

Daulat - an afterword



After referring to a recent commentary ([*'Almost there!': The end of democratic Constitutionalism in Malaysia?*](#)), the first part provided an introduction to a more extended analysis of these issues that I wrote in 2009. The second, third and fourth parts provided, in much delayed publication, the text of that original analysis. The fifth part outlined some parts of a discussion that I had of these matters with a leading Malaysian lawyer (and also the full bibliography of my original analysis). This sixth section consists of an “Afterword” in which four further issues are briefly noted and discussed.

Afterword

This final installment, or “Afterword”, offers some further reflections (February 2014) on four aspects or implications of my original argument developed in 2009 and presented in 2010.

i. The question of “Originalism”

My argument consists of a critique of those — the Perkasa-minded “new royalist” theorists and the

shari'ah-minded Islamo-Malay ideologues — who seek to misappropriate the meaning and authority of the Merdeka Constitution of 1957 for their own purposes: for purposes, and by means of some idiosyncratic and bizarre interpretations of its content and intent, that are simply mischievous, and perhaps even perverse.

My argument is a defence of what I take to be — and what most serious scholars recognize as — the “original” and “authentic” meaning of the Constitution.

Taking this position raises the question of so-called “originalism”.

Constitutional theorists in the USA, referring to their own nation’s founding charter, have coined the term “originalism” to characterize the position which holds that the role of judges, and all historically-minded expert scholars, is simply to discover and uphold the original meaning of the USA Constitution, as it was intended and understood at the time by those who framed it — to uphold their views and none other.

Of the many criticisms and rejoinders that have been offered to that position, one is relevant here.

If one were to uphold the USA Constitution as it was originally intended and understood, slavery would never have ended, women would never have been recognized as citizens entitled to vote and so on.

In other words, no political or social progress would ever have been possible. It would have been deemed, necessarily, as constitutionally impermissible.

Any change, no matter how necessary or reasonable it might be in its own terms, might ever be accepted and allowed to take hold if its import ran counter to the subjective intentions — and stood beyond the horizons of the very time-bound understandings — of the so-called Founding Fathers of the USA and its Constitution.

These criticisms have great force and merit.

But they can be misconstrued.

They have force. But theirs is a limited force, not a force of unbounded and infinite reach.

To refuse “originalism” and say that change is possible, even necessary, and hence not impermissible is not so say that any and all proposed changes are legitimate, acceptable and equally reasonable.

Change that enlarges the meaning of the constitution in accordance with its original spirit and intent may be accepted; innovations and modifications that run counter to them — to the constitution’s

animating aspirations and its unfolding developmental trajectory — are not, and cannot be justified and made enforceable simply by uttering an anti-“originalist” catch-cry.

The critique of “originalism” is a critique of a narrow-minded literalism, of a doctrinaire “strict constructionism”, in legal interpretation.

This critique takes its stand on the ground that constitutions, like the societies whose lives they frame and shape, evolve. The constitution, no effective constitution, is a dead document, frozen in time — a means whereby the dead hand of the past may fasten its grip upon the windpipe through which the “breath of life” animates the public purposes of a developing, progressive nation.

To mean anything, and serve any worthwhile purpose, a constitution must evolve. But the so-called “living constitution” must have its roots in the founding constitution. It must remain faithful to its ideals and principles and give continuing, evolving and appropriate expression to them as times and circumstances change.

So the Merdeka Constitution and its well-known aspirations cannot simply be set aside by those who now wish to institute a new ethnocratic ascendancy, whether on “blood and soil” or clericalist foundations. Or, rather, if people want to do that, they must set aside the Federal Constitution, and do so explicitly.

They cannot do so as they prefer and please in the name, and by invoking the majestic authority, of a Federal Constitution — the currently existing constitution — that was avowedly and explicitly promulgated as the “supreme law” of a modern, inclusive and progressive nation.

In short, one may uphold the spirit and affirm the intent of the Merdeka Constitution without putting oneself, and one’s argument, beyond the pale of reasonability as rigidly doctrinaire and “originalist”.

And one cannot, explicitly or otherwise, invoke the key ideas of “anti-originalist” theory in order to say that, at any time, the Federal Constitution, despite its well-known origins and history and nationally-formative meaning, may mean, or be made to say, anything that one cares to assert — no matter how antithetical that position may be to the history and long-accepted meaning of that foundational document.

ii. Prudence? Peas, bells, cats and babies’ ears.

I return to the question whether it was wise, several years ago, for me to be persuaded that I should not make my argument public, for fear that its meaning, and some of its ideas, might be willfully misconstrued and unscrupulously appropriated by people with a very different intellectual and political agenda.

Was a “prudent silence” the best position to adopt?

The basis of that prudence can be simply put. And it was. It was the admonition, “don’t give people ideas” — especially not ideas that they will abuse.

A wise old lady whom I once knew had an oft-repeated saying. “Do not put peas in babies’ ears!” she would warn.

But who would ever imagine doing such a thing!

Her point was this. Do not tell people not to do things, bizarre or perverse things, that they themselves, on their own, would never have imagined doing.

Don’t give people ideas. Especially not silly ideas or ideas that they will use in silly ways.

She had a point.

But, as recent experience has shown, it was not advice, and not a point, that was relevant in this situation.

Even without the benefit of my input, the new constitutionalist heretics, especially the “new royalist” theorists, came up with those ideas, or very similar ones, on their own. Unaided.

As was only to be expected.

They are not stupid people. They are very smart, purposeful, and artfully creative in accordance with their preferred purposes and ultimate objective.

Looking back now, it seems to me that it might have been wiser to go ahead and publish my analysis several years ago.

It is now clear. My not publishing it did not stop people pursuing their agenda or offering their intellectually dubious rationale for it.

True, had I published it, they may have presented their ideas with greater authority and subtlety — and, to my own personal displeasure and irritation, on the basis, at least in part, of my own work.

But my silence, contrary to the admonitions of those who urged that course upon me, did not constrain or greatly disable them. It did not disarm them or neutralize the impact of their “revisionist heresy”, of their reckless constitutional innovation.

So, in retrospect, it now seems to me that I should have then published my analysis.

Doing so would not have stopped those people. It would not necessarily have disabled their arguments and stopped them in their tracks, halted their momentum.

But would it have made things worse? I doubt it.

It might at least have placed their argument in a wider context, cast a shadow over it and their agenda. It might have shown that theirs was not the only one on offer, the only or best “show in town”. The field would not have been left to them alone, to frame and direct as they pleased.

Overall, rather than worrying about “putting peas in babies’ ears”, it might have been better simply to “bell the cat”.

When the cat has a bell around its neck, you can hear, and then see, it moving — and when it then pounces.

Whether or not the cat’s intended victim is in the end saved, the bystanders are at least enabled to know, well in advance, what is likely to happen.

They are forewarned, even if the bird does not heed the warning.

What is predicted or made predictable comes to them as no surprise.

More, duly forewarned, people may be able to consider calmly, ahead of time, the responses that they might make, and choose to act in good time upon the best of them.

Above all, when things come not as a surprise but arrive consistent with a coherent prediction and scenario, they can be seen, when they do come, for what they are.

Not as sublime and disinterested expressions of grand, honourable principles or an inevitable historical momentum but as elements of a mundane, carefully prepared and determined political strategy — as moves that are often part a sectional or sectarian strategy that hopes to succeed by presenting what are merely partisan interests as the best interests of society as a whole, of the entire nation at large.

iii. Relevant fields of knowledge

From my unwisely “prudent” silence, there is an important point to be made about the varieties of scholarly expertise, and a general lesson to be learned about public and professional recourse to relevant fields of knowledge.

When I completed my analysis several years ago, I provided copies to, and then discussed my argument with, a number of notable scholars and wise practitioners in fields other than my own that

had a direct relevance to the issues involved.

Many of them, it is fair to say, were distinguished people in fields that are far more prestigious, or publicly known and acceptable, than my own. And that fact had, and has, consequences.

I “tried” my argument seriously. In exchanges with leading, intellectually agile and open-minded lawyers; with knowledgeable political scientists; and with erudite scholars in the field of political and legal philosophy.

And all of them, as was only to be expected, responded to my argument from the grounds, and within the terms, of their own special expertise.

So they told me many things: some that I did not already know and others that I did, some that I really needed to know and take account of, and also others that I did not.

What they did not do, most of them, was to meet or try to engage with me on my own ground: to see and grasp the intellectual context from which I was coming, to understand it with its own special terms and specialist preoccupations, and, from their own expert standpoint, to wrestle with my argument in its own terms.

Had my own special field of knowledge been one that was quite marginal or incidental to the issues involved, that lack or omission would have presented no great problem.

But, as was the case here, where the “heart of the matter”, the core of the problem, lay (or so I argued) within the province of the kind of expertise that I had to offer — arcane and publicly unfashionable though the “cultural analysis” of pre-postmodernist anthropology and Southeast Asian cultural history may be — that was most unfortunate.

As I finally put the matter to one of my wise interlocutors;

“Look, yes, all that is fine. We still have some points to clarify and I may need to refine my argument a bit more. But basically thanks for taking me and my argument seriously. For trying to understand its nature, drift and intention, and seeing where it may lead (beyond where I myself may now be able to do).

“But, again, back to the basic matter.

“I am sure that vast areas of political philosophy and modern jurisprudential theory (of which I know that I know little) may be relevant to the argument that I am making.

“But I am certain of one thing — and this is my main, underlying point.

“I am certain — no matter how much subtle and appropriate political theory and apposite jurisprudential reasoning and resources are brought to bear on this matter — that by themselves, alone, those resources will not be enough to win this nationally fateful argument, to prevail.

“So long as most people who are engaging at this time with this issue (with this bold new challenge, or clash, this ideological ‘bid’, and even radical constitutional ‘ambit claim’ or revisionist ‘try-on’) remain unaware of, and so do not take into account, the underlying and still ‘lurking’ basic Southeast Asian cosmological ‘paradigm’ and its key, crucial, quasi-sacred political aspects, for that long too they will not understand — and will accordingly be left unable to grasp and handle — what the ‘new royalist’ and ‘ethno-supremacist authoritarians’ are doing, the game that they are playing, and so will be doomed to lose to them.

“On the other hand,” I added sardonically, “if you tell the ‘Islamo-Malay’ ideologues and the artful ‘new royalist’ manipulators of modern jurisprudential theory that they are either unknowing captives, or else unwitting wielders, of what is basically a deep, old Southeast Asian preoccupation (namely, the region-wide pre-Islamic and non-Malay Hindu-Buddhist religious notion of cosmically grounded royal sanctity — and not ‘sovereignty!’), you may just embarrass them, slow them down, and perhaps even stop them for a while (what more can really hope for?) in their tracks.

“So, finally, my position is that — when we talk about what is intellectually and conceptually relevant to this current and fateful legal and historical confrontation — I, not uniquely but in good and ample company, say ‘yes’ to political and jurisprudential theory (which everybody in this ‘game’ sees as relevant, especially in this horribly ‘over-lawyered’ society here in Malaysia!).

“Yet I also, and emphatically — and virtually alone here in the middle of this encounter — say ‘yes’ to Southeast Asian cultural history and its importance, and to the long tradition of anthropological analysis of basic Southeast Asian cosmology and its political implications or dimension.

“This, I insist, is something that nobody in this game, apart from me, sees as relevant, or even seems to have any knowledge or awareness of — nor, therefore, the slightest inkling of its implications, of its central and defining involvement in this major battle of national ideas and direction, on both sides of the fight.”

That remains my position.

When the time comes, if it ever does, to frame and “bed down” some constitutionally well-grounded public realities in this area, doing so will be the work largely of the lawyers, the constitutional specialists and the jurisprudential theorists; in addressing their task, they will need to be guided by the wisdom and insights of the astute political scientists; and their efforts will have to be informed by the contributions of erudite political theorists and political and legal philosophers.

But unless people recognize the key and basic importance to this endeavour of the deep analysis of region-wide Southeast Asian cultural tradition and history — including the still potent cosmological dimensions and grounding of its pre-Islamic political “mindset” — that worthy exercise will be doomed to failure.

Only in that way can people begin to understand what *daulat* is, and what it is not.

Understanding what *daulat* is, really is and is not, is indispensable to grasping what this controversy is all about. To knowing where the argument of the “new royalist” ideologues is not just defective but fatally flawed.

Strange as it may sound and seem (especially to the new champions of the idea of a modern Islamic-Malay monarchy with their idiosyncratic ideas of its solid constitutional grounding), the key, or indispensable entry point, to understanding the royal *daulat* of the Malay monarchs lies in grasping its origins — and in recognizing its defining roots — in the sacred, cosmologically pivotal sanctity or *sakti* of the Hindu-Buddhist god-kings of early Southeast Asia.

The royal Malay *daulat* is just a variant of this archaic, pre-Islamic, regionally generic belief-complex.

Heedless to this history, the “new royalist” and “Islam-Malay” theorists remain “spooked” by a Hindu-Buddhist hobgoblin.

The matter is complex. But it is also as simple as that.

iv. Why me?

Fourth and last, I ask myself, as others in puzzlement and irritation doubtless do, “why me?”

Why is it always I who “speaks up”? Why does it always fall to me to raise all these difficult issues in the columns that I write about Malaysian culture, history, society and politics?

Believe me, I am getting old and tired. I would rather that other people took that role and responsibility, not me.

In particular, younger people, people who are members “by right” and identity of this society, and not just a well-intentioned outsider of long standing.

But, there don’t seem to be any such people around.

Or if there are, they lack the knowledge, the voice, the will and the courage to say these things.

Some know what they think, I suppose, but dare not say it. Some know what they think and would dare if they could, but they do not know how; they do not have the words or the public voice.

Others again know, and perhaps dare, and even have the voice, but their will and courage are not great enough to enable and impel them to break their silence, to ask for and compel a public hearing.

Even more worrying is this. Many, I fear, after years of living at odds with the “public world” and its dominant currents, have gone into a kind of “inward migration” into their own innermost recesses. Long accustomed to this kind of protective dichotomization, or “splitting”, of their social and inner selves, they not longer really know what they think, how their inner self really sounds in public terms, or who they themselves really are any more.

So, for the meanwhile, in the absence of other voices, the task often falls to me.

But, believe me, I would prefer it otherwise. I am eagerly seeking to pass on the baton, to retire from this role, and to lapse into the gentle obscurity of a tired old man and “former scholar”.

But, beyond any personal point, there is a more important general issue at stake here.

When major issues about citizenship and the nation arise, one always hopes that there are people, younger scholars, trained in the fields of modern political theory and political philosophy who might enter the arena and speak.

But there are not.

And the fault here is not personal but systemic.

There simply are no such scholars in these fields. It has been authoritatively decided that these fields are irrelevant to the nation’s true needs, identity and purposes — that they are surplus and extraneous to national requirements.

All that is needed, official thinking holds, is that employment (together with ensuing national standing and credibility) be provided, in profuse amplitude, for those trained in certain inward-looking, unself-critical forms of Islamic social thought and political theory and aggressive cultural apologetics.

It is a position that lacks serious intellectual legitimacy, but one can deny neither its existence nor its consequences.

However, the case of the principal matter discussed in this extended analysis is something else.

We are talking here not of some doctrinally “over-protected” zone of national intellectual effort.

We are talking here about what — in the wider scholarly world beyond of Malaysia — is and has long been known, valued and recognized in a deep sense as Southeast Asian regional history and cultural analysis.

These are not fields where the claims of “Islamist cultural doctrine” and “the Islamization of knowledge” have moved in to override older and more general, even universal, form of expertise, scholarship and knowledge. Nor has that new “Islamization” agenda seen the need to do so in this area.

Accordingly, over the last forty years and more, public funds in vast measure have been devoted in Malaysia to the creation and consolidation of a modern intellectual, academic and scholarly community in these very fields, especially cultural anthropology and regionally-oriented early, early-modern and modern history.

Even so, not a single voice. Not a single scholar has emerged who would seem to have the knowledge, the intellectual standing and authority, as well as the personal commitment and public voice to “take on” and engage with these issue as matters of general and national importance to the people of Malaysia as a whole.

All manner of other scholarly experts appear aplenty in the press and as columnists and commentators and television celebrities. Yet virtually all of them seem more politically attuned in their career interests and motivations than to be serious scholars who feel a compulsion to make known to the wider national public what the best in world scholarship might have to say on the issues upon which they comment.

They are ideologues and apologists, most of them, not scholars. A national scholarly community of shrewd, single-minded, ingratiating, unrelentingly opportunistic, and mutually competitive conformists.

Ultimately, then, the absence of any such modern intellectual community of public spirited academics of deep, genuine and overriding scholarly commitment is not just a personal failure of those people, individually or as a group and “social type”.

That lack represents the failure — and it is a very expensive and embarrassing failure — of Malaysian national higher education and research policy in the human and social sciences over two academic generations, over the last half century, in effect.

It is a sad story.

A final word

At the outset of this extended discussion, I identified the immediate circumstances that prompted me to write this series on “*Daulat*, sovereignty and constitutionalism in contemporary Malaysia” several years ago.

But the series itself, the analysis that it offers — I again emphasize — is not polemical or political in nature.

As its length and tone make abundantly clear, it is a scholarly analysis of what is generally — and, one might say, with the possible exception of Malaysia, universally — recognized as the deep cultural nature, or foundational cosmological template, of Southeast Asian society, regionally and generically: as a characteristic type of social order, cultural domain and “cosmologically grounded” construct.

It seeks to probe and explore, to analyse and clarify, the nature of Malay ideas of *daulat* in that context, as a specific instance of that generic Southeast Asian “social type” — from that analytically relevant and historically necessary standpoint.

It is nothing remarkable. It is simply what any properly trained and competent scholar in Southeast Asian cultural history or cultural anthropology would, or should, say.

That said, though the analysis is of a very scholastic (and, some might even say, turgid and protracted) nature, it is clear that this analysis — and bringing it forward to some wider attention beyond the academic preoccupations of those within the “ivory tower” — is now very timely.

More timely and appropriate now, one might even say, than it was or seemed when the analysis was written five years ago.

This is not an analysis that is driven by any narrow political purpose or immediate and contemporary political agenda.

But, in early 2014, as the nation’s courts are again made to grapple with the question of the standing of the traditional Malay Rulers — and whether even to attempt to analyse, as distinct from an effort to question or impugn, their legal status must be considered seditious — the timeliness of, and the need for, the kind of deep cultural and historical analysis that has been offered in this series should be obvious.

This series has been offered not as a polemical exercise but as a sincere attempt to bring the insights of what is generally recognized as an important field of expert scholarly knowledge to bear upon contemporary developments: upon the situation of the Malaysian nation today.

It is written, as must be obvious, from a deep concern and respect for Malay culture — including its royal heritage and living traditions — and a profound conviction of its continuing political relevance

and national importance.

These are things that need to be acknowledged and spoken about, clearly and without undue trepidation, not protected and insulated from public awareness by a suffocating blanket embroidered with an inhibiting motif that says "sedition".

That is why, and the spirit in which, this series has been written.

It is offered on that same basis to all who may care to read it, and who may find that it makes good and publicly valuable sense.

[This is the final part of a 6 part series. Part 1, 2, 3, 4 and 5 are available [HERE](#), [HERE](#), [HERE](#), [HERE](#) and [HERE](#)]

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