

## Malaysia's "Devarajas"



These days people are again hitting the streets in Malaysia, flooding the media, confronting recalcitrant members of parliament and running for office in the governing party over the question of *kedaulatan* or “sovereignty” — whether traditional and cultural, of the Malay rulers, or modern and constitutional, of the Malay people, and even over both these notions and the relation between them.

Many real, difficult and significant issues are involved here. One thing is clear on which all may readily agree. On top of the inherent difficulty of the issues themselves, what is not needed is any further or surplus complication of a purely verbal or “linguistically generated” character. Whatever, and however variously, people may think about these issues, the task of sorting them out, understanding and perhaps even resolving them is made no easier by the conceptual confusion or “linguistic fog” that has enveloped all consideration, both public and also scholarly and technical, of this cardinally important matter.

Yet again, we have an instance of what, since Wittgenstein, philosophers identify as our being “bewitched”, bedevilled and bamboozled, and our reasoning hobbled, by language: here by a further linguistic level or dimension of difficulty, even obfuscation, that is superimposed upon and

so compounds the political, legal and cultural management of the substantive human and social problem at hand.

If language is the tool of effective reasoning and analysis — and our working toolkit, so to speak, is comprised of a number of concepts that together constitute the key items of our analytical language — then we must keep those tools sharp and precisely honed, each to its own purpose. We must not allow them to become unserviceably blunt. Still less should we confuse two different tools in our conceptual toolbox, no matter how similar the purposes that they routinely serve may at times seem to us. If the tools that we employ are defective, damaged or inappropriate, our analytical efforts will be crippled and so may fatefully mislead us.

In this case we have such a problem, one that is “interlinguistically” generated. It stems from the treatment of the Malay term *kedaulatan* and the English concept of “sovereignty” as equivalents, mutually substitutable, and as accurate denotative translations of each other. Yet they derive from two entirely different cultural, conceptual and imaginative worlds. The likelihood that they will be perfectly congruent is accordingly slight. That fact, however, has not deterred people, including leading and representative scholars, from treating them as perfect or close equivalents, denotative and even connotative, with fateful and perhaps dire public political consequences.

In Malaysia’s foundational constitutional texts and in centrally important public discussion and discourse, the two are treated as identical or as simple equivalents. “Sovereignty” is routinely rendered (or, as experts in technical semantics would say, “glossed”) as *kedaulatan*, and vice versa. Some rigorous disentangling of this confusion is long overdue.

### **“Sovereignty”**

Let us begin with the term “sovereignty”. While its popular meaning may simply suggest pre-eminence or primacy, its technical legal and jurisprudential sense is far more precise and rigorous. In this “field of discourse” that which is sovereign is not simply first, distinguished or superior. More than that, it exists “of itself”. It is autonomous and unmastered, it owes fealty to nobody and nothing beyond itself. It is self-subsisting and self-defining. It is not defined by its relation to anything or anyone else; others are defined, owe their existence and take their existential form in relation to it. That which is sovereign is not just primary but an independent phenomenon, not a dependent occurrence.

The sovereign, sovereign power, is primary and originating. It is the determinative, not a derivative, reality. Foundational in character, it is accordingly not revocable by any other party, force or phenomenon. It is, in short, absolute and independent authority. It is, in any given situation according to its own distinctive character, first and last, the ultimate political reality.

The term has its own subsequent development and long career in the works of leading jurists such as Dicey, but it begins with, and is best understood from the work of, the great sixteenth century

jurist and founder of modern jurisprudence Jean Bodin (1530-1596).

For Bodin sovereignty is absolute and perpetual public or social power. **(1)** It is perpetual because whoever holds it, though he acts through agents, does not lose it by delegating it and may always in the end revoke that delegation; it is perpetual in the sense that it is inalienable, enduring, irremovable. It is absolute because whoever has it, according to Bodin, “holds it, after God, only by the sword”. **(2)** It is absolute in the sense that it is unconditional.

The sovereign makes the law, “which is his mere command”. **(3)** Originating and self-defining, he is himself not subject to the law that he makes, the law that originates in his authoritative will. Law is “the command of the sovereign touching all his subjects generally on general matters”. **(4)**

This sovereign power, for Bodin, may reside in the will of one person (monarchy) who alone has the right to make law, of the few (aristocracy), or the many (democracy). Since Bodin’s time there has been a historical evolution in that direction. Bodin recognized these different possibilities. But he himself had a preference for monarchy, the sovereignty of the single person, since that way sovereignty was least likely to become divided or shared. Any such division or sharing of sovereignty Bodin regarded as both practically unstable and conceptually imperfect, even confused. **(5)**

It was in the very nature of sovereignty to be total and unified, not divided, shared, fragmented, dispersed. Any arrangement providing for a dispersal of sovereignty offends the notion of sovereignty in principle and, in practice, was likely to be unstable and transitional, a phase or stage between different forms of coherent sovereignty and unified authority. “Bodin”, the great Oxford scholar John Plamenatz observed, “is generally given the credit of being the first to put forward clearly the conception of sovereignty as the legally unlimited power of making law”. **(6)**

Bodin, he adds, **(7)** was the first jurist who clearly ascribed to sovereignty the attributes of inalienability and indivisibility and who first classified types of states according to where the supreme or ultimate legislative authority resided in them.

This supreme law-making power for Bodin is in principle indivisible and should remain undivided. Custom may be of various origins and diversely grounded, law not.

### **Southeast Asia’s “Hindu-Buddhist Theatre State” template**

From quite different historical circumstances, and from a distinctively different cognitive, moral and imaginative universe, emerged the notion of *daulat* and now its modern, and very formalized and abstract, derivative, the notion of *kedaulatan*.

Its originating terrain is the human, experiential and conceptual world of classical Southeast Asia, and specifically what has become fairly recently known from the work of the noted anthropologist

**Clifford Geertz as the “Hindu-Buddhist theatre state”.(8)**

Again, while Geertz’s name now comes most readily to mind, the analysis of this kind of state — and its associated forms of and beliefs about statecraft — has a long and distinctive intellectual ancestry: from the work of Robert Heine-Geldern,(9) to that of Oliver Walters,(10) Paul Wheatley,(11) Benedict Anderson,(12) Stanley J. Tambiah (with his notion of the Southeast Asian “Galactic Polity”)(13) and subsequently Anthony Milner(14) and, among Geertz’s students, Shelley Errington.(15)

A brief entry to these ideas is available to me. Some time ago (Kessler 1998; orig. 1989)(16) I tried to sum up “the politically salient cultural legacy of what Clifford Geertz calls the Southeast Asian ‘Indic State’.

“Hindu-Buddhist in origin, the state provided on earth a microcosm of the divine macrocosm; it did so through the ruler, who both participated in that divinely ordained macrocosm and actualized it in and around himself on earth: in his body and person, in his entourage and palace, in his city and regime. The political order of things turned upon the notion of the ‘exemplary centre’, which under royal aegis recreated and revalidated on earth the divine cosmic order by ritually re-enacting it.

“Through its successful imitation [under the ruler’s sacerdotal direction] of the divine order in royal ritual, the human world comes to share and participate in the sanctity of the macrocosm. Structured on this sacred pattern or template, the human socio-political world itself is sanctified. In his person and physical body, in his palace and its architectural pattern reflecting the broad cosmic design, the ruler becomes both the focal point for the human social order around him and also the hinge connecting the smaller human world with the divine cosmos. The cosmic order is reproduced in miniature on earth in a regime that is ever relegitimized by the constant re-enactment of those rituals of cosmic replication. The sacred person and palace of the ruler becomes an ‘exemplary centre’, a model of order to be awesomely respected and dutifully upheld.

“The centre in this configuration is strong, expressing its strength and power in stillness, by being undisturbed and undisturbable. All else around it is focused upon this centre; the further one goes from the centre, the further one is from perfection, completeness, imperturbability. Action itself or movement is the sign or evidence of such remoteness, peripherality, imperfection; and the closer to the centre it occurs, the more disturbing are its implications. Movement disturbs immobility, tranquillity, order, and hence political and cosmic legitimacy.

“Movement or change, especially that directed towards the still and exemplary centre, is accordingly tantamount to rebellion, insurgency, usurpation. While such characterizations,” I concluded, “may seem mere caricatures of a far more complex and ever-changing historical reality, the cultural residues captured in that caricature may still suffuse present reality, significantly inflecting even contemporary political ideas and action.

“Clearly,” I continued, “if there is any remaining truth today in the Geertzian portrait, the legacy of these ideas must constitute some obstacle to establishing the legitimacy of action from below, from the margins, from civil society upon the ruling centre. This may seem arguable.

“But an overriding concern within many Southeast Asian political traditions with loyalty as contrasted with lawfulness has been noted by many commentators. This,” I tersely added, “is not, in other words, favourable soil for ideas of popular sovereignty to take root or hospitable ground for an active citizenry enjoying, and fully exercising, the legal entitlements of citizenship to flourish.”

Now captured within a derivatively Arabic and Islamized term or conceptual form, Malay ideas of *daulat* took shape within, and are a notable instance of, this complex of deep-seated ideas about cosmological and social order and the pivotal role of the ruler in connecting them. They thereby invest the state and its ways with the sacred legitimation of the cosmic order to which, in his royal person, he uniquely provided connection and access.(17)

Once this is understood, it should come as no surprise that, since 2008, the “new royalist” ideologues and theorists have looked enviously, on the Malay Rulers’ behalf, to the situation in Thailand.

They have looked with admiration and envy at the Thai king’s royal sanctity, and at the great legal (as well as social, cultural and religious) powers that, “packaged” together, are there protected and insulated by the notion of *lèse-majesté*.

It is a similar kind of religiously and culturally grounded political authority, and constitutional standing, that they have tried to fashion and promote by means of their radically revisionist jurisprudential doctrines — by means of their peculiar appropriation of the meaning of the Federal Constitution.

[To be continued in Part 3, next Monday, with a presentation of the second instalment of the original argument. Part 1 is available [HERE](#)]

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## Endnotes

(1) The following discussion of Bodin and his foundational understanding of the notion of sovereignty is largely based upon John Plamenatz’s exposition (1963). The question does not of

course end there; history, including the history of formative, foundational ideas, moves on. New ideas now proliferate about different forms and sources of sovereignty, including the two that are centrally germane to my own argument made in this essay: the “constitutional” and that which is essentially “popular”. These are developments that I recognize and do not gainsay.

My thinking on these matters has been informed in particular by the writings of Pemberton (2009), Prokhovnik (2008) and Jackson (2007). Much has happened to the concept since Bodin’s time (one has only to think of the implications for state sovereignty of the creation in our own times of the European Community). Yet for purposes of argument I still use as my conceptual yardstick a more classical notion of sovereignty, one denoting an undivided form of ultimate, normative and obligatory authority capable, in the final instance, of ultimate, decisive judgement.

(2) Quoted from Bodin by Plamenatz (1963: 101).

(3) Plamenatz (1963: 101).

(4) Quoted from Bodin by Plamenatz (1963: 101).

(5) Bodin was hardly tilling new ground here; similar ideas had been suggested much earlier by Plato.

(6) Plamenatz (1963: 102).

(7) Plamenatz (1963: 103).

(8) Notably Geertz 1968 & 1980.

(9) Heine-Geldern 1956.

(10) Especially Wolters 1967, 1970, 1999.

(12) Notably Anderson 1972.

(13) Professor Tambiah gave a scintillating lecture under this title that I heard at the Anthropology Section of the New York Academy of Sciences on 26 April 1976. A printed text was later distributed by Professor Tambiah from Harvard University, but my copy of it is no longer accessible to me. A version of it was published in the Academy’s *Annals* of 1977. It can be found and consulted via the internet.

(14) Milner, 1982.

(15) Errington, 1989.

(16) Kessler 1998: esp. pp. 44-45. [A Malay version was published earlier in 1993. The original version was a seminar publication of ISEAS: The Institute of Southeast Asian Studies, for an event entitled “Reconceptualizing State and Society in Southeast Asia” in 1989].

(17) These matters are masterfully summarized by Paul Wheatley (1980: 413-414). “In order to maintain harmony between the world of the gods and the human world, capital cities were, ideally, structured in the image of celestial cities or ... at least incorporated in their design elements of celestial order; and the parallelisms thus established had to be sustained by rigorously scheduled rites and worship. Human beings had to be ever alert to prevent or suppress perturbations at the microcosmic level which, resonating in the macrocosmos, might induce a chain of reactions whose outcomes could range from the trivial to the calamitous ... Sacred urban space was initially generated by, and structured about, an existentially centred point of ontological transition between cosmic planes. Through this focus of creative force was conceived to pass a universal axis which it was the responsibility of ritual experts to guard against dislocation. Part of that responsibility was discharged by constructing at this quintessentially sacred pivot of the universe an architectural feature or complex of features charged with the awesome, symbolism of an *axis mundi* ... The orientation of the sacred enclave enclosing the *axis mundi* should be accommodated to the cardinal compass directions. From the center of the city the four horizons were projected symbolically outward to these compass points, thereby assimilating the polity to the cosmic order and defining a sanctified *habitalis* within the continuum of profane space ... Events within these ceremonial cities were not perceived — for ritual purposes at any rate — as singular occurrences flowing into the past in an irreversible stream. In this manner of thinking sacred history authenticated a paradigm of spatial order not by documenting its existence at a moment in time but by discerning its cyclical recurrence in the flux of events, so that change was mediated through traditional channels of renewal rather than through innovation ... These sacred cities were instruments for the deployment of power in accordance with a particular cosmologically framed conception of political order. Their rulers were inevitably concerned with the divine legitimation of their authority. The principal instrument by which they converted systems of belief about celestial hierarchies into statements of fact about terrestrial hierarchies was religious ritual ... These are the principles of city and state organization.” The volume reviewed by Wheatley contains two especially relevant essays, by Michael Aung-Thwin on the sacred cities of classical Burma and by Jeffrey Meyer on Beijing as a pivotally configured sacred space.