

## Flexible constitution behind economic success

With 179 racial groups, Malaysia is an ethnic and religious mosaic more complex than Lebanon, writes *Chibli Mallat*

Parliamentary democracy has been maintained in the sense that elections have been held both regularly and fairly ever since 1957. But the parliamentary rights of the opposition have been neutralised. Parliament has ceased to fulfil the purpose of calling the government to account before the people's representatives. Restrictions on the media have made it difficult for opposition parties to make their views known to the electorate."

This quote sounds familiar, but it isn't about Lebanon. It comes in the conclusions of British law professor Andrew Harding in a recent book on Law, *Government and the Constitution in Malaysia*.\*

Malaysia by all accounts has been a unique success story. Harding tackles the dimension of Malaysia as a 'little tiger', but also examines the extended stability – unique in South East Asia – it has enjoyed since independence in 1957.

The economic miracle of Malaysia is well known. What is less known are the political and legal ingredients which have presided over the country's economic success.

As forcefully noted in the introduction to the book, "constitutional stability has formed the basis of Malaysia's present and growing economic prosperity." Although imperfect by both the standards of a successful parliamentary system and of a smoothly working federation, "the unification of the whole of [historic] Malaya under a federal system was a considerable achievement.

"So was the creation of a system of parliamentary democracy with no real preparation of the ground, and the development of the legal system and a 'malayanised' judiciary."

Malaysia is a complex society which makes the Lebanese mosaic pale in comparison. Of

20 million inhabitants, about 11 million, mainly Malay nationals (55 per cent) are Muslim. The rest is made up of non-Muslim minorities from mostly Chinese descent. But there are no fewer than 178 different racial groups, belonging to various religions: Christians, Hindus, Sikhs, Buddhists. Muslim Malays and other native peoples of Malaysia (as opposed to the Chinese for instance) enjoy special privileges under the Constitution. They are known as *bumiputera*. Under Article 3 of the Constitution, "Islam shall be the religion of the Federation, but other religions may be practised in peace and harmony in any part of the Federation".

The constitutional arrangements, as well as the constitutional history, are unique. Early on, Malaysia chose federalism as a way to keep together the various geographic principalities, at the head of each of which sits a hereditary Ruler. So not only is Malaysia a federal country, it is also hereditary monarchy (or collection of monarchies). It is further distinguished by the adoption of a 'Westminster', that is purely parliamentary, model.

But unlike Britain, the country is regulated by a codified constitution. This basic law, known as the Merdeka constitution, came into force on Independence day (August 31, 1957). Malaysia is therefore a constitutional federalist parliamentary Islamic monarchical state.

For those of us who think that Middle Eastern societies are impossible to govern under a constitution, there may be some lessons to learn from the Malaysian experience. First, the stability of the system does not mean that there were no crises, but the reaction to the crises is noteworthy. The Malaysian experiment is full of compromises.

Harding's book identifies several major

crises, the last in 1993 over the prerogatives of the so-called Rulers, who lost much of their traditional immunity for possible violations of the law by themselves or their relatives. In the process, the states they represent were weakened in relation to central government, but the federation still operates in a way which is sensitive to the delicate balance between centre and periphery, and between tradition and high technology.

Another compromise appears in the treatment of 'reluctant' states within Malaysia: early on, Singapore chose not to be part of the Federation, and both are doing well on their separate course. The federalism of Malaysia itself has various speeds and degrees, with the two states of Sabah and Sarawak enjoying "considerable advantages over the other States in terms of grants, revenues, and borrowing powers."

The system is sophisticated and complex, particularly with regard to the financial autonomy of the states, some of which, like Sarawak, are rich with oil. A legal arrangement was developed whereby "all powers with regard to petroleum are vested in the federal government in return for cash payments to the state governments, which are agreed from time to time."

In the Middle East, only the United Arab Emirates is a federation. There is much to be learnt from the sophisticated, and clearly successful, constitutional accommodations which are found in and around the Malay cluster.

Federalism has also allowed the flourishing of a balanced recognition of the Islamic tradition – crucial considering the non-Muslim minorities in the country. Under the Merdeka constitution, Islam and Islamic law are matters for the individual states that make up the

federation. Here again, a curious innovation could serve as model for a number of Middle East countries including Mauritania, Sudan, Israel, Iraq and Iran.

All is not rosy. The constitutional crisis of 1988, which led to the dismissal of top judges after a severe friction with the prime minister, who holds executive power, has allowed constitutionalism to be marred by a weakening of the rule of law. This was a great setback to the system, and "the legal position with regard to political rights indicates the extent to which they have been restricted."

One will recognise in the strictures imposed terms that are familiar to Arab lawyers, including emergency powers which restrict many forms of protest under the guise of "threats to the higher interest of the state". There is also the all too familiar exceptional phrase, "save in accordance with law", which, in the absence of an impartial judiciary, allows room for many excesses. It is found in Article 5 of the Malaysian constitution: "No person shall be deprived of his life or personal liberty save in accordance with law."

In the closing "constitutional audit" to Harding's rich book, the reader is left to ponder the distinction – and the inter-relationship – between the rule of law and constitutional government. "Malaysia will be well placed to advance the rule of law and democracy because it has the benefit of long-established traditions of constitutional government."

\*Andrew Harding, *Law, Government and the Constitution in Malaysia*, Kluwer Law International, The Hague London and Boston 1996

Chibli Mallat is a practising attorney and a professor of law at Saint Joseph's University