Backwards And Forwards

1. Introduction

One day in the nineteen-fifties I was seated at a long table in the Chief Secretary's Office in the old Secretariat, Kuching – now, I believe, the Chief Judge's Chambers. The Governor was presiding over the weekly meeting of the Supreme council, and I was attending as acting Attorney General.

The item before the Council was one relating to land: I've forgotten the exact issue. It was the practice of the Governor to invite the views of members of the council in accordance with their seniority, and as the youngest member my opinion was invited first. [The practice is a wise one, since no elder faces contradiction by his junior]

"Would it not be better," I said, "first to ascertain what the local adat may be?" I had read my papers carefully.

"Why?" Enquired the Governor, abruptly.

The question confounded me, and for a moment I was at a loss for words. "Well," I responded lamely, "it may well be that the *adat* already serves the interests of government."

"But we are the government, and the paper before us represents its policy." Such, more or less in those words, was the comment of the Governor: a comment that surprised me. It represented the unconscious arrogance of power.

Let me now move on to 1957, just after *merdeka*. I had been responsible for the drafting of some Bill or other, and was having a discussion with the Minister upon the final draft. The draft approved, I then said (this being in accordance with pre- practice) that the draft Bill would then be circulated to interested bodies: the Bar, trade and commerce. "But why," enquired the Minister, surprised. "Well," I replied, they are most immediately concerned, and their comments will be useful. It is the usual practice." "Certainly not," said the Minister,

"we are the government." And that was that. As the saying goes, I was taken aback. The Minister was a man I much respected; I had known him in Johor as a liberal lawyer; and he was a member of the English Bar, trained in like principles as myself.

Now, what were these principles? And why was I upset? Circumstances change quicker than our minds. I remember, during the War, being shocked by the principle of "Unconditional surrender", adopted as Allied policy. This again was the product of power, and emerged from a comment by President Roosevelt. I doubt whether any intelligent serviceman agreed with it. By its promulgation "the Anglo-Saxon powers denied themselves any freedom of diplomatic manoeuvre and denied the German people any avenue of escape from Hitler".[1] The two words cost many lives.

There is a certain intoxication in power. As Isabella says in "Measure for Measure", "O! It is excellent to have a giant's strength, but it is tyrannous to use it like a giant".[2] We can see this in the policies of "New Labour" in Britain, under which radical constitutional changes are under way, likely to result in the destruction of the United Kingdom.

But this, by the way. We devise constitutions to control power, for without power organized society cannot exist; but a constitution cannot explain how that power is to be exercised. We like to think of ourselves as dosmetic, but as T H Green wrote:[3]

> As the will the people in any other sense than the measure of what the people will tolerate is really unascertainable in the great nations of Europe, the way is prepared for the sophistries of modern political management, for manipulating electoral bodies, for influencing elected bodies and for securing plebiscites.

In other words, democracy, in Europe at least, is in may respects an illusion. We like to think of England as a democracy, but in truth it is at present an oligarchy, a state of government by the few, who use the

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[1] Chester Wilmot, *"The Struggle for Europe"* (Collins 1952), chap. VI.

[2] "Measure for Measure", II ii 107.

[3] Of Rousseau, quoted in Radcliff, *"The Problem of Power* (Secker and Warburg 1952), 87.

media to manipulate the masses as they wish, consistently with, as Green says, what the people will tolerate.

Yet all of us need law, and the legal rules defining and regulating government in a constitution. That constitution seeks to distribute the powers of the state among several authorities, in the hope that no one, except in an emergency, can assume dictatorial, supreme and irresponsible power. In the United Kingdom the constitution is not, as yet, embodied in one document: which made it easy for the transfer of power to Brussels, in 1972. Malaysia, however, being a federal state, has of necessity a written constitution and a carefully-defined list of federal and state powers. It is the foundation of the Malaysian political system, and I hope that I may be forgiven for taking another, and with any luck, brief, look at it.

2. Constitutions

A constitution usually represents a new start. Malaya had a constitution in the Federal Agreement of 1948, the true start of federal government. This was consciously designed, and based upon principles that had grown over generations, upon traditions, customs and habits that had evolved over time as illustrating a generally agreed policy, putting an end to the turmoil precipitated by the proposed union of 1946.

A constitution imports a sense of confidence, a prospect of certainty, and to that extent enhances our lives. It grants us flashes of certain truths to which we aspire, yet is grounded in a reality we think we know. We saw in the Malayan Constitution an expression of that doctrine of the separation of powers which we think essential to avoid putting supreme power in the hands of one man. Indeed, the constitution of 1957 set these out distinctly. But some of us are puzzled by the fact that since 1988 the term "judicial power of the Federation" has vanished from the text of the Constitution. Professor M P Jain once asked me, "Where has it gone ... or is it still there, hovering invisibly over us?" Article 39 tells us in whom the executive power of the Federation is vested, article 44 tells us who can exercise legislative power: and until 1988 article 121 told us where the judicial power resided. The loss of the term is still likely to cause anxiety, I suspect, in the real of administrative law.

So I look back upon the draft constitution proposed by the Reid constitutional Commission in 1957 with a nostalgic respect. An old academic friend, a joint editor of a commentary on the constitution, recently wrote to me, observing that it is a pity that the present Constitution is "so debased".

"Debased", a useful adjective, meaning lowered in character, quality or value. I knew what he meant, and returned to the Reid draft with a renewed interest. Article 3 of that draft was proudly entitled "The Rule of Law", and article 4 provided machinery for a swift enforcement of the rule of law, by application to the Supreme Court. Furthermore, any restrictions on freedom of speech, assembly and association had to be "reasonable" restrictions. In other words, the judiciary was superior to both executive and legislature.

These provisions were dropped from the independence constitution. From that time, then, I trace a growing distrust of the judiciary: a distrust which has, ironically, in its turn captured the judiciary itself. I remember my dismay when, in 1988, the supreme Court adopted a wide interpretation of the executive power of detention, instead of restricting it to those suspected of "organised violence", as article 149(1) of the constitution provides.[4] The guidelines for preventive detention are laid down in the essential preamble to the Internal Security Act itself, and that Act depends for its efficacy, in relation to preventive detention, upon article 149, as amended in 1960. It seemed extraordinary to me that the Supreme Court took the view that "from the wording of the Act there is nothing to show that it is restricted to communist activities", and thereby adopted the view that any ambiguity in the matter should be resolved in favour of detention, rather than liberty, when the essence of the Act relates to "organised violence".

But to go backwards again. In 1962 I was at work, at Tun Razak's instance, on land legislation. One day he called me into his office. "The Tunku must be mad," he said. It seemed that Malaysia was in the offing and that no one – apart from Tun Razak – had considered the administrative burden that would fall on the federal civil

[4] *Theresa Lim Chin Chin v Inspector General of Police* [1988] 1 SCR 141.

service on Singapore's entry into the Federation.[5] It was, after all, only five years since independence, when the burdens occasioned by the departure of expatriate officers, and the need to set up diplomatic missions abroad, had weakened the public service. Tun Razak, probably the most experienced administrator in government, brought me in to the Prime Minister's office, and I set to work to analyse all the laws of Singapore, on the basis of the federal powers likely to be assumed on the island's incorporation in Malaysia.

That was my last function as a draftsman. Like Tun Razak, I had no great hopes of success. Later experience in South Yemen convinces me that a federation is best developed from its most advanced nucleus, and that the inclusion of Singapore in an existing federation, with Kuala Lumpur as its capital, was doomed from the start.

With much truth, it can be said that the draft constitution proposed by Lord Reid represented the ultimate aspiration of those who fashioned it; the independence constitution of 1957 was the product of compromise between hope and reality; and from 1960 it acquired a character all its own. The emergency of 1948 ended in 1960, and since then the country has been in, as it were, a state of half-emergency. The appearance of liberal, parliamentary democracy has been in some ways deceptive. Further, the need to acquire the 2/3 majority of votes necessary to amend the Constitution has dominated every election since *merdeka*, and severely distorted the political process. That the Government has failed to meet the aspirations of the *merdeka* Constitution need occasion no surprise: a convoy can only travel as fast as its slowest ship.

3. Stability

So, in all, I cannot be too critical. I believe that the overriding consideration in the minds of every prime minister since *merdeka* has been, and is, the need to preserve stability within Malaysian society. It should not be forgotten that independence came in the course of a prolonged state of emergency arising in 1948. When *merdeka* arrived,

[5] For a useful account, see Ghazali Shafie's *"Memoir on the Formation of Malaysia"* (UKM 1998).

Malaya was in many respect a police state: its peoples were struggling towards a national unity which could only develop with independence.

The achievement of the founding fathers, of Tunku Abdul Rahman and his colleagues, is not therefore to be despised, they could not put an end to the emergency until 1960, and that year marks, as it were, the date when the constitution was Malayanised.

1960 was, then, a turning point, a time when the executive extracted a further measure of power from the legislature. I remember suggesting to Tun Razak, then sponsoring the internal Security Bill in the Dewan Rakyat, that some of the ideas for its amendment out forward by the Opposition – notably D. R. Seenivasagam from Ipoh – were good, and merited the reference of the Bill to a select committee. But Tun Razak would have none of it. And I remember D.R. asking me, later, what was the use of spending hours studying a Bill, if no one in government took any notice: was this, he argued, the democratic way? No doubt I shrugged my shoulders: *apa boleh buat*, again the function of government is, after all, to govern, to maintain law and order. When I begin to feel critical, I remind myself of the words Tun Razak addressed to me in 1960, when I argued with him that with the ending of the emergency, the power of preventive detention should lapse. "Put yourself in my position", he said, "would you let them all out?" At that time there were in detention some two or three hundred suspected terrorists, and I knew something of their activities from prosecutions in Johor.

Stability, then, has been responsible for a certain reactionary tendency in law and policy. Memories of May 13, 1969, fade, yet those who were there at the time know how fragile public order is, how easily it can be disrupted. As the 18 deaths in the Maria Hertogh case of 1950 in Singapore illustrate, even an apparently simple family law case in the courts can cause violence. Outraged, inflamed emotions in a delicately-balanced, multi-cultural society can precipitate catastrophe.

Executive and judiciary can be forgiven, I believe, for their sometimes illiberal and reactionary attitudes. Even a bad law is better than no law. If at times the Government has displayed a contempt or distrust for the judiciary, then perhaps it can be excused, if not forgiven. Even so, I find it difficult to excuse the ousting of judicial review from the area of preventive detention. I console myself with the

thought that this feverish reaction to the case of *Chang Suan Tze*[6] was caught from Singapore, and did not originate in Malaysia. Still, the sooner preventive detention goes, together with the rest of the fetters on media freedom, the happier Malaysian society will become. The age of paternalism, begun so long ago with the British, is surely drawing to a close.

4. Defects

A major problem in a democratic society, and one that is always neglected by those who frame constitutions, is this: a democratic system needs political parties, if it is to be effective: yet how are these necessary bodies to come into existence, and be financed?

A constitution makes no mention of parties, although in one of the latest, that of Fiji in 1990, there is a reference to "party" and "opposition party", the flatter being defined as "a group of members [of Parliament] in opposition to the Government": but that even further than most written constitutions go. Rights, of course, we can observe in plenty.

In my lifetime, I have seen the spring of human rights break into a stream that has grown into a river, one now threatening to flood the landscape of the law. It is a subject which has quite properly developed out of the inhumanity of nazi policy; and because it appeals to a sense of justice as well as a sense of greed, it satisfies many appetites. Textbooks, syllabuses on the subject breed like worms on a corpse, and of our duties as human beings we read little or nothing. Yet, as Malouet warned the French Estates General in 1789, "Take care when you tell man his rights. For you will transport him to the summit of a high mountain – from where you show him an empire without limits."

But to return to my theme, that of an omission in the area of constitutional drafting. A democratic constitution requires political parties, and they require finance. But where is the money to keep them going

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[6] *Chang Suan Tze v Minister for Home Affairs and Ors* [1989] 1 MLJ 69.

to come from? Money can only come from those who have it: individuals, yes, companies and corporations, more so. And if they give it, they usually require a quid pro quo, something in exchange. Skilled draftsmen may prepare, skilled politicians operate a beautiful constitution, but that constitution requires political parties created and established under a law which can be more readily manipulated than any constitution. "follow the money" is a useful maxim not only for the police detective, but for the political scientist. Yet a constitution should surely deal with the essential realities of life, and not follow what has almost become a standard pattern, one dominated by rights.

Of course, the fashion will change. As noel Annan wrote,[7] "the ideas that liberate one generation become the shackles of the next." "We can predict," writes Roberts Grodin[8]

> That all fashionable items and ideas will shortly be unfashionable ... that extreme moral postures will soon evaporate or give way to their opposites ... And we can predict that all these predictable events will come as utter surprises to the people involved.

Carpe diem, enjoy the present: as Han Shan advised, "Be happy if there's something to be happy about!"[9]

I make this point about political parties since the whole political system is, whether we like it or not, based upon bribery of one kind or another. I remember, in the late sixties, working in a ministry in Sri Lanka, at a time when the government was giving its citizens one free measure of rice periodically. In her election campaign Mrs. Bandaranaike promised the electorate two free measures of rice, and won the election. The fact that the rice, which came from Chine, was bartered for rubber, and that the following year's rubber was already mortgaged to that end, meant that two free measures of rice was impossible. Politics can be an unscrupulous business, full of false promises: even with a free press, these cannot easily be detected.

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[7] "Our Age" (*Fontana* 1991), 377.

[8] "Time and the Art of Living" (*Ticknor and Field* 1982), 42.

[9] "Cold Mountain" (Grove Press 1962), 82.

Under our democratic system, promises are inevitable. The policy offered by a party is in the nature of a polite bribe: if the policy benefits me, the party has my vote. We rely on our intelligence, our friends and the media to expose untruth. Yet, as Azmi Khalid and Harun Halim Rasip wrote in 1980:[10]

> Abuses of power by government are not at all seen as being corrupt ... the use of official facilities for party purposes has lost sight of the distinction between ruling party and government, for after all the two are one and the same in the public eye.

In the background of the Constitution there is, I believe, another problem coming out of the legal system itself. This lies in the adversarial principle upon which both Parliament and the judicial system itself is based. That there is merit in the system I concede: its survival in the common law world is proof enough. In the real of politics it works reasonably well, although in England, the home of the common law, I detect signs of progress to a one-party state.

It is in the area of criminal justice that I think reform is needed. An Australian judge observed in 1995[11] that in the last twenty years there had been:

> A gradual, but clearly discernible trend towards accepting that the ultimate purpose of our adversarial system is to resolve disputes by pursuing the truth ...

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[10] "Corruption" (*Aliran* 1981), 78. I was distressed to read, in a report on the Sabah elections of March 1999 (*Asiaweek*, 26 March 1999) that "On the day before the elections ... the local Borneo Mail ran six pages of Barisan ads. Money was used in other ways too. Karim Bujang, Barisan secretary in Sabah, admits that water tanks, gas cookers and grass-cutters were handed out to voters during the campaign. The Suaram monitoring team also reports that Barisan gave out zinc roofing sheets and portable toilets." If the report was true, it suggested bribery on a large scale. Yet the bribery of voters is penalized by law as an election offence. Indeed, in the same month in England a woman Labour MP was disqualified as such after being convicted of knowingly making a false declaration of election expenses. Such expenses are rigidly controlled by law, and rightly so.

[11] David Ipp, 'Reforms to the Adversarial Process in Civil Litigation', *Australian Law Journal*, vol. 69 [1995], 714.

This trend is, I believe, on the increase, as more and more people, lawyers and others, discover the weaknesses of the adversarial system, and look with increasing interest to a system taking the ascertainment of the truth, not the winning of a case, as its objective. The administration of justice should not be a game.

Lord Devlin, a former judge of the House of Lords, has severely criticized the adversary trial as a remnant of the mediaeval trial by ordeal: there should be less emphasis on winning a case, and a greater stress on getting at the truth. As he wrote of the criminal trial in 1979, "at the heart of the difficulty is the tendency of the police, once their mind is made up, to treat as mistaken any evidence that contradicts their proof of guilt".[12]

I remember having a few words with the late Karam Singh. He had just been released from Kajang Prison, on completing a sentence for contempt of court. "Over half the people in that prison," he said, "should not be there."

Well now, that was the opinion of a gifted, principled lawyer. The common law system of criminal justice is now perceived as defective. To quote Lord Devlin again, "no one until the case against the *Leyland Justices*[13] had ever contended that the prosecution had an obligation to observe natural justice in its relations with the defence".[14]

The basic element whereby we seek the truth from which, we trust, justice will follow, lies in the disposition of a case by an independent, neutral judge or magistrate. Unfortunately, under a system relying, as does ours, upon lawyers who may well not be evenly matched (after all, it is notorious that the rich can afford the ablest advocates) the judicial tribunal is compelled to act "with a considerable degree of passivity".[15]

Such passivity can well prove disastrous to the interests of truth. Yet until the English prisoners' counsel Act 1836, which entitled prisoners charged with felony to a full defence by counsel, criminal trials

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[12] "The Judge" (*Oxford pb* 1981), 73.

[13] *R. v Leyland Justices, ex p. Hawthorn*, "The Times", 25 July 1978.

[14] *Op. cit.*, 83.

[15] David Ipp, *op. cit.*, 712.

were essentially a quest for truth, overseen by the judge: not as now a contest between prosecutor and prisoner.

The trend of the law is, I believe, towards transforming the role of the judge from the passive to the active. There is little of the high drama often found in a criminal trial in a common law court to be found in French or German courts. In the former, witnesses are often brow-beaten, expert witnesses called to contradict each other rather than give a consensus. Such a transformation can be made by giving the judiciary much greater power than under the present system.

Malaysia already has the nucleus of a reformed system in the judicial and legal service established by article 132 of the Constitution. I believe magistrates could well be trained to take over the fact-finding, investigatory functions now in the hands of the police. This process could require a review of the Criminal Procedure Code and the Evidence Act; a training scheme for magistrates and judicial cadets, to which admission would be by an examination open only to qualified lawyers; and the recruitment of (probably) many more magistrates than we have at present.

All this would prove in the short term expensive, in the long term of enormous advantage. "A French trial costs a third to a half that of a common law trial, and puts off the street 90 per cent of the known quilty in medium to serious cases, and much less frequently convicts an innocent person"[16].

This is not the place to develop this theme, but I hope that it is not neglected. We need a more transparent system of justice, one seeking truth, not victory. The adversarial system is not a part of Asian culture, and is not a satisfactory way of seeking truth.

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[16] Evan Whitton, "The Cartel" (*Herwick* 1998), 210. According to Dickens, in his novel "Bleak House", "the one great principle of the English law is, to make business for itself." This seems to be a fair comment on the common law, for there seem to be fewer lawyers in non-common law jurisdictions. According to a report in the *"Sunday Star"* of 1 November 1992, the following proportions of lawyers per 100,000 of the population then then existed:

USA	324	New Zealand	145
UK	172	France	49
Australia	146	Japan	12

5. Change

That the Constitution should be subject to a comprehensive review was proposed by his Royal Highness Sultan Azlan Shah in 1987, on the thirtieth anniversary of merdeka. Such a review was not forthcoming, although the Constitution itself continues to be frequently amended. The trouble is, society itself is changing so rapidly. One modern writer, indeed, in 1996 foresaw the demise of the national state:[17]

Like a mothball, which goes from solid to gas directly, I expect the nation-state to evaporate without first going into a goey, inoperative mess, before some global cyber state commands the political ether. Without question, the role of the nation-state will change dramatically and there will be no more room for nationalism than there is for smallpox.

Indeed, he suggested[18] that "Governments fifty years from now will be both larger and smaller. Europe finds itself dividing itself into smaller ethnic entities while trying to unite economically". Nationalism certainly is not going to disappear overnight, but the onward march of technology continues, as multi-nationals prosper. Like Prometheus (the word means foresight) we steal fire from heaven, and are punished in more subtle ways.

For the benefits we enjoy often contain poison. The catalogue of our social problems gets ever-longer. Crimes proliferate, violence increases, pornography and prostitution flourish, alcohol and worse drugs are used and abused, our chemists have produced not only wonderful medicines, but a battery of narcotics, sedatives, stimulants and hallucinogens. Reality and illusion merge in the eye of television. And the rich of the world become richer: 20 per cent of the world consumes, we are told, 80 per cent of its resources, a quarter of us have an acceptable standard of living, and three-quarters don't.[19] And all the time the environment is mercilessly exploited, air, sea and land are polluted by human greed. The Buddha put it well in his fire Sermon: "All things are on fire, with the fire of hatred, with the fire of infatu-

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[17] Nicholas Negroponte, "being digital" (*Coronet* 1996), 236.

[18] *Ibid.*, 230.

[19] *Ibid.*

ation, with birth, old age, death, lamentation, misery, grief and despair are they on fire."

In these circumstances, the human spirit requires tranquility, peace and order, the comfort of a religion seldom now to be found in the Western, increasingly godless world. The Constitution offers a framework within which men and women can live in harmony with each other, working towards that ideal of equality expressed in article 8 of the constitution, mindful of the fact that inequality is a poison that can take painful effect in many ways. As winwood Reader wrote in 1972:[20]

> Mankind grows because men desire to better themselves in life, and this desire proceeds from the inequality of conditions. A time will undoubtedly arrive when all men and women will be equal, and when the love of money, which is now the root of all industry ... will cease to animate the human mind. But changes so prodigious can only be effected in prodigious periods of time ... It is a complete delusion to suppose that wealth can be equalized and happiness impartially distributed by any process of law, Act of Parliament, or revolutionary measure.

6. England

Since in England lie the origins of the Malaysian Bar and much of its law, it may be pertinent for me to offer a few final comments on developments there. England is becoming, unlike Malaysia, an increasingly intolerant society. Freedom is, after all, something we can readily assess, by the measure of what we can freely say.

Let me therefore refer to a recent prosecution in England. An elderly gentleman, something of an eccentric I suspect (and any worthwhile society needs its eccentrics) was in the habit of getting on a soapbox in the open air, in Bournemouth, and preaching to the pagans of that town. One day he put up a poster, stating "Stop Immorality Stop Homosexuality Stop Lesbianism" and began to address a motley gathering. He was derided, abused, made the target of much mockery.

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[20] "The Martyrdom of Man" (*Watts* 1945), 407.

One passer-by, however, an astute young homosexual, complained to the police that he was not immoral.

The 1986 Public Order Act of the UK makes it an offence to display any writing, sign or other visible representation that is threatening, abusive or insulting within the hearing or sight of a person [apparently any person] likely to be caused harassment, alarm and distress thereby. The police were summoned, the speaker arrested. He was brought before the magistrates, fined £300, with £395 costs.

England lacks a Penal Code, containing such "General Exceptions" as your section 95, which provides that "Nothing is an offence by reason that it causes or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

There is much wisdom in your Penal Code. But in our society, one lacking (it seems) persons of ordinary sense and temper, men, being too much governed, have forgotten how to govern themselves. The so-called "politically correct" elite of the U.S.S. and Western Europe have developed a set of moral, cultural and political truths applicable, they believe, to all societies, at all times. As one writer recently noted, [21] "these same people, who ten or fifteen years ago campaigned against Cruise missiles and championed Third World rights have now re-invented themselves into a self-appointed elite which divides its time between preaching the values of Islington [a London suburb] and bombing those too obstinate to embrace them". Fashion again, you see.

Yet all societies are different, have to seek their own salvation with diligence, as the Buddha advised. Most people share many of the human rights groups objectives, such as a ban on land mines, an end to torture, but many become nervous of the extent to which these rights are extended. Indeed, as one writer noted,[22] "the idea that by seeking the global abolition of capital punishment they may actually be increasing the sum of human misery in the world never occurs to [them], so sure are they in their convictions". Yet is long-term imprisonment more humane? The late Sir Alexander Paterson, an eminent prison reformer, said, "I gravely doubt whether an average man can

[21] John Laughland, "The Spectator", 25 May 2002.

[22] Neil Clark, "The Spectator", 8 June 2002.

serve more than ten continuous years in prison without deteriorating ... I am inclined to view confinement in the twilight of prison life for twenty years or more as being, on the ground of humanity, something worse than death".[23] He thought imprisonment for terms beyond ten years is less humane than the death sentence.

In England as in Europe the death penalty has gone, but whether society is the better, the happier, I take leave to doubt. But we don't stop there. Recently the British Prime Minister (18 June 2002) reaffirmed his determination to abolish, in serious cases, the ancient rule against double jeopardy. This rule, in article 7of the Constitution, dates from Roman law and, in the common law, from the 12th century. I fear that its abolition will further destabilize a society already in disintegration. In 1660 Lord Falkland said that "when it is not necessary to change, it is necessary not to change." There is much wisdom in this careful principle, which is at work here in Malaysia. But in England, novelty has become king, anything new must be better than anything old.

7. Last Words

Malaysian society is more stable. You are fortunate to be natives of a beautiful country, members of a unique society, one bursting with many gifts, many talents in the arts, music, drama, literature. *Merdeka* released many latent energies, inactive, often repressed under a largely benevolent paternalism, and I am happy to have seen them emerge, flower, come into bloom, to fruit. And not least, I have seen the noblest ideals of the English Bar, the quest for justice, virtue and truth, sustained, often under grave difficulties, by many hard-working, often poorly-paid and often much-abused lawyers.

As for the Constitution itself, I see it as an engine pulling us on to that far distant period when love of money will cease to animate our minds.No law can bring about that Utopia; but we can, gradually, almost imperceptibly, create conditions in which we can progress peacefully to that distant goal. And this is the most we can do, until the day

[23] "Paterson on Prisons" (*Muller* 1951), 143-4.

when, as Max Muller said, "the true religion of the future will be the fulfillment of all the religions of the past".[24]

That day lies far ahead, far beyond the disappearance of nation-states. Malaysia, with its tolerant, multi-racial culture, its strong sense of ethics, sets an example to the rest of the world, and I hope that the high ideals of its founders are never forgotten. We enjoy many luxuries today which our fathers and grandfathers did not. Let us so work, that we may pass on to our children and succeeding generations an even better and happier society than the one we have been fortunate enough to inherit.

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[24] In a letter to Rev. M K Schermerhorn, 1883.

THE ROLE OF CREDIT RATING AGENCIES IN MALAYSIA

Introduction

Since 1990 to date, coporations wich wanted to issue corporate bonds[1] were required to obtain a rating from one of the two rating agencies in Malaysia, Rating Agency Malaysia Bhd (RAM) or Malaysian Rating Corporation (MARC).[2]

RAM was established in November 1990 with a paid up capital of RM10 milion. It's 51 shareholders compries commercial banks, merchant bank, finance companies and two other institutions, the Asian Development Bank and IBCA Ltd, an international credit rating agency based in United Kingdom.[3]

Credit rating services are also provided by Malaysia's second rating agency, MARC. MARC was incorporated in October 1995 with a paid up capital of RM10 milion and commenced operations in June 1996. The sharedholders of MARC comprises major life and general insurance companies, stockbrokers and discount houses in Malaysia.[4]

The existence of mandatory credit rating in Malaysia is symptomatic of an emerging debt market where inverstore are less sophisticated and disclosure standarts are low. This is also consistent with the merit-based regime which favours a paternalistic role to market

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[1] Also referred to interchangeably as 'corporate debt', 'private debt securities', 'corporate securities', or 'ringgit bonds', or 'bonds'.

[2] Rating of bonds is made compulsory under para. 20 of the Guidelines an the Offering of Private Debt Securities and para. 21.05 of the Policies and Guidelines of the Securities Commission.

[3] To ensure a measure objectivity and a balanced assessment, one of the subscribers hold more than a 4.9% equity stake. The trigger point for a 'substaintial share holding is 5% voting right under section 69D of the Companies Act, 1965.

[4] Like RAM, each shareholder owns no more than 4.9% equity in MARC.