

Daulat - the ancient and the modern



The story so far

To recapitulate: historically and culturally, as has been seen, the historical and cultural position of the Malay rulers is wider and deeper than their modern constitutional position and role.

But when these rulers act in their modern and formal constitutional capacity, their actions and functions are constitutionally created, defined and delimited.

When they act as constitutional monarchs, they are just that and no more. They cannot plausibly draw upon their traditional prestige, eminence and “sacred” *daulat* to enlarge their constitutional role, discretion or authority.

These two things — ancient cosmological status and modern constitutional standing — are clearly different. They are matters deriving from two distinct and mutually incommensurate universes of meaning.

The connection between them — in the person of the ruler who represents an old cultural institution and its underlying beliefs, but who also occupies a modern constitutional position and

discharges a correspondingly circumscribed formal role — is purely contingent.

Two different things are done, or symbolized, by the same person, or personal incumbent of two institutional positions. But they are different and distinct.

He is one, the one person, but what he is, historically and culturally, and what he does, in modern constitutional terms, are two distinct realities, a conceptual duality.

True, the two come together and meet adventitiously in the one person. But they are not one, not a seamless unity, but two parts of an historical duality, the one part contingently superimposed upon the other.

To see and treat them as one thing, not as a contingently combined duality, makes no logical, historical or constitutional and jurisprudential sense.

Certain significant implications follow from this fact.

Is there an extra-constitutional aspect or dimension to the constitutional position of the Malay ruler?

Yes. Clearly so.

Does it involve and centre upon the political salience of the Malay ruler and his position, its ancient cultural significance?

Again, yes.

Can the ruler invoke his ancient cosmic *daulat* to enlarge his modern constitutional position and standing?

No. The idea is conceptually confused and incoherent.

If the position of the Malay ruler has that kind of old cultural significance, then what is its modern political salience and force?

Clearly, the Constitution cannot authorize or license extra-constitutional action, action that exceeds the Constitution and impugns its own standing as the “supreme law” and source of the modern state’s national sovereignty. (If it did, if it could, it would not be a constitution. Something else perhaps, but not a constitution.)

Only the converse can be true. That the “sacred” eminence and prestige — traditional and continuing — of that extra-constitutional aspect, the ancient royal *daulat*, lends its authority, legitimacy and symbolic *gravitas* or solemnity to the Constitution and to the principles of modern

constitutionalism. And not *vice versa*.

Put another way: if there something more to the position of the traditional Malay ruler than his modern constitutional position, what is that “something more”? Of what does it consist, and what might it be able to do?

Clearly, there can be no extra-constitutional basis for his exceeding his constitutional function. Any such notion renders nugatory the idea of a constitution.

Still less can there be (as some of the “new royalist” theorists from time to time like to assert) a constitutional basis — any constitutionally acknowledged and endorsed grounds internal to the Constitution itself — for a claim to any extra-constitutional authority to exceed, or to enlarge beyond its constitutionally apportioned dimensions and specified limits, the ruler’s constitutional role and position.

Such a thing simply cannot be. The entire idea is simply fanciful and jurisprudentially incoherent. It is incompatible with any proper sense of modern constitutionalism.

IV.

Authoritative Power or Status-Bestowal?

Those who think there is a conflict or inconsistency here between affirming the idea that the Malay Rulers have long emanated *daulat* and suggesting that emanating *daulat* does not amount to the exercise of sovereignty — and who alas act, often all too self-righteously, on the basis of insisting that this is an inconsistent position — are simply confused by words and their use.

Traditional rulers in Europe and elsewhere were called sovereigns because, in those pre-modern times, rulers were what states now are these days: unmastered powers, free-standing powers that owed their position to nobody else. That is what the term “sovereign” means. But that is not what the Malay rulers, whatever the authority they once enjoyed, now still enjoy.

*** *Daulat and cosmic legitimacy***

Daulat is not, and never was, sovereignty in this technical sense. The *daulat* of the classical Malay Rulers was not sovereignty in that modern jural sense but an aura — ultimately cosmological and historical in origin throughout the broader Southeast Asian context—of mystical power and even sanctity that made their descent, and positions as rulers, legitimate. They are legitimate by virtue of their cultural position without enjoying sovereignty, or being the locus of modern political sovereignty, in the technical legal and constitutional sense.

In the modern world, legitimacy derives from constitutional sovereignty. In the traditional Malay

world and that of Southeast Asia generally, legitimacy came from the sacred and sacralizing cosmological “embeddedness” of the ruler’s position and power, of which his *daulat* was a prime manifestation and validating confirmatory expression.

The key issue in classical Southeast Asia was legitimacy — the legitimacy of the ruler that followed from his pivotal embeddedness in the sacred cosmic order, and his ensuing ability to furnish others with legitimate social identity by virtue of their relation to him — and not absolute authoritative law-making power.

*** *Traditional Malay rulers: a source of law or status?***

In many parts of Southeast Asia, and certainly throughout much of the peninsular Malay world, the ruler’s power was seldom absolute. He was no Solon-like source and creator of binding law. He was usually faced, and had constantly to deal, with the challenge of rebellious district grandees and local chiefs over whom, far more often than not, he usually exercised only partial, intermittent control — often a sporadic ascendancy that waxed and waned and, whenever it began to crystallize and show signs of becoming solid, remained in need of continual maintenance, repair and renewal.(20) These were hardly circumstances in which sovereignty, understood as absolute or ultimate law-making power, might be exercised.

To overcome this problem, as Anthony Milner has shown from the close analysis of classical political texts,(21) the Malay world rulers turned elsewhere to assert their ascendancy. Lacking modern sovereign authority, they buttressed their position and asserted themselves over, and sought to co-opt and encompass, their wilful noble and aristocratic inferiors through recourse to their own unique cosmic connections and power. To their sacred *daulat*. Even if they could not reduce the chiefs and nobles to dutiful political subordination, they could allocate, frame and fashion cosmically appropriate social identities.

The Malay rulers asserted themselves through this power of bestowing name, identity and status. To have an identity as a Malay, Milner shows, was to have a status, and it was the sacred, cosmically-connected ruler who was the fount of all legitimate status and valid identity. (His role can perhaps be described as analogous to that of a pre-modern email address or website name allocation authority; he was the designated and authoritative “domain-master” who allocated names and titles, cosmically and socially legitimate status and identity. To have an identity a Malay needed to be known, to have a public reputation, a name, and it was his political relation to a ruler that provided precisely that.

The classical Malay ruler was a pre-cyber-age “domain name administrator”. The ruler’s authority and legitimacy stemmed from the fact that he knew — since he was their master allocator and arbiter — the true and proper names of all people and places in his domain.

*** *Sovereignty, or the living part of an ancient mystique?***

This is no archaic memory or residue. In recent times the approved modern spellings of certain place names on highway signs have been known to have been “corrected”, at some expense, because they did not accord with the ruler’s view of correct toponymic usage. On such matters he not only knew best; the point was that whatever he chose or happened to think accordingly became, and therefore, was the best, the only proper usage.

To be a Malay was to be in relation to a ruler, a *raja*. This is what *kerajaan* initially meant, not government in the modern sense but the condition of being in relation to the status and identity of a living *raja* or ruler who could give identity to those around and beneath him. One could be a Malay, and a Malay could be a fully-formed social being, only by having — and being defined by an identity-bestowing relation to — *araja*, a ruler.

These Malay rulers did many things and enjoyed many powers. All these powers — along with the cosmic sanctity and mundane dignity that they ensured — together constituted, and were known as, the royal *daulat*.

These various powers were often formidable. But sovereignty was rarely one of them. Malay rulers rarely exercised sovereignty in the modern sense, though they may at times have aspired to do so or wished, counterfactually, that they could.

To assert this now, in the twenty-first century, and to do so in order to question the now standard and generally unthinking equation of the term *daulat* with “sovereignty”, is not to dishonour the Malay rulers today or to impugn their dignity. But it is to clarify certain crucial aspects both of classical Southeast Asian social and cultural reality and of modern jurisprudential concepts and legal terminology.

It is, in short, to insist upon a principled refusal of any “false identification” between perhaps similar, and seemingly coterminous, items from these two distinct imaginative and conceptual domains.

V.

Between *Daulat* and “Sovereignty”.

The Malay rulers may once have exercised a sovereignty — or aspired to — that was legitimated by their cosmologically-grounded sanctity. Some legal scholars still claim or imagine that they did.⁽²²⁾ If, doubtful though the proposition is, they ever did exercise that kind of ultimate sovereign power, that is what enabled them to declare their royal will, or seek to, as state law.

*** *Sovereignty and the declarative power to make laws***

They no longer have that power. Laws are now made elsewhere, by other means and on a different

basis, that of modern constitutionalism. Whatever their *daulat* may now mean and can still ensure, it is not absolute and independent law-making authority. Or even its ultimate source.

The Malay rulers do not enjoy or exercise sovereignty in that primary sense. But through their now attenuated *daulat* they lend the residue of their former cosmologically-based sanctity to legitimate the modern constitution, and the constitutional order generally, in which they are implicated and in which they have, in part — in some specific, distinctively modern capacities and aspects of their larger public identities — been incorporated.

That Federal Constitution and those state constitutions are, however, charters of sovereignty that embody and — for all its divided, dispersed or fragmented nature — are largely based upon the modern principle of popular sovereignty. Their core principle is the political primacy of the people themselves, as a totality, as the source of legitimate law-making. (Why else does, and would, one hold elections? What else can, and could, they ever mean?)

The locus of the sole, or overwhelmingly preponderant, ability to make laws and of the legitimate right to do so (and of the proper expectation that those laws will be obeyed and are duly enforceable) is the national constitutionally-based government — in parliament, in the executive and also the judiciary — as the embodiment of popular will and democratic sovereignty.

In all this, again, the Malay rulers have *daulat* but not modern technical sovereignty. Rather, they “lend” their *daulat*— or the modern residue of its ancient sacred character and sacralizing force — to the legitimation of modern constitutional government, and of the modern constitutional order in general of which, by means of a newly fashioned component of their formal selves (namely, their newly specified constitutional roles) they are now a part.

Yet that is not the end of the story. “What kind of part,” we need to ask, “do the Malay rulers play in this modern constitutional order?”

* ***Old ideas and the validation of modern constitutionalism***

The nineteenth century political writer Walter Bagehot (1826-1877) drew a famous distinction between what he called the “dignified” and “operative” parts of the constitution or form of government. The dignified parts were symbolic and intended to be public and impressive. That is, they were persuasively legitimating. The operative were its mundane, functional parts.(23)

It is a nice distinction but a false dichotomy — false since symbolism, as political anthropologists and theorists these days keep reminding us, does not simply reflect and ratify a social reality that is supposedly grounded elsewhere but rather enters into the creation and shaping of that reality, here and now in all that we do — especially through official public, often royal, ceremonialism.(24)

Ritual does what it does, state and public ceremonialism do what they do, simply by saying what

they say, yet by saying it in the far from simple way that they do so: in their distinctive and resonant idiom — that is at once conceptual and emotional, visual and aural, abstract and tangible.

*** *What ritual says and does***

Ritual is a language that both speaks and also does, that does what it does by how it speaks — in a way that evokes and also unifies different, and quite incommensurate, planes of experience and dimensions of identity.(25)

The rulers with their ancient *daulat* have, primarily, that dignified and legitimating role as ceremonious ratifiers and ritual guarantors of the mundane political order. Yet they and their role are crucially and necessarily “operative” and functional, not merely “dignified” and impotently symbolic.

Whatever their other diffuse cultural entitlements and broad traditionally-based social standing, their modern function, their proper constitutional function, consists, perhaps paradoxically, in their “dignified” — which is to say the necessary moral and indispensable cultural — legitimation that they give, or “lend”, to the mundane, functional socio-political order, its form and arrangements.

Their specific and distinctive “functional” role resides in and consists precisely of their efficacious — and not “purely” or “merely” symbolic — delivery of this “dignified” legitimation service: in their lending the aura of their remaining *daulat* to the modern state and its essentially democratic charter of popular sovereignty.

That is the constitutional role of the rulers. It consists not in the assertion of their royal *daulat* on their own behalf, in the service of their own special standing, but in the bestowing of the aura of their former ancient *daulat* upon the modern constitutional order, wherein modern sovereignty truly and properly resides.

*** *A shadow that illuminates and enlivens***

Paradoxically, then, the shadow of the past serves to illuminate and infuse present-day constitutional and political reality. The rulers and their *daulat* give dignity to and ennoble the nation’s constitutional arrangements; the Constitution does not politically validate and empower or update, in modern terms and circumstances, and it certainly does not enlarge the ancient royal *daulat* of the Malay Rulers.

In short, life-anchoring cosmic connectedness is not modern constitutional primacy and legitimacy, nor is modern jurisprudential authority primarily grounded and embedded in sacred, exemplary and exclusive cosmological mediation — in the ritual and symbolic brokering of relations between the phenomenal and supernatural worlds.

[To be continued in Part 5 with a presentation of some commentary on my ensuing discussions with some expert friends and colleagues concerning my original argument as well as the risks, and the advisability, of publishing it. Parts 1, 2 and 3 are available [HERE](#), [HERE](#) and [HERE](#)].

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FOOTNOTES

(20) The autonomy, and frequent defiance, of these local grandees, ever jealous of their own name and strength and of the personal loyalty of their local followers, severely limited the power and ultimately the legitimacy, and hence authoritative law-making power and "sovereignty", of most Malay rulers, however grand and imposing their cosmically-generated *daulat*, for much of the time.

This situation was, of course, not unprecedented. The same dynamic, and tension, of rivalry between royal centralizing power and the resistance of the territorial (and people-controlling) nobility is a major theme of early modern European history.

Bodin himself was not unaware of this problem when he wrote of the absolute law-making power of the sovereign ruler. He wrote what, and as, he did (Plamenatz 1963: 1, 101-102 suggests) as part of the argument and process whereby these barons ultimately were induced to acquiesce in the claims of central royal power.

Bodin wished to tame and domesticate, not to eliminate, these centrifugal, or centre-defying, subordinate powers. His analysis was in some sense an attempt to convince the remaining resisting nobles to accept central royal power; it was proffered as an argument for and as a prospective rationalization of that process.

This was a process, as the great sociologist Norbert Elias (1897-1990) has argued (Elias: 1978, 1982, 1982a) whereby royal power in the centralizing state acquired not simply the monopoly, as Max Weber argued, of the legitimate use of force but also of the legitimate collection of taxation.

As it did, the barons lost their ability to resist and to exercise power independently. They were drawn towards the centre, the fount of royal authority and status as well as potential favour.

And as they were, independent brokers of violence gradually became cultivated, even effete, courtiers.

Ceasing to contend against one another with swords and jousting lances, they now destroyed one

another, or sought to, with words, with subtle wit and polished sarcasm—as the Duc de Saint-Simon’s celebrated memoirs of life in the court of the “Sun King” Louis XIV so graphically document. Court society came into existence.

It valued, even worshipped, the “cultivation” and status-conscious violence-renouncing “civility” that now replaced physical bludgeoning, treacherous ambushes and protracted sieges of one another’s castles.

This process, it may be argued, never advanced nearly as far in the Malay world, and in its limited progress lie the origins of, and the key to understanding, much about contemporary Malay sociability, especially its code of status-privilege and its tendencies towards unremitting political tenacity, even unending and defiant implacability. An argument to that effect was offered in Kessler (2001, unpublished).

(21) Milner 1982.

(22) What once was, what people may later have created institutionally and ideologically, and what may even later have been imagined in nationalist cultural memory are quite different things. How much of what people now speak of as “traditional Malay royal authority” really was so, how much was the creation of British colonial rule and institutional improvisation, and how much is the fond desire of eager nationalists and latter-day sentimental royalists is unclear.

These matters need not be resolved here now.

What matters in this context is that these matters are now quite widely asserted and perhaps almost as widely believed, and hence are facts of current Malaysian political life — whether or not they are largely, or to what extent they may be, what are now known, following Hobsbawm and Ranger’s influential work (1983), as “invented traditions”.

Were things ever really so, completely and uniformly, throughout the *alam Melayu*, the Malay cultural world? I doubt it

(An insight into how ramshackle indigenous dignity was cosmetically remedied by the compensatory aggrandizement of the colonial period is provided by the illustrative plates in William Roff’s classic study of *The Origins of Malay Nationalism* [1967] of the palace of the Sultan of Selangor immediately before and soon after the onset of colonial rule; at the time of publication the idea was so “counterintuitive” that, at least in the first edition, the captions were reversed to suggest, against the book’s clear argument, a sad and dramatic descent from pre-British glory to colonial immiseration and indignity.)

It is enough to say of those grandiose assertions and beliefs, and of the idealized cultural descriptions of anthropologists and cultural historians, that things may not always, or ever, have

been completely so.

But whatever was “really the case” does not much matter here. What matters is that things are believed, now emphatically by some, formerly to have been so, in an asserted, bygone, culturally paradigmatic “golden age”.

This is a rich vein to be quarried by those eager to excavate — stratigraphically, so to speak — “the modern invention of royal Malay political tradition”.

That is not my task here — but see my remarks about “Archaism and Modernity in Contemporary Malay Political Culture” (1992). What once was, and how it was later imagined and then persuasive memory of it constructed is a task for others. Historians please note!

(23) Notably in *The English Constitution* (1877).

(24) For a notable recent analysis see Cannadine (2001).

(25) A vast anthropological and sociological literature, from Durkheim onwards and finding expression in the works of such recent scholars as Clifford Geertz and Victor Turner, has made this key point.

Collective ritual activity consists of the persuasive public symbolic enactment of a community’s — or in modern times even a nation’s — core values, ideas and sensibility.

Public worship, ceremonial or ritual is a special, because multilayered and multidimensional, kind of “performative public symbolic action” in which people express their sense of themselves as a community — a historically fated, perhaps a sacred community — and so become one.