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TO THE OXFORD AND CAMBRIDGE SOCIETY, MALAYSIA  
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*The Role of the Malaysian Monarchy*

[Salutations]

**Introduction**

1. Good evening. It's a pleasure for me to address you all tonight as an old Oxfordian, a pleasure that has been perhaps a little long in coming. As many of you know, Oxford University has existed for at least nine centuries. It is so old that the exact year of its establishment is lost in the mists of time. How it has managed to survive all this while, let alone rise to its premier position in the world, is astonishing. All of this is a tribute to its perseverance in the pursuit of excellence, as well as its commitment to be relevant and of service to the wider community in a constantly evolving and changing world.
  
2. If Oxford, and here I will add Cambridge, had been the archetypical "ivory towers", secluded and living off their privileges and traditions, blissfully unaware of the needs and burdens of society at large, they would have become nothing more than just old and undistinguished English universities. We might not have cause to form a society like this or the opportunity to enjoy one another's company on an occasion such as this. These universities, instead, chose the more difficult path. They chose to resist the temptation of complacency that comes with mere longevity and sought to be consequential to the present. This choice

has meant that their graduates are able to be men and women of consequence who are able to leave the world a better place than when they entered it.

### **Constitutional monarchy**

3. I see parallels in the traditions of eminent universities with that of an even older institution, namely the monarchy. In addressing the topic of “The Role of the Malaysian Monarchy” this evening, I will endeavour to convey my personal vision to ensure that the monarchy evolves so that it is not a mere anachronism, a “leftover” as it were, but that it continues to play an essential and vibrant role in Malaysian public life. I say “endeavour” because it is a tricky subject, one which is easy to miscommunicate and to be misunderstood. There are many subtleties and nuances that can are often difficult to compactly put into words. I will nevertheless try to be as succinct and forthright as I possibly can.
4. Let me begin at the beginning. The Federation of Malaysia is a constitutional monarchy. The monarchy simply refers to the fact that nine of Malaysia’s thirteen states have hereditary royal families. Every five years, one of these nine Rulers or Sultans is elected by the Conference of Rulers to serve as the Supreme Head of the Federation or its *Yang Di-Pertuan Agong*. The election and limited terms of office of the Supreme Head are features unique to the Malaysian monarchy.
5. The traditional view of the monarchy is that it plays a passive and mostly ceremonial role. This largely stems from the fact that about the only time that the public witnesses the monarchy “at work” is when the *Agong* or Rulers officiate at public events. They therefore see the

monarchs as symbols of state, a reason for the regalia and pageantry that underpin social identity and which provide tradition and colour to a country's affairs. The full scope of their duties and responsibilities as set out in the Constitution and as practiced are known to only a relatively small segment of the population. Surprisingly even some in the legal profession do not seem to be well versed with the articles of the Constitution. I believe that this has been a major reason for the confusion and controversy that arisen in recent times about the role of the monarchy.

6. Let me therefore take a moment to state the facts. As a general rule, and on most matters, the Rulers and the *Yang Di-Pertuan Agong* are bound to act in accordance with the advice given by their Chief Ministers and the Prime Minister respectively. In common with all constitutional monarchies, notably Britain, the role of sovereigns is to reign and not to administer. There are many sound reasons for them to do, a major one being that they place themselves above the rough-and-tumble of everyday politics, as well as the exigencies and controversies that inevitably follow. From this elevated position, they are able to perform their specially designated functions as and when required.

### **Discretionary powers**

7. The Federal constitution invests the state Rulers and the *Agong* with what it calls "discretionary powers". As the term suggests, these are powers that are exercised at the monarchs' prerogatives, although limits may be imposed, as I will explain in a moment. For Rulers, discretionary powers include the appointment of their Chief Minister, the withholding of consent to a request for the dissolution of the

Legislative Assembly and the carrying out of all functions as head of Islam and Malay customs. The discretionary power of the *Yang Di-Pertuan Agong* includes the appointment of the Prime Minister and the withholding of consent to the request for the dissolution of Parliament.

8. On the appointment of Menteri Besar and the Prime Minister, the discretion of the Rulers and the *Yang Di-Pertuan Agong* are not absolute. They are required to use their judgment to determine who is likely to command the confidence of the majority of the members in the state Legislative Assembly and in the House of Representatives respectively. The discretionary powers of the *Yang Di-Pertuan Agong* and his fellow Rulers, while circumscribed and meant to be used in exceptional circumstances, are clearly not superfluous. There are written into the constitution for a reason and that reason is that they are to be used when the situation warrants.
9. In most cases, the choice of Menteri Besar and Prime Minister are straightforward: they will simply be the leaders of the political party with the most seats in the Legislative Assembly and House of Representatives respectively. The exceptions to this rule are the two situations when there is a 'hung' Assembly or Parliament – that is, when there is no clear majority party – or when a coalition government needs to be formed. In these events, the Rulers have the obligation to act to determine who commands the confidence of the majority. Failure to do so would be tantamount to them neglecting their responsibilities to their subjects in the broadest and most fundamental way.
10. As you would be aware, the second of these instances came into play after the March 8<sup>th</sup> general elections this year. In my home state of

Perak, for example, the issue of who commanded the confidence in the State Assembly was by no means straightforward, given the close nature of the contest and the loose coalition of winning political parties. These parties – the Democratic Action Party, the Pan Islamic Party and the People’s Justice Party – had to choose a commonly agreed leader whom they could demonstrate to the Ruler’s satisfaction, commanded their confidence. They did so after extensive negotiations among themselves and were duly sworn in. In Selangor the winning margin was larger, but the Ruler there also had to ensure that the Menteri Besar that he was going to appoint was acceptable to the three political parties and could in fact lead the state.

11. On the subject of the discretionary power, another issue that arose recently was the transfer of the Perak religious department director by my state government. You will remember I had said earlier that among the state Ruler’s discretionary powers is the carrying out of all functions relating to Islam. As the appointment of the person in question clearly came under the ambit of the Ruler, and as the appointment had earlier received royal assent, it was only fitting and proper that the permission of the Ruler be first sought for his removal. Furthermore, the religious department director, having been accused of wrongdoing, should, in accordance with natural justice, have had the opportunity to be heard. This was not done and we had therefore to direct the government to reinstate him.

### **Conference of Rulers**

12. Before I leave the more formal aspects of the role of the Malaysian monarchy, it is critical to note that the nine Rulers, together with the four states that do not have hereditary Rulers, collectively form the

Conference of Rulers. The Conference meets three or four times a year, each meeting lasting three days. Technically, the *Yang Di-Pertuan Agong* is not a member of the Conference but, along with the Prime Minister, joins on the last day of the Conference to discuss important national policy matters.

13. The Conference of Rulers elects the *Yang Di-Pertuan Agong* and is the only body authorised to remove him. It must be consulted – and here I underline the word ‘consulted’ – in the appointments of the Chief Justice and other Judges, the Auditor-General, and the members of the Election, the Public Services and the Education Commissions. For constitutional amendments in areas that are within the Rulers’ ambit, such as the national language, the position of the Malays, the natives of Sabah and Sarawak and the Rulers themselves, their consent must be received.
14. On the appointment of high officials, the Constitution states that the Yang Di-Pertuan Agong is to “act on the advice of the Prime Minister, after consulting the Conference of Rulers.” The exact meaning of the word ‘consult’ is an important one. I do not wish to go into all the intricacies at this point. I merely wish to allude to the fact that there have been vastly differences in opinion as to the exact meaning of the word. Certainly, the power of veto cannot read into the word. The drafters would have used the phrase ‘gain the consent’ if that were the case.
15. At the same time, however, I believe that when the drafters of the Constitution wrote the word, they intended it to be substantive and not trivial. It would seem farfetched that they meant that Rulers had merely

the right to give their views and opinions, with no requirement for cognisance being given to them. For consultation to be meaningful, the heaviest weight has to be given to the Rulers' advice. To do otherwise would be to give scant respect to the whole institution of the monarchy, an act that would be seriously at odds with the tenor of the Constitution.

### **Primary responsibilities**

16. In performing their functions, the Rulers, are not bound by the specific letter of the law. My father, His Royal Highness Sultan Azlan Shah, whom many of you know was a former Lord President of the Supreme (now Federal) Court, has said:

*“A King is a King, whether he is an absolute or constitutional monarch. The only difference between the two is that whereas one has unlimited powers, the other’s powers are defined by the Constitution. But it is a mistake to think that the role of a King, like a President, is confined to what is laid down by the Constitution. His role far exceeds those constitutional provisions”.*

17. On the face of it, it might seem as if His Royal Highness is saying that the monarch can exercise his powers without restraint. Those of you who know him and the great esteem that he has for the law, however, could never draw this conclusion. What His Royal Highness is referring to – and which I am in full agreement with – is that the Rulers responsibilities are not simply limited to the specific provisions spelt out in the Constitution. They have a wider over-riding responsibility to serve the true spirit of the law, and the people’s and the nation’s larger interests.

18. It is out of the sense of duty to fulfil its constitutional role that the Conference of Rulers has expressed reservations about the suitability of a number of candidates slated for senior judicial appointments, as well as extensions of judicial appointments. In each of these cases, the concerns expressed by their Royal Highnesses were based on facts and their requests for reconsideration were therefore well-founded. While this may have produced strains at times, it is nonetheless a tribute to the robust nature of the relationship between the monarchy and the government that solutions have been found.
19. There are two important points that can be drawn at this time. First, the discretionary powers of the *Yang Di-Pertuan Agong* and his fellow Rulers, while circumscribed and meant to be used in exceptional circumstances, are clearly not superfluous. There have been written into the constitution for a reason and they are expected to be used when situations warrant. Second, these monarchical powers must be considered integral to the country's democratic governance processes. They constitute an exceptional check and balance intended to further safeguard and advance the people's welfare.

### **Exercise of influence**

20. Thus far, I have outlined the more formal aspects of the role of the Malaysian monarchy. This, however, should be taken to mean that their power is limited to them. As any good leader can attest, power does not have to be exercised overtly and directly in order to be effective. The monarchy holds a special position in society and the opinions of Rulers are therefore not taken lightly. They have the ability to persuade in a way that few others in society can.

21. Vernon Bogdanor, in his excellent book “The Monarchy and the Constitution” puts this in a very cogent way. He says:

*“Concentration upon the constitutional powers of the sovereign is liable to give a misleading picture of the contemporary role of a constitutional monarch, for the prime constitutional role of the sovereign occurs, not when a ministry begins or comes to an end, but during the everyday life of a government, and consists in the exercise of influence rather than power.”*

22. Bogdanor goes on to quote my favourite author on the subject of the monarchy, the English writer, Walter Bagehot, who, in the mid-19th century, said the three rights of the constitutional monarch are “*the right to be consulted, the right to encourage, the right to warn.*” Bagehot goes on to say that if these rights are properly exercised, the sovereign would require no other powers. Indeed, the wise use of influence reduces the need to use discretionary or reserve powers until all avenues of influence have been exhausted.
23. It is probably true that older Malaysians are unaccustomed to the idea of an engaged and vocal monarchy. In recent years, however, events have shown that the mood is changing and there is much more receptivity to this. For their part, the Rulers are more aware than ever before that their pronouncements can have a significant gravitating effect in public discourse. Their frank and forthright messages on such subjects as the need for true social cohesion, the fight against corruption, the independence of the judiciary and the role of religion have come at a timely juncture and resonated with the *rakyat*. With no agenda of their own, they have been able to step in as required by the

vicissitudes of governance and to do so in a way that is legitimate and, if I might say so myself, to some public acclaim.

24. Having said this, attempts to embroil the monarchy in politics, especially race- or religion-based politics, are misconceived. One sometimes wonders what goes through the minds of those who call on the Rulers to take this action or that, and whether they actually understand the full implications of what they are asking for. Of greater concern are those who try to use the institution of the monarchy for their narrow, politically-motivated, ends. Deliberately working to manipulate the crown not only threatens to bring the Rulers low and into disrepute and, in so doing, subvert it and the constitution. In this matter, one could ask whether there is any essential difference in the seriousness of compromising the monarchy as it is with the judiciary.

## **Conclusion**

Ladies and gentlemen:

25. Let me end by way of a brief summary. The monarchy in Malaysia is more than a symbolic and ceremonial institution. In saying this, I recognise the tremendous social significance of national symbols. It does have discretionary powers that are set out in the Constitution, but responsibilities that go beyond what is written to what is intended. The Rulers also are not, nor can they be, deaf, blind and dumb to the critical issues on which the nation is hinged. Theirs are the voices of impartiality, fairness and reason when such are necessary. The Rulers must speak with clarity and firmness for those who cannot.

26. Their actions must be tempered by the knowledge that their source of strength comes from their acting in ways that uphold the country and its national interest. As the country experiences not only political and economic but also social change, the institution of the monarchy will have to adapt to the new realities if it is to remain fresh and vibrant. Like everywhere else, Malaysia is undergoing a generational transformation. The young being, well, younger, are more uninhibited about challenging the established order of things. We can only hope that they will recognise the importance of the institutions of state and to nurture them with foresight.

Thank you.