

✿ Equality



“ There is only one kind of law in the country to which all citizens are amenable. With us, every citizen, irrespective of his official or social status, is under the same responsibility for every act done without legal justification.

This equality of all in the eyes of the law minimises tyranny. ”



—Raja Azlan Shah J (as he then was)
Public Prosecutor v Tengku Mahmood Iskandar
& *Anor* [1973] 1 MLJ 128, HC at 129

HRM Sultan Azlan Shah



Education

*H*is Royal Highness received his early education at the Government English School in Batu Gajah and at the Malay College in Kuala Kangsar. Thereafter, His Royal Highness read law at the University of Nottingham and was conferred the degree of Bachelor of Laws in 1953. In the following year, His Royal Highness was called to the English Bar by the Honourable Society of Lincoln's Inn.



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—**HRH Sultan Azlan Shah**
Climates of Freedom

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Conference on the Malaysian Constitution

University of Malaya

Kuala Lumpur, 22 August 1987

Today it is my pleasure to address you, to open a conference celebrating the thirtieth anniversary of the Malaysian Constitution. Three decades have passed since the colonial yoke was amicably cast off, and this country set out on the difficult path of independence. It is an auspicious moment, then, for us to look back, to assess our own position, and to seek to define our future objectives.

In order to do this, I should like to compare the climate of opinion in which independence was obtained with that obtaining at present, so that we may perhaps understand ourselves and our Constitution the better. Some of you will know (from my lecture at Universiti Sains Malaysia, on *The Right to Know* in December 1986)¹ that I have a passionate concern for that truth which is the object of the historian. It is this truth I seek to explore in endeavouring to

¹ See chapter 3, below.

describe the climate of opinion in 1957: for it was in that climate that the Constitution was born.

Of course, that Constitution was not conjured up out of thin air. The Constitutional Commission was headed by that great judge, Lord Reid; it was given the task of outlining a draft constitution and it did more, and gave us a complete draft, one to a large extent derived from the Constitution of India.

Yet Malaysia (to use the term of our time) is not India. The constitutional history of Malaysia had different origins, and was subject to different pressures. We here were not unfamiliar with the principles of constitutional government—indeed, in the Malay States the traditional pattern of government was based upon seasoned concepts of sovereignty and we knew the wisdom of a division of the supreme power in the State. In Perak, over a hundred years ago, we had a State Council. The concept of federation here is almost a hundred years old. So the problems of 1957 lay, not in the creation of constitutional principles, but in their application to the circumstances of a mixed, democratic society: a society in which the Malays were, and remain, a dominant group, but within which are evolving other cultures, other races, all merging into one Malaysian nation.

“A nation is,” to quote Disraeli, a great British Prime Minister,

a work of art and a work of time. A nation is gradually created by a variety of influences—the influence of original organisation, of climate, soil, religion, laws, customs, manners, extraordinary accidents and incidents in their history, and the individual character of their illustrious citizens. These influences create the nation—these form the national mind.²

²
The Spirit of Whiggism,
1836.

It is that national mind that is still in the course of formation. To create a sense of nationhood in 1957 was no easy task, considering that the problems of independence required for their resolution political skills of a high order.

I hope that it is not amiss for me to mention in this regard the statesmanship of two men in particular, both of them having personal knowledge of the difficulties of kingship, and both of them lawyers. I refer of course to Tunku Abdul Rahman, the first Prime Minister, and Tuanku Abdul Rahman, Yang di-Pertuan Besar of Negeri Sembilan. The latter was the first holder of the office of Yang di-Pertuan Agong, and, alas, died in office. Without their skills in administration, in understanding the structure of government, the complex psychologies of the various peoples of the Federation, and in particular the deep sense of history and tradition within the Malay community, independence and its first few years would not have been the happy period for all communities, that in fact it was.

Compromise was at the heart of this success. Moderation in demands, coupled with a mutual understanding of the situation of our neighbours: these made for an auspicious opening to our independence. There was an air of freedom within and around Government as energies, long suppressed under a colonial regime, were released, public works and institutions established. It was a time of great hope, great promise, and the wind seemed to be set fair for a safe voyage into the future.

Almost 12 years later, this idyll was shattered. Even now, we have not recovered from the trauma of that time — as witness the prohibition on the discussion of sensitive issues, embodied in an Emergency Ordinance of 1970. Yet out of the tragedy of May 13 emerged the Rukunegara, proclaimed by the Yang di-Pertuan

Agong on 31 August 1970. Greater unity: this was the theme, and it remains valid to this day. To maintain our democratic way of life, to use that as a foundation for the creation of a just society in which the wealth of the nation is equitably shared, and to ensure a liberal approach to the varied cultures and traditions of the unique mixture that constitutes modern Malaysian society: these were the objectives of the Rukunegara. That they remain valid is evidenced by the peace and harmony we have enjoyed since the terrible days of 1969. People of all races came together in friendship, the wounds of the past were healed, and we faced the future with a confidence based on the successful fashion in which we had overcome the troubles of the past. My regret is that the Constitution itself does not echo the philosophy of the Rukunegara. I know that our legislators are distrustful of grandiose declarations of policy which, all too often, mean little or nothing; yet something of the spirit of the Rukunegara could and should be implanted in our most important law.

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An American poet, Whitman, said that “It is provided in the essence of things, that from any fruition of success, no matter what, shall come forth something to make a greater struggle necessary.” This seems to be one of the laws of life, and one we should welcome. We should not rest on our laurels, but persevere constantly in furthering the ends so vividly illustrated in the Rukunegara.

As I have observed before,³ “the justice of the common law will supply the omission of the legislature”. This principle is true even in relation to the Constitution. Yet the common law is

³ *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152 at 154.

effective only if the assistance of the judiciary can be invoked, for the judges are themselves powerless to initiate action. This defect, if defect it be, of the common law system means that the written law, and especially the Constitution itself, must be kept under constant review.

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For there should be within the Constitution what I can only describe as a resonance: the Constitution must be in harmony with existing law, yet vibrate with the demands of the humanity it is designed to serve. Not only in the rights it guarantees, but also in the institutions and offices it creates, there must be a consistency with the aspirations of all citizens. When Tunku Abdul Rahman proclaimed our independence, he did it in the name of God, invoking the blessing of God on our country as “a sovereign, democratic and independent State, founded upon the principles of liberty and justice, and ever seeking the welfare and happiness of its people and the maintenance of a just peace among all nations”. These are high ideals, and we must strive for them constantly.

This being so, the Government of the day as one of the guardians of the Constitution, but better equipped than the judiciary to keep it in good repair, should from time to time establish a well-informed and representative committee to review its operation. Amendment should not solely be in reaction to developments, such as judicial decisions thought to be unfavourable, but should be founded on a positive approach, reviewing the philosophy behind the principles of the Constitution and the social objectives that the Constitution is designed to serve. And I believe that the time

has come for such a review, and that, in making it, the views of all individuals and organisations who desire to submit information or opinions should be invited. Such a move would release much of the tension within our society, and channel popular energies into fruitful and constructive channels.

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We can look back, then, and see that independence brought political freedom, with all the heady excitement of the achievement of 30 years ago. Yet there is another aspect to independence, that of economic liberation, and this raises more complex and profound issues: issues so involved, indeed, that we can only hope to resolve them with the active support of our neighbours and others within the so-called Third World. A constitution can offer a solution to the problems of political independence, but it can do no more than create, and then be adapted to, the conditions in which economic liberation is possible: and on this economic front we have far to travel.

For, the future we and our children face is a difficult one. The problems posed by an expanding population, urbanisation, depletion and destruction of natural resources, pollution, transport, the polarisation of society, a developing technology: all these raise difficulties not readily resolved. To work to harmonious ends within our society, a free and a critical spirit manifest in a free and responsible press is essential: without this, the spirit of the nation will languish, or could even perish.

Out of my own experience, I believe that much can be done in the way of refining the basic principles on which the Constitution itself is based. That process of refinement is in general, of course, entrusted to the judiciary and (I must be careful here, I do not wish to be accused of immodesty) I believe that our judiciary has proved worthy of the trust the founding fathers of the Constitution saw fit, in their wisdom, to confer upon the Bench.

Yet more can be done. That there are dangers in a judicial imperialism I know only too well; judges have one function, politicians another, and each is essential to the harmonious application of the Constitution. As some may know, I have felt for some time the need for an affirmation of the right to know that which is essential to a healthy democratic society. Even that is not enough. It is pleasant to speak of constitutional guarantees of life and liberty: but what do these mean to a family denied a roof over their heads, fresh water for drinking and washing, sufficient food, and adequate income, sometimes even fresh air?

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It is often said that “justice is open to all”. Our Constitution guarantees many rights, but they need refinement, explanation, study: so that out of our Constitution may emerge a more just and happy society, of the kind envisioned in our Proclamation of Independence.

Much, then, can be achieved when those twin lawmakers, Parliament and the Judiciary, work in harmony, united by that common philosophy reflected in the Constitution. It is not for one to trespass into the realm of the other, and improper for the judge to raise expectations that cannot be fulfilled. Between these two essential pillars of the Constitution there must be harmony.

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Yet neither the courts nor Parliament can any longer live in the *laissez-faire* world of the past. The needs, the demands of society are too insistent, crying out for remedy: and here the courts can, in their own way, by refining the basic principles of our Constitution, play a vital role in the progress of our society. From India came many of the features of that Constitution, and from India has come, of late, a refreshing stream of jurisprudence in which the Indian judiciary has sought to assist in the eradication of poverty, albeit in a modest way. Of course, as I have said, Malaysia is not India: but our judges are no less lacking in conscience and compassion than their Indian brethren, and can play an equally effective and constructive role. The goals we all share are set out, clearly enough, in that very Proclamation I have mentioned.

Our Constitution has to be the basic instrument by which all these perplexing issues are to be solved, for without the discipline imposed by a sound political and legal structure, chaos and injustice will reign. Imperfect as our Constitution may be, it represents basic ideals to which we must hold fast. It has served us well through the

past 30 years, and survived many shocks, many changes. That it can be improved, I have no doubt, and in this Conference I trust that wise and constructive proposals to that end may emerge, and that these will not be overlooked by those in authority.

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With this wish, then, I declare this Conference open, and hope that all involved will benefit from its papers and deliberations.

