to declare an emergency.<sup>95</sup>

The amendments were apparently considered necessary because of an upcoming election for King in which the two potential candidates for the Kingship, following the order set out in the Third Schedule to the Federal Constitution,<sup>96</sup> were Rulers who had caused problems for their respective state governments. It had been reported that one of the candidates for the Kingship had suggested that on becoming King he would exercise the power to declare an emergency and then seek to exercise governmental powers himself.<sup>97</sup> Further, each of these Rulers had taken exception to the

Chief Ministers of their states and had taken steps that ultimately led to the resignation of the Chief Ministers.<sup>98</sup> Of particular concern was the forced resignation of a Chief Minister after two years of refusals by the Ruler to give assent to state legislation.<sup>99</sup> The proposed amendments were sought to avoid any similar problems which either of the two candidates for the Kingship might cause for the federal government upon becoming King.<sup>100</sup>

The King, at the behest of the Conference of Rulers, refused to give his assent to the amendment bill. This was followed by political rallies by the Prime Minister and a media blitz which portrayed UMNO as the protector of the Rulers against radicals seeking the abolition of the monarchy and which exposed the allegedly extravagant lifestyles of the Rulers of the states of Perak and Johor.<sup>101</sup> Eventually a solution acceptable to both the government and the Rulers was found. The final amended version of the Constitution provided that the King, within 30 days of the passing of a bill by both houses, would either give his assent to the bill or, if it was not a money bill, return the bill to Parliament with a statement of reasons for his objection to the bill. If, on the return of a bill, the bill was again passed by both Houses it would again be presented to the King for his assent and the King would have 30 more days to assent to the bill after which time the bill would become law "in like manner as if [the King] had assented to it".<sup>102</sup> The requirement for similar provisions to be adopted in state constitutions was dropped in return for an oral assurance that assent to bills passed by state legislatures would not be unreasonably delayed by the state Rulers. The amendments with respect to emergency powers were withdrawn.<sup>103</sup> The compromise also included oral assurances that the Rulers of the states would not unreasonably withhold assent to state legislation and that the proclamation of an emergency would not be exercised unilaterally by the King.<sup>104</sup>

The ability of the government to mount sufficient public support for a change to the assent provisions that would more clearly limit the powers of the King and, at least through an oral assurance, the powers of the Rulers, indicated a change in Malay society with respect to the importance of the Rulers.<sup>105</sup> It suggested a decreasing importance of the Rulers as a symbol of, and in the protection of, Malay political supremacy.<sup>106</sup> Nonetheless, there appeared to be sufficient public support for the Rulers to allow them to prevent a more substantial incursion into their powers.

### **III. The Constitutional Amendments and the Events Leading up to the Amendments**

#### **A. The Gomez Incident<sup>107</sup>**

There were allegedly several incidents over the course of at least the previous twenty years in which Rulers and members of the royal families had abused their privileges.<sup>108</sup> However, the catalyst that brought these allegations into the open and was the linch-pin for the constitutional

amendments was the Douglas Gomez incident. Douglas Gomez was the coach of the Maktab Sultan Abu Bakar field hockey team. The team had made it to the semi-finals of the Malaysian Hockey Federation Milo Champion Schools Tournament. Its semi-final match was to be held on Wednesday, November 25th, 1992. A few hours before the match Douglas Gomez was instructed to cause the team to withdraw from the match on an order from the Johor Education Department director.<sup>109</sup> This was just one of several withdrawals of Johor hockey teams from tournaments over several months prior to November 25th. Afterwards Douglas Gomez called for the resignation of all Johor Hockey Association principal office bearers and criticized the leadership for "destroying" hockey in the state.<sup>110</sup>

This seemed to have little to do with any of the Malay Rulers. However, Douglas Gomez was summoned to the Istana (or palace) Bukit Serene in Johor Baru on Monday, November 30th. He was there for four hours. During the first hour he was briefed on palace etiquette and on how to ask for forgiveness if he made a mistake in his actions or communications with the Sultan. The Sultan of Johor arrived and, according to Gomez, was surrounded by six men in jeans and T-shirts and 10-12 Johor Military Force personnel.<sup>111</sup> On Tuesday, December 1st, after his visit to the palace, Gomez sought treatment at a local private clinic for bruises to his face and stomach. On Sunday, December 6th, he made a report to the police in which he alleged that he had been the victim of an assault while at the palace and that, although there were several people in the palace at the time, the only person responsible for his injuries was the Sultan himself.<sup>112</sup>

The apparent connection between the Sultan of Johor, Douglas Gomez and field hockey was an event which occurred in July of 1993. The Sultan's son, Tengku Abdul Majid Idris was alleged to have assaulted the Perak goalkeeper after a championship final game which Perak won on a penalty stroke. The Malaysian Hockey Federation concluded that there was sufficient evidence that the assault had occurred and banned Tengku Majid from play for a period of five years. It was after this decision by the Malaysian Hockey Federation that the spate of withdrawals by Johor hockey teams from national tournaments began to occur.<sup>113</sup>

## **B. Response to the Gomez Incident**

The Gomez incident was followed by several days of news coverage in which outrage was expressed at the Gomez incident.<sup>114</sup> Reports in the following weeks contained allegations of other abuses by the Sultan of Johor and the Johor Royal family.<sup>115</sup> There were also allegations of abuses of privilege by other Rulers. For instance, the Pahang Royalty was alleged to be putting pressure on

the Pahang Government and its forestry officials for more timber concessions in spite of substantial concessions that had been made over the previous four years.<sup>116</sup> There were other general allegations of excessive timber and land concessions being demanded by Royal families.<sup>117</sup> There were complaints that some Rulers refused to pay debts and otherwise refused to comply with contractual obligations relying on their immunity from civil actions.<sup>118</sup> There were allegations that the privilege of allowing Rulers to import luxury cars free of duty had been abused by obtaining import approval permits for cars for other members of the royal families and for friends of the royal families.<sup>119</sup> Concerns were also expressed with respect to alleged interference by Rulers in government affairs.<sup>120</sup>

Caution regarding provisions of the Sedition Act, which deemed discussion of the issue of the Rulers' privileges to be an act of sedition, had apparently been thrown to the wind. Reports of sedition were made against various persons<sup>121</sup> including opposition MP Karpal Singh<sup>122</sup> and even against the Prime Minister himself.<sup>123</sup>

### **C. The Proposed Amendments**

In response to the Gomez incident there were calls for steps to be taken to remove the Rulers' immunity.<sup>124</sup> Within weeks of the first reports of the Gomez incident amendments to the provisions of the constitution concerning the immunity of the Rulers were being drafted.<sup>125</sup> Newspapers carried reports of support for the Government's strong stand on the Gomez incident and for proposals to amend the constitution to deal with the matter. According to the reports, support came from both coalition government parties and from non-government coalition parties.<sup>126</sup> Support was also reported from several groups and organizations in Malaysian society.<sup>127</sup> There were also reports and letters containing opinions to the effect that constraining the alleged abuse of the Rulers would be consistent with Islamic principles.<sup>128</sup>

These proposed amendments dealt with the immunity of the Rulers, changes with respect to the Rulers' powers to grant pardons and changes with respect to sedition in the context of Parliamentary proceedings concerning the Rulers. The provisions of the Constitution providing for the immunity of the Rulers were to be amended to replace the general immunity with an immunity limited to their actions in an official capacity. The proposed amended version of Article 181(2) read,<sup>129</sup>

No proceeding whatsoever shall be brought in any court against the Ruler of a State *in respect only of anything done or omitted to be done by him in the exercise or purported exercise of his functions under any written law* (words to be added in italics).

There was a similar proposed amendment of Art. 32 with respect to the immunity of the King.<sup>130</sup> A third clause to be added to Article 181 provided that any law which provided for the immunity of a Ruler of a State in his personal capacity or attached sanctity to his residence would be void.<sup>131</sup> Perhaps in the interests of garnering support from the Conference of Rulers, the proposed amendments provided that no proceedings could be taken against a Ruler in his personal capacity for anything done or omitted to be done by the Ruler before the amendments came into effect.<sup>132</sup>

The whole notion of Rulers being subject to the criminal proceedings before a court and the consequences of criminal proceedings with respect to members of the royal families could be next to meaningless if the Rulers could pardon themselves or their family members. Consequently the provisions of the Constitution with respect to pardons were to be amended such that where a Ruler or his consort, son or daughter were involved the powers would not be exercised by the Ruler himself. Where the King, or his Consort, or the Ruler of a state, or his Consort, were concerned the powers would be exercised by the Conference of Rulers and the King or Ruler concerned would not be members of the Conference of Rulers for that purpose.<sup>133</sup> Where the son or daughter of the King or Ruler of a State were concerned the power to pardon would be exercised by a Ruler of a State nominated by the Conference of Rulers who would act on the advice of a pardons board.<sup>134</sup>

The proposed amendments also dealt with restrictions on questioning the privileges of the Rulers in either Parliament or State Legislatures. The proposed amendments provided that no person would be liable to any proceedings in any court against a person in respect of anything said by him of the King or a Ruler when taking part in proceedings of either house of Parliament or any committee thereof.<sup>135</sup> However, one exception to this remained. The person could still be liable if he or she advocated the abolition of the constitutional position of the King as the Supreme Head of the Federation or the constitutional position of the Ruler of a State.<sup>136</sup> Similarly, no person would be liable to any proceedings in any court in respect of anything said by that person of the Ruler of any State when taking part in any proceedings of the legislative assembly of a State or any committee thereof, unless the person advocated the abolition of the Ruler's position as the constitutional Ruler of the State.<sup>137</sup>

Meetings of the Rulers with government representatives led to some last minute changes in the proposed amendments before they were presented in Parliament.<sup>138</sup> The changes provided for the creation of a special court to deal with cases involving the Rulers. If civil or criminal actions were brought against a Ruler or the King these would, under the revised version of the proposed amendments, be dealt with by a special court. The special court would consist of the Lord President of the Supreme Court, who would act as chair of the court, the Chief Justices of the High Courts, and

two other persons, chosen by the Conference of Rulers, who are or were judges of the Supreme Court or High Courts.<sup>139</sup>

The Rulers were said to have generally agreed to accept the proposed amendments on January 17, 1993.<sup>140</sup> However, at a special meeting on January 18 they issued a statement saying they were not in a position to give consent to certain proposals in the Bill without further deliberation and consultation. The Rulers, while acknowledging that "there can not be two systems of justice in the country" and that they agreed "to the formation of an effective mechanism to hear the [people's] grievances against them", expressed concern for the "far-reaching consequences on the sovereignty of the Malay Rulers". They were of the view that a special court was not the most suitable forum for determining matters relating to the Rulers and proposed the creation of an Advisory Board to make recommendations to the appropriate State authority for the removal of a Ruler before he was charged or sued.<sup>141</sup> Nonetheless the proposed amendments, as revised, were tabled in the Dewan Rakyat (lower house) on January 18th, 1993 and were passed by both houses by January 20th.<sup>142</sup>

#### **D. UMNO's Justification for the Amendments and Opposition to the Amendments**

UMNO's justification for the amendments was that they were necessary to protect the Rulers and preserve the institution of the Rulers as constitutional monarchs.<sup>143</sup> In response to claims that the amendments represented the first step towards the creation of a republic, UMNO pointed to the amendments on sedition which continued to make persons liable for statements in Parliament or a Legislative assembly advocating the abolition of the monarchy.<sup>144</sup> Otherwise amendments to the provisions on sedition were said to be necessary because although abuses by Rulers were known of in the past, little could be done because no one could voice criticisms of the Rulers even in Parliament or the State Legislatures and thus the public could not be made aware of the problems faced by the Government.<sup>145</sup>

Semangat '46, an opposition party that was formed upon the breakup of the former UMNO party,<sup>146</sup> opposed the amendments, taking arguably the strongest pro-royalty stance of any party. While it agreed that some steps needed to be taken so that the Rulers could "hear the grievances of the Rakyat (the people)",<sup>147</sup> it claimed that the proposed amendments interfered with the sovereignty of the Rulers and were a step towards the formation of a republic.<sup>148</sup> They argued that the ultimate removal of the Rulers would take away an important aspect of Malay culture and tradition and a symbol of Malay unity.<sup>149</sup>

The Democratic Action Party (DAP), a primarily Chinese opposition party which is part of an opposition coalition with Semangat '46, originally supported the government in December when



it expressed the need for action to be taken in light of the Gomez incident.<sup>150</sup> It also initially supported the amendments.<sup>151</sup> However, it abstained from voting when the amendments were introduced in Parliament in January.<sup>152</sup> The reason they gave for the abstention was that the Constitution required the consent of the Rulers to amendments affecting their privileges and such consent had yet to be given. According to DAP the consent was required before the amendments could be introduced in Parliament.<sup>153</sup> DAP was accused of sacrificing its principles in favour of preserving their opposition coalition with Semangat '46.<sup>154</sup>

The Islamic Party of Malaysia (PAS), a Malay pro-Islamic party and part of the opposition coalition, supported the government's call for action and the move to lift the Rulers' immunity in light of the Gomez incident<sup>155</sup> but later abstained from voting on the amendments introduced in Parliament in January.<sup>156</sup> Although it claimed to be in favour of the removal of the Rulers' immunity because it was not in accord with the principles of Islam,<sup>157</sup> it said that the amendments were not "comprehensive enough" and that it did not like the manner in which the wrongdoings of the Rulers were exposed in the House.<sup>158</sup> PAS was arguably in a difficult position in that it may have wanted to avoid alienating the Kelantan royal family whose support could be influential in staying in power in the state of Kelantan.<sup>159</sup>

#### **E. The Rulers' Compromise**

The decision of the Conference of Rulers not to consent to the proposed changes to the Constitution was followed by stepped up pressure on the Rulers. It was announced that henceforth the payment for the expenses of the Rulers would be limited to those that were expressly provided for by the law.<sup>160</sup> The government would no longer pay for the building and maintenance of rest houses, additional palaces, private wards in hospitals, yachts and aircraft.<sup>161</sup> The refusal of the Rulers to give their consent to the proposed amendments was followed by a barrage of media coverage exposing alleged excesses of the Rulers.<sup>162</sup> There were also further reports of influence by the Rulers in government affairs.<sup>163</sup> Eventually, on February 11, it was announced that a compromise had been reached and that the Rulers agreed to give their consent to the proposed amendments but with certain changes that were agreed to.<sup>164</sup>

There were two changes to the amendments tabled in the House on January 18.<sup>165</sup> One was that a Ruler charged with an offence in the Special Court should cease to exercise his functions as a Ruler.<sup>166</sup> Pending the decision of the Special Court a Regent would be appointed to exercise the functions of the Ruler.<sup>167</sup> A Ruler convicted of an offence by the Special Court and sentenced to imprisonment for more than one day would cease to be the Ruler of the State unless he received a

pardon.<sup>168</sup> A similar provision was added with respect to the King.<sup>169</sup>

The other change was that no action, civil or criminal, could be instituted against the King or a Ruler of a State with respect to anything done or omitted to be done in his personal capacity without the consent of the Attorney General.<sup>170</sup> Overall the modifications appeared to be relatively minor.<sup>171</sup> The revised amendments were submitted to Parliament and were passed by both Houses on March 9, 1993.<sup>172</sup>

#### **IV. Cultural Change and the Struggle for Power**

##### **A. The Struggle for Power**

The government argued that the amendments to the Constitution in response to the Gomez incident, by removing the immunity of the Rulers, were a step towards increased democracy in Malaysia.<sup>173</sup> Viewed in their broader context the amendments were part of an inevitable struggle for power between the executive branch of government and the Rulers.<sup>174</sup>

The removal of the Rulers' immunity does not, on the face of it, directly increase executive powers. However, the focus, in the midst of the amendment debate, on the alleged orders given by Rulers to government officials, pressure put on government officials to obtain government contracts and timber concessions, alleged extravagant expenses, and alleged interference in government affairs suggests there was more to the whole affair than just the removal of the Rulers' immunity.<sup>175</sup> In part the allegations were made to put pressure on the Rulers to consent to the removal of their immunity.<sup>176</sup> However, the exposure of these alleged extravagances put the Government in a position to crack down on the influence of the Rulers. The removal of the Rulers' immunity, and the apparent public support,<sup>177</sup> may put the Government in a better position to leave the Rulers to pay for unbudgetted expenditures presented to state and federal governments after they have been incurred. The Rulers can now be sued for those expenses. Many of the alleged actions of the Rulers through which they exerted influence may now be the subject of legal proceedings before the Special Court.

The form which the removal of immunity ultimately took also appears to give the executive additional leverage over the Rulers. Three of the five judges of the Special Court are the Lord President and the Chief Justices of the High Courts who are appointed at the behest of the Prime Minister.<sup>178</sup> The proceedings, civil or criminal, can only be undertaken with the consent of the Attorney General, and, in the context of criminal proceedings, expose a Ruler to the potential loss of his position as Ruler.<sup>179</sup> This seems to give the government a significant tool for bringing an unwieldy Ruler into line.

Indeed, as Raja Aziz Addruse, a lawyer and editor of the Journal of the Malaysian Bar (and

member of a royal family), has said,<sup>180</sup>

the amendments will arm the Executive with the power to subjugate the Rulers through threats of prosecution for any offences, however minor. The Rulers will be at the mercy of the Executive. ... The power to prosecute is a powerful weapon which, in the hands of the ruthless, can be abused to great advantage - not by prosecuting the alleged offender but by withholding prosecution in return for his cooperation.

## **B. Cultural Change and Why the Government Acted When it Did**

Although the Gomez incident was the catalyst for the amendments, concerns about the influence and excesses of the Rulers had been raised in the past. At the UMNO generally assembly in November of 1990 a resolution was passed that sought to clarify the role of royalty in politics in light of alleged involvement of some of the Rulers in the October 1990 general election.<sup>181</sup> In 1992 UMNO had drafted a set of guidelines for the Rulers to address some of the concerns.<sup>182</sup> The Prime Minister also commented in his speech to Parliament on the introduction of the amendments that concerns about problems with the Rulers had been noted for quite some time.<sup>183</sup> Thus the Gomez incident was the merely the opportunity the Government needed to muster political support to deal with the influence of the Rulers that had vexed the Government for some time.

The Government might have responded earlier to the increasing expense and influence of the Rulers and their interference in government. However, in the time between 1983-84 constitutional crisis and the 1993 constitutional amendments, the Mahathir government faced a serious leadership challenge in 1987 and a general election in 1990.<sup>184</sup> The Mahathir government may have also felt the need for support from the Malay Rulers, particularly in the 1990 general election when they faced the challenge of Semangat '46 which claimed to be the champion of Malay causes and the true protector of Malay institutions such as the monarchy.<sup>185</sup> Challenging the Rulers at that time would have risked the loss of Malay support crucial to any political coalition hoping to form the government.

By 1993 the position of the Mahathir government was more secure.<sup>186</sup> The government coalition's dominant Malay political party was showing signs of increasing concern over the problems encountered with respect to the Rulers.<sup>187</sup> They appear to have also felt the time was right for a challenge to the Rulers in light of even greater changes in the attitudes of Malays towards the Rulers than had been the case at the time of the 1983 constitutional crisis.

In the 1983 constitutional crisis the government had to accept substantially reduced constraints on the Rulers compared to those it had originally sought. Nonetheless, the government's

success in amending the constitution to constrain the powers of the Rulers in 1983, modest though it may have been, had indicated that attitudes of some Malays towards the Rulers were changing.<sup>188</sup> The New Economic Policy (NEP) introduced in the early 1970s facilitated an increase in the number of highly educated Malays.<sup>189</sup> Malays educated either overseas or in Malaysian Universities were exposed to Islamic principles or concepts of democracy neither of which squared with the notion of an un-elected Ruler with broad powers.<sup>190</sup>

In the ten years that passed after the 1983 constitutional crisis the number of highly educated Malays increased.<sup>191</sup> Thus the change in the cultural attitudes of the Malays towards the Rulers apparent in the 1983 constitutional crisis had, if anything, become more pronounced.<sup>192</sup>

The NEP had also encouraged the development of a Malay entrepreneurial class.<sup>193</sup> This new class of successful Malay business persons may have felt less need for the privileges accorded Malays through the quota system and citizenship provisions the protection of which was vested in the Rulers by the Constitution.<sup>194</sup> Their interests were also affected by the business interests of the Rulers and the influence of the Rulers in obtaining government contracts, licences and timber concessions. The Malay entrepreneurial class, as well as the non-Malay entrepreneurs, may have felt their business potential was constrained by the competitive advantage Rulers and their royal families could obtain through their influence.<sup>195</sup> Many Malays may have also come to the view that the real source of protection for their special rights and privileges, to the extent they still hold these dear, is not so much through the Rulers as it is through the leverage they hold in the political process.<sup>196</sup>

These changes in the cultural attitudes of Malays permitted a more substantial challenge to the position of the Rulers than had been possible in the past.<sup>197</sup> UMNO and the governing coalition appear to have sensed that the support of the Malay Rulers was no longer necessary to secure the support of the Malay population. For the Rulers the consequence of this change in the attitude of Malays is that the importance of the Malay Rulers for the Malay people and in Malaysian politics appears to have been substantially, and probably irrevocably, reduced.<sup>198</sup>

## **V. Conclusion**

The removal of the Rulers' immunity was a significant constitutional development in Malaysia. The move of the executive to rein in the influence and alleged excesses of the Rulers was brought about with apparent public support that is perhaps somewhat surprising given the historical reverence to the Malay Rulers and their importance as a symbol of Malay unity. The Government demonstrated a willingness to crack down on influence and extravagance, a step they would have been unwilling to take if it meant the loss of the precious support of the Malays.

Their ability to take the steps they did suggests a continuing change in the cultural attitude of the Malays to the Malay Rulers. The reduced degree of unquestioning reverence for the Malay Rulers and their symbolic significance appears to be more substantial than it was in 1983 given the relatively limited success of the Government in 1983 compared to 1993. The Malay Rulers had been exerting considerable influence in Malay society and politics in spite of the constitutional limits on their powers. However, the events of 1993 appear to have irrevocably reduced the significance of the Malay Rulers in Malay society and in the politics of Malaysia.

**Footnotes**

1. The paper makes no judgment on whether the immunity of the Rulers should have been removed. Questioning the rights and privileges of the Malay Rulers is deemed to be seditious under the Sedition Act 1948, Laws of Malaysia, Act 15, s. 3(1)(f).
2. See e.g., Khoo Kay Kim, *The Peninsular Malay Sultanates: Genesis and Salient Features*, in KHOO KAY KIM, *MALAY SOCIETY: TRANSFORMATION AND DEMOCRATISATION* 6 (Petaling Jaya, 1991); also set out in the materials for the SECOND WORKSHOP ON MALAY SULTANATES AND MALAY CULTURE, December 4th-7th 1978, Hasanuddin University, Ujung Pandang.
3. See the Malay Annals (*Sejarah Melayu*) an annotated English translation of which is provided by C.C. BROWN, *SEJARAH MELAYU* (Kuala Lumpur: Oxford University Press, 1970). There are also accounts of the lives and times of the various Rulers such as the Hikayat Hang Tuah with respect to the Malacca period or the Hikayat Pahang of more recent origin. Accounts of the Malacca period are also found in the UNDANG-UNDANG MELAKA (the "Melaka Digest") see Liaw Yock Fang, *UNDANG-UNDANG MELAKA* (The Hague: Martinus Nijhoff, 1976). See Khoo Kay Kim, *supra* note 2, at 6-7.
4. See e.g., the discussion in J.S. JESSEY, *HISTORY OF SOUTH-EAST ASIA (1824-1965)* 18-19 (Lunas, Kedah, Malaysia: Penerbitan Darulaman, 1985); B.W. ANDAYA & L.Y. ANDAYA, *A HISTORY OF MALAYSIA* 7-9 (London: The MacMillan Press, 1982).
5. With respect to the arrival of the Portuguese, Dutch and British see *infra* Part II B and the accompanying text.
6. See KHOO KAY KIM, *The Traditional Malay Sultanate: Administration*, in *WORKSHOP ON MALAY SULTANATES*, 21st-24th February 1977, Kuala Lumpur, 3-4. Negeri Sembilan, in particular, was quite different from other Malay states having a matrilineal system not based on territorial organization. See *id.*, at 4, n. 6.
7. *Id.*, at 4-5. See also the descriptions of the political structure of the Kelantan kingdom in Rahmat Saripan, *Kelantan Sultanate*, in *SECOND WORKSHOP ON MALAY SULTANATES AND MALAY CULTURE*, 4th to 7th December 1978, Hasanuddin University, at 10; and of the political structure of the Riau-Lingga kingdom in M. S. Sunardi, *The Riau-Lingga Kingdom in the Spread of Islam and Malay Culture*, in the *THIRD WORKSHOP ON MALAY SULTANATES AND MALAY CULTURE*, 1st - 4th November, 1982, Kuala Lumpur, Malaysia, 136, at 146-7.
8. J.M. GULLICK, *INDIGENOUS POLITICAL SYSTEMS OF WESTERN MALAYSIA* 44 (London: The Athlone Press, 1988).
9. *Id.* See also Kim, *supra* note 6, at 5. For a contrary view to the effect that the Rulers in fact wielded substantial power that was more than symbolic see A.C. MILNER, *KERAJAAN: MALAY POLITICAL CULTURE ON THE EVE OF COLONIAL RULE* 51-52, 67-71, 94-111 (Tucson, Arizona: The University of Arizona Press, 1982); and see Zainal Abidin bin Abdul Wahid, *Glimpses of the Malaccan Empire - I* in *GLIMPSES OF MALAYSIAN HISTORY* 18, 19 (ZAINAL ABIDIN BIN ABDUL WAHID ed., Kuala Lumpur: Dewan Bahasa dan Pustaka,

1970).

10. Id., Gullick, 44.
11. This notion of unquestioning loyalty was present since as early as the period of the Malacca Sultanate during which a Malay Sultan was said to hold absolute power and his subjects gave him absolute loyalty. See Zainal Abidin bin Abdul Wahid, *supra* note 9, at 20; and CHANDRA MUZAFFAR, PROTECTOR? AN ANALYSIS OF THE CONCEPT AND PRACTICE OF LEADER-LED RELATIONSHIPS IN MALAY SOCIETY 1-49 (Penang: Aliran, 1979) on the concept of loyalty to the Malay Rulers.
12. *Supra* note 3, at 67.
13. The concept of daulat is discussed in, e.g., Gullick, *supra* note 8, at 44-45; Zainal Abidin bin Abdul Wahid, *supra* note 9, at 20.
14. See T.J. Moy, *The Sejarah Melayu Tradition of Power and Political Order* 134-135 (M.A. Thesis, Department of History, University of Malaya, Kuala Lumpur, 1978), as cited in KHOO KAY KIM, *MALAY SOCIETY: TRANSFORMATION AND DEMOCRATISATION*, *supra* note 2, at 18.
15. According to Gullick, *supra* note 8, at 45, "It was believed that any Malay who infringed the majesty of the Sultan would suffer retribution from the impersonal force of outraged royal dignity." There is also a Malay expression, *timpa daulat*, which means to be struck down by majesty as by a thunderbolt - see *id.*, Gullick, at 45, note 1.

Malay people often claim that some Malays (typically other than they themselves) continue to believe in the magical powers of the Rulers. As one Malay put it, an even mildly insulting comment with respect to a Malay Ruler might lead to one feeling sick to one's stomach shortly thereafter even though no Ruler or member of a royal family ever heard, or got wind of, the insult.

16. LT. COL. JAMES LOW, *Observations on Perak (1850)* 4 *JOURNAL OF THE INDIAN ARCHIPELAGO AND EASTERN ASIA* 503-4, as cited in Kim, *supra* note 6, at 10-11.
17. See *SEJARAH MALAYU* as translated by C.C. Brown, *supra* note 3. Several of these accounts are reviewed in Muzaffar, *supra* note 11 at 7-16.
18. See Milner, *supra* note 9, at 69. On loyalty to the Malay Rulers see also ARIFFIN OMAR, *BANGSA MALAYU: MALAY CONCEPTS OF DEMOCRACY 1945-1950*, 2-5 (Kuala Lumpur: Oxford University Press, 1993). According to a Straits Settlement dispatch dated 10 January 1877, a man of common birth expressed his relations with his chief as follows:
 

I was one of the Maharaja Lela's followers. I must do what he bids me. I am his ra'ayat (subject). I would not dare resist him. (Cited in Gullick, *supra* note 8, at 65.)
19. See Zainal Abidin bin Abdul Wahid, *supra* note 9, at 19. See also Gullick, *supra* note 8, at 49-50, 113-124.

20. R. BRADDELL, *THE LEGAL STATUS OF THE MALAY STATES* 12 (Singapore: Malaya Publishing House, 1931). According to Zainal Abidin bin Abdul Wahid, *supra* note 9, at 19,

... the Malay rulers normally enjoyed an almost absolute power. This power was not merely derived from the fact that he could exercise many rights but the Malay masses themselves accorded the ruler with what could be termed as "blind loyalty". Although there were exceptions but generally this was true. The cultural tradition of the Malays played an important role in shaping this attitude.

For a contrary view suggesting that the power of the Rulers was decentralized and more symbolic in nature, see Gullick, *supra* note 8, at 21, 44-46, 95.

21. This "fear culture" was frequently referred to in newspaper articles and letters to the editor as the events surrounding the constitutional amendments were unfolding. See e.g., Time to redefine powers of Rulers, *NEW STRAITS TIMES*, Dec. 8, 1992, at 13 (speaking of fear of the royalty in Johor); Let's not go back to the ancient times, *NEW STRAITS TIMES*, Dec. 14, 1992, at 11 (referring to the Malacca period when the monarchy was absolute and the people lived in fear); Amendment to check fear culture, says MB, *THE STAR*, Jan. 1, 1993, at 2; Artistes back changes, *NEW STRAITS TIMES*, Jan. 20, 1993, at 6 (claiming that Malays had been "chained" by a feeling of slavery to the feudal group for too long).
22. L.W. PYE & M.W. PYE, *ASIAN POWER AND POLITICS: THE CULTURAL DIMENSIONS OF AUTHORITY* 257 (Cambridge, Mass.: Harvard University Press, 1985). This fear of authority is often expressed by Malays in terms of the relationship between the durian and the cucumber. The analogy is well known among the Malays (although it appears to be less well known among non-Malay Malaysians). The durian is a large, heavy fruit with a hard exterior shell armed with multiple pyramid shaped pointed protrusions. The saying goes that when the durian bumps into the cucumber the cucumber gets hurt, and when the cucumber bumps into the durian, the cucumber also gets hurt. This is often brought to one's attention by Malays in the context of relations between authorities and the subjects of the authorities.
23. See M.S. Sunardi, *supra* note 7, at 139-40.
24. Y.A.M. Raja Azlan Shah, The Role of Constitutional Rulers in Malaysia, in F.A. TRINDADE & H.P. LEE, *THE CONSTITUTION OF MALAYSIA: FURTHER PERSPECTIVES AND DEVELOPMENTS* 76, 77 (Singapore: Oxford University Press, 1986).
25. *Id.*, at 77-78.
26. Ahmad Ibrahim, The Position of Islam in the Constitution of Malaysia, in TUN MOH'D SUFFIAN, F.A. TRINDADE AND H.P. LEE (EDS.), *THE CONSTITUTION OF MALAYSIA 1957-77*, 41, 47 (Kuala Lumpur: Oxford University Press, 1978).
27. Raja Azlan Shah, *supra* note 24, at 78.
28. See Rahmat Saripan, *supra* note 7, at 5; and M. S. Sunardi, *supra* note 7, at 145-7.
29. Raja Aslan Shah, *supra* note 24, at 77. See also Muzaffar, *supra* note 11, at 30-32.



30. See Ahmad Ibrahim, *supra* note 26, at 47..
31. See e.g., Andaya and Andaya, *supra* note 4, at 55-6. The Malacca Sultanate did not cease to exist but moved to Bintan in the upper Riau gulf. See Sunardi, *supra* note 7, at 143.
32. *Id.*, Andaya and Anadaya, at 68-69.
33. The establishment of these settlements is reviewed in, for example, Andaya and Andaya, *supra* note 4, at 106-113; J.S. Jessy, *supra* note 4, at 115-30; and C. D. COWAN, *NINETEENTH CENTURY MALAYA: THE ORIGINS OF BRITISH CONTROL 1-9* (London: Oxford University Press, 1961).
34. Andaya and Andaya, *supra* note 4, at 114, 122.
35. See Cowan, *supra* note 33, at 9-143.
36. See e.g., Andaya and Andaya, *supra* note 4, at 154-55.
37. Andaya and Andaya, *supra* note 4, at 154-64; Cowan, *supra* note 33, at 176-211; See also R. EMERSON, *MALAYSIA: A STUDY IN DIRECT AND INDIRECT RULE 112-134* (New York: MacMillan and Co., 1937).
38. *Id.*, Andaya and Andaya, at 172-74.
39. See e.g., Cowan, *supra* note 33, at 189-211, 254-56. See also Emerson, *supra* note 37, at 121-23, 133-34; Andaya and Andaya, *supra* note 4, at 165-72; and Braddell, *supra* note 20, at 9-12. Other Malay states were also later required to accept British resident advisers. Such arrangements came into effect in Kelantan in 1910, Johore in 1914, Trengganu in 1919, Kedah in 1923 and Perlis in 1930 (see Braddell, *supra* note 18, at 31-32).
40. For a discussion of the creation of the Federation see e.g., Andaya and Andaya, *supra* note 4, at 182-84; Bradell, *supra* note 20, at 12-15, 30-31; Emerson, *supra* note 37, at 135-145.
41. Quoted in Emerson, *supra* note 37, at 139. On the relatively limited power of the Rulers under the British resident system see also Braddell, *supra* note 20, at 12-13 and Cowan, *supra* note 33, at 238-62. According to Braddell (at 13),
 

With Federation there gradually came about an absolute absorption of authority by British officers throughout the Federated Malay States. Discounting exaggeration and looking fairly at the position to-day, the jurist can only say that the protecting power is de facto ruling the Federated Malay States and the Malay Rulers are merely registering that rule, the position today being de facto, but not de jure, only minimally different from that in a colonial protectorate.
42. Even their powers with respect to religious and cultural matters may have been impinged upon - see Ahmad Ibrahim, *supra* note 26, at 56-57.
43. With respect to the Malayan Union struggle generally see J. ALLEN, *THE MALAYAN UNION* (Monograph Series No. 10, Southeast Asian Studies, Yale University, 1967); A. LAU,

THE MALAYAN UNION CONTROVERSY 1942-48 (Singapore: Oxford University Press, 1991). See also J.P. ONGKILI, NATION BUILDING IN MALAYSIA 1946-1974, 38-52 (Singapore: Oxford University Press, 1985); and Mohd. Ariff Yusof, Post-War Political Changes, Constitutional Developments Towards Independence and Changing Conceptions of Judicial Review in Malaysia, [1982] J. OF MALAYSIAN AND COMPARATIVE LAW 19, 20-24.

44. On the Malayan Union scheme see e.g., id., Lau, at 83-90; id., Ongkili, at 40-42; and id., Yusoff, at 20-24.
45. Id., Ongkili, at 41-42.
46. On the reaction to the Malayan Union scheme see e.g., id., Lau, at 123-145; id., Ongkili, at 42-52; and Allen, 24-25, 33-36, 41-45.
47. On the development of UMNO see e.g., G.P. MEANS, MALAYSIAN POLITICS, 99-102 (2nd ed., London: Hodder and Stoughton, 1976).
48. See the FEDERATION OF MALAYA AGREEMENT, 1948, Order in Council, S.I. No. 108 of 1948 in Statutory Instruments 1948, Vol. 1, Part 1, p. 1231. See also the FEDERATION OF MALAYA GOVERNMENT GAZETTE, FEDERAL GOVERNMENT, for the period 1 Feb. - 30 June, 1948, pp. 33-109. On the events leading to the signing of the Federation of Malaya Agreement see Ongkili, supra note 43, at 53-59; and Lau, supra note 43, at 151-182 and 188-209.
49. See Arrifin Omar, supra note 18, at 50-54 on the changing Malay perceptions of the Rulers. Indeed, a comment in a Malay newspaper in April of 1946 went so far as to say,
 

... it is not the rakyat (people) that has committed derhaka (treason) towards the raja (Ruler) but on the contrary, it is the raja that has committed derhaka towards the rakyat.

Cited in Arrifin Omar, Kerajaan and Rakyat: A Malay Sense of Identity - Part I, 13(2) ALIRAN MONTHLY 7 at 9 (1993).
50. On UMNO becoming the substantive protectors of the Malays and the Rulers becoming symbolic protectors see Muzaffar, supra note 11, at 57-63.
51. See Y.A.M. Raja Azlan Shah, supra note 24 at 76,79; TUNKU ABDUL RAHMAN, LOOKING BACK 27 (Kuala Lumpur: Pustaka Antara, 1981); Muzaffar, supra note 11, at 61-62.
52. FEDERAL CONSTITUTION, Arts. 3, 70, 71 and Schedule Eight, Part I, ss. 1, 2. The Federal Constitution was set out in the First Schedule to THE FEDERATION OF MALAYA AGREEMENT, 1957, notice of which was given in the GAZETTE (U.K), December 11, 1957, Notification No. (New Series) 888. For similar provisions with respect to the Rulers being the heads of religion in their own states see infra note 63.
53. See the 1948 Federation Agreement supra note 48, ss. 67-76.

54. Art. 38(1) and the Fifth Schedule.
55. Art. 32(1). On the role of the King see Raja Azlan Shah, *supra* note 24; and R.H. Hickling, *The Yang di-Pertuan Agong as Head of the Executive*, [1991] (MALAYSIAN) SUPREME COURT JOURNAL 43.
56. Art. 32(3) and the Third Schedule, Part I. The Conference of Rulers consists of the Rulers of the nine former peninsular Malay states and the Governors of the states of Penang, Melacca, Sabah and Sarawak. For the purposes of the election of the King the Conference of Rulers consists of just the Rulers of the nine former peninsular Malay states. See the Fifth Schedule to the Federal Constitution. On the election of the King see F.A. Trindade, *The Constitutional Position of the Yang di-Pertuan Agong*, in F.A. TRINDADE & H.P. LEE, *THE CONSTITUTION OF MALAYSIA: FURTHER PERSPECTIVES AND DEVELOPMENTS*, *supra* note 24, 101 at 103-6. See also Dato Dr. Visu Sinnadurai, *The Yang di-Pertuan Agong: The Appointment Process under the Federal Constitution*, [1989] (Malaysian) SUPREME COURT JOURNAL 65.
57. Art. 66(3). This provision was subsequently amended - see Part II F below.
58. Art. 66(3) simply provided that a bill passed by both Houses "shall be presented to the Yang di-Pertuan Agong for his assent" and Art. 66(4) simply said that he was to signify his assent by causing the Public Seal to be affixed to the Bill. This was later amended. See Part II F below.
59. See the Constitutions of the States of Malaysia: Johore, Second Part, Art. 31; Kedah, Art. 60; Kelantan, First Part, Art. 39; Negeri Sembilan, Art. 64; Pahang, Part II, Art. 34; Perak, Part I, Art. 38; Perlis, Art. 60; Selangor, Art. 78; Trengganu, First Part, Art. 36.
60. Art. 43(2)(a). For similar provisions with respect to the States see the Constitutions of the States of Malaysia: Johore, Second Part, Arts. 3, 4(2)(a); Kedah, Arts. 35, 37(2)(a); Kelantan, First Part, Arts. 12, 16(2)(a); Negeri Sembilan, Arts. 36, 38(2)(a); Pahang, Part II, Arts. 2, 4(2)(a); Perak, Part I, Arts. 12, 16(2)(a); Perlis, Arts. 35, 37(2)(a); Selangor, Arts. 51, 53(2)(a); Trengganu, First Part, Arts. 10, 14(2)(a).
61. Art. 40(2).
62. See the Federal Constitution, Sch. 8, Part I, ss. 1(2), 2. See also the Constitutions of the States of Malaysia: Johore, Second Part, Art. 8; Kedah, Art. 39; Kelantan, First Part, Art. 15; Negeri Sembilan, Art. 40; Pahang, Part II, Art. 6; Perak, First Part, Art. 18; Perlis, Art. 39; Selangor, Art. 55; Trengganu, First Part, Art. 12. For a general discussion of the powers of the King see Trindade, *supra* note 53; and Azlan Shah, *supra* note 24.
63. See the Constitutions of the States of Malaysia: Johore, First Part, Art. 57A; Kedah, Art. 33B; Kelantan, First Part, Art. 6; Negeri Sembilan, Art. 6; Pahang, Part I, Art. 24; Perak, Part I, Art. 6; Selangor, Art. 48; Trengganu, First Part, Art. 4.
64. See the Constitutions of the States of Malaysia: Kedah, Art. 26; Kelantan, Second Part, Art. 26; Pahang, Part I, Art. 12A; Perak, Part II, Art. 26-27; Perlis, Art. 26; Selangor, Art. 41; Trengganu, Second Part, Art. 33A.

65. See the Constitutions of the States of Malaysia: Kedah, Art. 18(2); Kelantan, Second Part, Art. 22A; Negeri Sembilan, Art. 12; Pahang, Part I, Arts. 14, 17; Perak, Part II, Art. 15; Perlis, Art. 18(2); Selangor, Art. 21; Trengganu, Second Part, Art. 16A.
66. See the Constitutions of the States of Malaysia: Kedah, Art. 30; Kelantan, Second Part, Art. 43; Negeri Sembilan, Art. 26; Pahang, Part I, Arts. 28, 29; Perak, Part II, Art. 25; Perlis, Art. 30; Selangor, Art. 40; Trengganu, Second Part, Art. 31.
67. See the Constitutions of the States of Malaysia, for example: Kedah, Art. 33; Kelantan, Second Part, Art. 49; Perlis, Art. 32; Selangor, Art. 40; Trengganu, Second Part, Art. 31. For a general discussion of the powers of the Rulers see Raja Azlan Shah, *supra* note 24.
68. Art. 40(1).
69. Art. 43(2)(b).
70. Art. 122B(1).
71. See the discretionary powers referred *supra* note 62 and the accompanying text.
72. See the Federal Constitution, Sch. 8, Part I, s. 1(1). See also the Constitutions of the States of Malaysia: Johore, Second Part, Art. 7; Kedah, Art. 39; Kelantan, First Part, Art. 15; Negeri Sembilan, Art. 40; Pahang, Part II, Art. 6; Perak, Part I, Art. 18; Perlis, Art. 39; Selangor, Art. 55; Trengganu, First Part, Art. 12.
73. Art 181(1). State Constitutions also expressly preserved the prerogatives, powers and jurisdiction of the Ruler of the State except to the extent they were affected by express provisions in the particular state Constitution - see Johore, Third Part, Art. 8; Kedah, Art. 76; Kelantan, First Part, Art. 62; Negeri Sembilan, Art. 79; Pahang, Part II, Art. 54; Perak, Part I, Art. 62; Perlis, Art. 76; Selangor, Art. 96; Trengganu, First Part, Art. 63.
74. Art. 159(5). On the question of the relationship between Art. 38(4), Art. 159(5), Art. 66 (see Part II F) and the question of whether the consent of the Conference of Rulers was required see Shad Saleem Faruqi, *The Sceptre, the Sword and Constitution at a Crossroad*, [1993] 1 Current Law Journal xlv at xlv-xlvi, xlix-li, and lii-liv; and Abdul Aziz Bari, *Constitutional Amendment 1993: Thoughts on the Aftermath, the Procedures, the Rulers and the Democracy*, MALAYSIAN LAW NEWS, June 1993, 22 at 22-23.
75. See Azlan Shah, *supra* note 24, p. 88.
76. Art. 42(1). State Constitutions also expressly gave the power to the Ruler of the state to grant pardons in the manner provided for in Art. 42 of the Federal Constitution - see Johore, Second Part, Art. 12; Kedah, Art. 42; Kelantan, First Part, Art. 27A; Negeri Sembilan, Art. 45; Pahang, Part II, Art. 15; Perak, Part I, Art. 27A; Perlis, Art. 42; Selangor, Art. 60; Trengganu, First Part, Art. 25A.
77. Art. 42(1). The Constitution was amended to provide for the Federal territories of Kuala Lumpur and Labuan. With respect to the Federal Territories see Constitution (Amendment) Act (No. 2) 1973, Laws of Malaysia, 1973, Act A206 (which created the Federal Territory of

Kuala Lumpur), s. 11 and the Schedule to the Act. With respect to Labuan see Constitution (Amendment) (No.2) Act, 1984 Laws of Malaysia, 1984, Act A585 (which created the Federal Territory of Labuan), s. 12.

78. Art. 42(4)(b).
79. Art. 42(5).
80. Arts. 42(8), (9).
81. See Ongkili, *supra* note 43, at 202.
82. On the May 13th riots and their aftermath see J.P. Ongkili, *supra* note 43, at 199-216; GOH CHENG TEK, *THE MAY THIRTEENTH INCIDENT AND DEMOCRACY IN MALAYSIA* (Kuala Lumpur: Oxford University Press, 1971); TUNKU ABDUL RAHMAN, *MAY 13: BEFORE AND AFTER* (Kuala Lumpur: Utusan Melayu Press, 1969); F.V. GAGLIANO, *COMMUNAL VIOLENCE IN MALAYSIA 1969: THE POLITICAL AFTERMATH* (Athens, Ohio: Ohio University Centre for International Studies, 1970).

For the Proclamation of the Emergency pursuant to Article 150 of the Federal Constitution see P.U.(A) 145/69, 15 May 1969. Uncompleted elections in Sabah and Sarawak were suspended by the Emergency (Essential Powers) Ordinance, 1969, P.U.(A) 146/69, 15 May 1969. An order dated 15 May 1969 also directed the legislative assemblies of the states not to meet - see P.U.(A) 147/69.

83. See Ongkili, *supra* note 43, at 216.
84. See the Constitution (Amendment) Act, 1971, Laws of Malaysia, Act A30, s. 6 amending Art. 153 of the Federal Constitution to add Art. 153(8A).
85. The New Economic Policy is set out in Government of Malaysia, *SECOND MALAYSIA PLAN, 1971-1975* especially paras. 133-156 (Kuala Lumpur: Government Press, 1971).
86. See the Sedition Act, 1948, Laws of Malaysia, Act 15, as amended by P.U.(A) 282/70, ss. 3(1)(f), 3(2)(b),(c). See also the Constitution (Amendment) Act, 1971, Laws of Malaysia, Act A30, ss. 2-4 amending Articles 10, 63, and 72 of the Federal Constitution allowing Parliament to pass laws restricting freedom of speech otherwise protected by Art. 10 "in the interest of the security of the Federation ... public order or morality" [see the amended version of Art. 10(2)(a)] and "prohibiting the questioning of any matter, right ... [or] privilege" set out with respect to citizenship, language rights or quotas in favour of the Malays [see the amended version of Art. 10(4)]. It made members of Parliament and state legislative assemblies subject to charges of sedition in respect of these matters [see the amended versions of Arts. 63 and 72]. It also made amendments to these sections subject to the consent of the conference of Rulers [see amended Art. 159(5)].
87. See the provisions cited *supra* note 83, which also prohibited the questioning of the rights or privileges of the Rulers. See Ongkili, *supra* note 43, p. 223.
88. See the Constitution (Amendment) Act, 1971, Laws of Malaysia, Act A30 of 1971, s. 7 amending Art. 159 of the Federal Constitution which deals with the amendment of the

Constitution.

89. For a discussion of the 1983 constitutional crisis see H.F. Rawlings, *The Malaysian Constitutional Crisis of 1983*, 35 I.C.L.Q. 237 (1986); H.P. Lee, *The Malaysian Constitutional Crisis: King, Rulers and Royal Assent*, in F.A. Trindade and H.P. Lee, *supra* note 24, at 237; V. Lowe, *Redefining the "Constitutionality" of the Monarchy: The 1983 Constitutional Amendment Crisis in Malaysia*, 2(2) *Kajian Malaysia: JOURNAL OF MALAYSIAN STUDIES* 1 (1984); S. Barraclough and P. Arudsothy, *The 1983 Malaysian Constitutional Crisis: Two Views and Select Documents* (July 1985; Griffith University, Centre for the Study of Australian-Asian Relations, Research Paper No. 32).
90. Constitution (Amendment) Bill, 1983, s. 12(b) which would have amended Art. 66(5) of the Federal Constitution.
91. Constitution (Amendment) Bill, 1983, s. 21 which would have amended s. 11(3) of the Eighth Schedule to the Federal Constitution which Parliament can do pursuant to Art. 71 of the Federal Constitution.
92. Federal Constitution, Art. 150(2).
93. Art. 150(1).
94. Art. 40(1).
95. Constitution (Amendment) Bill, 1983, s. 20 which would have amended Art. 150 of the Federal Constitution.
96. On the election of the King see *supra* notes 55-56 and the accompanying text.
97. Rawlings, *supra* note 89, at 246; Barraclough and Arudsothy, *supra* note 89, at 10-11.
98. In the case of Perak the dispute arose over a refusal to increase the Sultan's allocation of land and mining concessions. The Sultan refused to attend any functions where the Menteri Besar was present and finally decided to sport a beard until the Menteri Besar had resigned. *Id.*, Rawlings, at 245; Barraclough and Arudsothy, at 11; Shah, *supra* note 24, at 80-81.
99. *Id.*, Rawlings, at 245; Barraclough and Arudsothy, at 11; and Lee, *supra* note 89, at 241-42.
100. *Id.*, Rawlings, at 245; Barraclough and Arudsothy, at 10-11.
101. Lowe, *supra* note 89, at 8-9.
102. Constitution (Amendment) (No.1) Act, 1984, Laws of Malaysia, Act A584, s. 2. See Rawlings, *supra* note 89, at 250-253.
103. *Id.*, Constitution (Amendment) (No. 1) Act, 1984, s. 2. The compromise solution provided that the King would assent to the original Bill yielding the Constitution (Amendment) Act, 1983, Laws of Malaysia, Act A566, which contained several amendments not in contention, and that the Government would immediately introduce another Bill that would amend the Constitution

(Amendment) Act, 1983 to implement the terms of the compromise. The Bill effecting the terms of the compromise became the Constitution (Amendment) (No.1) Act, 1984. See *id.*, Rawlings, at 250-253.

104. See *id.*, Rawlings at 251; and Lee, *supra* note 89, at 247-48.
105. See Barraclough and Arudsothy, *supra* note 89, at 13, 17, 20.
106. Lowe, *supra* note 89, p. 12. Barraclough and Arudsothy, *supra* note 89, pp. 1.
107. Most of the references on the Gomez incident and its aftermath are drawn from the NEW STRAITS TIMES and THE STAR. These are the major English daily newspapers. However, they are known to be either controlled or influenced by parties in the Barisan National, the governing coalition. The NEW STRAITS TIMES is said to be in the hands of persons supportive of UMNO, the Malay party in the Barisan National, and THE STAR is said to be effectively controlled by the Malaysian Chinese Association, the Chinese party in the Barisan National. Major Malay and Chinese language dailies are also said to be subject to government control or influence. See Syed Arabi Idid, Malaysia, in Achal Mehra (ed.), PRESS SYSTEMS IN ASEAN STATES 41 esp. at 46-49 (Singapore: Asian Mass Communication Research and Information Centre, 1989); E.T. GOMEZ, POLITICS IN BUSINESS: UMNO'S CORPORATE INVESTMENTS 51-106 (Kuala Lumpur: Forum, 1990); Mustafa K. Anuar, The Malaysian 1990 General Election: The Role of the BN Mass Media, 8(2) *Kajian Malaysia* 82 (1990); Democracy Games, FAR EASTERN ECONOMIC REVIEW, Feb. 11, 1993, pp. 20-22; and Deals: A Triumph for Anwar, ASIAWEEK, Jan. 20, 1993, p. 45. Indeed commenting on the exposures of excesses of the Rulers (on these excess see *infra* notes 116-122, 163-164 and the accompanying text) one commentator noted that,

What a lot of us tend to forget is that our controlled media only revealed to the public what those at the top wanted us to know, nothing more, nothing less.

And commenting on the cessation of the exposures of the Rulers excesses when the Rulers eventually consented to the constitutional amendments said,

So why did the media suddenly shy away from its new found role as champions of the ordinary citizen? Simply because they were obeying instructions.

See Anil Netto, Amendments to the Amendments: Some Reflections, 13(2) ALIRAN MONTHLY 16, 17 (1993). In the interests of providing some balance ASIAWEEK, the FAR EASTERN ECONOMIC REVIEW and ALIRAN are referred to.

108. There had been instances where members of royal families had been charged before - see Gomez lodges police report, Zaman: We will seek A-G's direction to investigate case, NEW STRAITS TIMES, Dec. 7, 1992, at 1, 4. One of these in fact involved the Sultan of Johor in 1973 when he was Tengku Mahmood Iskander on a charge for causing bodily injury for which he was convicted (see *Public Prosecutor v. Tengku Mahmood Iskander & Anor.*, [1973] MALAYAN LAW JOURNAL 128). Another of these incidents involved the Sultan of Johor again when he was Tengku Mahmood Iskander on a charge of culpable homicide for which he was convicted (see *Public Prosecutor v. Tengku Mahmood Iskander*, [1977] 2 MALAYAN LAW JOURNAL 123). See also *infra* notes 178 to 181 and see Muzaffar, *supra* note 11, at 74.

Indeed concerns had been raised as early as the first half of the 19th century, see Abdullah bin Abdul Kadir Munshi, HIKAYAT ABDULLAH I & II (Puastaka Antara, 1968) as cited and discussed in *id.*, Muzaffar, at 41-49.

109. According to one letter published in the NEW STRAITS TIMES the instruction to withdraw came from "higher authorities" - see Crux of the problem lies with the JHA, NEW STRAITS TIMES, Dec. 7, 1992, p. 13. See also, Tackle the real problem in Johor, NEW STRAITS TIMES, Dec. 8, 1992, at 13.
110. For reports on the Douglas Gomez incident see Gomez lodges police report, Zaman: We will seek A-G's direction to investigate case, NEW STRAITS TIMES, Dec. 7, 1992, at 1, 4; Gomez: Sultan beat me, NEW STRAITS TIMES, Dec. 8, 1992, at 1, 3. See also The Limits of Royalty, ASIaweek, Dec. 18, 1992, at 38; Bending the rulers: sultan's behaviour raises doubts over role of royalty, FAR EASTERN ECONOMIC REVIEW, Dec. 24-31, 1992, at 16.
111. The Johor Military Force (JMF) was an independently run state police force. Johor was the only state to have such a force of its own. The Gomez incident and the subsequent venting of concerns with respect to the Johor royal family and the JMF led to a review and eventual disbanding of the JMF. See State withdraws funds for JMF, THE STAR, Dec. 19, 1992, at 2; Waiting for report on JMF, THE STAR, Feb. 1, 1993, at 2; End to Johor Military Force, Muhyiddin: Sultan's private army will be disbanded, NEW STRAITS TIMES, Aug. 14, 1993, at 1, 2; Cabinet approves proposal to disband the JMF, NEW STRAITS TIMES, Aug. 19, 1993, at 1, 5.
112. *Id.*
113. Gomez lodges police report, Zaman: We will seek A-G's direction to investigate case, New Straits Times, Dec. 7, 1992, at 1, 4. The Sultan's son was later charged and pleaded not guilty - see Tengku Majid charged, Ruler's son pleads not guilty to causing hurt, allowed bail of \$2,000, New Straits Times, Dec. 16, 1992, at 1, 2.
114. See e.g., Abdullah: Rakyat ashamed and angry, New Straits Times, Dec. 7, 1992, at 4; Stem violence, Malay congress to government, New Straits Times, Dec. 7, 1992, at 4; Study on extent of Rulers' immunity to legal action, New Straits Times, Dec. 8, 1992, at 1, 3 (claiming that several MPs called on the government to take firm measures to protect the people against the wrath of the Johor royalty to ensure that "the weak would not be intimidated by the strong"); Gafar on hockey coach Gomez's revelation, New Straits Times, Dec. 9, 1992, at 1 (in which Gafar Baba, the Deputy Prime Minister, said that it was "unbelievable that such an incident [could] happen in a country that practises democracy and has a modern administration"). A motion was passed in the Dewan Rakyat (Lower House) on December 10th that read:

That the house which sits today feels extremely sad and views seriously the incident involving a Malaysian citizen, Douglas Gomez, who was injured at the Istana Johor on Nov. 30, 1992 by the Sultan of Johor.

That the House decides that the incident was an abuse of power which goes against the spirit of the Federal Constitution and was contrary to the laws of the country which are based on the system of constitutional monarchy and parliamentary democracy. ...



See Parliament calls for action, *New Straits Times*, Dec. 11, 1992, at 1, 3.

115. See e.g., Clerk: I was fined too for obstructing Johor Sultan's car, *New Straits Times*, Dec. 12, 1992, at 4 (a man alleged that he had been forced by a gun-wielding man to pay an exorbitant fine of \$M600 (about \$US235) for allegedly obstructing the Sultan's car when the maximum fine for such an offence was only \$M300 (about \$US120)); Motorist: I was fined \$500 for blocking royal motorcade, *New Straits Times*, Dec. 14, 1992, at 2; and Police compiling list of penalized motorists, *New Straits Times*, Dec. 16, 1992, at 1. Other revelations of alleged abuses by the Sultan of Johor and the Johor Royal Family were subsequently made in Parliament on January 19th, 1993 when the amendments to the Constitution were first introduced. Perhaps the most serious of these was the conviction of the Sultan of Johor when he was Raja Muda before he became Sultan, on a charge of "culpable homicide not amounting to murder" for which he was fined \$M6,000 and sentenced to jail for six months (see *Public Prosecutor v. Tengku Mahmood Iskander*, [1977] 2 *Malayan Law Journal* 123). He was later pardoned. There were also five allegations of assault committed after he became Sultan, two allegations of assault by the Tunku Mahkota and three allegations of assault by the Tunku Bendahara (Tunku Abdul Majid Idris). For a report of these allegations made in Parliament see List of criminal acts done by the Johor Sultan, *New Straits Times*, Jan. 20, 1993, at 4.
116. It was alleged that between 1988 and July, 1992 they were given 37,223.6 hectares of timber worth \$270 million - see Keng Yaik: Pressure from Palace, Pahang royalty demands more timber concessions, says Minister, *New Straits Times*, Dec. 18, 1992, pp. 1, 2; see also Lim: 93,000 acres given to Sultan, *The Star*, Dec. 18, 1992, at 2 (noting that the annual timber quota for the state from 1991-1995 is 30,000 acres). These allegations were challenged by the Pahang Royalty - see Tengku Mohkota denies using pressure, *New Straits Times*, Dec. 18, at 1; see also Adib explains stand on timber concession issue in Pahang, *New Straits Times*, Dec. 19, 1992, at 2.
117. See e.g., Union: Review timber permits for royalty, *New Straits Times*, Dec. 15, 1992, at 2 (West Malaysia Forest Officers Union claim royalty's involvement in the timber industry has made it difficult for its members to discharge their duties); Palace had some officers moved out, *The Star*, Dec. 18, 1992, at 2 (Pahang palace involved in choosing areas for forest concessions and work on access roads begun without approval; uncooperative forestry officers transferred); Pahang Prince: Amendments good, *The Star*, Dec. 18, 1993, at 2 (Pahang prince notes that "it has been the practice of the palace to expect certain privileges from the Government but this has never been over-publicized").
118. See Intellectuals: Rulers fear civil and criminal action, *New Straits Times*, Jan. 16, 1993, at 2.
119. See Customs seize three luxury cars, *New Straits Times*, Jan. 8, 1993, at 1. One of the cars was seized from a timber tycoon on suspicion of evading import duty using an "Approved Permit" issued to the Sultan of Pahang.
120. See e.g., Palace had some officers moved out, *The Star*, Dec. 18, 1992, at 2 (also alleging Pahang palace was involved in choosing areas for forest concessions); Union: Review timber permits for royalty, *New Straits Times*, Dec. 15, 1992, at 2 (West Malaysia Forest Officers Union claim royalty's involvement in the timber industry has made it difficult for its members to discharge their duties).

121. See 79 reports of sedition referred to A-G for advice, says Haniff, *New Straits Times*, Jan. 29, 1993, at 2; and Haniff: Rulers will get what is within the law, *The Star*, Feb. 13, 1993, at 2 (190 reports of sedition had been received - sample of two sent to A-G for further action). None of the allegations had been pursued at the time this article was written.
122. See Karpal to apply to set aside writ, *New Straits Times*, Jan. 7, 1993, at 2; Feb. 7 hearing for Kelantan royalty suit against Karpal, *New Straits Times*, Jan. 22, 1993, at 4.
123. Businessman lodges report against Dr M, *New Straits Times*, Jan. 20, 1993, at 7.
124. See Study on extent of Rulers' immunity to legal action, *New Straits Times*, Dec. 8, 1992, at 1, 3. There were also letters published in newspapers calling for steps to be taken - see, e.g., Time to redefine powers of Rulers, *New Straits Times*, Dec. 8, 1992, at 13; Unable to tolerate anymore abuse, misconduct by royalty, *New Straits Times*, Dec. 8, 1992, at 13.
125. The first hint of this came as early as December 9th, 1992 - see UMNO calls meeting, Gomez case: Gafar to table motion in Parliament today, *New Straits Times*, Dec. 10, 1992, at 1, 2 (noting UMNO council would discuss possible constitutional amendments) and Parliament calls for action, PM: Special session may be held to amend constitution, *New Straits Times*, Dec. 11, 1992, at 1, 3. See also Cabinet to decide when to give notice to Dewan Rakyat [lower House], *New Straits Times*, Dec. 16, 1992, at 1; Draft almost ready, *The Star*, Dec. 27, 1992, at 2; UMNO studies draft: Proposed amendments to be handed to Cabinet tomorrow, *New Straits Times*, Jan. 5, 1993, at 1.
126. See e.g., DAP supports stand taken by government, *New Straits Times*, Dec. 8, 1992, at 3; PRM hails Dr. M's stand on royalty, *New Straits Times*, Dec. 7, 1992, at 4; Parliament calls for action, PM: Special session may be held to amend constitution, *New Straits Times*, Dec. 11, 1992, at 1, 3 (noting that all parties including opposition parties PAS and DAP wanted action to be taken to prevent a recurrence of the Gomez incident and supporting the government's efforts to check the behaviour of the Rulers).
127. See e.g., Stem violence, Malay congress to government, *New Straits Times*, Dec. 7, 1992, at 4 (Malay Intellectual Congress expresses outrage at Gomez incident); Teachers told to stay out of palace meet, *New Straits Times*, Jan. 2, 1993, at 2 (National Union of the Teaching Profession expresses support for the government's move to amend the constitution); Ulamas back constitutional change, *New Straits Times*, Jan. 1, 1993, at 2 (Ulamas Association of Malaysia supports the amendments); UM academics back Government proposal on Rulers' immunity, *New Straits Times*, Jan. 8, 1993, at 2 (Universiti Malaya Academic Staff Association express support for the government's move to remove the Rulers' immunity).
128. See e.g., Qualities worthy of a Ruler in light of Islamic teachings, *New Straits Times*, Dec. 15, 1992, at 11; Amendments according to Islam, *New Straits Times*, Jan. 11, 1993, at 2; Moktar: Heads of State and Islam must lead by example, *New Straits Times*, Jan. 26, 1993, at 2; Zaleha: Action was against Islamic teachings, *New Straits Times*, Jan. 21, 1993, at 2 (Rulers acted against Islam by rejecting amendments).
129. Constitution (Amendment) Bill, D.R. 1/93, published in the *Government Gazette*, 21 Jan. 1993, s. 7(a). The proposed amendments were also set out in Changes proposed to be made

to articles of the constitution, New Straits Times, Jan. 13, 1993, p. 2.

130. Id., s. 2.
131. Id. s. 7(b).
132. Id., s. 8.
133. Id., s. 4(b) amending Art. 42 of the Federal Constitution which provides for pardons and the appointment of pardons boards.
134. Id., s. 4.
135. Id., s. 5 amending Art. 63 of the Federal Constitution.
136. Id.
137. Id., s. 6 amending Art. 72 of the Federal Constitution.
138. Amendments made to proposal to remove legal immunity: Six Rulers say 'yes', New Straits Times, Jan. 18, 1993, at 1, 2.
139. The provision for the special court was added as an amendment to Art. 181 of the Federal Constitution with consequential amendments to Art. 38. See Constitution (Amendment) Bill, D.R. 1/93 (as passed by the Dewan Rakyat on the 19th January 1993 and the Dewan Negara on the 20th January 1993) amendments to the Bill having been submitted prior to second reading in "Proposal to Amend the Constitution (Amendment) Bill 1993 to be Moved by the Honourable Prime Minister". These amendments were set out in Proposed amendments to the constitution, New Straits Times, Jan. 19, 1993, at 2.
140. See Amendments made to proposal to remove legal immunity: Six Rulers say 'Yes', New Straits Times, Jan. 16, 1993, at 1, 2; Change to take its course: PM tables amendment Bill despite Rulers' disagreement, New Straits Times, Jan. 19, 1993, at 1, 4.
141. See Decision of the Special Meeting of the Conference of Rulers on Jan. 18, '93, New Straits Times, Jan. 19, 1993, at 2; and Rulers: Closer study of draft Bill Needed, New Straits Times, Jan. 19, 1993, at 1.
142. In the 180 seat Lower House 129 government coalition members and 4 independents voted for the amendments. Sixteen opposition Democratic Action Party members abstained from voting. Fourteen opposition Parti Bersatu Sabah members, four opposition Democratic Action Party members and six opposition Semangat '46 members were absent. Seven opposition Islamic Party of Malaysia members abstained at the first reading stage and then staged a walkout before the second reading. In the 69 seat Upper House all 57 senators present voted in favour of the Bill. Twelve opposition Semangat '46 members were not present. See 133 MPs vote to remove legal immunity of Rulers: Amendment Bill passed, New Straits Times, Jan. 20, 1993, at 1, 2 and Senate passes Bill unanimously, New Straits Times, Jan. 21, 1993, at 1, 2. See also Showdown with the Royals, Asiaweek, Jan. 27, 1993, at 30.

143. According to the Prime Minister, in his speech introducing the amendments in the Dewan Rakyat,

the actions of the Rulers and those hiding behind the Rulers who exceed their rights and privileges, are becoming serious with the passage of time. It is possible that this could become more serious in the future. If the law is not amended, as proposed, it is certain that worse things could happen to cause the institution of the monarchy to be hated by the people. It is not impossible that, some day, representations may be made to abolish the system of monarchy, whatever the provisions of the constitution.

The Proposed amendments are intended to prevent or stop hatred against the Rulers from escalating which could lead to demands for the abolition of the royalty. The amendments are to save the Rulers themselves and the system of constitutional monarchy.

The text of the speech is reported in Move to safeguard Rulers' dignity, New Straits Times, Jan. 19, 1993, at 10, 11. See also Anwar:

144. For example, in the speech of the Prime Minister on introducing the amending Bill to Parliament the Prime Minister noted that,

To further strengthen the constitutional provisions that perpetuate the system of monarchy, a provision is being made that any resolution or proposal to abolish the monarchy will be deemed to be seditious and subject to the Sedition Act. [New Straits Times, Jan. 19, 1993, at 10]

145. See the text of the speech of Prime Minister Mahathir on the introduction of the amending bill on January 18, 1993. The text of the speech is set out in the Move to safeguard Rulers' dignity, New Straits Times, Jan. 19, 1993, at 10, 11. According to the Prime Minister,

Although almost every Prime Minister and Menteri Besar [Chief Minister of a State] has reported their problems to the Umno supreme council, the public was never informed. So the people do not know of the problems faced by the Government. [Move to safeguard Rulers' dignity, New Straits Times, Jan. 19, 1993, at 11]

146. On the breakup of UMNO see Fan Yew Teng, *The Umno Drama: Power Struggles in Malaysia* (Kuala Lumpur: Egret Publications, 1989).

147. See Semangat asks the Govt to be cautious, *The Star*, Dec. 17, 1992, at 2.

148. Semangat to oppose changes, *The Star*, Dec. 23, 1992, at 2; Semangat rejects amendments, *The Star*, Jan. 4, 1993, at 2; Semangat 46 stages walkout, *New Straits Times*, Jan. 19, 1993, at 6; Above the Law? Malaysia's Government and Sultans Clash Over Royal Rights, *Asiaweek*, Jan. 6, 1993, at 21-23.

149. Semangat rejects amendments, *The Star*, Jan. 4, 1993, at 2.

150. DAP supports stand taken by government, *New Straits Times*, Dec. 8, 1992, at 3; Parliament calls for action, PM: Special session may be held to amend constitution, *New Straits Times*,

Dec. 8, 1992, at 3.

151. Split over palace issue widens, *The Star*, Dec. 22, 1992, at 2 (noting a split in the opposition coalition in which DAP supported the Bill while other opposition coalition members did not).
152. Kit Siang: Why my party abstained in voting, *New Straits Times*, Jan. 21, 1993, at 3.
153. *Id.* See also DAP backs Bill but wants it referred to committee, *New Straits Times*, Jan. 19, 1993, at 6.
154. Koh: Kit Siang and party being submissive to S46, *New Straits Times*, Jan. 22, 1993, at 4; Isa: Parties fear losing support of S46, *New Straits Times*, Jan. 21 1993, at 3; Fong: DAP only seeks political mileage, *The Star*, Feb. 6, 1993, at 2. See also Anil Netto, No one is above the law: Not even Sultans and Cabinet Ministers, 13(1) *Aliran Monthly* 2, 3 (1993).
155. On PAS backing the response to the Gomez incident see Parliament calls for action, PM: Special session may be held to amend Constitution, *New Straits Times*, Dec. 11, 1992, at 1, 3. On PAS originally backing the removal of immunity see PAS backs move to lift Rulers' immunity, *The Star*, Dec. 24, 1992, at 2.
156. See *supra* note 139.
157. See e.g., Respect only a fair Ruler, says Hadi, *New Straits Times*, Jan. 19, 1993, at 6.
158. See Hadi on why PAS walked out, *New Straits Times*, Jan. 20, 1993, at 2.
159. See Royalty issue: Kelantan MB torn between being a Malay and a Muslim, Nik Aziz faces a dilemma, *New Straits Times*, Jan. 25, 1993, at 1; Netto, *supra* note 154, at 3.
160. See PM: No more extra benefits, Rulers to get only privileges, funds provided for by legislation, *New Straits Times* Jan. 21, 1993, at 1, 2; Move to bring Rulers' treatment in line with Federal decision: State privileges to go too, *New Straits Times*, Jan. 22, 1993, at 1, 6; Kedah withdraws all perks given to royal household, *New Straits Times*, Jan. 26, 1993, at 2; Government sets limit on royal privileges, *The Star*, Feb. 5, 1993, at 2; Decisions: No More 'Extra Perks', *Asia week*,
161. Privilege withdrawn for Sultan's jet, *New Straits Times*, Jan. 27, 1993, at 2 (free parking in hanger withdrawn for Sultan of Pahang's Boeing 727 jet); Perak puts all palace projects on hold, *New Straits Times*, Jan. 27, 1993, at 2; State to curb Johor Rulers' extravagance, *New Straits Times*, Jan. 25, 1993, at 2 (state to slash unbudgetted expenditures on palaces); SAS escorts may be withdrawn, *New Straits Times*, Jan. 22, 1993, at 4 (no more highly trained special action squad (SAS) motorcade escorts for the Rulers); No more shares for the Rulers, *New Straits Times*, Jan. 23, 1993, at 4; Ministry reviews privileges not under Act, *New Straits Times*, Jan. 22, 1993, at 2; Council: Royals must pay tax on properties, *The Star*, Feb. 1, 1993, at 2 (Johor Baru council to collect tax not exempt and not paid); No more doctors on future royal tours, *The Star*, Feb. 3, 1993, at 2.
162. Some of the reports in the media barrage were, e.g., Sultan of Kedah gets 160 ha concession

a year, New Straits Times, Jan. 22, 1993, at 4 (also listing the Sultan's palaces and noting that the state government paid \$M 250,000 (about \$US 98,000) for expenses incurred by the Sultan on an overseas trip for flight tickets, accommodation and pocket money); No more jobs for 'royal contractor', New Straits Times, Jan. 21, 1993, at 4 (noting that the Selangor government would stop awarding contracts to a royal family contractor who had gotten 3 contracts without going through the normal procedure of calling for tenders); Illegal to use royal gun permits, The Star, Feb. 2, 1993, at 2 (alleging that the number of gun permits sought per year by the Negeri Sembilan Ruler matched that of three battalions); Royalty owe RM264,000 in assessment arrears, The Star, Feb. 2, 1993, at 2 (Perlis royalty said to owe assessment arrears for houses, shoplots, stalls and a cinema); Najib: Rulers have abused armed forces personnel, The Star, Feb. 2, 1993, at 2 (in 1984 a Royal Malaysian Navy captain on patrol duty was told by a Ruler to jump from his boat and swim ashore where he was "abused" by the Ruler in front of his subordinates and the public allegedly for disturbing the Ruler's picnic); Lifestyle won't be affected by withdrawal of extra benefits, New Straits Times, Jan. 23, 1993, at 1 (noting \$M 69.32 million (about \$US 27.3 million) spent on renovation of the King's palace in 1989, \$M 6.8 million (about \$US 2.7 million) spent on cutlery, \$M 2.5 million (about \$US 1 million) spent on bedspreads and \$M 300,000 (about \$US 120,000) spent on storing the bedspreads); Rulers Privy Purse 1991, New Straits Times, Jan. 23, 1993, at 4 (listing the substantial allowances the Rulers are legally entitled to); RM 16 mil needed to maintain nine palaces, New Straits Times, Jan. 23, 1993, at 2; Land wrested from landless: Muhyiddin pledges full probe, New Straits Times, Jan. 25, 1993, at 2 (claims that state government withdrew 1600 ha of land given to the landless in 1981 and awarded it to a company controlled by the Johor royal family); Extremely wealthy but still wanting more business favours, New Straits Times, Jan. 26, 1993, at 2 (noting that the Royal family of Negeri Sembilan owns a large number of businesses ranging from the construction of oil and gas rigs to the Malaysia franchise for 7-Eleven stores); Kelantan questioned over \$1.1 m import duty, New Straits Times, Jan. 23, 1993, at 2 (import duty of \$1.15 million (about \$US 450,000) for the import of a Mercedes 600 car paid for by the state government for a royal family member); Istana becomes casino for a birthday party, New Straits Times, Jan. 27, 1993, at 2 (unnamed Ruler alleged to have turned palace into a casino for a birthday party contrary to Islamic practice).

163. Family ties being used for project approvals, New Straits Times, Jan. 22, 1993, at 6 (relatives of the Sultan of Trengganu accused of using pressure to get approval of applications for logging concessions and other projects); Former RMAF officer ordered to leave state, The Star, Feb. 5, 1993, at 2 (air force lieutenant-colonel forced to leave state after a difference of opinion with a Ruler); MB to stop pressure from royalty, New Straits Times, Jan. 22, 1993, at 6; Dept heads briefed on palace orders, The Star, Feb. 1, 1993, at 2 (the Menteri Besar of Perlis saying department heads would have to report to the state secretary before having an audience with a Ruler or obeying a Ruler's orders and the state secretary would have to get the Menteri Besar's permission); Guide on dealing with Rulers, The Star, Feb. 5, 1993, at 1 (the guide required government officials to seek the approval of the Prime Minister, or relevant Minister or Menteri Besar before attending an audience with any of the Rulers, required the reporting of the outcome of the discussion, and gave a list of orders from the Rulers to be ignored such as orders to transfer officials to other departments, taking disciplinary action against an official or a request of an official to reveal particular information). The influence of the Rulers was also noted in Testament to Selfishness: Interview with Aliran President Dr. Ariffin Omar on legal immunity, 13(1) Aliran Monthly 6 at 8 (1993) in which Dr. Ariffin Omar was quoted as saying,

We must not forget that some of the Rulers are building business and financial alliances with certain individuals that are causing some concern to certain political leaders who feel that these alliances may become a threat to their vested interests in the not too distant future.

164. See Rulers say yes: King to refer amendment Bill to Parliament for modifications, *The Star*, Feb. 12, 1993, at 1 (9 Rulers unanimously accept the proposed amendments); A Pact with the Sultans, *Asiaweek*, Feb. 24, 1993, at 27; Royal assent: Sultans compromise on legal immunity, *Far Eastern Economic Review*, Feb. 25, 1993, at 20. The Sultan of Kelantan was apparently unable to be present at the meeting of the Rulers and conveyed his position through a proxy given to the Sultan of Kedah which apparently rejected the amendments. However, the Sultan of Kedah claimed that the Sultan of Kelantan told him orally to support the amendments. The Sultan of Kelantan later denied having given the oral modification of the proxy although he was alleged to have expressed his support for the amendments at a subsequent meeting on 15 February 1993. On these events and claims by the Sultan of Kelantan that the consent of the Rulers was void see e.g., Sultan of Kelantan against amendments, *The Star*, Feb. 26, 1993, at 2; Kelantan Ruler voiced support for the Bill, says statement: Kedah Sultan stands firm, *New Straits Times*, Mar. 5, 1993, at 1, 2; Sultan to stop his statements, *New Straits Times*, Mar. 7, 1993, at 2.
165. There were also some cosmetic changes such as moving the Special Court provisions to a new article 182 of the Constitution and putting it in a new Part XV of the Constitution. The amendment to the immunity granting article 181(2) was changed to read,
 

No proceedings whatsoever shall be brought in any court against a Ruler of a State except in the Special Court established under Part XV.

A similar modification was made to the amendment of Art. 32 with respect to the King. Art. 182(2) provides that any proceedings against a Ruler or the King "in his personal capacity" shall be brought in a Special Court. See the Constitution (Amendment) Act, 1993, Laws of Malaysia, Act A848, ss. 2, 7 and 7A.
166. S. 1A(1) of the Eighth Schedule to the Federal Constitution added by the Constitution (Amendment) Act, 1993, Laws of Malaysia, Act A848, s. 9.
167. S. 1A(2) of the Eighth Schedule to the Federal Constitution added by the Constitution (Amendment) Act, 1993, Laws of Malaysia, Act A848, s. 9.
168. S. 1A(3) of the Eighth Schedule to the Federal Constitution added by the Constitution (Amendment) Act, 1993, Laws of Malaysia, Act A848, s. 9.
169. Constitution (Amendment) Act, 1993, Laws of Malaysia, Act A848, s. 2A adding Art. 33A to the Federal Constitution.
170. *Id.*, s. 7A adding Art. 183 to the Federal Constitution.
171. See No major effect on Bill, says PM, *The Star*, Feb. 12, 1993, at 2.
172. In the 180 seat Lower House there were 167 votes in favour of the amendments as revised. Six

PAS members abstained. One PAS and six Semangat '46 members were absent. DAP, Parti Bersatu Malaysia and four independents voted in favour of the amendments. See Bill on rulers passed with 167 votes, *New Straits Times*, Mar. 10, 1993, at 1, 4. The states were required to make corresponding amendments to their State Constitutions pursuant to Art. 71 and the Eighth Schedule of the Federal Constitution. On the states moving to amend their constitutions see e.g., Five states ready to make changes, *New Straits Times*, Mar. 10, 1993, at 1, 2; Muhyiddin: Adopt standard draft, *New Straits Times*, Mar. 13, 1993, at 2; Johor Constitution amended to clarify role of Sultan: End to Palace interference, *New Straits Times*, June 21, 1993, at 1.

173. See e.g., A. Kadir Jasin, A resounding victory for democracy, *New Straits Times*, Mar. 14, 1993, at 13. See also the speech of the Prime Minister Move to safeguard Rulers' dignity, *New Straits Times*, Jan. 19, 1993, at 10, 11.
174. The Government claimed it was not a power struggle. See Anwar: It's for good of our royalty, *New Straits Times*, Jan. 9, 1993, p. 2 ("it is not to give additional powers to the Prime Minister or the Menteri Besar"). However, the reports of the influence the Rulers had in government affairs suggests otherwise - see supra notes 117 and 160.
175. See supra notes 114 to 120, 162 to 163 and the accompanying text.
176. Indeed increased pressure on the rulers was hinted at. See e.g., Unwritten privileges must end, says PM, *New Straits Times*, 20 Jan. 1993, pp. 1, 2 (the PM saying that he didn't rule out rewriting the whole constitution to avoid future problems with the Rulers); Mahathir: UMNO discussed 30-day provision, *The Star*, Feb. 1, 1993, at 1 (in which it was noted that the UMNO supreme council had discussed abolition of the 30-day assent provision and considered amendments to state constitutions concerning the assent provisions (on the significance of which see Part II F)); Hearing will embarrass Rulers, says Kadir, *The Star*, Feb. 6, 1993, at 3 (saying that if the Rulers went to court over whether their consent was required more excesses of the Rulers would have to be exposed in court); Hamid: Only tip of the iceberg, *New Straits Times*, Jan. 25, 1993, at 2 (law minister says that the press had revealed only a small portion of the misdeeds and excesses of the Rulers).
177. A survey by the national news agency Bernama found that 76% of Malays supported the government's stand with respect to the Rulers (see Showdown with the Royals, *Asiaweek*, Jan. 27, 1993, at 30-31; 76 pc of Malays in 9 states support changes, *New Straits Times*, Jan. 14, 1993, at 1, 2 (only Kelantan expressed less than 50% support with the support there being 47%)). Indeed in speaking to several Malaysians with respect to the Rulers issue the author found no one willing to say they were not in support of the removal of the Rulers' immunity. However, an UMNO survey in late January found that 60% of the Malay population were not in favour of the way the government handled the issue (see Tit for tat: Mahathir steps up pressure on reluctant rulers, *Far Eastern Economic Review*, Feb. 4, 1993, at 13). There may have also been more support for the government position in urban areas than in rural areas (see The pride of Johor: UMNO's birthplace split on Sultan's rights, *Far Eastern Economic Review*, Jan. 21, 1993, pp. 11-12).
178. The Lord President of the Supreme Court and Chief Justices of the High Courts, each of whom is to be a judge of the Special Court consisting of five judges established under the amendments, are appointed by the King on the advice of the Prime Minister. See Art. 122B(1)



of the Federal Constitution.

179. See *supra* notes 166 to 170 and the accompanying text.
180. Editorial 21(1) *Insaf*: Journal of the Malaysian Bar pp. a-d, at p. b (1992). He suggested the creation of a Royal Tribunal to inquire into the gross misconduct of any Ruler would better preserve the independence of the Rulers. *Id.*, at pp. c-d. In response to this statement by Raja Aziz Addruse, several lawyers rallied for the consideration of a motion at the Bar Council General Meeting to the effect that the views expressed by Raja Aziz Addruse were not the views of the Bar Council. See *Lawyers want Bar Council to reject editorial*, *New Straits Times*, Jan. 13, 1993, at 1; *Bar Council to discuss call for EGM by group*, *New Straits Times*, Jan. 14, 1993, at 2; *Bar's EGM fizzles for lack of a quorum*, *The Star*, Feb. 6, 1993, at 2.
181. Of most concern was the involvement of the Kelantan Ruler in supporting his uncle Tunku Razaleigh Hamzah, the leader of opposition party Semangat '46. UMNO lost all its state and parliamentary seats in Kelantan. See *Prune and propagate: UMNO assembly shapes next generation leadership*, *Far Eastern Economic Review*, Dec. 13, 1990, at 12, 13; *Of Successors and Sultans*, *Asiaweek*, Dec. 14, 1990, at 46.
182. See *Bending the Rulers: Sultan's behaviour raises doubts over role of royalty*, *Far Eastern Economic Review*, Dec. 24-31, 1992, at 16.
183. See *supra* note 145. See also *UMNO to seek royal consent*, *The Star*, Dec. 17, 1993, at 1, 2 (in which the PM admits that the government should have acted earlier).
184. See *Netto*, *supra* note 154, at 4.
185. See *Hamid: Don't be overemotional*, *The Star*, Dec. 20, 1992, at 2 (a government minister notes that its leaders did not speak out in the past as they benefitted from the Rulers and feared action against the Rulers would lead to a loss of their positions). See also *Testament to Selfishness: Interview with Aliran President Dr. Ariffin Omar on legal immunity*, 13(1) *Aliran Monthly* 6 at 6 (1993) in which Dr. Ariffin Omar is quoted as saying that politicians did not crack down on the Rulers because they were using them for their own political ends. He has also noted that Mahathir had needed the Rulers' support because his position was weak - see *Ariffin Omar Sultans: Guardian or Figureheads? Constitutional Monarchy: Theory vs. Practice 1948-1993*, 13(3) *Aliran Monthly* 2 at 4-5 (1993).
186. See *Netto*, *supra* note 154, at 4.
187. See *supra* notes 181 to 182 and the accompanying text.
188. See *Barraclough and Arudsothy*, *supra* note 89, at 1, 13-14, 16-17.
189. In 1970 university enrolment in Malaysia was about 8,000 out of a population of 10.4 million (or about 0.077 per cent). By 1980 university enrolment in Malaysia had increased to 23,000 out of a population of 13,746,000 (or about 0.16 per cent). In the ten year period 1970-1980 the proportion of the population enrolled in university had thus more than doubled. See *Information Malaysia: 1992-93 Yearbook* 74 (Kuala Lumpur: Berita Publishing, 1992).

190. On the early development of the inculcation of concepts of democracy in Malay society in the late 1940s see Ariffin Omar, *Bangsa Malayu*, supra note 18, at 170-79.
191. By 1989 university enrolment in Malaysia had increased to an estimated 53,000 out of a population of 17,374,000 (or about 0.31 per cent). Thus between 1980 (see supra note 186) and 1989 the proportion of the population enrolled in university had nearly doubled. See *Information Malaysia*, supra note 189.
192. See Netto, supra note 154, at 4 who notes that,
- ... it is doubtful that such action could have been taken ten or twenty years ago without serious, far-reaching repercussions.
- and that,
- the barrage of attacks against the royalty witnessed today is in many ways, the product of the New Economic Policy (NEP) and increased educational opportunities for the Malays. With better educational opportunities and the emergence of the Malay middle class came increased confidence and a more critical attitude towards the aristocracy.
193. See e.g., R. Milne, *Privatization in the ASEAN States: Who Gets What, Why and With What Effect?*, 65(1) *Pacific Affairs* 7, 16 (1992); Barraclough and Arudsothy, supra note 89, at 13. Ariffin Omar, *Sultans: Guardians or Figureheads?*, supra note 185, at 5 referring to the rising group of Malay businessmen.
194. On the quotas see the Federal Constitution, Art. 153.
195. A concern along these lines was implicit in the statement of the Deputy Prime Minister that it would be alright for royal households to be involved in business as long as they did not exert "influence" and competed on equal terms. See *Don't go overboard, Ghafar tells press*, *The Star*, Feb. 3, 1993, at 2.
196. On this being an inevitable result of the growth of the middle class see *Above the Law? Malaysia's Government and Sultans Clash Over Royal Rights*, *Asiaweek*, Jan. 6. 1993, at 21-23 quoting Chandra Muzaffar as saying,
- Over the past two decades UMNO has emerged as the substantive protector of Malay interests. That means there's now less use for a symbolic protector monarchy. As the middle class grows in economic and political power, its only natural that the substantive protectors, UMNO, should clash with institutions that represent feudal power.
197. See supra note 192. The extent of the change in attitude was such that there was open discussion of changing practices with respect to the Rulers such as bowing or using self-deprecatory terms when addressing a Sultan. See e.g., *Don: Stop using degrading terms in royal presence*, *New Straits Times*, Jan. 27, 1993, at 2; *To bow or not to bow*, *The Star*, Feb. 1, 1993, at 2; *Cabinet to decide on way to address Rulers*, *The Star*, Feb. 8, 1993, at 2.
198. See accord Netto, supra note 154, at 5.

