Assessment of the Performance of a Resilient Hybrid Political System: The Case of Malaysia

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Abstract

Countries that come out of the “gray zone” during “third wave democratization,” as ambiguous as they may seem politically, may not be a manifestation of a failed democratization attempt. Rather, their “hybrid” characteristics, portraying neither a full democracy nor outright authoritarian practices entrenched in the system, may plausibly serve as a panacea to governing, especially in a troubled state.

Many studies that have depicted the “hybrid” political system have focused more on its conceptualization and typology rather than how this kind of regime actually performs and functions. However, studying this regime type only at its surface does not help us to understand the in-depth nature of a hybrid regime nor its political setup. A thorough assessment is needed for this purpose. Therefore, this case study evaluates the performance of the hybrid political system that is practiced in Malaysia.

This study assesses the two democratic principles of popular control and political equality, using the assessment framework prepared by the internationally based intergovernmental organization, the International Institute of Democracy and Electoral Assistance (IDEA), whose aim is to support sustainable democracy around the world. The method prepared by International IDEA was based on the claim that “democracy is not an all-or-nothing affair” but is a shifting continuum. The IDEA method acknowledges that the democracy practiced in some countries is not perfect and is subject to the country’s historical experiences, demographics, cultures, and realities.
This study’s results suggest that having partially practiced democratic principles, with support from semi-authoritarian apparatus, produces a political system with both positive and negative components that both facilitate regime transition and democratization as well as reinforce regime incumbency and dampen democratization. This study shows that, ultimately, the interactions between the positive and negative components may produce balancing mechanisms that help to strengthen both the regime’s persistence and the country’s resilience.
Acknowledgements

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Chapter One: Introduction to the Study

This case study presents an “ambiguous” political system¹ that is neither fully democratic nor outright authoritarian. Countries with this type of political system are described as “third wave democratization” and are typically viewed as being in the process of regime change toward democracy. Malaysia is a paradigmatic case of a country with the hybrid political configuration of a partly democratic system with authoritarian practices. However, for many years, Malaysia has managed to endure. Praised for its high economic growth, political and social stability, the country has proven to be the anomaly in democratization studies.

The unconventional political system practiced in Malaysia defies the claim that the country will undergo a linear and teleological journey under the democratization process until it reaches the consolidation phase. Proponents of democratic transition describe a country of this kind as an unstable “halfway house.” Instead, Malaysia manages to remain persistent and resilient in the face of challenges and political turbulence.

In discourses on comparative regime studies, Malaysia is categorized as a “semi-democracy,”² “quasi-democracy,”³ “flawed democracy,”⁴ “partly-free”⁵ country, and

¹ The term political system will be used interchangeably in this dissertation.
“syncretic state”\textsuperscript{6} that is “neither democratic nor authoritarian”\textsuperscript{7} but is both “responsive and repressive”;\textsuperscript{8} the most general term given, hybrid regime,\textsuperscript{9} portrays the common and neutral description of regime studies on Malaysia. These categorizations are unconventional to what is accepted as a normal political system.

**The Research Paradox**

To the dismay of democratic proponents, an “ambiguous” regime such as in Malaysia is supposed to be in transition to becoming fully democratic, as proven by some success stories of regime transition cases, such as Taiwan, South Korea, and Mexico. A country like Malaysia has almost all that it takes to transform to being a fully democratic country with all the “preconditions,” such as persistent economic growth that produces a broad middle class, high educational and income levels, and a large industrial working class. Bottom line, Malaysia has all that it takes to be in the “zone” of what Huntington (1991) claimed is likely to transform into being fully democratic.\textsuperscript{10}


\textsuperscript{4} The Economist Intelligence Unit (EIU) has categorized Malaysia as a flawed democracy, ranking 81 in 2007. The latest EIU ranked Malaysia 64, shows “improvement” in democracy but still categorized as “flawed” based on the level of genuinity of the democratic process.

\textsuperscript{5} The Freedom House, a renowned organization, has ranked Malaysia as “partly free” on the rating of “4” in the country’s level of civil liberties in 2011.


The irony is that the “political configuration” entrenched in the Malaysian regime works in contradiction to the ideas of a liberal democracy. The case of Malaysia, as with many other countries in the developing world, has made analysts and proponents of democratic transition theories question their paradigm. Carothers (2002) wrote a thought-provoking article claiming that the transition paradigm has lost its significance as a universal paradigm for understanding democratization.11

Case (2005) claimed that Southeast Asia is a region that sets the compound of “a great storehouse of historical and contemporary hybrid regimes.”12 In the region that analysts claim to be most recalcitrant,13 Malaysia is an interesting subject and a paradigmatic case of the “ambiguous” regime.14 As a case study, Malaysia is important because the country is a paradox in democratization theories. Having almost all of the attributes and preconditions15 of a democratic government, the fact is that Malaysia is everything but fully democratic.

13 Donald Emmerson has called Southeast Asia the most recalcitrant region to liberal democratic reforms. Nevertheless, some country cases in this region (e.g., Malaysia) continue to stand out as a puzzle of political development. [Donald K. Emmerson, “Region and Recalcitrance: Rethinking Democracy through Southeast Asia,” Pacific Review 8, no. 2 (1995): 222-248].
14 Marina Ottaway has given the label ambiguous to regimes that combine rhetorical acceptance of liberal democracy with some formal democratic institutions with limited respect to civil and political rights. However, these regimes also practice some illiberal authoritarian traits in their systems. [Marina Ottaway, Democracy Challenged : The Rise of Semi-authoritarianism (Washington, D.C.: Carnegie Endowment for International Peace, 2003)].
15 Malaysia stands out as something that is inconsistent with the conventional ideas of regime transition to democracy, such as theorized by Lipset in 1959. A country that, despite imitating a model of the
This thesis depicts Malaysia as a partially practiced democracy that is “flawed,” in order to connote the condition of democracy in Malaysia for simplicity purposes; however, the term actually means a democratic system that is not practiced in its full sense. More accurately, the term “hybrid” signifies the mixed nature of Malaysia’s political system, which combines the attributes of both a democracy and an authoritarian system.

The “hybrid regime,” defined by Karl (1995), emerged at the turn of the twenty-first century as the most widespread political system in the world. The Malaysian case also seems to fit comfortably into the categories proposed by O’Donnell and Schmitter (1986), who distinguish between liberalized authoritarianism (dictablandas) and limited democracy (democraduras).

**Political Hybridity: Analytical Challenges**

The term “hybrid regime” represents the paradox of the democratic transition paradigm. It indicates the “messiness” of democratization linear ideas against the political realities. The hybrid political system is ignored by democratization proponents because of Westminster type of governing, along with successful economic growth with a growing middle class, shows little to no progress toward becoming a fully democratic country.

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16 According to Economist Intelligence Unit Democracy Index, in flawed democracies, basic civil liberties are still respected but they are limited. There are illiberal practices in other aspects of democracy, such as limited media freedom, low levels of political participation, and underdeveloped democratic political culture. In addition, “flawed” also could present democratic deficits that are generally described by analysts as illiberal practices that disregard some important democratic main principles. Nonetheless, the flawed democracy does not violate the democratic procedural of election. [Larry Diamond, “Is the Third Wave of Democracy Over?” *Journal of Democracy* 7, no. 3 (July 1996); Fareed Zakaria, “The Rise of Illiberal Democracy,” *Foreign Affairs* 76, no. 6 (1997): 22-43; and Wolfgang Merkel, “Embedded and Defective Democracies,” *Democratization* 11, no. 5 (2004): 33-58.]


its flawed characteristics. However, the hybrid system’s obsession with democracy and democratization within studies about regime change might be a way to account for the lack of broader systematic comparative studies of hybrid regimes and their peculiarity. The assumption is that these “ambiguous regimes” are still in a transition process; hence, no attention is given to their peculiar nature.

I have mentioned that Malaysia is a paradigmatic case of a country emerging from the “gray zone” of the democratization process. Analysts and strong proponents of democracy have acknowledged this “zone” and the problems that come out of it. According to proponents of democratization, countries that are situated between the continuum of authoritarian and democratic spheres, practicing partial liberalization, are not stable and will not persist. Huntington (1991) acknowledged the plausibility of countries that are emerging from “third wave” democratization, calling them a “halfway house” that will not stand. He argued that these kinds of regimes have stalled in the democratization process because of the “flawed” practices of democratic principles. Putting weight to that analogy, Przeworski (1991) wrote that regimes with partial liberalization are inherently unstable until they reach the goal of full democracy.

In sum, scholars of democracy agree that the characteristics of a hybrid regime that combine democracy and authoritarian traits are contradictory, which renders them unstable. As hybrid regimes persist throughout the world, as shown by Malaysia and her

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20 Samuel P. Huntington, *The Third Wave Democratization in the Late Twentieth Century*, 137.

closest neighbor Singapore, analysts like Steven Levitsky and Lucan Way agree that it is about time “to stop thinking about these cases in terms of transitions to democracy.”\textsuperscript{22} In reality, these regimes are not transitioning anytime soon, but will persist through their political configuration, which is maneuvered democratic institutions with illiberal practices and control.

Some analysts say that the political system of regimes practicing partial democracy is defective and that they will not necessarily transition into a full democracy. For example, Wolfgang (2004) argued that a “defective” democracy is not necessarily a regime in transition. Depending on their political power, social economics, and cultural entrenchment in their political system, these regimes can establish themselves for a longer time. He stated that this is the case when specific democratic defects are supported by political power, socio-economic and socio-cultural contexts and developed within a mutually supportive coexistence of environment and a partial control mechanism.\textsuperscript{23}

Jayasuria and Rodan (2007) saw “hybrid regimes not as imperfect versions of liberal democracies but as possible political regimes in their own right, with their own internal dynamics and qualitatively distinct institutional forms.”\textsuperscript{24} They argued that political regimes need to be identified and explained in terms of the organization of conflict through various modes of political participation; that the idea of hybrid regimes in general falls short in explaining why and how regimes take the forms they do.


“Halfway” and “diminished subtype” regimes depicted as deficient have certain prior institutional benchmarks of liberal democracy, yet no identifying cause for the apparent institutional dysfunction or deficit. Rodan (2004) argued that political regimes need to be identified in terms of the relationship between their institutions and the management or containment of conflict. The form and nature of inclusion of political participation into the mode of hybrid governance is abridged by the transition theory’s obsessive focus on the institutional functions of a democracy; this theory is an advance on the simplistic formulations of a linear transition to a liberal democracy.

**“Hybridity” As an Analytical Tool to Manage Conflict**

Current literature on “hybridity” discusses a peace-building program in which hybridity is used as a tool to provide a more accurate view of the dynamic diversity of ideas and practices that can contribute to peace-building and aid programs. According to MacGinty, “Hybridity is both a process and a condition of interactions between actors and practices. It is a process of social negotiation, conflict and coalescence and can be found in all societies and social interactions.” MacGinty recommends the concept of hybridity because it can help to detect the complexities and flexibility of internationally

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26 Ibid.


supported peace-building efforts. The concept may not be a panacea to settle conflicts, but it offers a simplicity in attempting to understand a complex phenomenon.\textsuperscript{29}

This discourse on hybridity is still new, and the idea of hybridity can be used as “dynamic model of conflict management in action.” Liberal state-builders\textsuperscript{30} regard the hybrid form as a “policy failure.” While hybrid forms of statehood, business, politics, and culture may be odd, dysfunctional, and seemingly unfair, acknowledging the working mechanism could actually be useful for peace-building and conflict management.

This study analyzes the conventional view that halfway-house regimes are unstable. This hybrid political system is found in many new democratic countries, especially those coming out from “third wave” democratization. However, the democratic elements and authoritarian support system of a hybrid political system do not necessarily contradict each other; rather, this odd political setup can be mutually supportive.

According to Crouch (1996), Juan Linz claimed that these “ambiguous” political systems cannot be adequately understood as a kind of regime that is situated at the midpoint along a continuum between democracy and an authoritarian system. Rather, these regimes should be understood as their own kind, with peculiar characteristics that distinguish them from either democracy or an authoritarian system.\textsuperscript{31}

In regimes like Malaysia, which is given semi-democracy or semi-authoritarian labels by experts, there is a need to understand that Malaysia has an integrated and coherent political system with its own peculiar characteristics. Therefore, it is necessary

\textsuperscript{29} Roger MacGinty, “Hybridity and Hybridisation: Beyond Top-down Meets Bottom-up” (Paper prepared for HCRI Manchester/Bradford, Seminar 22-23 June 2011).

\textsuperscript{30} Ibid.

to study, more precisely, the interrelationship between the democratic and authoritarian traits, so that such regimes can be conceptualized as regime types in their own right.\textsuperscript{32} This study, therefore, does not seek to add another adjective, such as “façade” democracy. Rather, this study’s purpose is to assess the partially practiced democracy itself and its performance in a “hybrid” state.

**Hybrid Political Mechanism in Malaysia**

Different political setups with hybrid elements of democracy and authoritarian attributes work differently in regimes around the globe. In Malaysia’s hybrid political system, the political configuration shows how the positive components of democratic principles (e.g., elections) and the negative components of a control system (e.g., electoral gerrymandering) are used simultaneously in Malaysia’s political setup. The electoral system in Malaysia may appear to be a façade, but it is important for the regime’s incumbency. On the other hand, a manipulated election can open opportunities for opposition parties to contest the incumbent and to give a strong competition.

Case (2006) argued that “elections … are not intended to produce turnover but instead to provide feedback, registering fluctuations in support so that governments might adjust their policy course but never leave office.”\textsuperscript{33} Analysts and critics of Malaysia’s political regime have frequently highlighted the gerrymandering of constituencies in order to favor the incumbent government and its mal-apportionment; which explains why rural constituencies are disproportionately represented, because Malay-Muslim


\footnotesize{\textsuperscript{33} William Case, “How Do Rulers Control the Electoral Arena?” in *Electoral Authoritarianism: The Dynamics of Unfree Competition*, ed. Andreas Schedler (Boulder, Co.: Lynne Rienner, 2006), 95-112.}
populations are greater in the rural districts. The Malay-dominated ruling elite constructed the electoral system to virtually ensure that they could not be removed from power.

Elections in Malaysia are “Janus faced.” On one side, they are used to legitimize the incumbent party through manipulation and gerrymandering of the electoral system, denying democratization. On the other side, elections can actually open opportunities for the opposition parties to gather support, through electoral votes; thus, the possibility of more democratic openings. In Malaysia, this was proven during the 2008 and 2013 general elections. However, the existence and persistence of the hybrid mechanism that works in Malaysia’s political system seems effective in preventing a transfer of power through election.

**Institutions of Control in Malaysia**

It is not just the electoral system that favors the incumbent government, who has a wide range of political controls to restrict opposition parties and dissidents. The mechanism of control serves as a state apparatus to protect the ruling government from the opposition parties’ interference on government business. Thus, these control mechanisms are institutionalized, and are often justified as necessary for maintaining order and stability in the plural society that is Malaysia.

The most important part of this machinery of control has been the Internal Security Act (ISA), a legacy from the colonial era that has permitted detention of suspects (up to two years and indefinitely renewable) without proving their guilt in a court of law. ISA was so notorious that it symbolized the “illiberalism” of democracy in

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Malaysia. The removal of ISA has been a key demand of the Reformasi movement and civil society. In September 2011, Najib Razak, Malaysia’s sixth premier, announced the repeal of ISA and three emergency declarations.35

**The Strong State**

According to analysts, the strong state and its apparatus are used by the ruling elites allegedly to constrain the voices of dissidents who supposedly will pose challenges to the regime. Because the state is very strong in Malaysia, the regime can afford to loosen its grip without losing control. Slater and Fenner (2011) argued that state power is the stringiest institutional foundation for authoritarian regimes’ staying power, that states are the ultimate institutional weapons in the authoritarian arsenal,36 and that the most durable regimes are those that either stay out of trouble or have a proven track record of putting trouble behind them.

In Malaysia, we have seen stability whenever the regime has survived a monumental challenge. Along with its lengthy time of ruling, the regime has exhibited a constant outcome of institutional continuity. Malaysia’s hybrid regime is exceptionally durable not because of the lifespan of the political party, but because the regime has steadily managed massive socio-economic transformations without altering their most important institutional structures. Whether crises have been economic or political, they have been few and rare in Malaysia; even when crises have happened, they have been ably contained and effectively resolved.

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35 Available at www.themalayinsider.com (15 September 2011).

In Malaysia’s hybrid system, the state has responded to political tensions by strengthening its authoritarian control. For instance, immediately after the ethnic riots in 1969, the state exercised its control apparatus by launching the emergency provisions of the Constitution and implementing the Internal Security Act (ISA). These riots were the main event that changed Malaysia’s political configuration; state power was extended and the control system was tightened.

These control mechanisms that were a winning situation for the incumbent regime, nevertheless, were a setback to the democratization process. In 1987, Premier Mahathir faced off challenges to his premiership by employing the Internal Security Act (ISA) against members of organizations and groups who were critical of the government’s policies. Hence, despite the state’s acquisition of authoritarian powers, the system was far from fully authoritarian.37

The government in Malaysia exercises strong authoritarian powers to safeguard its political stability and continued domination of the Malay elite. However, countervailing social forces and regular competitive elections restrain its power and make the regime sensitive to popular pressures; so, it often responds to challenges with a combination of both repressive and responsive measures. For example, Prime Minister Najib Razak repealed the Internal Security Act (ISA) in June 2012 after relentless pressure from the masses and international communities. This act from the premier showed a sign of give and take in the system.38


38 Among others, the Najib administration has repealed the Internal Security Act 1960 (ISA), lifted three Emergency Declarations, and enacted the Peaceful Assembly Act to regulate public gatherings. The government also scrapped the need for annual printing licenses, in the Printing Presses and Publications
Dominant One-Party System

The control apparatus in a hybrid political system is deeply institutionalized. Milton Esman (1973) termed this kind of control system as being “institutionalized dominant” and suggested that this method is basically a coercive network of controls with the purpose of maintaining hegemony and that it is often highly sophisticated and deeply institutionalized. Malaysia is a highly institutionalized hybrid regime. According to Mauzy (2006), one of the reasons for the resilience of the dominating party in Malaysia, the United Malay National Organization (i.e., UMNO), also known as the Alliance, is that it is a well-institutionalized party that reaches down through an extensive system of branch chapters and leads up to district, state, and national organizations. One characteristic of the hybrid regime in Malaysia is that there is a blurring of the line between the party and the state; when Malaysians talk about the party, we usually mean the state and the government.

The dominant one-party system is a complex scenario under the hybrid setup. According to Jesudason (1995), dominance is a self-conscious process and the dominant party cannot be ignored as a strategic actor in the governmental system. We cannot confine ourselves as structural-determinists in understanding the dominant party; nor can

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we merely see coercion and repression as key devices used by the ruling elites.\textsuperscript{41} As an analyst and student of comparative government, I suggest that we not see hybrid regimes as only a manifestation of a failed democracy and form of authoritarian control.

Pempel’s (1990) work on uncommon democracies in Western Europe advised that this kind of uncommon regime type contains useful ideas because dominant parties can act as institutions that shape the social structure as much as they are constrained by it. He demonstrated that dominant parties are dynamic organizations that do not necessarily decline over time. They are capable of creating new social bases of support, or abandoning old ones in order to stay in power.\textsuperscript{42}

In Malaysia’s hybrid political scenario, the UMNO-led Barisan Nasional (BN) dominant party has made significant achievements to sustain its central power due to its effectiveness in responding to the grievances of its key constituents, the voters; their key advantage is help with the masses from their patron-clientele relationships. UMNO can be assured by its political culture of support, especially the ethnic Malays who help the dominant party sustain its political power. The mechanism that works in the Malaysian hybrid system is that the dominant party, UMNO, provides a patron-clientele relationship to the Malays. This is considered a legitimate practice in the political system. In response, the Malays vote for them in general elections.


Patron Clientele

Political management in Malaysia fits the model of ethnic patronage. This practice refers to complex patronage networks between the political establishment and an emerging, mostly Malay, business class. The ruling party in Malaysia almost always enjoys the advantage of the 3M’s—money, media control, and party machinery. The key to the dominant single-party (in Malaysia, UMNO) is patronage and money politics.

To provide patronage obligations, UMNO and some of the other Barisan Nasional parties are deeply engaged in business and have cultivated close and overlapping ties with the leaders of business and commerce. UMNO owns, or controls through proxies, all kinds of businesses, from a major newspaper group, to mining, television, and the state’s largest construction company. Many government no-bid contracts have been awarded by the Cabinet to UMNO-linked companies, and well-connected UMNO members are often awarded privatized assets.

Analysts argue that The New Economic Policy (NEP 1971-90) and privatization policies breed cronyism in the government and benefit politically well-connected groups of the new rich who are nurtured by government patronage and preferential treatment. Political patronage and clientelism play a prominent role; an increasingly authoritarian and centralized Malay political elite employs the financial resources of the state to

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[www.aliran.com/monthly/2004a/3g.html](http://www.aliran.com/monthly/2004a/3g.html)

distribute control of major economic enterprises to a small circle of dependent cronies and quasi-entrepreneurs, often by methods that are shrouded in secrecy and corruption.45

In a hybrid system, the patron-clientele networks are carefully weaved by the state through its apparatus in the name of fixing the imbalances in the socio-economic structure. The paradox is that, on one hand, state intervention reasonably promotes economic growth and political competition (mistakenly assumed as democracy); and on the other hand, state intervention is a sign of deeper authoritarianism.46

**Elite Strategies**

One should not underestimate the role of agency, specifically the political elite, in determining how the regime works in Malaysia. The elites bargained during the consociational era in Malaysia’s political collapse during the May 13, 1969 ethnic riots. The UMNO Alliance’s disastrous outcome demonstrated that consociational inter-ethnic compromises were less effective for the Malay ruling elite as a means of maintaining their political power. This was one of the most crucial reasons the Malay ruling elite sought an alternative mode of regime maintenance and shifted toward a more hegemonic control, which led to the unambiguous UMNO-led Malay dominance.47

According to transition theories, strategies of the elites involve negotiated agreements between ruling elites and opposition elites, which move common perceptions of self-interest toward accepting democracy as the best possible regime form under given


conditions. Elite strategies for democratization do not apply to Malaysia, whose ruling elites are well-known for their strength and cohesiveness. Some analysts claim that the patronage-system practice in Malaysia contributes to the elites’ cohesiveness and their support of the dominant party, whose crucial task is to maintain the loyalties of in-groups by guaranteeing their long-term interests.  

Thus, elites’ strategies for regime change in Malaysia do not apply to the transition theory, which suggests that democratic transition is the result of elites defecting from the incumbent’s party. This highlights the importance of patronage and the elite cohesion in Malaysian politics. Beatriz Magaloni (2006) wrote that hegemonic parties must have distributed ample spoils in order to deter elites from splitting.

**Internet and New Social Media**

Controlling laws that limit civil rights and freedom of the people are not totally hopeless when, at the same time, the Internet media are free from regulation. In Malaysia, the term “netizens” is given to those in the society who rely on social media for news and communication because the conventional print and broadcast media are tightly controlled by the ruling government. This condition enables the people to get alternative media sources for information and freedom of expression. Grievances among the Malaysian communities were inflamed through an unprecedented intensity of Internet usage and new social media (e.g., bloggers, YouTube, Facebook, Twitter, and others). The Internet

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media have become the most important source of independent political information in Malaysia.

The advantage to “netizens” is that the Internet is not controlled by the government, which has kept their promise made during Mahathir’s era not to impose any control on Internet communications media for the sake of attracting foreign direct investments into Malaysia. This loophole has worked to the advantage of Malaysians, especially those in the opposition parties who seek alternative media to disseminate their information.

The Internet-democracy relationship is not absolute, said Best and Wade (2009). In Malaysia, the issue is whether the Internet media can have an impact on democratization or not. Since the Reformasi movement in late 1990s, the Internet has been used for socialization and mobilization, but mainly as an alternative media for information. Bottom line, the Internet and new social media so far are a positive means of social movements in Malaysia.

Civil Participation

The liberal position on civil society proposes that the general welfare of a society and the process of democratization are enhanced if groups, organizations, and associations act as a buffer to prevent the state from assuming too much control of the society. In Malaysia, the discourse on civil participation is linked to the larger question of democracy. In a society with a hybrid political system, political participation or contest is often minimized by ensuring that the civil society is under the hegemony of the state. Dissent and opposing views are curbed and challenges are suppressed with the use of

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controlling laws. In Malaysia, the issues are not so much about the forces of civil society challenging the state’s power and control, but how the state dominates the civil society and its activities, rendering it ineffective for further democratization and regime transformation.

**Peaceful Social Mobilization**

In Malaysia, pressures for change did not originate from the elites, but from the citizens. According to Lee, ethnic politics is no longer considered the main factor that shaped Malaysian politics. Ethnic politics was weakened by the new politics, encapsulated by the *Reformasi* movement. *Reformasi* opened the door for the opposition to challenge UMNO-led ethnic politics. *Reformasi* was initially born out of the people’s anger at Mahathir’s ruthless treatment against his deputy prime minister, Anwar Ibrahim. After that, *Reformasi* eventually turned into a more generalized protest against corruption, cronyism, nepotism, and the government’s abuse of power.

These developments reflected a significant element of political transition in Malaysia along three dimensions: (1) They signified a substantial erosion of UMNO’s legitimacy in society. (2) *Reformasi* not only galvanized multi-ethnic support; it also brought to the fore universal issues based on the need for governance reform, especially for greater accountability, transparency, and rejection of corruption and cronyism. (3)

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55 Ibid.
Anwar’s crisis galvanized new forms of social mobilization in the country, the people’s demand for good governance and checks on government power.56 This thesis suggests that social mobilization should increase the likelihood of democratization and triggering regime change in Malaysia (see the HINDRAF and BERSIH movements in chapter six.)

Another interesting issue in the transition literature is the connection between democracy and uncertainty. The process of establishing a democracy is a process of institutionalizing uncertainty and subjecting all interests to it. According to Karl and Schmitter (1991), the transition period is a subject of unforeseen contingencies, unfolding processes, and unintended outcomes.57 This is the stage where the hybrid regime emerges. Despite not reaching the finish line of the democratization race, hybrid regimes are showing resiliency. In stark contrast with arguments of their fragility and instability, they are able to survive the challenges.58

The survivability of hybrid regimes can be traced back to the very combination of authoritarian and democratic traits entrenched in their political system. The problem is that analysts focus too much on trying to conceptualize these diminished59 democratic


58 See Carothers 13; Ottaway 8; Merkel 50; and Leornardo Morlino, “Are There Hybrid Regimes? Or Are They Just an Optical Illusion?” European Political science Review 1, no. 2 (2009): 273-296.

types of political regimes and categorize them under specific conceptual democratic thresholds, in order to differentiate them from fully democratic regimes.\textsuperscript{60}

There is not much focus in the literature on evaluating how countries with limited practices of democracy actually function or why particular countries. So, this thesis suggests that we not view hybrid regimes only in terms of the failure of transition theories or the unsuccessful process of democratization. Instead, rather than focus on a flawed practice of democracy, analysts should start analyzing how the hybrid political setup works to sustain and stabilize a particular regime type. I suggest that in order to understand how these regimes work, and their characteristics, analysts must evaluate these regimes’ performance.

To date, the literature has focused little on measuring hybrid regimes, making this study and assessment of “ambiguous regimes” highly relevant, especially regarding countries such as Malaysia that are thought to have been failing the democratization process. Now it is time to assess the hybrid character of Malaysia’s political system, its functions, and how it works.

**Measuring Democratic Quality in a Hybrid Regime**

Measuring the quality of democracy is the latest field in democratization studies. Liberalism has won and democracy has been expanded around the globe. The new concern is the quality of these new democracies. Przeworski (2010) wrote that having followed liberalization, transition and consolidation, we have discovered there is still

something to improve, and that is democracy.  Some analysts claim that the goal of the new literature on democracy assessment and measurement is to learn what makes democracy better or worse and to provide insights, to policymakers and other agents of reforms, on how democracy can be improved and strengthened in their countries.

The Challenges

The problems with democratization and regime transition theories are when they focus too much on issues of regimes transitioning to democracy and consolidation, rather than putting attention on how the regimes actually work even without being fully democratic. The hybrid regime is generally described by transition experts as unstable and peculiar and, thus, deserves extra attention in the literature. How can we know how they really function without evaluating their performance? This is the challenge taken on by this study, which assesses and evaluates the performance of the so-called odd and ambiguous regime with flawed democratic practices.

Democratic transition scholars have explicitly or implicitly been adamant about regimes such as Malaysia, who will one day transform into a liberal democratic system. This is not surprising since the nature of these theories is teleological. I argue that an ambiguous political regime like Malaysia may not necessarily transform to be fully democratic, but that does not mean there will not be opportunities for that goal to happen. This is because the political configuration entrenched in the regime through its hybrid

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mechanism will somehow facilitate openings for more democracy, while simultaneously hindering its development.

Political uncertainty is particularly high among developing democracies that are contributing to this puzzling empirical pattern. This is one of the main challenges in designing a framework of research on regime change. It is hard to predict when there are elements of uncertainty; however, we can still put hope in our predictions by analyzing characteristics to forecast the possibilities of outcomes. Many analysts claim that democratization is a multi-faceted phenomenon\textsuperscript{63} and that uncertainty surrounds the end goal of the democratization process itself; therefore, it is imperative to use the right analytic approaches in order to understand the issues and problems surrounding the democratization process, its success stories and its failed efforts. Assessing the quality and problems of a democracy has been the object of numerous studies. However, despite the existing extensive literature, the multi-dimensional character of understanding democracy and measuring its quality have made this study extremely difficult and challenging.

For these reasons, this study does not advance specific master variables to be used as units of analysis. Rather, I list factors that I think are significant to be the explanatory variables to describe and explain some answers from the assessment questions. From this analysis, I hope to show how these factors influence, either positively or negatively, the democratization process in Malaysia. Key factors such as the electoral institution, Internet media, and the peaceful social movement, are positive factors that can facilitate democratic openings. Factors such as the strong state, dominant single-party system,

coercion (in the form of repressive laws), manipulated electoral system, ineffective middle class, patron-client list practices, and weak civil societies, are negative factors that hinder the development of democracy and regime change.

If it is hard to place Malaysia in a clear-cut category between democracy and authoritarianism, it is even more difficult to perceive the direction in which its political system is moving. As explained previously, the link between the transition paradigm and elements of uncertainty about the end results contradict the claim made by proponents of transition theories, like Huntington, who wrote that a regime in transition toward democracy will normally go every way, and if it does not, it is unstable. Ironically, the Malaysian political system has been balancing between the traits of liberalism and control since before its independence from the British, and these characteristics have remained unchanged until the present.

Some hybrid regimes’ institutional apparatus and their relation with the behavior of political actors can affect the political system in the long run, either positively or negatively. That said, this study reminds us that even a partially practiced democracy with a certain political configuration and setup can plausibly provide an institutional framework that is capable of guaranteeing an opening for democracy development and possible regime change. However, there still exists grounds to question the stability of the hybrid institutional arrangements.

This research chooses to advocate for better governance. I believe that whatever ground our political setup is based upon, without good governance it is pointless. Good

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64 Samuel P. Huntington, *The Third Wave Democratization in the Late Twentieth Century* (1991), 137.
governance not only addresses democratic government; it is equally important to a hybrid government.

In recent years, the economic and political turmoil in Malaysia have reached the climate of citizen discontent. Issues of bad governance are the main factors that have brought Malaysians to the streets of Kuala Lumpur in protest to demand more democratic openings and good governance from the incumbent regime. The Malaysian ruling government is blamed for failing to meet the needs of the poor, disadvantaged, and marginalized minorities in a seemingly highly inequitable society.65

Regarding citizen discontent with government performance, this study suggests to continue pushing for good governance. Accordingly, this study opens the door for discussion of the possibilities to make hybrid regime studies an independent field in comparative regime literature, rather than a subfield of diminished types of democracy in democratization literature.

The objective of this study is to evaluate the partially practiced democracy in Malaysia and to find out how it actually works in a hybrid political setup. This study also hopes to identify the strengths of the hybrid setup, as well as to acknowledge weaknesses, discrepancies, and areas of limitation that need to be improved. This study attempts to show how some principles of democracy and authoritarian practices are mutually engaging to prepare the ground for regime stability and endurance.

On the basis of these factors, the hybrid regime seems to function not in spite of but because of the combination of democratic and authoritarian institutions and the combination of incentives and deterrents that result from their interactions. It is also

reasonable to claim that hybrid regimes can be both stable and unstable in relation to the incentives and deterrents. In addition, it is plausible to claim that the institutional apparatus and the mechanism that balances the positive and negative components of democracy, in a hybrid regime can somehow provide a ground for equilibrium.

**Thesis Statements**

The hybrid regime in Malaysia may not necessarily transform to be fully democratic, but that does not mean that there are no opportunities for progress in democratization. This is because the political configuration entrenched in the regime through the components of democracy (e.g., regular elections, elite strategies, Internet and social media, peaceful mobilization) will somehow facilitate openings for more democracy, destabilize the regime, and trigger a possible regime change. On the other hand, the political configuration in Malaysia’s hybrid system can also facilitate negative components of authoritarianism; such as, control system, strong state, electoral engineering, dominant one-party system, and patron-clientele practices that can hamper the democratization progress and sustain regime incumbency and resiliency.

This study provides a comprehensive assessment of the democratic principles practiced in Malaysia. One of the goals of this study is to show how democratic traits of popular control and political equality work in a political environment that is partly democracy with authoritarian control and how they function as a survival strategy. In addition, this study provides valuable insights as to what makes regimes in the gray zone worth studying.

The aim of this study is not to create another adjective to describe countries in the gray zone. Rather, it is to describe a new dynamic in democratization literature, that a
“defective” democracy can actually work in a troubled country. The goal of this assessment is to shed light for future research of a sustainable hybrid regime type in studies of democratization and comparative governments.

Figure 1. Positive and Negative Components of Democratization in Malaysia’s Hybrid Political Configuration

Methodological Framework

The research framework used for this thesis to assess democracy was proposed by the well-known non-profit organization that promotes democracy around the globe, the International Institute of Democratic and Electoral Assistance (IDEA). Their method focuses on assessing two democratic principles: (1) popular control, and (2) political equality.

In the democratization field, students and scholars alike are fully aware how contested the concept of democracy is. No universal concept of democracy has been
produced so far in comparative politics history. Thus, according to the International IDEA framework, popular control and political equality are the basic principles at the root of democracy. These principles clarify how democracy is supposed to work on behalf of the people, as well as determine how democratic institutions, mechanisms, and values should function for the people. The framework states that the people should ultimately control (popular control) what the decision-makers do in their name, and that everyone should be equal in exerting that control (political equality).  

According to Professor Weir (2008), International IDEA’s framework does not just look at the formal relations between democratic institutions (e.g., Parliament, the executive, the judiciary); it goes deeper, into the fabric of the society, the people, the local government, the electoral system, and popular participation, to evaluate the country’s culture of democracy. The framework combines a commitment to the fundamental principles of democracy, mediating values related to these principles, and a comprehensive range of questions about democratic performance. International IDEA stands on the ground that democracy is not perfect. In terms of the assessment framework and within International IDEA’s general orientation toward democracy as an ongoing and an evolving process, it is entirely to be expected that democracy is not an “all or nothing” affair, so that certain features may be better developed than others and assessing the

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67 Ibid.

quality of democracy necessarily requires a multidimensional approach that can provide a more nuanced and context-specific “performance profile.”

The democratic ideals endorsed by proponents of democracy may be interpreted differently and convey overlapping meanings, depending on who is doing the assessment and which part of the world they come from. Thus, the International IDEA framework is a citizen-led assessment that insists that only citizens and others who have lived in the country being assessed should carry out the assessment. This is because only the citizens of the country are the best source of experiences to tell the country’s history, the people and society, the culture and their experiences with democracy, in order to shape its democratic principles. The objective is to set the future of democracy in the hands of its own citizens and not outsiders.

This method is robust, practical, and universally applicable. It has been tested all around the world in new and old democracies, in developed and developing countries. Since the year 2000, more than twenty countries have been assessed using the IDEA framework. I used this approach for this study based on two factors: (1) IDEA’s approach is open-ended research with flexibilities in measuring democracy. There is no compulsion for an objective conclusion expected at the end of the assessment. The assessment

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71 To date, the framework has been applied in more than twenty countries around the world, including countries in Asia, Africa, Eastern and Western Europe. These assessment initiatives have all been motivated by a variety of factors, illustrating the fact that democracy has many stories. From the odd democracy such as in India and Mongolia, to the exemplar democracy in the Northern hemisphere such as in UK and Western Europe.
questions are robust and do not confine the assessor’s responses into limited areas. (2) The framework is open for further modification to suit local surroundings. With this in mind, the assessment approach is useful for those who are facing similar complexities in approaching an ambiguous political system, such as in Malaysia.

The IDEA framework helps to identify challenges in order to strengthen the country’s method of governing and reform if it is needed. I hope the assessment findings will help to inform and educate citizens on the quality of democratic processes as well as the progress and weaknesses of democracy in their country. In addition, I hope the assessment findings will provide some points of contribution to the existing literature of countries that are in the gray zone and that are commonly partly democratic.

How the Framework Works

The International IDEA framework is constructed based on two fundamental sets of democratic principles: popular control and political equality. From these two democratic principles, the framework derives seven mediating values:72 participation, authorization, representation, accountability, transparency, responsiveness, and solidarity. According to International IDEA, in order for these to be achieved and realized, they have to be adhered with a series of requirements that need to be placed via institutional means. The combination of these values, their requirements, and institutional means is outlined in Table 1 below. The democratic principles (i.e., popular control, political equality) and mediating values are used to construct the four main pillars of the assessment framework, each of which has a series of subcategories of assessment (see Table 2). Each of the subcategories has an overarching question and a series of search

72 These two principles and seven mediating values are drawn from the rich tradition of democratic theory and the discourses on defining democracy (International IDEA, 2008).
questions (a total of 90) (see Summary of the Framework, Figure 1). This study excludes the fourth pillar of democracy beyond the state because (1) Malaysia’s political accounts are very much influenced by the domestic politics rather than international factors, and (2) international influence is not intense in Malaysia, compared to other countries in the region.

**How To Get the Data and Information?**

This study attempts to assess and answer the fifteen overarching questions prepared by International IDEA using qualitative and quantitative indicators. The answers are in a form of analysis via descriptive-analytical approach. For this assessment, I collected varieties of statistical indicators on democracy, development, human rights, and governance, in order to provide answers to the search questions across the different subcategories of the four main pillars. Alongside these quantitative indicators, which are necessarily limited, this research includes qualitative summaries of the key aspects of Malaysia’s democracy, organized using the subcategories and pillars.

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73 See appendix.

74 According to Levitsky and Way, Malaysia is one form of competitive authoritarianism that has failed to be affected by international linkage. For instance, in 1998, Malaysian Prime Minister Mahathir Mohammad was able to imprison his leading challenger, Anwar Ibrahim, and to crack down on the subsequent protest movement without incurring large-scale external costs. Notwithstanding strong Western support for Anwar and the Reformasi movement, the international community never seriously threatened Mahathir’s grip on power. [Steven Levitsky and Lucan A. Way, “International Linkage and Democratization,” *Journal of Democracy*, 16, no. 3 (July 2005): 20-34.]

75 The use of search questions indicates the difference between the SoD framework from other efforts to measure and assess democracy. The objective was not to achieve an aggregate “score” for a country, nor seek to rank the order of democratic experiences between countries; however, the framework has acknowledged that democracy is not an “all-or-nothing” but a multifaceted affair.

76 It is a mixed-method approach in which the researcher uses a combination of qualitative and quantitative research in the study. Descriptive research involves the collection of secondary data and the description of the data in order to answer questions concerning the current status of the subjects being studied. Analytical research is often called exploratory research. Analytical research can be quantitative or qualitative, depending on whether the focus is on exploring factors, such as voter turnout, which can be assigned a definitive value, or factors that cannot be given a definitive value, such as attitudes or beliefs.
Data and information on discourses of Malaysian politics were gathered through secondary sources from libraries and Internet research; including scholarly works from academic journals, newspapers and magazine reports; and analysis of Malaysian politics forums, the Malaysian Human Rights Commission, Amnesty International, the U.S. Department of State, UN Special Reports on Malaysia, and NGOs, as well as blogger sites such as Malaysiakini.com, MalaysianInsider.com, and Aliran.com, all well-known as reliable online political sources.

**Plan of the Dissertation**

Chapter one introduces the research framework and highlights the issues in the democratization and transitions paradigm. It contains the issues and paradox of the subject of “regime transition” in Malaysia, and discusses the framework of evaluating the “democracy” practiced in Malaysia. This introductory chapter also includes the three claims made about the regime in Malaysia.

Chapter two mainly focuses on the theoretical approaches that were relevant to this study. It demonstrates the main approaches of democratization studies; such as modernization theories, historical structuralist and transition theories, the background of third wave democratisations, and some works that discuss “hybrid” regime resiliency. The latest trend under democratization studies on how to measure the quality of democracy is also discussed.

Chapter three highlights the trajectory of Malaysia’s politics and the important dates since independence to the present. This trajectory is in the form of time lines of Malaysia general elections since 1955.
Chapter four covers two assessment subjects: (1) assessment of the issues of nationhood and citizenship in Malaysia, and (2) assessment of the rules of law and access to justice. This is to show how elements of democracy are intermingled with authoritarian practices in Malaysia’s political system.

Chapter five covers the assessment of the conditions of civil, political, economic, and social rights. It shows that some democratic rights are constrained by the practices of authoritarian control in Malaysia.

Chapter six covers the issues under Malaysia’s free and fair elections and political parties. The objective is to see how these democratic institutions are practiced in a hybrid political environment.

Chapter seven covers the subject of the government’s effectiveness and accountability, the role of the military and police, and an assessment on corruption in Malaysia. Chapter eight covers the assessment on media and political participation.

Chapter nine covers the assessment on government responsiveness and decentralization.

Chapter ten analyzes the overall performance of the so-called flawed democratic practices in the Malaysia’s hybrid political system, and discusses some findings from the assessment, such as the importance of “good governance” indicators. A general policy recommendation is highlighted and a projection of the regime’s future is discussed.
Table 1: Mediating Values, Requirements and Institutional Means of Realization

<table>
<thead>
<tr>
<th>Mediating Values</th>
<th>Requirements</th>
<th>Institutional Means of Realization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation</td>
<td>• Rights to participate&lt;br&gt;• Capacities/resources to participate&lt;br&gt;• Agencies for participation&lt;br&gt;• Participatory culture</td>
<td>• Civil and political rights system&lt;br&gt;• Economic and social rights&lt;br&gt;• Elections, parties, NGOs&lt;br&gt;• Education for citizenship</td>
</tr>
<tr>
<td>Authorization</td>
<td>• Validation of Constitution&lt;br&gt;• Choice of officeholders/programs&lt;br&gt;• Control of elected over non-elected executive personnel</td>
<td>• Referenda&lt;br&gt;• Free and fair elections&lt;br&gt;• Systems of subordination to elected officials</td>
</tr>
<tr>
<td>Representation</td>
<td>• Legislature representation of main currents of popular opinion&lt;br&gt;• All public institution representative of social composition of electorate</td>
<td>• Electoral and party system&lt;br&gt;• Anti-discrimination laws&lt;br&gt;• Affirmative action policies</td>
</tr>
<tr>
<td>Accountability</td>
<td>• Clear lines of accountability, legal, financial, political, to ensure effective and honest performance civil service and judicial integrity</td>
<td>• Rule of law, separation of powers&lt;br&gt;• Independent auditing process&lt;br&gt;• Legally enforceable standards&lt;br&gt;• Strong parliamentary scrutiny powers</td>
</tr>
<tr>
<td>Transparency</td>
<td>• Government open to legislative and public scrutiny</td>
<td>• Freedom of info, legislation&lt;br&gt;• Independent media</td>
</tr>
<tr>
<td>Responsiveness</td>
<td>• Accessibility of government to electors and different sections of public opinion in policy formation, implementation and service delivery</td>
<td>• Systematic and open procedures of public consultation&lt;br&gt;• Effective legal redress&lt;br&gt;• Local government close to people</td>
</tr>
<tr>
<td>Solidarity</td>
<td>• Tolerance of diversity at home&lt;br&gt;• Support for democratic government and popular democratic struggles abroad</td>
<td>• Civic and human rights education&lt;br&gt;• International human rights law&lt;br&gt;• U. N. and other agencies&lt;br&gt;• International NGOs</td>
</tr>
</tbody>
</table>

Source: Democracy Assessment: The Basics of the International IDEA Assessment Framework

Table 2: Main Pillars and Subcategories in the State of Democracy Framework

<table>
<thead>
<tr>
<th>Main Pillars</th>
<th>Subcategories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizenship, Law, and Rights</td>
<td>• Nationhood and citizenship</td>
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<tr>
<td></td>
<td>• The rule of law and access to justice</td>
</tr>
<tr>
<td></td>
<td>• Civil and political rights</td>
</tr>
<tr>
<td></td>
<td>• Economic and social rights</td>
</tr>
<tr>
<td>Representative and Accountable</td>
<td>• Free and fair elections</td>
</tr>
<tr>
<td>Government</td>
<td>• Democratic role of political parties</td>
</tr>
<tr>
<td></td>
<td>• Government effectiveness and accountability</td>
</tr>
<tr>
<td></td>
<td>• Civilian control of the military and police</td>
</tr>
<tr>
<td></td>
<td>• Minimizing corruption</td>
</tr>
<tr>
<td>Civil Society and Popular</td>
<td>• Media in a democratic society</td>
</tr>
<tr>
<td>Participation</td>
<td>• Political participation</td>
</tr>
<tr>
<td></td>
<td>• Government responsiveness</td>
</tr>
<tr>
<td></td>
<td>• Decentralization</td>
</tr>
<tr>
<td>Democracy beyond the State</td>
<td>• International dimensions of democracy</td>
</tr>
</tbody>
</table>

*Source: Beetham, D., Bracking, S., Kearton I. and Weir, S. 2002*  

Figure 2. Summary of the International IDEA Framework

Democratic Principles
- Popular control
- Political equality

Mediating Values
- Participation
- Authorization
- Representation
- Accountability
- Transparency
- Responsiveness
- Solidarity

Framework Structure

Citizenship, law and rights
- Nationhood and citizenship
- The rule of law and access to justice
- Civil and political rights
- Economic and social rights

Representative and accountable government
- Free and fair elections
- Democratic role of political parties
- Effective and responsive government
- The democratic effectiveness of Parliament
- Civilian control of the military and police
- Integrity in public life

Civil society and popular participation
- The media in a democratic society
- Political participation
- Decentralization

Democracy beyond the state
- External influences on the country’s democracy
- The country’s democratic impact abroad

Search Questions
15 Overarching questions
75 Specific questions
90 questions in total

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Chapter Two: Theoretical Approaches and Relevance

When the Cold War ended in the late 1980s, Fukuyama published his famous thesis about the end of history and the last man.\textsuperscript{80} This claim is not worthless, because history witnessed a surge of countries embracing democracy, one after another like the domino effect.

Over forty countries have gone through this transition between 1974 and 2005, with an increase from forty to eighty-nine countries becoming democratic.\textsuperscript{81} However democratization studies are not without issues. Since the surge of democracy in the 1990s, now in the new millennium, the trend has shifted toward evaluating countries that have flunked the process of becoming fully democratic.

Understanding Democratization

This chapter demonstrates important approaches in democratization studies and their relevance to this dissertation. Democratization studies are very interesting and rich, because their discourses cover almost the entire field of comparative politics. Also, they display problems and success stories of comparative democratization not only in developed countries but also countries in the developing and less-developed regions.

\textsuperscript{80} Francis Fukuyama has been made famous for his book, \textit{The End of History and the Last Man} (New York: The Free Press, 1992) where he quickly put into publication the assumed triumph of Western capitalism against socialism, signaling the end point of humanity’s sociocultural struggle.

In this chapter, I show and explain four approaches to understanding how democratization works: (1) modernization, (2) structuralist, (3) third wave, and (4) transition or agency approaches. Along with these approaches, I also highlight the issues, limitations and usefulness of these approaches in order to grapple with the problems of the democratization effort in Malaysia. In addition to approaches, included in this chapter is the latest trend in democratization literature that is studied for measuring the quality of a democracy.

**Modernization Approach**

This theory is an attempt to theorize democracy in relation to Western capitalist ideology. This approach began in the mainstream literature of comparative politics in the 1960s and 1970s.\(^8^2\) It underlines the particular variables and components of what make a democracy. This process assumes a lineal and untroubled relationship between capitalism and democracy; and tends to alienate other factors, such as history, ethnocentricity, and the sensitivity of countries outside the western hemisphere. The modernization approach focuses overtly on structural factors to explain democracy, since it is based on capitalist economy. In comparative politics, the modernization approach invites a widespread and active response from critics in this field. Critics argue that modernization theorists ignore the particular developmental processes of the Third World; their assumptions are based

on the experiences of the Western world, and they made this the platform for others to follow.83

The most important theory that defines modernization studies, supported by proponents of democracy, was Lipset’s theory of social requisite to democracy. Lipset established the theoretical link between the level of development of a particular country and the plausibility of it becoming democratic. Lipset stated that the more well-to-do a nation, the greater the chances that it will sustain democracy; that a country is more likely to be democratic if its socio-economic structure is advanced and developed.84 Critics argue that Lipset’s research may have a high degree of correlation between a high level of economic development and being democratic; however, this correlation does not mean a causation of democracy.

Among prominent critics of Lipset’s thesis were Adam Przeworski and Fernando Limongi85 who demonstrated that modernization only helps existing democracies to survive and does not help democracy to emerge.86 Przeworski agreed that the conventional empirical observation of validating wealth can sustain a democracy in wealthier countries; however, wealth and gradual economic growth do not bring

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democratic transition from autocracy. Nevertheless, wealth remained strongly related to democracy, and its relationship with democracy is probabilistic.\textsuperscript{87}

For instance, Lipset’s theory is irrelevant to be applied in certain countries in Southeast Asia and Latin America. Przeworski is right to claim that economic growth does not cause a regime to transform to democracy. Evidence from Latin America (post-World War II) further refutes the thesis of modernization theory. Instead, economic progress in that region was associated with the persistence of authoritarian regimes.\textsuperscript{88} Analysts describe the regimes that emerge in the midst of economic modernization as the new authoritarianism.

In Malaysia, pressures from economic growth have had a reverse impact. The Malaysian state has been formally democratic since independence; however, it has become increasingly authoritarian, especially after the incident of ethnic violence in 1969. Analysts argue that socio-economic development demands changes to democracy as well as for authoritarianism.\textsuperscript{89} Therefore, in Malaysia, conditions of economic growth are determined by state control over the economy and entrepreneurial class. Thus, economic growth and its relations to democracy depends on the ruling elites’ commitments to democratic transition, which is hardly the case. Malaysia shows that greater economic development has been accompanied by more authoritarianism; which


\textsuperscript{89} Harold Crouch, \textit{Government and Society in Malaysia}, 220.
suggests that economic development does not fit the Lipset hypothesis, thus rendering economic development neither necessary nor sufficient for democratization.

David Apter argued that democracy as an end should not be pursued at all levels of modernization since it can bring about destabilization to the political process in underdeveloped societies.\textsuperscript{90} Similarly, Huntington in his most prominent work\textsuperscript{91} criticized and nailed the prevailing modernization theory that argued that capitalist development, instead of generating stable democracies, affects stability in developing countries. For Huntington, rapid social change produces mass political demands,\textsuperscript{92} which existing constitutions find hard to contain; and this results in jeopardizing order in a society. In this context, according to Huntington, economic development increases political mobilization at a faster rate, thus leading to instability.\textsuperscript{93}

Fukuyama claimed that modernization ignores the particular development processes of the Third World; and that, extrapolated out of the experiences of the Western world rule for the entire planet, is also inherently ethnocentric. The critique from the left says that modernization theorists have enshrined an ethnocentric European or


\textsuperscript{92} Huntington’s thesis was so relevant to the political situation in Malaysia in late 1960s when ethnic violence erupted due to ethnic turmoil; and the regime has, since then, used this incident to justify institutionalizing more authoritarian measures, such as enacting repressive laws and creating affirmative action policies for the sake of social harmony and regime stability.

North American model of social development as a universal one for humanity to follow. 94

**Structuralist Approach**

Historical structuralism is the macro approach to understanding democratization. Similar to modernization, which emphasizes economic structure and development of democracy, the structuralist approach focuses on long-term historical patterns, such as colonial heritage, the state, class, societal fractionalization,95 political culture,96 and international influence.97 The difference is that the modernization thesis concentrates more on short-term calculations of democracy; whereas, the structuralist approach explains long-term predictions of democratization.98 According to Teorell (2010), the structuralist approach is distinguished from other approaches in that it explains democratization progress independent of human agents or actors.99

The state-centered view under the structuralist approach is part of the academic response to the excessive focus on the society-centered view toward understanding democratization.100 According to statists, the “society-centered” perspective is outdated


and the state should be the new actor to explain policies and political activities. Important writings on the state, such as *Bringing the State Back In* by Skocpol *et al.* (1985), emphasizes the state (in a Weberian\(^{101}\) sense) as an explanatory variable in its own right to dictate the organization of a society itself.\(^{102}\) Structuralists use states to explain state relations with social classes and how they interact over phases of time in history in shaping a political system.

In Malaysia, the state structure itself became an important explanatory variable for understanding how democratization works, or stalls, in Malaysia. Dan Slater (2012) called the situation in Malaysia a strong-state democratization.\(^{103}\) According to Slater, state power in Malaysia has served as the main source of the absolute-power mechanism in order for a regime to maintain its incumbency. Thus, the regime in Malaysia will strive hard to make sure that they will not lose political control over the state apparatus. However, the extent of the arsenal used by the regime in Malaysia, to sustain its power, is far greater than would be considered normal and acceptable in a fully democratic country. Thus, we can understand why the ruling *Barisan Nasional* (BN) in Malaysia has not lost any general elections since independence.


\(^{101}\) Max Weber (1946) conceptualized state as the monopoly of the legitimate use of physical force within a given territory. This term is widely used in contemporary political science.

\(^{102}\) Peter B. Evans, Dietrich Rueschemeyer, Theda Skocpol, eds., *Bringing the State Back In* (Cambridge [Cambridgeshire]: New York: Cambridge University Press, 1985).

Jesudason\textsuperscript{104} (1995) claimed that the position of the state in Malaysia as a statist democracy that represents the situation where power holders have much of the leverage in determining the rules of political competition, and that allows the incumbents to entrench their dominance in the society without employing a high degree of coercion. This point is interesting because the concept of a state in Malaysia overtook Weber’s definition of a legitimate use of physical force; hence, it marks the characteristics of Malaysia’s political system of semi-authoritarian.\textsuperscript{105}

Institutionalism Approach

Under the structuralist approach is the institutionalism approach. Some analysts claim that studies on institutions are related to agency\textsuperscript{106}; others, like Teorell (2010), see that institutionalism still bears a strong relevance to structural theories of democratization.\textsuperscript{107} Also, institutional explanations as determinants of democracy can be seen under areas such as forms of government, electoral system, constitutional frameworks, and regime types; these examples are relevant to an institutional explanation


\textsuperscript{105} Marina Ottaway (2003) gives the concept “semi-authoritarian” to describe the ambiguous regimes that result from a failed transition process.


that is exogenous to human agency.\textsuperscript{108} I include the institutionalism approach under the historical structuralist approach to explain further the roles of institutions as one of the many variables for explaining and analyzing democratization and, possibly, also regime transition in Malaysia.

The Social Forces and Democratization

A seminal work by Moore (1966) provides a milestone for a socio-historical understanding of democratization. Structuralists like Moore focus on factors that are distinctive to particular cases, like his comparison of the eight major countries Britain, France, the U.S., Germany, Russia, Japan, China, and India.\textsuperscript{109} The studies focused on how historical accounts of the roots of democracy and dictatorship have influenced democracy in the modern world. One important claim that Moore has made is that the bourgeoisie class was an important variable that can bring democracy in a country: No bourgeoisie, no democracy.\textsuperscript{110} However, later research found that in developing societies the middle class does not necessarily work to the advantage of a democracy. For example, in Latin America, the middle class actually supports the militarized dictatorship, instead of working toward a democratic system.\textsuperscript{111}

Lipset’s middle class and Moore’s bourgeoisie both support the structuralist approach, explaining how democracy is achieved. However, this connection is irrelevant


\textsuperscript{110} Ibid., 418.

in some areas, such as Southeast Asia. In Malaysia, for example, a huge portion of the middle class supports the authoritarian regime, instead of demanding regime transformation. Thus, the claim that growing the middle class creates pressures for democracy is questionable, at best. The middle class in Malaysia is relatively large, but they are divided along ethnic lines. Government policies that positive discrimination responds more to the demands of Malays has alienated ethnic non-Malays. Thus, the ethnic divisions in Malaysia have forestalled any unified middle-class or working-class action against the dominant regime. A divided and a weak middle class in Malaysia renders them ineffective to push for democracy or to resist authoritarian government.

The strength of the structuralist approach is that it is more grounded and explanatory and it provides comparisons across countries and regions. Yet, critics claim that this approach is old school and obsolete for explaining regime change. They acknowledge agents like classes and states, but they do not sufficiently explain institutions, individuals, and elites as agents of change. Their view on structures has determined that outcomes are too simplistic and predetermined, thus lack of a micro-foundation.

**Third Wave Approach**

Samuel Huntington, the great scholar of democratization, named the post-1974 period the “third wave” of global democratic expansion. This prompted him to

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113 Huntington, however, changed his views on modernization to some degree after his influential 1991 work *The Third Wave*. He does consider modernization as one of the factors driving democratization.
write the Third Wave theory\textsuperscript{116} to validate those events. Since then, Huntington’s wave theory has been widely accepted as providing a basis for analysis. In addition to confirming the liberalization of many countries, he acknowledged that the wave also involves countries that are not fully democratized, some which previously had made the transition but reversed back to non-democratic rule.\textsuperscript{117}

The Third Wave theory\textsuperscript{118} was not, however, a manifestation of a broader cross-cultural modernization process that eventually would encompass all societies, but one rooted in a particular set of cultural values inherited from Western Christianity\textsuperscript{119}; also that the dissemination of the ideologies of democracy will have positive implications from transnational activities. This is where the problems are realized regarding Huntington’s Third Wave theory in particular, and the democratization paradigm in general. Huntington is criticized due to the weakness of the Third Wave theory’s assumption that democratization is the result of positive transnational activities.

Historically, even though the origin of modern democracy may be rooted in Western Christianity, globalization and the West do not represent the vanguard of a universalizing

\textsuperscript{114} Democracy Third Wave spread following development of regime transition in South Europe and Latin America, then spread around the globe in Asia starting in the late 1980s and into the 1990s.

\textsuperscript{115} Critics of Huntington’s wave theory suggest that he fails to capture different explanations for democratization.

\textsuperscript{116} Samuel P. Huntington, The Third Wave: Democratization in the Late Twentieth Century.

\textsuperscript{117} Ibid., 15-16.

\textsuperscript{118} The catch-phrase “the third wave” has been widely among scholars studying what is considered by some to be democratic transitions and democratization throughout much of the developing world. [Source: Wikipedia].

\textsuperscript{119} Francis Fukuyama, “Samuel Huntington’s Legacy,” Foreign Policy (5 January 2011).
democratic movement. In addition, critics say that Huntington’s prediction narrowly focuses on untainted elections instead of including effects of the fallacy of electoralism. Critics also say that by overemphasizing the global aspects of democratization, Huntington has ignored actual causes for democracy that seminally involve the configuration of domestic politics of nation states; including historical legacy, institution-building, class structure, civil society, and the power of state. The important factor that comes out of the democracy third wave is that ambiguous regimes got stuck in the continuum between authoritarian and full democracy.

**Transition Process-oriented Agency Approach**

In response to the relative inability of modernization and structural approaches to explain the third wave democratization processes, new literature on democratic transition emerged in the 1980s, adopting an agency or process-oriented approach. This literature emphasized the importance of political actors and their ideas and ability to interact with each other (incumbent and opposition) to peacefully bring about a democratic transition.

A huge part of transition theory has focused more on the strategic choices of agents or actors such as political elites. According to Howard and Roessler (2006), elite strategies and “incumbent-opposition dynamics” are more important to “competitive authoritarian” regime than structural factors for determining political liberalization. However, the agents/elites approach on democratic transition is irrelevant to Malaysia,

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because there is no obvious cooperation between the ruling elites and opposition elites when it comes to negotiating a regime transition. The ruling elites have so far remained strong and unified under the regime. It is the opposition elites that are weak, due to different ideologies.

Transition theory emphasizes the importance of political change and focuses on liberalization, transition, and consolidation. Rather than focusing on economy, history and development as in the modernization approach, the transition school believe that it is individual actors such as elites (either from the incumbents or the oppositions) who are responsible for regime transition to democracy. This is where the problem lies. Too much focus on agents neglects other variables that are also part of explaining how and why a regime succeeds or fails to become democratic.

Rustow (1970),\textsuperscript{123} one of the main critics of Lipset and structural literature in general, claimed that they neglect the micro or genetic aspect of how democracy comes into being.\textsuperscript{124} To address this neglect, Rustow came up with a model of democratization that emphasizes certain stages/phases that a country must go through from authoritarian to democratic rule. These phases are: the preparatory \rightarrow decision\rightarrow habituation.\textsuperscript{125}

Many recent works on transitions have continued this emphasis. Twenty years after Rustow, O’Donnell and Schmitter (1986) came out with strong research on the relevance of political actors as agents in democratic transition in Latin America. In other

\begin{itemize}
\item \textsuperscript{124} Ibid., 340.
\item \textsuperscript{125} Jan Teorell, \textit{Determinants of Democratization: Explaining Regime Change in the World, 1972-2006} (Cambridge: Cambridge University Press, 2010), 19.
\end{itemize}
words, what matters is not that political elites have a normative commitment to
democracy, but that they are willing to accept it as a compromise. Huntington (1984) and
Karl (1986c) likewise argued that democracy has been an unintended consequence and
that political elites have viewed democracy as a means of realizing other objectives.\textsuperscript{126}

Critics and analysts argue that the transition stage of democratization is regarded
as a period of great political uncertainty; that regimes can reverse, re-becoming
authoritarian rather than transforming into fully democratic. According to Karl and
Schmitter, the transition period is a subject of unforeseen contingencies, unfolding
processes, and unintended outcomes.\textsuperscript{127} This is the stage where the hybrid regimes
emerge; instead of going through the end process of democratization, these regimes get
stuck in-between the continuum.\textsuperscript{128}

One of the interesting issues in the literature is the connection between democracy
and uncertainty. Przeworski’s contributions have highlighted the uncertainty of
democracy. The process of establishing a democracy is a process of institutionalizing
uncertainty and subjecting all interests to uncertainty. In an authoritarian regime, some
groups, typically the armed forces, have the capacity to intervene whenever the result of a
conflict is contrary to their program or interests. In a democracy, no group is able to
intervene when outcomes of conflicts violate self-perceived interests. Democracy means

\textsuperscript{126} Scott Mainwaring, “Transitions to Democracy and Democratic Consolidation: Theoretical and
Comparative Issues” (Working paper #130 presented at the Kellogg Institute/University of Notre Dame

\textsuperscript{127} Terry Lynn Karl and Philippe C. Schmitter. 1991, “Modes of Transition in Latin America, Southern and
Europe,” International Social Science Journal: 270.

\textsuperscript{128} Doh Chull Shin, “On the Third Wave Democratization: A Synthesis and Evaluation of Recent Theory
that all groups must subject their interests to uncertainty.\textsuperscript{129} This tradition stresses the uncertainty and possibilities that surround transitions to democracy.\textsuperscript{130}

The wave of democratic optimism after the collapse of the Soviet Union and the triumph of capitalism around the globe, has given way to more somber appraisals about the current condition of democratic systems in the developing world. There is a growing awareness that elections alone do not guarantee the full quality of a democratic system. In addition, only a few countries that were supposed to transition to democracy have actually reached the stage of consolidation of the system. Instead, most of the countries in Africa, Asia, and ex-Communist states, have come to occupy an uncertain middle ground between complete authoritarian and full democracy. Some have even reversed back to becoming authoritarian.

These so-called ambiguous democracies have been variously described as flawed, illiberal\textsuperscript{131} or more generally hybrid regimes\textsuperscript{132}; what Ottawa 2003 claimed was an ambiguous system that combined rhetorical acceptance of liberal democracy … with essentially illiberal or even authoritarian traits. Academics and policymakers have


focused increasing attention on the challenges and dilemmas of these gray-zone countries: hybrid regimes.

**Resilient Hybrid Regimes**

While others in democratization studies have attempted to analyze the failed process of democratic transition, lamenting regime defects with façade democracies that disguise authoritarian practices; others claim that these regimes will not stand and that “liberal authoritarianism is not a stable equilibrium; the halfway house does not stand.”

How is it that so many countries around the world, Malaysia being a classic example of a regime with mixed/hybrid system, have endured for more than fifty years?

Much discourse in the transition literatures discusses how a country can be democratic and end up with a democratic consolidation. However, not many have given thought to regimes of this kind that have endured challengers and critics and have thrived; not only surviving, but are stable and resilient. The transition paradigm limits the further understanding and reality of regimes in the gray area. These limitations in the democratic transition paradigm should be given some reflection.

Regimes like these are not in a transitional mode; they are here to stay. According to Hobson (2003), the assumption that the current status of regimes in the gray area is only temporary and the idea that they will eventually become either a democracy or

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133 Hybrid regimes matter because they present special challenge to the study of democratic transition.


135 I use system and regime interchangeably in the discussion, because the concept of regimes in my study presents the method or a system of government. It also means a state system or a political system.
reverse back to authoritarianism is problematic. He does not agree that regimes at this stage should be called democracies, because these regimes do not meet all the definitional criteria of what a democracy is. For those who assume that these regimes will end up reverting to authoritarianism, serving the teleological pitfalls and normative judgments, Hobson further argued that viewing these regimes from the dichotomy of a “democracy + elections’ mindset” obscures the real nature of these entities. Only by removing this mindset can analysts progress toward a fuller understanding of what these regimes truly are.\footnote{Christopher Hobson, “Rethinking Democracy: The End of Democratic Transitions?” \textit{Melbourne Journal of Politics} 29 (2003/04): 56–67.}

Merkel (2004), in his analysis,\footnote{In his work, Merkel described what a defective democracy is all about. He did this under the foundation of what real democratic government should be. However, he ignored the point that regimes that have been labeled as a democratic defect does not mean it is dysfunctional and will not last; it may not be a practicing democracy in full, but this does not mean the system is unsustainable.} showed that defective democracies are by no means regimes in transition. They tend to form stable connections to their economic and social structures and are often seen as considerable parts of the elite population and as an adequate institutional solution to the specific problems of governing effectively. These regimes will remain for a long time, he says, as long as there is equilibrium in the system.\footnote{Wolfgang Merkel, “Embedded and Defective Democracies,” \textit{Democratization} 11, no. 5 (2004): 33–58.}

Brownlee (2007) commented on regimes that are partially democratic and partially autocratic, which Huntington labeled halfway houses. Instead of being unstable, wrote Brownlee, this kind of regime has, in fact, become “a fortress – not a way station...
but a way of life.” According to Brownlee, comparative scholars have thrived on political change, especially the installation of democracies after years of dictatorship. However, Brownlee also stressed that, in order to explain regime change, regime continuity should be taken into consideration as well.\(^{140}\)

Since the end of the Third Wave theory, there has been increasing skepticism about the outcomes of many regimes that were thought to be in transition. The gray-zone and hybrid regimes seem to be dominating the condition of those countries, especially in the Third World. Bogaards (2009), in his study of hybrid regimes, claimed that the prospect of democratic consolidation for these kinds of regimes are farfetched; thus, that these regimes must be considered a type of their own rather than categorized as regimes that are undergoing the process of transition.\(^ {141}\)

Dan Slater (2009) argued that, in order to study a regime, one must directly observe how stable and resilient to challenges and crises those regimes have proven to be over time. Slater described Malaysia as a regime with endurance capacity; not because it has lasted more than five decades, but that it is durable because it has shown a remarkable capacity to manage conflicts.\(^ {142}\)


Countries in the gray area have been given many labels, such as “partial democracy,” “semi-democracy,” “façade democracy,” “illiberal democracy,” “soft authoritarian,” “competitive authoritarianism,” and “electoral authoritarianism.” To date, there are many emerging interests in the studies of this ambiguous regime type, and my project is one of them. This study, therefore, will fill the opening in the democratic transition discourse on why a regime can remain a hybrid and survive for a long period of time without reaching the destination of becoming democratic or fully authoritarian.

**Measuring Democracy**

The wave of democratization around the world in recent decades has brought about a rising need for a means to assess, measure, compare, and explain democratic progress cross country, cross region, and over time. The issues in democratization studies no longer focus on democratic transition and its consolidation. Focus in contemporary democratization studies is on how to measure the qualities of these democratic regimes that have undergone the transitioning stage, as well as democracies that are already well established.143 According to analysts, three challenges face the new interests of measuring democracy: conceptualizing; measurement and aggregation.144

All of these challenges are very poorly resolved by existing measures of democracy. Regarding democratic concept specification, existing measures are based on a conception of democracy that is too simple and lack a sound conceptual logic that can be standardized to be used in other cases. Aside from conceptual inadequacy, the method

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of measuring (the measurement) used to create indices that do not demonstrate high validity or reliability and some cannot be imitated. Finally, researchers who have used the existing measures neither discuss nor justify their aggregation level and rules.145

A number of composite indices were developed to measure democracy. Coupled with the advancement of statistical methods, democratic indices became powerful tools of social science research and an important factor of political decision-making. Well-established democracy indices, such as Freedom House and Polity IV, are criticized for not being sensitive enough to measure the delicate differences among established democracies. For instance, well-established indices like Freedom House, Vanhanen, and Polity are more relevant to be used to distinguish a democratic country from non-democratic country; thus, they are not designed to measure the quality of established democracy. The reason for this is their minimalist concept as a basis for democracy.146

The reason for measuring democracy is to establish where democratic countries stand on a scale of democratic quality. O’Donnell criticized mainstream political science on democracy for regime bias. Political science can rely on predominantly narrative or statistical methods for observing and understanding democracy. Important recent works in narrative traditions—O’Donnell et al. on measuring democracy in Latin America, Diamond and Morlino et al. on measuring comparative democracy across the world—focused on the complexity of democracy and the need to look beyond the regime type in


146 Ibid., 531.

A sample study in Norway on democracy assessment drew on large-scale surveys of attitudes and beliefs among political, business and cultural elite; as well as surveys of citizenship and political behavior, in addition to analyzing political processes and structures. O’Donnell \textit{et al.} developed a theory of democratic quality that links democracy with human rights. Diamond and Morlino \textit{et al.} identified a range of dimensions for assessing democracies, including their responsiveness.\footnote{148 Ibid.}

Lijphart studied thirty-six countries, comparing two types of democracies—majoritarian and consensus democracies—to show how they differ in performance. Political scientists agree that consensus democracies should be better in representativeness, and majoritarian democracies should be better in terms of efficiency of rules. Lijphart found that consensus democracies tend to outperform majoritarian democracies in both representativeness and efficiency of governance, indicating that democracies do differ systematically in quality and performance.\footnote{149 Ibid., 13.}

The main issue in measuring quality of democracy is how to actually measure it. What framework should be used? Must the method be standardized so that it applies universally? Can different cases use different measurement method? Lastly, how should
democracy be graded? Is democracy a property that can be graded in terms of having more or less of it, or is it an either/or phenomenon?

Measuring the quality of a democracy is the latest new field in democratization studies. Various types of measurements and assessments have been designed and applied to new and old democracies, displaying different degrees of consolidation. The goal of this new literature on democracy assessment and measurements is to learn what makes a democracy work better or worse and to provide policymakers and other agents of reforms insights on how democracy can be improved and strengthened in a country.

The issues surrounding this new literature are on how to untangle the concept of democracy vs. its quality. When assessing the quality of democracy, one should bear in mind that levels of understanding about the structure and process of democracy are substantially different across geography and societies. Different socio-cultural, economic system, and institutional patterns explain democracy in variations of ways and standards. In developing countries of late, people have started to demand more government accountability, transparency, and social justice. Citizens are beginning to understand that elections alone are not sufficient to make a good democracy.

In Malaysia for example, decades of semi-authoritarian rule, rising socio-economic inequalities, rising corruption among government officials, and preferential treatments that benefit few have made Malaysians demand good governance from the ruling regime.
**International IDEA and Democracy**

This method maintains a more dynamic position that sees democracy as an ongoing process in all countries, which cannot be imported or exported but must be supported. To this end, the *International IDEA Handbook on Democracy Assessment*, and the revised edition *Assessing the Quality of Democracy: A Practical Guide*, both adopt a wide and substantive definition of democracy that is built on fundamental principles and mediating values; the fundamental principles being (1) popular control over decisions and decision-makers, and (2) equality of respect and voice between citizens in the exercise of that control.150

The International IDEA framework of assessing democracy does not yield comparative quantitative measures; the move from higher-level theoretical concepts and democratic principles to analytical categories and search questions represents an adoption of virtually the same principles. The IDEA approach is broadly inclusive of the constitutive elements of democratic development; however, it lacks an explicit theory of how these elements are related to one another and how democratic development occurs and is sustained.151

The surge of democracies since the end of the Cold War has been acknowledged and noticed. New interest in comparative politics literature has arisen in seeking to explain the conditions for the emergence, breakdown, or survival of different regimes;

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and to address questions regarding the quality of these new democracies and issues surrounding the stages of democratic consolidation of transitional regimes/countries.

The quality of democracy is a multifunctional phenomenon, and it does not make sense to measure the quality of democracy in non-democratic countries. The literature on the quality of democracy is in an early stage; there are no well-established hypotheses about the causes (or consequences) of a good democracy.\textsuperscript{152} The assessment of a democracy’s progress may not be sufficient to be explained holistically by concentrating on statistical measurements without an explanatory approach. By using a case study approach, research can go in-depth in analyzing and measuring how a democracy functions in a particular country. A statistical approach or quantitative approach should go well with large-N studies; however, for a single case study like Malaysia, a qualitative study is more relevant.

Democracy assessment can be used for analyzing the problem of consolidation as well as different trajectories, processes, and outcomes under democratization.\textsuperscript{153} I believe that democratization should be explained holistically and, thus, use all four approaches in analyzing democracy in Malaysia.

\textbf{Conclusion}

I have displayed the approaches under democratization studies that I believe are important to understanding how democratization (third wave democracy) can plausibly bring about regime transition or regime stalling in the process. I argue that these


approaches are important for understanding why some regimes transform to democracy and why some do not and, instead, pause in the process. I also argue that each of these approaches may be relevant and can provide sufficient explanation if applied to particular cases, but may not fit to explain other cases. Hence, taking one approach in isolation will not provide a satisfactory explanation for the outcomes of regime transition. Different approaches under transition theory should be considered complementary to each other, instead of competing with each other or dominant against the other approaches, in explaining certain cases or many cases, given that each of them has their own strengths and limitations.

In conclusion, I have determined that all approaches for understanding the democratization process—modernization/economic, historical structuralism, and transition approaches—are relevant and play a part in understanding the political system in Malaysia. By using all of these approaches, we can discern what variables cause democratic achievement and what hinder its realization. Democratization requires a collective action of classes and social movement, more than just an agency- and actors-oriented approach.

Teorell (2010), in his studies on regime change in the world, found that it is important to have an integrated theory of democratization for measuring democratic quality. Singling out one or two approaches is not enough to fully describe the complexities of democratization, especially in countries that are different than the original hypotheses used in successfully developed Western countries, Latin America,
and Southern Europe.  

All of the approaches are important; each has its own strengths and limitations in explaining the issues and advantages of democratization in developing countries. For instance, economic growth theories alone cannot be used to analyze democracy in a country such as Malaysia or Singapore or the oil-rich Gulf states. This explains why these cases are as important and intriguing as the democratization paradigms studied.

What works will necessarily depend upon national circumstances; and what works in one country will not necessarily work in another. However, successful cases of democracy practices that benefit the people can be emulated by others, as long as they do not disturb the equilibrium of the socio-economic construct of the polity. The main advantage of having methods to measure the performance of a political system and its governance is always beneficial to know; from these assessments, policy and decision makers can improve the quality of their government performance.

Bottom line, there is no single correct research strategy for researching political and social phenomenon. As Lakatos (1978) wrote, a theory is evaluated not only on the basis of parsimony but also on the grounds of the comprehensiveness of the explanation advanced and the extent to which it provides a promising foundation for future research. Each strategy has its own strengths and weight for explaining particular issues in particular cases. Some may not have the advantages of explaining and resolving

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155 Ibid.

paradox due to limitations; however, this does not mean that some approaches are completely useless. In practice, both the researcher and the analyst must be ready to be more open to venturing different approaches than conventionally used.
Chapter Three: Malaysia’s Political Trajectory Since Independence in 1957

Politics in Malaysia is influenced by two forms of governing: (1) partial democracy, and (2) controlled mechanism used by the state as its apparatus to manage the country. These sets of ruling have continued since the tragedy of ethnic violence that has marred Malaysia’s history as a plural society. Malaysia since then has used the incident to mark its politics as based on communalism. On this ground, politics in Malaysia presumably, cannot be managed under fully liberal democratic ideas alone and instead has to be supported by control apparatus to stabilize the whole political structure.

The purpose of this chapter is to provide the backdrop of the establishment of Malaysian regime’s experiences and to provide an understanding of the subsequent trajectory to trace any kind of political change experienced by Malaysia after colonialism ended in 1957. The backbone of this time line is the twelve general elections that have taken place since 1955.

1955

This is the only general election held under the then federation of Malaya on July 27, two years before independence. Voter turnout was 82.8 percent and the Alliance Party won about 80 percent of the total vote. The election resulted in a decisive win for the Alliance; comprised of United Malay National Organization (UMNO), Malaysian

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157 Regime, as mentioned earlier, denotes a political system, a form of governing, or a system of rule.
Chinese Association (MCA), and Malaysian Indian Council (MIC).\textsuperscript{158} The outstanding issue was the independence factor, which allowed the Alliance Party to secure outstanding victory against the opposition. The only opposition candidate was from the Malayan Islamic Party, later known as Pan Malaysian Islamic Party or Parti Islam se-Malaysia (PAS) and was nicknamed Mr. Opposition.\textsuperscript{159}

1957

In 1957, Malaya, the old name for Malaysia before its official formation in 1963, gained independence from the British. However, the independence of Malaysia is different from the independence of other countries. It was a peaceful independence, attained by holding talks with the British. One can claim that Malaysians, especially the Malays are non-confrontational people who are likely to accommodate and who practice a politics of give and take.

The UMNO became the bastion of Malays’ political power and the protector of Malay communities; the MCA found potential support from the Chinese business community and joined the Alliance right before the independence, mainly to protect the interests of the elites. The Alliance party (now Barisan Nasional, BN) demonstrated the political stability and multi-ethnic harmony that were essential for the new nation-state’s survival. Tunku Abdul Rahman, the first Prime Minister, set the pattern of administration for future prime ministers. In his government, as one observer claimed, the essence of

\textsuperscript{158} This marked the trend of the undefeated coalition parties after 1957, known as Barisan Nasional.

Alliance bargaining was not equality but mutual dependency, combined with a willingness to cooperate and accommodate.\textsuperscript{160}

1959

Malaysia’s first general election after independence was held in 1959. Tunku Abdul Rahman’s administration had managed to put aside the sensitive issues such as education, language, and the Malays’ special rights; and focused more on calling for communal harmony. During campaigning, they pointed to their good record over the past four years, promising further progress. The party stood for tolerance and amity among the ethnic groups of Malaya’s plural society. The Alliance won successfully in 1959, because they succeeded in convincing the people of their main role as the best safeguard of the nation’s domestic peace.\textsuperscript{161} It is claimed that the period from 1957 until the 1969 ethnicity riots is generally regarded as a harmonious period in Malaysian history.

1963

On 16 September 1963, the formation of Malaysia consisted of the formally propagated Federation of Malaya, Sabah, Sarawak, and Singapore. Brunei declined to be under Malaysia. Singapore, then, was a state in Malaysia, until it seceded in 1965.

1964

Malaysia’s second general election after the independence was held April 25, 1964. The Alliance party won 89 of the 104 seats. The People Action Party (PAP) headed by Lee Kuan Yew in Singapore won only one seat. Every Alliance Minister was returned,


with an even bigger majority. The result, according to Lee, came as a shock. The resulting victory of the Alliance is believed to have been due to the Tunku’s leadership and his call for patriotism and public support in the face of Sukarno’s confrontation.\(^{162}\) Even though the PAP leadership was keen to establish a partnership with UMNO in the Alliance, its intention was doubted by leaders in the Alliance. The mutual suspicion between PAP and UMNO resulted in an intense ethnic antipathy in Malaysian society. The manifestations of these were the two ethnic riots that took place in Singapore in July and September 1964.\(^{163}\) The speech by Lee Kuan Yew in 1965, calling for Malaysian Malaysia, further strained the relationship between the Malay elites in the Alliance and the PAP. This was considered the most serious threat ever to the framework of a Malay nation-state; hence, it contributed toward the “expulsion” of Singapore from Malaysia.

### 1965

Singapore seceded from Malaysia in 1965. In the beginning, the Alliance’s idea to include Singapore under Malaysia was a wise thing to do in order to contain its left-leaning Singapore politics.\(^{164}\) However, shortly after the formation of Malaysia, the wisdom of the idea was challenged. As widely claimed, the incorporation of Singapore into Malaysia created an unstable balance of power between the state of Singapore and federal government in Malaysia in addition to conflicts of interest socially, economically, and politically.

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The People Action Party (PAP) led by Lee Kuan Yew in Singapore created an alliance of its own under the new Malaysia, proposing Malaysian Malaysia which was against the aspirations of Malaysia’s own Alliance Party.

Since Malaysia is a heavily plural society, the then ruling elites, especially premier Tunku Abdul Rahman, were widely known for their peaceful nature and beliefs that communal solidarity is an extremely dominant force in Malaysian politics. The threat of communal violence was apparently the crucial factor that made the federal government make the crucial decision to oust Singapore from Malaysia.¹¹⁵ Some critics (mostly the ultra-Malay nationalists) argued that Tunku’s act of letting Singapore slip away was a mistake. Nevertheless, ethnic violence did not end in 1964; it happened again in 1969.

1966

As a result of the official formation of Malaysia in 1963, after almost four years of confrontation¹¹⁶ with Indonesia, the two nations agreed to a peace treaty in 1966; although Indonesian President Sukarno believed that the formation of Malaysia had been colonial clandestine to maintain British colonial rule behind the cloak of peaceful independence given to Malaysia in order to maintain their colonial possessions in Southeast Asia. It was also claimed that the formation of the Malaysia federation destroyed Sukarno’s ambitious plan to create Melayu Raya or Greater Indonesia.¹¹⁷


¹¹⁶ The term “confrontation” was coined by Indonesia’s Foreign Minister, Dr. Subandrio, in January 1963. It has come to refer to Indonesia’s efforts, at that time, to destabilize the new federation with a view to breaking it up. http://www.awm.gov.au/atwar/confrontation.asp

¹¹⁷ Melayu Raya was a political concept that sought to bring the so-called Malay Race together by uniting the British territories of Malaya, Sarawak, North Borneo, and Brunei with the Dutch East Indies. [Source:
Nevertheless the confrontation (1962–1966) was an “undeclared war,” with most of the action in the border area between Indonesia and East Malaysia (Sabah and Sarawak). Malaysia was assisted by the Commonwealth armies, mostly from Australia and New Zealand. In October 1965, Sukarno was toppled in Indonesia and the “New Order” was begun under General Suharto. In late May of the following year, his foreign minister, Adam Malik, met Tun Abdul Razak, Malaysia’s deputy prime minister, for peace talks in Bangkok, and the Peace Agreement was signed 11 August 1966.\(^{168}\)

**1969**

Malaysia’s third general election on 13 May 1969 is renowned for the ethnic riots that followed, marring the peaceful history of Malaysia’s plural society. The consequence also included the collapse of Malaysia’s consociational practices, plus a return to power for the Alliance Party (comprised of UMNO, MCA, MIC), although with a reduced majority. The Alliance Party’s seats fell from 89 in 1964 to now 66, and its popular votes declined from 58.4 percent in 1964 to 48.5 percent.\(^{169}\) The opposition parties, such as Gerakan and Democratic Action Party (DAP), had campaigned on the highly sensitive issues against Malay privileges that were outlined by Article 153 of the Constitution, causing major gains in the election. On May 12, jubilant Gerakan and DAP supporters, mainly Chinese, took to the streets of Kuala Lumpur in a victory celebration, ridiculing the Malays and predicting future Chinese successes. A counter-rally by UMNO

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supporters the following day led to unprecedented and uncontrolled ethnic violence. The official result showed the death of 196 people (could be more than reported), 406 injured, and unaccounted properties destroyed.\textsuperscript{170}

Ethnicity had been a strong factor in Malaysian political life long before 1969. However, the scale of violence on this day radically changed not only the political system but the wider social consciousness. Following this episode, the consociational model of the pre-independence era developed into a hegemonic party system,\textsuperscript{171} with UMNO establishing itself as a dominant party supported by growing Malay nationalism. The ascending groups of Malay nationalists had lost faith in the leaders of the Alliance and were pressing for a stronger Malay government.\textsuperscript{172} These groups blamed the election results, and the violence that followed, on the ongoing economic hardship of the Malays and called for policies to address this economic imbalance.\textsuperscript{173}

As a result of the ethnic violence, a state of emergency was declared. The Parliament was suspended and an emergency government—the National Operation Council (NOC) under the directorship of the Deputy Prime Minister, Tun Abdul Razak—took over. Tunku later resigned as premier and Tun Abdul Razak took over as Malaysia’s second prime minister.


\textsuperscript{171} The consociational political system collapsed and the regime became one of control.


It is claimed that the era of complete Malay political dominance took effect after 1969. Tun Abdul Razak and the groups of Malay nationalists demanded a new affirmative policy to correct the perceived discrepancies in the socio-economic system in Malaysia, in an effort to manage the opposition and dissidents. This usually involved government actions that curtailed human rights, with repressive instruments such as the Draconian Law of ISA, which had been used to contain a Communist threat some fifty years previous and this time was used against the opponents. As such, the political system ceased to be one of consociationalism and became one of control exerted by a UMNO-led BN coalition. Nevertheless, observers claimed that, aside from the repressive measures to manage constraints in the country, the government combined them with responsiveness.

1971

The most radical change in the wake of 1969 was the establishment of the New Economic Policy (NEP). May 13, 1969 had confirmed the fear of many in Malaysia’s fragile plural society, where ethnic tensions were high, that only a strong state could prevent the society from plunging into the abyss of societal collapse. The ethnic violence, hence, initiated a state-run social engineering program known as the NEP, whose objectives were two-pronged: first, to eradicate poverty; second, to restructure the society


through rapid expansion of the economy over time, in order to eliminate identifying one’s ethnicity with economic function.  

Aside from these two objectives, critics claimed that the interventionist affirmative policies of the government at all levels of society had perhaps caused the greatest creation of wealth in the shortest span of time by peaceful means in the history of the world. Analysts also claimed that the NEP were providing the government the accumulation of resources in order to support their patron client relations within the society. Although the NEP discriminated against the non-Bumiputeras, NEP proponents claimed that NEP was a positive discrimination policy that helped to correct the inequality and socio-economic imbalance that had been entrenched in the society since independence. Nevertheless, the UMNO-led government was flexible to allow a free market economy to develop, and the government gave the non-Bumiputeras a free hand in the economy as long as quotas and shares were allocated to Malays.

1974

In Malaysia’s fourth general election in 1974, the result was a victory for Barisan Nasional (BN), the coalition ruling party (formerly known as the Alliance Party) established in 1973. BN managed to capture 135 of the 154 seats in the Parliament. This meant the BN was much stronger now at the federal level than the Alliance had been in

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1959. The main reason for the victory was the strong support the BN got from the main ethnic composition in Malaysia: the Malays, Chinese, and the Indians.¹⁷⁹

1978

In Malaysia’s fifth general election in 1978, as expected, the BN comfortably maintained their majority in the Malaysian Parliament, with 131 of the 154 seats contested. The premier during that time was Tun Hussein Onn, the country’s third prime minister. Despite PAS’ withdrawal from BN, the UMNO still won by losing only four seats, and Kelantan lost to UMNO. MCA lost to DAP, winning only 17 of 28 parliamentary seats. The issues used by DAP to attack BN were the 1961 Education Act, the Merdeka University, and the Industrial Coordination Act. Nevertheless, despite garnering 42.8 percent of the total votes, the opposition as a whole only won 23 seats. Critics and analysts claimed that those were the effects of electoral gerrymandering.¹⁸⁰ Analysts claimed that the decade after 1978 saw the consolidation of BN’s rule, in particular UMNO’s hegemony over the ruling coalition’s party.¹⁸¹

1981

In 1981, for health reasons, Hussein Onn relinquished power to Mahathir Mohamad, who then became Malaysia’s fourth prime minister. It is significant to include this moment in the time line of Malaysian politics, because for the next twenty-two years,


¹⁸¹ In-Won Hwang, Personalized Politics: The Malaysian State under Mahathir (Singapore: Institute of Southeast Asian Studies, 2005), 118.
he would preside over a repressive-responsive\textsuperscript{182} state that tightly guarded the preferential status of Malays, curbed civil liberties, destroyed judicial independence, and delivered a steady economic growth with plenty of patronage to go around. In addition to Mahathir’s authoritarianism and the growth of illiberal democracy,\textsuperscript{183} post-1969 political developments were marked by an expanding middle class, competition within the Malay community between UMNO and the opposition PAS, Sino-Malay tensions, and the slow but steady growth from 1998 onward of a civil society movement that began to transcend communal barriers. One or more of these factors has been responsible for most of the major shake-ups in politics over the last four decades.\textsuperscript{184}

It was in Mahathir’s administration that the mechanism of control and executive dominance increased in an effort to manage constraints in the system. One of the methods, for instance, was controlling mainstream media. The existing control of the media became even stronger under Mahathir’s leadership. By the end of the 1980s, UMNO and its coalition partners were able to control all the mainstream media, in both publishing and broadcasting, through ownership. In addition to direct ownership of the media, Mahathir’s administration increased control by tightening regulations that affected freedom of the press. After Mahathir came to power, many opposition-oriented publications lost their printing permits and journalists were occasionally punished for their contributions that negatively portrayed government policies.\textsuperscript{185}


\textsuperscript{184} “Malaysia’s Coming Election: Beyond Communalism?” \textit{Crisis Group Asia Report} 235 (October 2012).

\textsuperscript{185} Ibid., 122.
1982

Malaysia’s sixth general election in 1982 was held more than one year early, before the term of the Parliament elected in 1978 was due to expire. It was claimed necessary to provide a mandate for Dr. Mahathir Mohamad, who had taken office in mid-1981. As expected, the ruling coalition Barisan Nasional (BN) won the overwhelming majority of seats, 132 of the 145 parliamentary seats (91.0%).

Factors for the big win were, aside from the natural advantages accrued by controlling the resources of government, BN’s claim of an impressive long-term record of achievement, economically and in terms of political stability and overall ethnic harmony. In addition, they were proud of the strong government, which the BN claimed was necessary to maintain the country as evidence of a major economic takeoff. The opposition parties, on the contrary, were disorganized, underfinanced, traumatized by infighting, lacked credible alternative programs and policies, and were unable to ignite issues or to get their various messages across convincingly.

1986

Again, as expected, in Malaysia’s seventh general election in 1986, the UMNO-led BN achieved an unprecedented victory, particularly in the rural areas which are predominantly Malay states. BN won 148 seats, DAP 24, PAS 1, and independents 4. Of all the BN component parties, UMNO performed the best, winning 83 of the 84 seats

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contested. MIC also performed well, winning 12 of the 13 seats allocated. DAP’s performance was their best ever in Malaysia’s election history. This made DAP the only opposition party in the House of Representatives (Dewan Rakyat). The main reason for DAP’s achievement, particularly in urban areas, was that they successfully articulated their criticism of the government on ethnic issues, economic mismanagement, financial scandals, and corruption. MCA lost their appeal for its pro-government’s policies. The BN component party that performed badly was MCA and Gerakan; they suffered a humiliating defeat, winning only 17 of the 34 parliamentary seats allocated.

1987

Malaysia’s economic recession in 1987 resulted in a more controlled flow of patronage, and rewards to new elites. Thus, the economic downturn can be seen as the catalyst for a split waiting to happen. Mahathir was challenged for the presidency of UMNO, and effectively the prime ministership, by Tengku Razaleigh Hamzah. The post of president provided an effective accession to the prime ministership. Hamzah’s new party, Semangat 46, teamed up with Party Islam se-Malaysia (Pan-Malaysian Islamic Party), PAS, and the Democratic Action Party (DAP) to form an opposition alliance called Gagasan Rakyat Malaysia. The opposition bloc campaigned on an anti-corruption platform within the context of UMNO and NEP patronage.


190 A former UMNO vice-president narrowly lost the party’s presidency to Mahathir in 1987 and, shortly after, Hamzah left UMNO with his supporters to establish the Party Semangat 46.

Also this year, in October, the Internal Security Act (ISA) again took effect, in Operasi Lalang. Under this repressive law, 106 persons were detained for allegedly being involved in activities prejudicial to the security of Malaysia. These included Lim Kit Siang, leader of the opposition, and Dr Chandra Muzaffar, a prominent human-rights activist (both were detained for two years), as well as university lecturers, environmentalists, businessmen, and some members of UMNO. All had been critical of the government.\textsuperscript{192} From there on after 1987, tighter authoritarian rules were applied to strengthen Mahathir’s centralized political control.

1988

There were two important events in 1988. First, the split within UMNO, revealing not just a power struggle but a hegemonic crisis, which signified a fundamental shift in the political basis of the union. UMNO was split in two: UMNO Baru (new), known as Team A, led by Mahathir; and Semangat 46, known as Team B, led by Razaleigh Hamzah.\textsuperscript{193}

The second major event was the sacking of the Tun Salleh Abbas, the Lord President (highest judicial figure in the land) by Mahathir, for gross misbehavior and conduct. This action was taken because the judge had written a letter of protest to the Agong in disagreement with Mahathir’s decision to increase the power of Parliament to remove the general power of the High Court to conduct judicial reviews. A tribunal set up by Mahathir found Salleh guilty and recommended to the Agong that Salleh be


dismissed, along with five other judges who supported him, which the Agong did. This most blatant intrusion of the separation of power that had ever happened in Malaysia’s political history, according to Milne and Mauzy, destroyed the independence of Malaysia’s judiciary.\textsuperscript{194}

1990

Following the split in 1988, in Malaysia’s eighth general election in 1990, the UMNO-led BN political hegemony was still intact. The dynamics of the split had created a more centralized political union. Although the unpopular feelings against Mahathir were high, they were balanced by the economic recovery. This was proven by the BN winning the election again, as expected, in which it won 127 of the 180 parliamentary seats (70.6%).\textsuperscript{195} Despite the high expectation that the Gagasan Rakyat would do well in the election, voters decisively rejected them. One of the main reasons was the dispute over goals between DAP and PAS and Semangat 46. For instance, PAS’s platform to turn Malaysia into an Islamic state was totally incompatible with DAP’s secular view of a multi-cultural and multi-religious society.\textsuperscript{196} In addition, the Semangat 46’s relation with the PAS was never smooth. In sum, all three parties were hopelessly divided to oppose the dominant UMNO-led BN coalition.

\textsuperscript{194} R S. Milne and Diane K. Mauzy. \textit{Malaysian Politics Under Mahathir} (Routledge, 1999), 46-49.

\textsuperscript{195} \textit{Malayan General Election 1990 Malaysia Factbook}, available at \url{http://malaysiafactbook.com/Malaysian_general_election_1990}.

1995

Malaysia’s ninth general election in 1995 had no surprises. The BN won 162 of the 192 parliamentary seats (84.4%) contested,\(^{197}\) easily surpassing the two-thirds required for amending the Constitution. Some claimed that this was the Reaffirmation of Barisan Nasional dominance.\(^{198}\) Despite predictions that Mahathir would face stiff opposition in three states, his coalition government—the BN—won the election in a landslide victory. The result was the best for the BN since Mahathir had come to power in 1981, and the political landscape had changed significantly since the 1990 general election. One change was the disappearance of the opposition alliance, the Gagasan Rakyat.\(^{199}\)

The most distinctive feature of the 1995 general election was the considerable shift in Chinese votes in favor of the BN. Observers found that, in this election, the BN was courting Chinese voters due to the fact the UMNO Baru (the new UMNO) could no longer take the Malay vote for granted because of the divisions within the Malay community, especially in the rural areas of Kelantan and Trengganu where the PAS held power. Thus, cultivating the Chinese vote was not simply a short-term solution to problems faced by UMNO Baru in the northern Malay states; it also reflected a concern

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\(^{199}\) The union among MCA, PAS, and Semangat 46 was not in harmony due to differences in interests, ideas, and political aspirations; with the consequent DAP opted out at the end, thus breaking up the coalition.
with the steady erosion of popular support for the BN since 1982. In this regard, the 1995 election rightly portrays the dominant party regime as a strategic actor.  

1997

The 1997-1998 East Asian crisis, triggered by the collapse of the Thai baht in July 1997, led to a currency crisis, a financial crisis, then an economic recession in most countries of the region. However, the Malaysian economy and population were not as adversely affected as their counterparts in Thailand, South Korea, and Indonesia. Thus, Malaysia was the only country involved in the East Asian crisis that did not involve the IMF.  

The currency crisis in 1997 triggered the tension between Anwar Ibrahim’s faction and those who were opposed to his rapid rise in UMNO. Tensions also escalated due to Anwar’s opposition to the government’s desire to bail out a crony’s firm, particularly those who had ties with Mahathir and UMNO, including Mahathir’s own son Mirzan Mahathir. Anwar’s positions against Mahathir’s policies during the currency crisis are said to confirm rumors that he was plotting to oust Mahathir. However, worrying more about a palace coup than ideological differences, Mahathir sacked Anwar from UMNO and from the vice-president position. Anwar’s debacle led to creating an informal coalition, which became the main opposition to Mahathir’s government; it was based on the PAS, the DAP, the small Malaysian People’s Party led by Husin Ali, and

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about a dozen NGOs. In addition to defending Anwar, the group was also championing reform, particularly opposition to nepotism, corruption, and cronyism. They lacked coverage by the mainstream media; however, they got to exercise some influence through the Internet and the new media. Then Anwar was arrested under ISA in September 1998, after numerous political speeches that criticized Mahathir and the UMNO-led government on corrupt practices, nepotism, and cronyism. The charges brought against Anwar were very demeaning and shameful, and brought a revolt by the Malays under a movement called Reformasi.

1998

The Reformasi movement in 1998 is considered a unique moment in Malaysia’s political history where a sense of unity was felt by Malaysian society. Observers and analysts claim that Anwar’s imprisonment and demonizing accusations against him were politically motivated by Mahathir and his cronies. The Malay communities, sensing some sort of injustice done to their favorite political leader, took to the street to protests. Whatever it meant to different groups, the Reformasi movement was more than just a call to justice for Anwar. It was a call for change in government policies, including concerns of Chinese and Indian activists; and it was a call for social justice, human rights, and Malaysians who felt excluded from the system.

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203 Milne and Mauzy, Malaysia Under Mahathir (1999), 188.

1999

Discontent was obvious but insufficient to topple Mahathir during Malaysia’s tenth general election in 1999. BN still won and kept a two-thirds majority, but they lost 14 seats and won only about 56 percent of the votes cast. The UMNO was the biggest loser in this year’s election. Their share of the parliamentary seats decreased from 88 to 72, losing mainly to PAS and Parti Keadilan Rakyat (People Justice Party).²⁰⁵

The result of this election was the creation of the multi-ethnic Alternative Front (Barisan Alternatif) comprised of PAS, DAP, and Keadilan into a short-lived opposition coalition. Though they lost to BN, nonetheless, the oppositions in this election scored a symbolic victory, ensuring that calls for good governance (transparency, accountability, eliminating corruption) would continue in the future.

2003

In 2003, Mahathir stepped down as prime minister and Abdullah Badawi took over as Malaysia’s fifth premier. Mahathir continued to be the focus of criticism, until he stepped down in October 2003, turning power over to his deputy, Abdullah Badawi. Badawi’s mild-mannered and low-key style were a welcomed change from Mahathir’s harshness and arrogant attitude. Badawi’s adoption of some of the key planks of the Reformasi platform, especially a commitment to curb corruption and his promotion of Civilisational Islam (Islam Hadhari), suggested a non-threatening evolution to greater communal harmony and a little more justice, with the stability that ongoing Barisan Nasional patronage could buy.

In Malaysia’s eleventh general election in 2004, the BN coalition captured 198 of 219 seats in Parliament, on the way to their most convincing electoral performance since 1974. BN also managed to increase their share of popular support from 56.5 percent in 1999 to 63.8 percent in 2004. Likewise, opposition votes declined markedly from 44 percent in 1999 to 30 percent in 2004. Most notable was UMNO’s return to prominence; as the dominant party in the Barisan coalition, they managed to secure 109 of the 219 parliamentary seats contested, only one seat shy of an absolute majority.206

It is claimed that the BN coalition had won the 2004 general election before it even began. This is because the advantage of incumbency had always offered UMNO and the BN several avenues through which to create an electoral environment that would work in their favor. While much attention was focused on parties and personalities during the 2004 elections, the role of civil society slipped quietly to the sidelines of Malaysian politics, marginalized once again by the state as well as by other political forces and interests that intended to showcase the titanic struggle between UMNO and PAS as the centerpiece of the elections. Indeed, civil society movements, so proactive and politicized merely five years before with the growth of the Reformasi movement, were conspicuously absent in 2004.207

Thus, Malaysia’s eleventh general election proved to be a monumental triumph for Abdullah Badawi, UMNO, and the Barisan Nasional. The extent of the victory was


largely attributable to the personality and policies of Abdullah.\textsuperscript{208} Most important, Abdullah’s creed to curb corruptions in his government had given hope to the Malaysians that, this time, their government would be more accountable and clean. In addition, this election witnessed major lapses in opposition strategy. However, a careful investigation into the issues that surfaced during and after the election indicates that much remains vague about the trajectory of Malaysian politics.

2007

In this year of the Bersih and HINDRAF movements, in November Kuala Lumpur witnessed tens of thousands of protestors take to the streets, calling for electoral reform. The police claimed that the protesters did not have the permit to gather in Merdeka Square and they dispersed the crowd with tear gas and water cannons. However, the crowd claimed that they had the right to express their views.

This event had been organized by a group called Berish (Clean) and comprised of a mixture of NGOs, CSOs and opposition parties. The issue they demanded was electoral reform and prevention of fraud in the electoral system.\textsuperscript{209} It was in this context that civil society and opposition politicians organized the Coalition for Free and Fair Elections (Bersih), with the goal of getting the opposition a more even playing field for the twelfth general election coming up in 2008. Some 245 people were arrested.\textsuperscript{210}

\textsuperscript{208} Upon Badawi’s consent, former Deputy Prime Minister Datuk Seri Anwar Ibrahim was released from jail in 2004 after the federal court overturned his sodomy conviction, allowing the de facto Parti Keadilan Rakyat (People’s Justice Party) leader to lead the opposition pact to stunning gains in 2008.


\textsuperscript{210} “Malaysia’s Coming Election: Beyond Communalism?” \textit{Crisis Group Asia Report} 235 (October 2012).
The second largest gathering that same year was the country’s ethnic Indian community, who protested against the government’s ethnic discrimination policies. They drew attention to the fact that ethnic Indians lived under poor socio-economic conditions. This second protest was regarded as the largest mass demonstration by ethnic Indians in decades. It mobilized 10,000 protestors under the banner of the Hindu Rights Action Forces (HINDRAF).211

2008

On March 8, 2008, Malaysia held its unprecedented twelfth general election, which resulted in what became known as the political tsunami212 in Malaysian politics. This is because for the first time since 1969,213 the coalition government lost to the opposition their two-thirds majority in the Parliament and their control of four state governments.214 No analyst had foreseen this event, given the strength of the BN machinery so far. This was a disaster on a major scale for BN and UMNO and was perceived as a sea change that eventually could spell the end of Barisan dominance.215

The largest swing of votes away from the BN came from the non-Malays. By 2008, the BN was being criticized for undermining the interests of the Indian community. The issue that hurt the Indians was the government’s demolition of several Hindu temples

212 The term coined by The Star, 2008.
213 In contrast to 1969, this time around Malaysia was remarkably calm. Malaysians were warned through text messages to stay calm, stay cool, stay home, no victorious parade needed.
214 Although the Barisan Nasional won 140 seats in Parliament, and could still form a government (54 seats came from Sabah and Sarawak); so, without Sabah and Sarawak, Barisan Nasional would not have even obtained a simple majority in Parliament.
in 2007 on the grounds of being illegally constructed. Also, increasing poverty and marginalization of the Indians aggravated multiple problems facing the community.\textsuperscript{216} Abdullah’s reputation for weak leadership and flip-flopping on important decisions alienated the three main ethnic groups, with close to 70 percent of Indians voting against him. Rampant corruption and abuse of power further angered the voters. Abdullah promised to clean up the system under his National Integrity Plan and to set up an independent Anti-Corruption Agency (ACA). However, he was caught between staying in power and agreeing to his promises, and personal weakness and a lack of conviction led to corruption reforms going downhill.

The March 2008 election signaled the idea that the BN could not remain in power forever simply by mobilizing ethnicity-based politics. The opposition parties won, not on ethnicity issues but across a range of issues that cut across ethnicity lines.\textsuperscript{217} In addition to credibility problems of BN leaders, the public were tired of rampant corruption, scandalized politics, and issues on the government lacking transparency and accountability.

2009

By 2009, the political landscape had changed again. Prime Minister Abdullah Badawi was forced to step down after the huge loss in the 2008 general election. He was replaced by his deputy, Najib Tun Razak, who was frequently referred to as an UMNO prince because of his privileged background and the fact that his father had been prime


\textsuperscript{217} A new paradigm for Malaysian politics that Malaysian voters are more taken in by wider national issues, such as corruption, crime, cost of living, social justice, and human rights.
minister in the 1970s. Compared to Badawi, as the sixth prime minister, Najib demonstrated stronger authoritarian tendencies, exemplified by the government’s response to the anti-Internal Security Act demonstrations in August 2009 and his move to take over the Perak state government earlier in the year. Najib understood that the only way to keep hold of a restive electorate was to move toward reform in many areas, such as his bold effort to abolish ISA and OSA in 2011; however, he was still not ready for electoral reform.  

2011

Dismantling—or being seen to dismantle—the state’s machinery of repression was a carefully considered strategic move by Prime Minister Najib Tun Razak. The most important part of that machinery was the Internal Security Act (ISA), a holdover from the colonial era, which allowed preventive detention of security suspects for two-year periods, indefinitely renewable. More than anything else, the ISA symbolized the illiberalism of Malaysian democracy, and its removal had been a key demand of the Reformasi movement and civil society. On 15 September 2011, Najib announced plans for the ISA’s repeal.  

2012

Prime Minister Najib Tun Razak introduced into Parliament: (1) in April, amendments to the 1971 Universities and University Colleges Act, to allow students to take part in political activities; (2) in July, his planned repeal of the Sedition Act; (3) in


219 Najib announced repeal of ISA and three emergency declarations. See www.themalaysianinsider.com (15 September 2011).
August, liberalization of the Printing Presses and Publishing Act, to allow greater freedom of expression; and (4) in November, a Peaceful Assembly Act. All of these actions were lauded in the government-controlled media as evidence of Najib’s credentials as a reformer. Criticism, however, came from all sides: from the UMNO right wing, including Mahathir, that the reforms were a sign of weakness; to the opposition, saying the reforms did not go far enough. Even a reformist member of UMNO acknowledged that, on close examination, the reforms were less than they seemed.  

2013

Malaysia’s thirteenth general election— in April 2013—was the most anticipated in Malaysian history. The Barisan Nasional (BN), led by Prime Minister Najib Tun Razak, and Pakatan Rakyat (PR), led by Anwar Ibrahim, were the main contestants. BN had been the longest-ruling coalition in the world and everyone was asking whether Najib could sustain his premiership and the UMNO-led BN dominance against the opposition coalition which was gaining momentum in terms of support from potential Malaysian voters.

As predicted, the BN won again, for the thirteenth consecutive time since independence from the British. However, this latest election witnessed the most unified challenge ever from the coalition opposition parties. The ruling party may have won but it was by a more narrow margin than they had ever experienced. For the first time in BN’s history, the opposition coalition party won the popular vote, showing a

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221 The 13th General Election must be held by June 2013, because the constitutional parliamentary term in Malaysia is five years. Then the Agong [King], on the advice of the Prime Minister, must dissolve the Parliament as ordered by Malaysia laws for national election. [Source: Wikipedia.]
vulnerability in the incumbent’s position. Also very significant, the BN captured only 133 of the 222 seats in Parliament; thus, denying them—for two elections in a row and only for the third time since independence—the needed two-thirds majority (first in 1969, then 2008, now 2013).

*The Economist* has described Prime Minister Najib Abdul Razak’s win in the 2013 election as a cheap victory, that only brought to the fore a system that is skewed toward the BN. Analysts say that this was the dirtiest election in Malaysia’s history; that, tired of the unfairness, cronyism and corruption, the voters, especially the young and the growing urban middle class, abandoned the BN.222

**Conclusion**

This chapter staged the time line of the Barisan Nasional (BN) regime in Malaysia since its establishment in 1963, based on the years of the general elections since 1955. This discussion shows the regime’s persistence under six premiers. In twelve general elections, only twice did the BN lose their super majority in the Parliament, 1969 and 2008. Chapters four, five, and six address the practices of democratic principles and the control mechanisms at work in Malaysian politics.

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Chapter Four: State of Democracy Analysis

Citizenship and Nationhood

This chapter examines dilemmas regarding common citizenship and nationhood in Malaysia, and assesses the overarching question: Is there public agreement on a common citizenship without discrimination? Malaysia’s pattern of politics and governance, which combine democratic procedures with authoritarian practices of control and repressive rules, are categorized here in what is broadly understood as a hybrid system or political regime. Two main issues that allegedly contribute to these dilemmas are: (1) Malaysia’s social contract, and (2) the Affirmative Action Policies.

The issue of citizenship has tainted the smooth rolling of Malaysian democratic politics since before and after independence. This main issue has caused debates, arguments, and fights among Malaysians, especially when a general election is approaching.

Malaysia is well-known as a plural society that is deeply divided along ethnic lines: economically, politically, culturally, and socially. After more than fifty-four years of independence, Malaysia did not score well as a “melting pot” society that can be proud, as experienced in the United States, for example. However, Malaysia scores a high grade for being relatively peaceful, stable, and prosperous, in comparison to other

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223 See literature review on the hybrid regime of Malaysia.

224 Of course, the U. S. has been independent for more than two centuries. Malaysia maybe in comparison; however, it is the best example of a plural society.
plural societies that have a history of colonialism; for example, Indonesia, India, Rwanda, Sri Lanka, and many other post-colonial states with histories tainted by ethnic conflict and violence. This is not to say that Malaysia has not experienced ethnic grievances at all. The most major, and the last one, that is considered a tragedy in Malaysia’s political history was in 1969. This event is also considered a national tragedy, because it disrupted Malaysia’s consociational democracy.225 This ethnic tragedy of May 13, 1969 is claimed by many experts and pundits as the main event in Malaysia’s ethnic history that changed and shaped the Malaysian political system until now.

**The Roots of the Nationhood Paradox**

Before Malaya became a united Federated Malays state, there was the Malayan Union. According to analysts, the idea of the Malayan Union was propagated by the British in 1946, which galvanized Malay’s sentiment toward nationhood. It is said that without consultation with the Malay elites and masses, the British came up with the idea of the Malayan Union, which called for liberal citizenship terms for non-Malays, to end special rights of the Malays, and to eliminate the power and status of Malay sultans. Reactions from the Malays to this idea of a Malayan Union were swift, intense, and confrontational. Due to fierce protests, the British abandoned the plan. However, this episode highlighted the sensitivity of the issue of non-Malay citizenship.

225 Lijphart considered Malaysia no longer a consociational democracy because, after 1969, the Malay state was becoming hegemonic and a democracy is controlled by the state. However, conflict management structures in Malaysia still remained closer to the spirit of consociationalism. Some analysts have used the situation in Malaysia as “coercive consociationalism” in which groups are unequal but some consociational techniques are used. [Diane K. Mauzy, “Malaysia: Malay Political Hegemony and ‘Coercive Consociationalism’,” in *Politics of Ethnic Conflict Regulation*, eds. John McGarry and Brendon O’Leary (London: Routledge, 1993), 106-27.]
According to Chandra Muzaffar, the Malay elites believed that a political system that offered a common citizenship and equal political rights for all would destroy the Malay race and would unjustly strip the Malays of their inherent rights as the historical community.\textsuperscript{226} Hence, the foundation of the Malayan Union’s ideas were somehow relevant to what have been demanded by non-Malays, especially on the right to equal citizenship status without preferential treatment given to any specific ethnic groups.\textsuperscript{227}

Another significant occurrence that resulted from the Malayan Union idea was the creation of a central Malay political organization (United Malay National Organization, UMNO), which became the primary political party to protect and promote Malay interests, and continues even today. The UMNO constituted the core and undisputed leadership of the Malay society as a whole. It was the most powerful party, and pushed through a plan for a federation with centralized powers and Malay special rights; the powers and special position of Malay rulers were restored and citizenship regulations were made complex and strict.\textsuperscript{228} Now the question, who could belong to the Malaysian nation? Was it just the Malays? What about the non-Malays who had been born and bred in Malaysia for generations?

It is claimed by analysts that the Malays have constantly been reminded by the Malay elites that, unlike the Chinese and Indians, they had no other homeland but the Malay land (the Federation of Malaya). Thus, they were the rightful sons of the soil.

\textsuperscript{226} Chandra Muzaffar, \textit{Protector?} (Penang: Aliran, 1979), 56.

\textsuperscript{227} The non-Malays have voiced their concern on the value of Malaysian citizenship. Does it change, depending on what race you are; or are all Malaysian citizens equal in rights and standing?

Whereas, the non-Malays had been brought in by the British and were immigrants who maintained a loyalty to mainland China and the Indian subcontinents.\(^{229}\)

This may have held true in the early years of the formation of Malaysia; however, after five decades of independence, the descendants of the immigrant Chinese and Indians, who had lived in Malaya all their lives and intended to live the rest of their days in Malaysia, who had known no other country and who pledged allegiance to the Malay states as their one and only “homeland,” they too wanted to be regarded as rightful sons of the soil of Malaysia. The problem, could the Malay nationalists accept this? I believe that if a Malaysian nation is to be established, these points must be taken into serious consideration.

Therefore, one must ask, what is the source of discrimination? It is the social contract argument, in which the non-Malays claim that they have been discriminated against on the basis of race, or being non-Malay. So, who are the Malays? According to the Constitution of Malaysia, the Malays are those who are from the Malay race, speak the Malay language, practice the Malay culture, and hold Islam as their faith.\(^{230}\)

A key feature of Malay nationalism has been a sense of otherness; the Malays have regarded non-Malays as the “other” who poses a threat to the essential survivability of the Malay nation. Therefore, boundaries were created to being a Malaysian nation, in which “the other” must be differentiated from the Malays, with a highly developed sense of us versus them. In other words, the Malays must protect, by whatever means,


\(^{230}\) Malaysia Constitution Article.
everything considered Malay. However, the non-Malays were on the defensive; and, upon gradually realizing that Malaya is in fact their homeland as well, the “others” in their view were the Malays, who were given a special position and who conferred upon the non-Malays (usually referred to as the Chinese and Indians) the status of being second-class citizens.231

After the failure of creating one Malayan nation through the Malayan Union in 1946, the British realized they could not cultivate a civic nationalism in Malaya as the country progressed toward independence. The vast majority of Malays did not agree on the idea of granting political equality and common citizenship to the non-Malays; however, the British insisted that in order for independence to be granted to Malaya, the Malayans must prove to the British that they could co-exist peacefully with the non-Malays.

By this time, the communities were already mobilized on the basis of ethnic political parties: the Malays with UMNO and Party Islam Setanah Melayu (PAS), the Chinese with the Malayan Chinese Association (MCA), and Indians with the Malayan Indian Congress (MIC). The British supported a multi-ethnic political party and considered transferring power to the Malayans only if they would form an Alliance. The first president of UMNO, Dato Onn bin Jaafar, was influenced by this idea and, in 1950, proposed openness toward the non-Malays to becoming members of UMNO.232 However, this idea by a prominent Malay leader was strongly rejected by the Malays,


causing Dato’ Onn to be expelled by UMNO. This consequence proved how the idea of opening UMNO to the others was feared by the Malays.

Dato’ Onn went on to establish an Independence of Malaya Party (IMP), with membership open to all Malayan communities. However, the party was decisively crushed during the next municipal election and was dismantled shortly thereafter. This occurrence also proved the Malays’ position regarding accepting the “others” under the banner of Malayan nationhood.233

UMNO was set up to serve as the protector of Malay interests and their special position. Tunku Abdul Rahman, elected as the UMNO president in 1951, was one of the founding fathers who had worked to achieve independence for Malaya. The Alliance Party, founded in 1953 in an effort to get independence from the British, was comprised of the elites in the three ethnicities—Malays, Chinese, Indians—and were from the various parties, UMNO, MCA and MIC, respectively.

These ethnic “bargains”234 shaped the form and fate of Malaysia. In the negotiations, the leaders of the three dominant ethnic communities (Malay, Chinese, Indian) reached an understanding: that the Malays would be dominant in the government, and the non-Malays were granted citizenship and assured that their position in the economy would not be disturbed.235

233 Mauzy (2006), Ibid., 51.

234 The bargain contributes to the dilemma of establishing nationhood for Malaysians. The foundation of this bargaining has been criticized as causing further ethnic division and slowing the growth of any unifying nationalism.

Specifically, the “bargain” offered liberal citizenship status to the non-Malays on the basis of *jus soli*\(^{236}\) as the major concession by the Malays, in return for acceptance by the non-Malays of the Malays’ special position as the rulers, of Islam as the state religion, and of Malay as the sole official language. This bargain\(^{237}\) established an informal understanding among the elites that UMNO and the Malays would be the “first among equals” in politics; in return, the Chinese could pursue economic dominance free of restrictions and persecution. Although much was purposefully left vague in the constitutional bargain, these terms satisfied the major claims of each of the communities and led to ethnic solidarity, favoring independence in 1957.\(^{238}\) This concession was enshrined in the Malaysian Constitution under Article 153, which entitles Malays to their special rights and, to the non-Malays, citizenship.

This act of bargaining among the three main ethnic groups was widely claimed as Malaysia’s “social contract.”\(^{239}\) However, critics argue that the “social contract provision” is nowhere to be found in the Constitution and that it only surfaced in the 1980s when the phrase was widely used by UMNO politicians. Also, this social contract is said to be detested by non-Malays (e.g., Chinese and Indians), who charge that it is an “apartheid system,” because the contract or bargain’s foundation is based on ethnic

\(^{236}\) Citizenship status by right of birth in a country.

\(^{237}\) With this “ethnic bargain,” three pillars of Malayness that comprise language, religion, and royalty would now have constitutional protection.

\(^{238}\) Lijphart considers the arrangement evolved in Malaysia as a reasonably successful case of consociational democracy until 1969.

\(^{239}\) In 1986, one of the UMNO leaders presented a conference paper calling the bargain a social contract between Malays and non-Malays. Since then, the term has been vigorously used by Malay politicians to support the claim of Malay supremacy, much to the dissatisfaction of non-Malays.
discrimination against those who are non-Malay; and who charge that the government divides the people into *Bumiputera*\textsuperscript{240} and non-*Bumiputera*, who are to be treated differently, all in the name of the social contract. It is claimed that the classification does not augur well with the objective of creating one Malaysian nationhood, because it is bound to create prejudice among the people, which will keep them apart. Hefner (2001) has argued that the foundation of the social contract is what triggered the debate and criticism of the citizenship issue in Malaysia, that what is conferred to the non-Malays is not equal citizenship but a form of differentiated citizenship.\textsuperscript{241} So what is the social contract that some Malaysians say is the main problem that is blocking the creation of one Malaysian nation?

**The Social Contract aka The Bargain**

The Malays were recognized as having a fundamental stake in the political system; while the non-Malays were assumed to be concerned primarily with a dominant position in the country’s economy. In effect, the communal compromises involved some trading of economic power for political power, with the objective of equalizing the proportionate distribution of power and wealth. The demands of non-Malays for increasing political participation were met by acceptance of the principle of *jus soli*,

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\textsuperscript{240} *Bumiputera*[s] was originally a Sanskrit word depicting the natives, or sons of the soil, in Malaysia; they are the Malays and the aborigines. The non-*Bumiputera*[s] are others who are not under the *Bumiputera*[s] category; they are the Chinese, Indians, and others who are not Malays or aborigines.

whereby everyone born in Malaya after independence would be counted as a citizen.\textsuperscript{242} In return, the Malaysian Chinese and Indians accepted the Malays’ special rights.

The Malays’ special rights were a peculiar part of the communal compromises, because they were designed to both improve the economic position of the Malays and to ensure the latter’s dominant role in the political system. The non-Malays were told that special rights were necessary only because of the Malays’ inferior economic condition; also, it was implied that, once the Malays achieved economic parity with the non-Malays, the special rights would be reconsidered and, presumably, would be eliminated and no longer necessary. Thus, throughout the years, these two contradictory sets of expectations have been generated among the Malays and the non-Malays as to whether the Malays’ special rights are temporary and transitional, or permanent and inalienable.\textsuperscript{243}

When the Constitution for Malayan independence was being drawn up, the issue was again reexamined by Lord Reid who was charged with the responsibility of drafting the new Malaya Constitution. However, the Reid Commission found it impossible to reconcile the two principles of the bargain: (1) providing a common nationality, and (2) safeguarding the special position of the Malays. The first principle presumed the equality of all citizens, while the second involved the creation of separate rights for two classes of citizens. The Commission expressed its preference for the principle of equality, but it acknowledged that the Malays would suffer if special privileges were suddenly withdrawn. To resolve this contradiction, the Commission did not give the Malay special

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\item Ibid., 39.
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rights constitutional status; rather, they allowed the system to continue by law, thus permitting termination or diminution by legislative enactment.  

The Reid Commission’s most controversial proposal provided that the Malays’ special rights would be continued for a substantial period, but that, in due course, the present preferences should be reduced and should ultimately cease. Accordingly, the Commission recommended that the existing Malay privileges should be reviewed fifteen years after independence, with the objective of preparing for their eventual abolition.  

These suggestions by the Reid Commission were vehemently rejected by the Alliance government, which mounted a successful campaign to include a constitutional guarantee of Malay rights and to delete all provisions regarding their future reevaluation or eventual reduction. Thus, in the final Constitution of Malaysia that came into operation in 1957, the Malay special rights received specific constitutional sanction and protection. So that, Article 153 authorizes a system to safeguard the special position of the Malays through a system of quotas applied to the public service, to scholarships, to training privileges, and to licenses for any trade or business. Article 89 sanctions the system of Malay Reservations, and permits the state legislatures to add to a land area that has been declared a Malay Reservation. The only limitation is that at least an equal area should be

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made available for general alienation and that the new area added to a Malay Reservation should include no land already owned by non-Malays.\textsuperscript{247}

To ensure that the operation of the democratic process would not erode or terminate Malay special rights, the latter were given a unique constitutional status. Article 153 begins: “It shall be the responsibility of the Yang Di-Pertuan Agong [Paramount Ruler]\textsuperscript{248} to safeguard the special position of the Malays and the legitimate interests of other communities….”\textsuperscript{249} Similarly, approval of the Conference of Rulers is required for any change of policy relating to the special position of the Malays and Malay Rights as defined in Article 153; and any amendments to Article 153 require agreement from the Conference of Rulers. As a result, these provisions make the Malay special rights more difficult to amend than the Constitution itself.\textsuperscript{250}

For these reasons, it is no surprise that Article 153 is one of the most controversial articles in the Malaysian Constitution. Critics consider it to create an unnecessary distinction between Malaysians of different ethnic backgrounds. In response to Article 153, proponents argue that the protective provisions were written into the Constitution not with the intention of pulling back the advancement of the non-indigenous peoples but


\textsuperscript{248} The nine Malay Sultans elect one of their members to be the Agong for every five-year term. The Agong serves as Malaysian King as a whole.

\textsuperscript{249} While the Constitution defines specific Malay special rights, it provides no guidance as to the legitimate interests of other communities. In practice, the latter phrase has acquired no meaning since the rulers have never recognized any specific legitimate interests of other communities. See: Malaysia Federal Constitution (reprint no. 4 of 1970, Art. 153), 156-59.

with the intention of securing the advancement of the indigenous peoples who, through no fault of their own, were educationally, socially, and economically less advanced.\textsuperscript{251}

Following the establishment of the Malaysian Federal Constitution in 1957, in 1963 Malaysia was created and the Chinese, under Singapore’s People Action Party (PAP) led by Lee Kuan Yew, challenged the foundation of Malay nationalism and Malay claims to dominance. The Chinese-dominated party called for a Malaysian Malaysia based on ethnic equality rather than a Malay Malaysia that gives special rights and privileges to the Malays.

This PAP challenge angered the Malays and the settled issues were stirred again. The language issue became a focal point when the Chinese demanded a wider official use of the Chinese language and to elevate it to co-official status. This effort was countered by a Malay determination to secure the full implementation of “the bargain” over language. UMNO youth said if language was to be reconsidered, so should be citizenship.\textsuperscript{252}

Nasty riots followed in Singapore in the summer of 1964, which led to Singapore being dispelled from Malaysia. The official separation was announced in 1965. Fortunate for the Singaporeans, the Malay leader during that time was Tunku Abdul Rahman, who was well-known for his soft spot toward the Chinese.\textsuperscript{253} When the UMNO ultras

\textsuperscript{251} Tun Suffian, \textit{An Introduction to the Constitution of Malaysia}, 2nd ed., 321.


\textsuperscript{253} Two of his four marriages were to Chinese women.
demanded him to send an army to get the island back from Lee Kuan Yew, Tunku rejected this idea.

Singapore’s expulsion did not resolve ethnic problems in Malaysia, however. In 1969, a few days after the election results were announced, the opposition, mainly the Democratic Action Party (DAP), made significant gain. During the victory rally, the opposition who were mainly Chinese were jubilant; and, during the celebration, they provoked the Malays through demonstrations on the streets of Kuala Lumpur, mocking the Malays to go back to the jungle. As retaliation, the Malays made counter-demonstrations, telling the Chinese to return to mainland China. These insults and provocations led to the worst race riots Malaysia had experienced so far; hundreds were reportedly killed, and thousands of Ringgit in property were lost.

These riots caused the government to declare a state of emergency and they suspended the press and the Parliament. A National Operations Council (NOC) was established, which functioned as a de facto government for about two years. With parliament suspended, the NOC became the supreme decision-making body (1969-1971). The NOC implemented security measures to restore law and order in the country, and peace was gradually achieved. In February 1971, parliamentary rule was re-

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254 It was Tunku’s idea that Singapore seceding from Malaysia would avoid further ethnic conflict and ethnic bloodshed in the future of Malaysia. Violence and bloodshed may have been contained, but grudges between races are still there.

255 However, the state of emergency imposed in 1969 has never been revoked by the federal government, in all the decades since; thus, allowing many provisions, such as the Emergency Ordinance, to remain in use.
established and, to restructure the wounded society, affirmative action policies were established.256

**The Affirmative Action Policies (AAP)**

Since the riots in 1969, ethnic issues have gripped Malaysia’s political culture. The government had struggled to find acceptable reasons for what had caused the ethnic riots and, finally, confirmed that the deteriorating socio-economic and political situation in the 1960s had caused it.257 This led to establishing the Affirmative Action Policies. In Malaysia, these policies were government-mandated preferences for government-designated groups.258 The Malays were designated as the disadvantaged group at varying levels of economic and social development; thus, making it imperative for the government to intervene to help some of them to overcome their economic disadvantages.259 In addition to the AAP were government remedies to the socio-economic imbalances, which existed due to the British colonialists’ policy of divide and rule among the three major ethnic groups.

256 Democracy in Malaysia, as claimed by experts, became a limited and controlled democracy after 1969. With the establishment of the AAP, the government tightened its grip on the people, especially regarding sensitive issues that mainly involve questioning the Malays special position in Article 153, Malaysian Constitution. As described by one European analyst, perhaps the most serious consequence of May 13, 1969 was the apparent decision of the Malaysian rulers to render Malay status inviolable by thought, word, and deed. [Anthony Short, “Communism, Race and Politics in Malaysia,” *Asian Survey* 10, no. 12 (December 1970).

257 The NOC have probably taken a middle position on the Malay, by not pointing fingers to any side of the population. Depending on who is the author of the book, the Chinese blame the Malays and their elites’ conspiracy that caused the tragedy; and vice versa, the Malays blame the Chinese chauvinists who caused the mayhem that contributed to the May 13th tragedy.


259 The most controversial government-backed affirmative policy in Malaysia is what they called the New Economic Policy (NEP), which aimed to achieve national unity and eradicate poverty in Malaysia’s plural societies. Critics claim that this policy heightened ethnic discrimination. (This issue is discussed under the economic right’s assessment.)
Proponents of these policies still argue that many constitutions empower schemes\textsuperscript{260} of preferential treatment in order to elevate the status of those who are economically, socially, and culturally disadvantaged; such as women and children, aborigines, “untouchables,” and other marginalized groups and communities in society. The AAP was awarded to the Malays for being the \textit{bumiputera} (sons of the soil), stating that they had suffered from socio-economic inequality inherited during the colonial period and consolidated in the post-independence years. Obligations were placed on the State to take charge of the AAP actions, to restructure the deprived Malays; thus, State paternalism was needed to promote the economic and social welfare of the Malays as the disadvantaged community.\textsuperscript{261}

The AAP became a compensating, as well as remedial measure, to undo the effects of past discrimination. Today, it still operates broadly, mandating special privileges for the politically dominant but economically depressed Malay majority, protecting minorities like the \textit{Orang Asli} (Malaysia’s indigenous peoples) and the native communities of Sabah and Sarawak, and conferring special privileges to underdeveloped regions in Sabah and Sarawak.\textsuperscript{262}

Although these services are part of the “social contract” in which the non-Malays have rights of citizenship and cultural and linguistic protection and the Malays are

\textsuperscript{260} Such schemes are called by many terms, such as: positive discrimination, affirmative action, reverse discrimination, special privileges, preferential treatment, ameliorative measures, and constitutional discrimination. [Shad Saleem Faruqi, “Affirmative Action Policies and the Constitution,” \textit{Kajian Malaysia} xxi, no. 1, 2 (2003): 31.]


\textsuperscript{262} Ibid.
guaranteed a continuation of their special position, critics say that these policies cause ethnic division and segregation which will hinder the plan for Malaysian nationhood. The goal of the AAP policies was to put the Malays (the natives) on a more equal footing with the immigrant populations (mostly ethnic Chinese), for fear of reverting to the social imbalances that had been set during the centuries under colonial rule; which had started with rule by the Portuguese, then the Dutch, then the Japanese, and ended with the British.263

With regard to inter-ethnic income inequality, although there were claims that the AAP had diminished such inequality in Malaysia, some indicators contradict these claims and show, in actuality, a worsening situation of inequality between various income groups within the nation as a whole and within each ethnic communities.264 Although the AAP often has been portrayed as providing measures that increase social cohesion, according to some critics, such policies actually have reinforced ethnic division, antagonized the less favorite ethnic groups (especially the Chinese), and exacerbated ethnic tensions. For instance, since the enforcement of the National Cultural and Educational Policies in 1971, which favors the Malay language and culture, especially in terms of getting government support, there have been growing tensions between the Malays and the Chinese communities.265


264 This income inequality is discussed further under the economic rights assessment.

In addition, claims of abuse and corrupt practices have rendered the AAP to be poorly distributed and to be concentrated in the hands of a few in the societies. Instead of benefitting the poor Malays, the AAP has morphed into cronyism and has widened the gaps between the haves and have-nots; a lack of transparency in the implementation has caused unchecked corruptions by those in power.

Critics strongly argue that these privileges are entrenched in the Constitution and they are against repeal in many ways. First, they state that any Bill to abolish or curtail these privileges may be caught by the law of sedition. Second, under Article 159(5), any amendment to Article 153 will require a special two-thirds majority of the total membership of each House of Parliament plus consent of the Conference of Rulers. Third, any change in policy affecting administrative action under Article 153 requires the government to consult with the Conference of Rulers. Fourth, Article 10(4) of the Constitution permits Parliament to prohibit questioning of any matter, right, status, position, or privilege protected by Article 153.

Ethnic affirmative action policies implemented and enforced in Malaysia have associated the interests of entire ethnic groups with their respective elites; thus, generalizing resentments associated with inter-ethnic and intra-class competition. Thus, it is unlikely that the ethnic affirmative action policies will achieve the end of improved

266 It is a law prohibiting discourse deemed seditious, including speech with seditious tendency, that would bring hatred or contempt or excite disaffection against the government or engender feelings of ill-will and hostility between different races. The provisions include questioning certain portions of the Constitution of Malaysia, namely those pertaining to the social contract in Article 153, which deals with special rights for the bumiputera. [Source: Wikipedia].

267 What is the conference of rulers?

268 Shad Saleem Faruqi (2003), 35.
inter-ethnic relations. An alternative approach needs to be found in order to create more lasting conditions for improved inter-ethnic relations.\(^{269}\)

Jomo (2004) claimed that a comprehensive alternative solution must be taken in order to engage ethnic issues, stating that partial solutions cannot work in tackling a complex ethnic integration paradox in Malaysia. For instance, one cannot wish away ethnic discrimination without tackling the existing problem of inter-ethnic inequalities and prejudice to which discriminatory policies and actions respond.\(^{270}\)

Maznah (2005) argued that appropriate “ethnic management” is important in tackling ethnic issues in Malaysia. According to Maznah, Malaysia’s development policy was clearly predicated on a group-based framework, as opposed to a group-blind policy that places individual well-being as the core concern. While group-based policy has predominated, the motives for such a policy may have been driven by multiple concerns rather than just group benefit. The notion of “horizontal inequality”\(^{271}\) has become a persistent tool for justifying unequal allocation of resources, rights, and privileges among contending forces.\(^{272}\)


\(^{271}\) Horizontal inequality is the inequality in economic, social, or other, which does not follow from a difference in an inherent quality, such as intelligence, attractiveness, or skills for people or profitability for corporations. In sociology, this is particularly applicable to forced inequality between different subcultures who live in the same society. [Source: Wikipedia].

Proponents of the AAP argue that, despite widespread non-Malay resentment of many existing policies, Malaysia has not experienced the trauma of the race riots in 1969. In response to this, some analysts have claimed that direct interventionist policy by the State, such as the AAP, is the basis for Malaysia’s stability. For whatever it is worth, and no matter if the policy is successful at bridging disparity gaps, it has had the effect of quelling mass inter-ethnic dissatisfaction. Therefore, the AAP, such as the New Economic Policy (NEP), must by necessity take on the form of an hegemonic discourse, accompanied by an array of state-coercive mechanisms that will mute dissent. The politically powerful group is the preferred group and is pacified by the policies. For the un-preferred group, the fear factor is usually explained as the reason behind the absence of dissent against the plan or a lack of opposition toward the ruling party that implements it.\(^{273}\)

What explains stability in Malaysia since the race riots of 1969? To understand Malaysia’s sense of ethnic peace, one relates it to the social condition of multiculturalism, or ethnic co-existence. Each group has actually existed separately but within parallel systems in a cultural and economic sense. Thus, as long as each group feels that their interests are not being threatened, and deprivation gaps are prevented from being unduly widened, there is stability, even if ethnic tension prevails. The pillars of this

framework include the logic of security, the ethnic “bargain,” the social contract, and planned development that enables Malaysia to exist in a state of stable tension.\textsuperscript{274}

Critics argue that, although there has been no recurrence of the ethnic violence of 1969, the resentment among the non-Malay population (i.e., Chinese and Indians) having to endure the AAP remains widespread and profound. With the sedition acts and government censorship on sensitive issues, “race relations” is still a politically sensitive subject, which shows that Malaysian society is far from harmonious.\textsuperscript{275}

Crouch (2001) seems to have certain positive impressions about the preferential policies, despite the injustices and resentments created among non-Malays; stating that these policies have contributed to conflict-management and social cohesion in Malaysia, which have become evident in the relative absence of ethnic tension. However, he suggests that the main factors behind this stability in Malaysia are the country’s uninterrupted economic growth as well as the repressive measures against ethnic violence, such as the Sedition Act.\textsuperscript{276}

Recent development in Malaysian politics have seen some openings in revision of the AAP; for example, when the incumbent Barisan Nasional (BN) lost significantly against the opposition coalition Party Keadilan Rakyat (PKR) during the 2008 general

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\textsuperscript{276} Harold Crouch, \textit{Managing Ethnic Tensions through Affirmative Action: The Malaysian Experience} (2001), 226, 253
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election. Also, Malaysia’s sixth premier, Najib Tun Razak,\(^{277}\) is the first Malaysian leader to argue that Malaysia’s structural problems have been caused largely by the failures in implementing the AAP. Najib has claimed that the policies that served the purposes of the previous era are now becoming impediments to success.\(^{278}\)

Despite the proponents and critics who support or challenge the AAP, there are various constraining factors that prohibit a complete policy reversal. In addition to the historical legacy of ethnic division, segregation, and special rights introduced under the British colonial rule, which continue to affect all domains of state policies in Malaysia, many prevailing issues prevent the state from taking any drastic measure to de-racialize the whole policy regime.

The problems are that many beneficiaries of the AAP include the high income of Malay families, who benefit from Malay special rights, and the non-Malay business elites, who profit from close relations with Malay officials; also, the UMNO-led BN coalition has relied on the “political and social contract” between UMNO and the Malay elites to remain in power since the implementation of the APP in 1971. These Malay political, bureaucratic, business and social elites, along with some sections of Chinese businessmen close to the UMNO patronage and clients, have been the ones who will lose the most from any genuine revision of long-standing affirmative action policies.\(^{279}\)

\(^{277}\) The irony is that it was Najib’s father who was Malaysia’s second prime minister and who was responsible for championing the establishment of the AAP and NEP in the 1970s.  


\(^{279}\) Ibid., 15.
**Disbanding Ethnic Politics**

After more than four decades since its establishment, the mission of building one multicultural Malaysian nation remains unrealized in Malaysia. Today, the country seems to be even more divided along ethnic lines. Thus, many liberal Malaysians have started to realize that the strict AAP is cancerous to a plural society and economic growth, and they recommend revision of the AAP.

On the issue of making one Malaysian nation, the important questions are: Should ethnic politics be disbanded? Are the Malays and non-Malays willing to accept a one Malaysian nation, regardless of race, culture, and religion? I believe that the goal in making one Malaysian nation will continue to be jeopardized because of the ethnic polarization and because the Malaysian people are still not ready to accept a multi-ethnic dimension to this country.

As long as we continue to harbor our identity based on our ethnicity, Malaysia will not grow into a nation but will remain a squabbling society of dissatisfied peoples. Sure, we can never remove our ethnic origin, but we can stop behaving as if by becoming a Malaysian we cease to become a Malay, whether we are Chinese or Indian. We just need to celebrate our diversity through equal treatment; and stop politicizing race and religion, because these issues are really divisive and cannot contribute to building a one Malaysian nation, which is way overdue.

**Rule of Law and Access to Justice**

Now we discuss the symptoms of the weakening of the rule of law in Malaysia. I argue that despite the proliferation of the 1957 Constitution, which established the main
legal and institutional framework\textsuperscript{280} in Malaysia, there have been significant problems in implementing the rule of law and persistent problems with reasonable and reliable access to justice, as practiced in Malaysia so far in contrary to the ideals and conventional meaning of the rule of law as manifest in Western countries.

Although the Malaysian government sometimes obeys, even promotes, the elements of the rule of law, they do so only when it is in their interests. When the costs of obeying the laws outweigh the benefits, the laws are discounted, which gradually is leading to the deterioration of the rule of law itself. With this claim, I here try to answer the main question set by the International IDEA regarding the rule of law and access to justice: \textit{Are the state and society consistently subject to the law?}

Countries differ in their cultures, political systems, economic systems, and how they implement rules of law. In the Western liberal system, rule of law is widely considered necessary for sustained economic development, the implementation of democracy and the protection of human rights. However, these fundamental values adhered to by Western countries make some people question if they are likely to take root fully in a different cultural, in the economic and political context of a non-Western nation as in Asia.\textsuperscript{281}

The rules of law generally subscribed in Malaysia do not prevail to the same extent as in Western democracies. In a country “whose significant democratic and

\textsuperscript{280} Article 8 by clause (1) provides that all persons are equal before the law and entitled to its equal protection.

authoritarian characteristics are inextricably mixed," the ideals are just on paper. The reality in Malaysia is that authoritarianism has been manhandling the rule of law. For a government that places greater emphasis on maintaining stability and ethnic harmony, this could not be avoided.

In Malaysia, the 1957 Constitution provides the main legal and institutional framework of the rule of law and access to justice. For instance, Article 8(1) states that all persons are equal before the law and entitled to its equal protection. However, despite these provisions, questions arise on the issues of its supremacy, as against the supremacy of Parliament, which in Malaysia is controlled by the executive body. Ideally, there should be a fundamental difference between the Parliament and the laws of the Constitution, as practiced in Britain. Hence, in Malaysia, the fundamental difference is irrelevant because the powers of Parliament, in theory, are supposed to be limited by the Constitution; yet, in practice, are unlimited. This paradox questions the credibility of the Constitution, which is supposed to be the most powerful law of the land.

The idea of the rule of law in Malaysia was adopted from the Westminster form of government and the legacy of British colonial rule, which are clearly embodied and

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283 Under the classic British formulation set forth by Darcie at the end of 19th century, the rule of law demands: (i) that all actions of public officials be sanctioned by law, and that all public officials be answerable to the ordinary courts for any unlawful acts; (ii) that there should be no wide or arbitrary discretion conferred on public officials; (iii) that all citizens are entitled to a fair trial before an independent tribunal; and (iv) that all citizens are entitled to be treated equally before the law. [Albert Venn Dicey, *Introduction to the Study of Law of the Constitution* (London: Macmillan, 1970, ch. 12).]
expressed in many of the Constitution’s provisions; for instance, Articles 5 and 8\(^\text{284}\) outline the principles of the rule of law prescribed by Dicey (1970).\(^\text{285}\)

In Malaysia, since independence in 1957, the idea of the rule of law was not subjected to extensive public debate or rigorous analysis until the 1980s. According to H. P. Lee (1986), a significant factor can be attributed to the backgrounds and personalities of the prime ministers in power during those times. Almost all of the predecessors of Mahathir were British-educated, with exposure to Britain’s political system and laws, which were most likely indoctrinated with a greater sense of their importance.\(^\text{286}\)

Tun Mohamed Suffian, the Lord President of Malaysia from 1974 to 1982, commented in a public lecture that, so far, the independence of the judiciary had never been in jeopardy, thanks mainly to the fact that Malaysia’s first three prime ministers were lawyers who understood the importance of having a judiciary that enjoys public confidence.\(^\text{287}\) The rule of law in Malaysia was deeply tainted, however, during Mahathir’s era, who was educated in Singapore. This may explain why he disregarded the importance of separation of powers between the judiciary, executive, and legislative bodies, as well as the limits of government regarding the implementation of the rule of law and access to justice.

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\(^\text{284}\) Article 5 on Right to Life and Liberty, and Article 8 on Equality under the Law.

\(^\text{285}\) List down.


\(^\text{287}\) Ibid.
Two main issues regarding the rule of law are (1) emergency laws; and (2) the separation of power, or judicial independence.

**Emergency Laws**

Emergency laws display a set of provisions that empower the government to summon extraordinary powers to cope with a crisis. In the Malaysia Constitution, such power is under the provision of Article 150. For example, it is provided that if the Yang di-Pertuan Agung (YDPA):

> is satisfied that a grave emergency exists whereby the security, or the economic life, or public order in the Federation or any other part thereof is threatened, he may issue a Proclamation of Emergency, making therein a declaration to that effect.

A Proclamation of Emergency may be issued even before the actual occurrence of the event that will threaten the security or economic life or public order, if the YDPA is satisfied that there is imminent danger of the event occurring. When a proclamation of emergency is issued, it has full force and effect as if an act of Parliament. The proclamation of the emergency laws may enlarge the scope of the law-making power of the Parliament. Regardless of provisions in the Constitution, “the Parliament may make laws with respect to any matter if it deems crucial by reason of the emergency” and such laws cannot be invalidated on the grounds of inconsistency with any provision of the

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290 Malaysian Constitution, Article 150(5).
Constitution. Hence, the broadening of the Parliament’s power cannot be applied to issues of Islamic Law, Malay customs, or with respect to any matter of the customs of the natives in the states of Sabah and Sarawak. Also, emergency laws that are contradictory to the constitutional provisions relating to religion, citizenship or language will not be valid. Apart from these specified exceptions, all of the fundamental rights granted in the Constitution can be derogated in times of an emergency. In this matter, the power of the judiciary to monitor the exercise of emergency rules is prohibited by the provisions of Article 150(8).

The emergency powers have been invoked four times since independence. They were used in 1966 and 1977 to overcome political crisis in the states of Sarawak and Kelantan, respectively. The 1964 state of emergency was proclaimed during the confrontation with Indonesia during the Sukarno era. The most important emergency declared, however, was during the 1969 race riots in Kuala Lumpur. In order to control ethnic disturbances during this period, an Emergency Ordinance was promulgated, which widened police powers to detain and arrest ordinary persons for sixty days, two years for a minister.

These emergency ordinances became the most controversial debate, were fiercely debated by pundits and analysts, and have become the target of people’s unease with the

291 Malaysian Constitution, Article 150(6A).

292 In this Article, regardless of any provisions in the Constitution, the judiciary has no authority on questioning: (1) the satisfaction of the YDPA mentioned in Clause [1] and [2B]. They shall be final and conclusive and shall not be challenged or called in question in any court on any ground; and (2) no court shall have jurisdiction to entertain or determine any application, question or proceeding, in whatever form, on any ground, regarding the validity of: (i) a Proclamation under Clause [1] or of a declaration made in such Proclamation to the effect stated in Clause [1]; (ii) the continued operation of such Proclamation; (iii) any ordinance promulgated under Clause [2B]; or (iv) the continuation in force of any such ordinance [H. P. Lee (2004), Ibid., 236.]
government’s intention and policies. Some of the ordinances enacted were with no real
security problem obviously affecting the stability or ethnic harmony in the country; they
were just instruments used by the federal authorities to serve their own interests and
political advantage to secure control of the State.\textsuperscript{293} The fact that these ordinances have
been made the norm in government actions can have atrocious consequences upon the
administration of justice, not only in Malaysia but other countries that maintain
emergency laws. Therefore, these laws need to be repealed.\textsuperscript{294}

Another observation about the 1969 assertion of the emergency laws is that even
though the laws were proclaimed over forty years ago, they still have not been revoked or
annulled. They are still operative, even though no serious ethnic disturbances have ever
taken place since their origin. It appears as though the emergency laws have become a
permanent fixture in legal settings, which casts doubt on the continuing relevance of the
rule of law in Malaysia.\textsuperscript{295}

Ong Hock Thye, once a federal court judge, said in the Ningkan court case that
Article 150 of the Constitution does not serve as an award for the Cabinet to cause an
emergency to be declared with untrammeled discretion just to fit their whim and fancy,
saying that it appears the Cabinet has \textit{carte blanche} to do as they please.\textsuperscript{296} Enactment of
Article 150 weakened the judiciary, whose power has been crushed because it is not able

\textsuperscript{293} Andrew Harding, \textit{Law, Government and the Constitution of in Malaysia} (Kuala Lumpur: Malaya Law

\textsuperscript{294} "Justice in Jeopardy: Malaysia," \textit{Aliran Monthly} (2000), available at

\textsuperscript{295} Harding, Ibid., 154.

\textsuperscript{296} 1 \textit{Malayan Law Journal} 119 (1968), 128, in H. P. Lee (2004), 238.
to remove any court’s decision in relation to the validity of a proclamation of emergency law or ordinance; whereas, the Cabinet has unrestricted power to act unchecked.

**Constitutional Amendments**

The Constitution in Malaysia is regarded as the highest law of the land and even this was not spared from the frequency of amendments that have diminished its reputation as the most revered document. While some amendments were justified as a basis for changing circumstances, like the exclusion of Singapore from the Federation of Malaysia, many other amendments have been motivated by political consideration. For instance, during in 1983, Article 150 was amended to provide for the issuance of a Proclamation of Emergency by the YDPA “if the prime minister is satisfied” that a grave emergency exists whereby the security, or the economic life, or public order in the Federation, or any part of thereof is threatened. This amendment replaced the satisfaction of the YDPA to, instead, the satisfaction of the prime minister. This amendment was, however, subsequently annulled, by amendment, in the Constitution Act 1984 as part of the agreement reached between the Mahathir government and the hereditary rulers, to bring an end to the constitutional crisis of 1983-1984.²⁹⁷

**The Separation of Powers: Judicial Independence**

The Malaysian Westminster-type constitution does not explicitly mention the independence of the judiciary; there is also no clear line separating the bodies of the executive and legislative branches against the affairs of the judiciary. In the Constitution, the articles merely refer to the administration of justice and do not have specific Acts

about upholding the “Separation of Power” (SoP). However, the SoP is essential in a
democratic government in order to maintain the existence of the rule of law. 298

Regarding the position of the executive body, the Malaysian Constitution follows the
British tradition in which the executive is part of the legislative body.

Specific provisions about the extent of each power are not provided by the
Constitution but are found in the subsidiary and other legislation. 299 Furthermore, the
executive who is head of the federal government, in this case the prime minister, has
succeeded in retaining its power that it acquired during the enactment of the emergency
laws in 1969.

One of the main principles of democratic government is the accountability of the
executive ministers to the Parliament. However, in Malaysia, the ministerial
responsibility is frequently traded off in favor of party unity and party discipline. The
ministers are not accountable to the Parliament; but, instead, to their component party
within the leading ruling party, that is the Barisan National (the National Front). 300

The Judiciary Trampled by the Executive

The year 1988 is written down as an unfortunate judicial event in the history of
judicial independence in Malaysia. It marked government’s reneging from its

298 These are the principle elements, articulated by Joseph Raz, which are needed for upholding the rule of
law in a state: (1) the independence of the judiciary must be guaranteed, otherwise it could not be relied
upon to apply the law; (2) the principles of natural justice such as the essentiality of having open court,
absence of biasness, right to be heard, must be observed in order for the law to be able to guide action; and
(3) the courts should have the power to examine the actions of the other branches of government in order
to determine if they confirm to the law. [J. Raz, “The Rule of Law and its Virtue,” 93 Law Quarterly Review
195 (1977): 198.]


300 Ibid., 51.
commitment to uphold “the rule of law.” What happened was a complete standoff between the government (Mahathir’s administration) and the Lord President (top judge in the country). It all started over the dispute about the 1987 presidential election results. After a recount, Mahathir’s team narrowly had won over the opposing team. The losing team, the United Malay National Organization (UMNO), filed a suit questioning the legitimacy of the elective process. The High Court ruled that the ramifications arising from discrepancies found in the registration of its branches under the Societies Act rendered UMNO an “unlawful society.”

UMNO then brought the case on appeal to the Supreme Court. Hanging on to a thread for political survival, Mahathir hoped the judiciary would dismiss the case in favor of his team. Instead, the country’s highest judge, Lord President Tun Salleh Abbas, motioned for the appeal to be heard by a bench of nine judges on the Supreme Court.

This angered Mahathir and his team and there were bitter exchanges of criticism between the prime minister and members of the bench. Mahathir made contemptuous attacks toward the judiciary, declaring them to be too sternly independent, to a point of jeopardizing the security of the nation. The judicial branch was uneasy about this accusation from the executive branch, judges wanting to be above criticism.

At the end of the dispute, Mahathir was successful in manipulating the mechanism for removing the Lord President and two other judges from office. This episode in the history of Malaysian politics has been described as unconstitutional.

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interference with judicial independence, stating that it undermined confidence in the independence of the judiciary. This incident also contributed significantly to the notion that the present Constitution was no longer viable and that the actions of the government no longer carried the legitimacy enjoyed before 1988.  

Since this event, the judiciary body has gradually weakened, and the Mahathir administration has made an effort to scrutinize appointments of every officer to the higher courts. In fact, it is reported that less reputable figures were given high judicial positions. In July 1996, a High Court Judge, Syed Hamid Idid, resigned from office after accusing colleagues on the country’s highest benches of 39 incidents of corruption, 27 cases of abuses of power, and 52 acts of misconduct. An example of such misconduct was the controversial libel lawsuit, in which crony capitalist Vincent Tan who had a close relationship with Mahathir’s administration and was awarded RM 10 million (US$2.6 million) in damages against journalist M.G.G. Pillai. It was later found that Tan’s counsel, V.K. Lingam, had sponsored holiday trips to Italy and New Zealand for Eusoffe Chin, the presiding judge who later became Lord President.  

Another prevalent example of executive power defeating judicial power is the Anwar Ibrahim case. Anwar’s trial was an attempt on the executive’s part to legitimate the humiliation of a political dissident by interweaving legal principles with moral

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303 Andrew Harding (1996), 147.


305 The Deputy Prime Minister of Malaysia during the Asian Financial Crisis in 1997. He is Malaysia’s second strong man after Mahathir. Anwar was apparently opposed to Mahathir’s policy of bailing out some “well-connected” firms belonging to his friends and son (Mirzan). Along with rumors that he was trying to topple Mahathir, Anwar was sacked by Mahathir from his post as VP and from UMNO for various reasons involving “moral impropriety.”
standards that had been generally accepted by the society. The government sought to articulate that Anwar had committed a crime that was demeaning. The case was brought to a hearing of the court, so as to give Anwar the so-called fair hearing. On the other hand, Anwar believed that the court had been turned into a political tool to destroy his political career. The most lethal of Anwar’s political conspiracy assertions were his insinuation that the court was not neutral and that the country’s highest ranking judge was incorporated in the plot to tarnish his reputation, thus shattering the whole basis of the court as a legitimate arena in which to try a case fairly. Anwar asserted that the trial was a “political persecution hiding behind the cloak of law.”

Anwar’s trial is said to have awakened the spirit of resistance among Malays against their leaders, which had been limited since the Malay Union proposal by the British in 1946. Many Malays began to question the actions and accountability of the Malay leaders and became more comfortable discussing Western politico-legal jargons, such as the rule of law, access to justice, and the separation of powers.

**Access to Justice**

Access to justice is a fundamental human right, rooted in civilized values, religion, the common law, and a constitution. The attainment of justice has been the cherished goal of all civilized societies. In lieu of the dark event that befell the judiciary in 1988, when the judicial body was trampled by the unchecked power of the

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306 One of the implications of the 1988 judicial saga was the appointment of the judges; those considered friendly to the prime minister were handpicked by the executive body.


Parliament and the executive, the active use of the Internal Security Act to silence dissent, and other repressive laws and authoritarian practices against the populations, analysts are baffled by the “official vision” proposed by Premier Mahathir Mohamad that, by year 2020, Malaysia should be categorized as a developed nation.

The issue of rights to access justice, whether provided in the Constitution or not, have come under a storm of explicit judicial debates. Although the judicial discourse has downplayed the rights of access to justice and deprived the “right” of any constitutional significance, the marked difference in views between the Malaysian Court of Appeal and the Federal Court have generated interest in constitutional law; because access to justice involves being able to access the courts and judicial remedies as well as legal representation, and also involves the right of ordinary citizens to challenge administrative decisions that affect their legal rights.309

A proactive judiciary, in implementing access to justice programs in a particular jurisdiction, may be associated with relatively weak constitutional provisions on the right of access to justice. It is argued that the practice and implementation effort to develop and improve access to justice should be informed and undergirded by a well-considered notion of rights and constitutionalism. Hence, if the rights of access to justice are absent or not recognized and protected by the legal system, it is possible that beneficial access to justice programs may one day cease to exist or be challenged by aggrieved parties.310

310 Ibid.


Issue: The Parliament’s Increased Power over the Constitution

In the case of Malaysia, which has a written Constitution, the Parliament is not empowered to abolish the right of access to justice. Judicial review is a basic and essential feature of the Constitution, which no Parliament can take away. However, the Malaysian Federal Court, in the case of *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan*, subsequently reversed the decision of the Court of Appeal. The Federal Court held that the constitutional rights are not absolute. In this respect, it should be noted that Malaysian federal courts have rejected the basic doctrines in the Constitution, wanting to remove the power of judicial review from it. The Court held that the effect of the ouster clause was clearly intended by the Parliament to remove judicial review. Thus, the right of access to justice cannot be sustained in the face of an express statutory ouster of judicial review.

In the case of *Kekatong Sdn Bhd v. Danaharta Urus Sdn Bhd*, the High Court’s decision was reversed by the Court of Appeal, who ruled that Section 72 was unconstitutional as it violated article 8(1) of the federal Constitution. What is important in this ruling is the Court of Appeal’s detailed examination of the right of access to justice in the Constitution. In this case, the judge ruled that the definition of law in the

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311 The federal court is the highest court in Malaysia and has exclusive powers to declare an act of Parliament void. Perhaps it is this provision that brought the judiciary to a head-to-head collision with the executive. In Malaysia, tensions between the executive and judiciary bodies materially began surfacing during the tenure of Mahathir Mohamad.

312 The Court of Appeal is appointed by the Agong, acting on the advice of the prime minister.

313 Judicial review is a court’s power to review, and possibly nullify, laws and governmental acts that violate the Constitution and higher norms. It is a way to assure that governmental actors respect the Constitution and do not use the powers granted to them by the Constitution to seize illegitimate power. Judicial review is generally the final word by a governmental institution on a law’s validity. [http://www.cic.nyu.edu/peacebuilding/oldpdfs/E23SummaryConstitutional%20Court%20Judicial%20ReviewAHaq.pdf]
Constitution is not exhaustive but open-ended by reference and entrenched in Article 160(2). The learned judge, among others, said that the government is according to the rule of law; thus, there must be fairness in State action of any sort, legislative, executive or judicial and, in simple terms, that no one is above the law.314

In overruling the Court of Appeal’s decision, on the same case the Malaysian Federal Court contended that the common-law right of access to justice cannot amount to guaranteed fundamental rights.315 According to the Federal Court, the common law could be modified by written law; thus, the right of access to justice is one provision that can be modified by written law (in this case, the Danaharta Act).

The Federal Court also emphasized Article 121(1) of the Constitution that the High Court shall have such jurisdiction that every citizen should have a constitutional right of access to the courts of justice in order to obtain remedies. However, the Federal Court referred the access to justice in the Constitution under Article 8(1) as a general right,316 in contrast to the Court of Appeal’s treatment of access to justice as a fundamental liberty under the Constitution. While the Federal Court stated that Articles 8(1) and 121(1) complement each other, the powers of the Court are clearly the dominant element that determines the boundaries of access to justice. Thus, access to justice shall be available only to the extent that the Courts are empowered to administer justice.317

317 Ibid.
The Federal Court proceeded to add that the right is determined by the justifiability of the matter. If the matter is not justifiable, there is no right to access to justice in respect of that matter. Thus, Parliament can enact a federal law pursuant to the authority conferred by Article 121(1) to remove or restrict the jurisdiction and power of the Court. This unrestrained power of parliamentary law-making in derogation of judicial power has been applied in subsequent Malaysian cases.318

The Federal Court has been subjected to fairly strident criticism. One critic has claimed that the Court has failed to appreciate the difference between laws enacted by Parliament in pursuit of powers given under the Constitution and the constitutional provisions themselves.319 Abdul Kader (2005) argued that the right to justice embodied in Article 8(1), although of common-law origin is not dependent on it, stating that the right flows from the Constitution itself, which is sui generis.320

In a nutshell, the search for constitutionalism and rights in the context of access to justice in Malaysia has not been an entirely fruitful one. Judicial discourse in Malaysia garnered from the case law and extra-bench pronouncements suggests that access to justice, while broadly construed, has not been accorded constitutional status, thus is subject to interpretation of Parliament’s acts and other Acts outside the Constitution.


320 Ibid.
Conclusion

The strength of the rule of law in the context of administration of justice in Malaysia varies, depending on the degree of government interest in the cases before the courts. In the vast majority of cases that come before the court daily, there has been no display of public concern over the manner in which these cases are handled, the integrity of the presiding judges and magistrates, or the eventual outcomes. Regardless of whether the cases involve commercial or family-law litigation or criminal prosecution, the *Justice in Jeopardy* (2000) report stated that there were well-founded grounds for concern as to the proper administration of justice in Malaysia, in cases of particular interest, for whatever reason, to the government:321

Plainly, this is only a small proportion of the total number of cases which arise, but they are of vital importance to the well-being of the entire system of justice in Malaysia. The central problem appears to be in the actions of the various branches of an extremely powerful executive, which has not acted with due regards for the other essential elements of a free and democratic society based on the just rule of law322 (p. 77)

Politics are played in Malaysia by using the ethnicity of politicians in the incumbent ruling party. It’s the same “old politics,” say analysts, with the purpose of preserving the status quo; all in the name of stability, ethnic harmony, and economic growth. All actions and policies undertaken by the government are for the good of the people; to impose on this policy, the State must be strong with its apparatus, backed by coercive policies.

321 H. P. Lee, 244.

322 *Justice in Jeopardy* report, 77.
The talk of national stability and ethnic harmony by the incumbent government is actually propaganda for the people to continually support and give mandate to the existing ruling coalition party, the Barisan Nasional (BN), stating that keeping the BN in power is essential for maintaining economic and social achievements. Hence, goes the argument that the price to be paid for stability is some dwindling in the strength of the rule of law, that fundamental liberties may have to be constrained, and that the executive power must be strong and powerful for the benefit of the people and the country.
Chapter Five: Civil, Political, Economic, and Social Rights

Are Civil and Political Rights Equally Guaranteed for All?

This chapter analyzes several different issues that brought dilemmas in implementing civil and political rights in a full sense in Malaysia. Since independence in 1957, and with the enactment of the nation’s Constitution in the same year, Part II of the nation’s Constitution, titled “Fundamental Liberties,” included the right to life and liberty of the person; equality under the law and freedom from discrimination; freedom of movement; freedom of speech, assembly, and association; and freedom of religion.323

Malaysia’s Constitution epitomizes the fundamental human rights, civil and political liberties that are enshrined in the Universal Declaration of Human Rights (UNDHR). However, Malaysia is a semi-democratic country, with apparent authoritarian practices. The government has maintained that it is realistic to have these rights restrained in order to maintain stability and harmony in the system and country. The irony is that those restrictions are also entrenched in the Constitution through amendments made by Parliament to limit the provisions of human rights in the Constitution.

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323 For instance, the main provision of the Malaysian Constitution, which is relevant to these rights, is in Article 5, which reads: “No person shall be deprived of his life or personal liberty saves in accordance with law.” [Tun Suffian et al., 1978.]
This phenomenon places human rights in Malaysia under the mercy of state power\textsuperscript{324} and is the dilemma facing the full implementation of civil and political rights in Malaysia. For the last fifty-four years, many Malaysians and critics have expressed concern that there has been an incremental development of an array of preventive detention laws and other restrictive laws that were inherited from the colonial government, which have allowed authorities to deny or place unjustified restrictions upon the enjoyment of fundamental human rights.\textsuperscript{325} These laws have given more unrestricted power to the state, especially the executive body, to carry on with the repressive laws to stifle opposition parties and dissidents who are against the state’s agenda. These have affected many Malaysians and have created intimidating effects on the development of civil and political life in Malaysia.

Due to the inflammatory nature of ethnic and religious issues in Malaysia, discussing and criticizing hypersensitive issues (e.g., the Malay privileges, the citizenship status of non-Malays, and language issues) for the purpose of inciting hatred and confrontation in the society is sanctioned as a criminal act. The Ministry of Home Affairs has the power to order detention without trial under the Sedition Act.\textsuperscript{326} and the

\textsuperscript{324} The enemy of human rights has always been the state, which is not just limited to government or one of its branches, the executive; but also extends to all its agencies, bureaucracies, and civil servants a modern term being The Establishment. It is invariably the state, through an agency, instrumentality or person, which infringes the rights of an individual. [Tommy Thomas, \textit{Human Rights in 21st Century Malaysia, Aliran Online}.]

\textsuperscript{325} Refer to Amnesty International, UNHCR, Aliran, SUHAKAM, Human Rights Watch, Freedom House, etc., references and examples from the claim. How the colonial state came up with these repressive laws and how it is still maintained by the incumbent government until today, even after 54 years of independence.

\textsuperscript{326} It is an Act to provide for the punishment of sedition. The Constitution guarantees freedom of speech under Article 10, and also empowers Parliament to impose certain restrictions to maintain public order. The act criminalizes speech with seditious tendency, including that which would bring into hatred or contempt
government has progressively tightened its grip on all critical institutions,\(^{327}\) to the point of rendering them useless. Mahathir wrote in his 1970 book that the manner, frequency, and trivial reasons for altering the Constitution was reducing the supreme law of the nation to a useless scrap of paper.\(^{328}\)

To explain the dilemma of the peoples in Malaysia in practicing civil and political rights, it is important to evaluate Part II of the Constitution, titled “Fundamental Liberties.” The nine Articles (i.e., the right to life and the right to liberty of the person, including habeas corpus\(^{329}\); equality under the law and freedom from discrimination; freedom of movement; freedom of speech, assembly, and association; and freedom of religion) are not absolute rights. Although the Articles pertaining to freedom from discrimination (Article 8) and freedom of speech, assembly and association (Article 10), in particular, contain a number of clauses that give more power to the Parliament to legislate any restriction on freedom of expression, association, and assembly that it “deems necessary or expedient in the interest of the security of the Federation ... public or excite disaffection against the government or engender feelings of ill-will and hostility between different races. It also prevents questioning the special position of Malays, and citizenship rights of non-Malays. The Act, which was enacted in 1948, is still valid and can be abolished only by Parliament.

\(^{327}\) In 1988, the incumbent government proposed to amend Article 121(1) to remove that crucial phrase “judicial power of the Federation” to slice out from the Constitution the judiciary’s judicial power and, instead, give Parliament the power to decide what the judiciary can and cannot adjudicate. So the judiciary no longer appears to have an overriding power to act as a check on the actions of the executive and the laws passed by Parliament. Since then, the government’s grip on the judiciary jeopardizes the doctrine of separation of powers in the country.


\(^{329}\) Originated from the English legal system, it is a legal action through which a prisoner can be released from unlawful detention.
order or morality,” these clauses have allowed the fundamental principles of the Malaysian Constitution to be comprehensively undermined. Through legislation, Parliament has given more power to the executive body. \(^{331}\)

A legislative and administrative structure has emerged, posing a grave threat to the rights and liberties safeguarded in the Malaysian Constitution as well as under international human-rights law. For instance, Article 149 in the original 1957 Constitution allowed for Parliament, in the event of serious subversion or organized violence, to pass laws that are repugnant to the fundamental rights safeguarded elsewhere in the Constitution. Then, in 1960, authorities amended Article 149 to expand the definition of subversion, and removed the one-year time limit on such Emergency Ordinances by providing that they could continue indefinitely, unless both Houses of Parliament passed laws revoking them. \(^{332}\)

In addition, Article 150 of the Constitution empowered the executive body to exercise extraordinary powers if a State of Emergency was proclaimed, but only for periods of two months at a time. Article 150 was also amended in 1960 to allow Proclamations of Emergency, and any Ordinances issued under them, to continue indefinitely unless both Houses of Parliament annulled them. In 1981, in further amendments to Article 150, the Cabinet was authorized to declare an Emergency when it perceived a potential threat, and not, as previously, when such a disruption was actually

\(^{330}\) Article 10 of the Constitution of Malaysia, subject to Clauses (2), (3) and (4).


\(^{332}\) Article 149 of the Constitution of Malaysia, Special Laws against subversion and acts that are prejudicial to public order, such as terrorism.
taking place. No judicial challenge to the legitimacy of the Proclamation, or the validity of the subsequent Emergency Ordinances, was permitted.\footnote{333 Article 150 of the Constitution of Malaysia, Emergency Powers.}

**Why Civil and Political Rights Cannot Be Practiced in Full**

Analysts and critics contend that certain unavoidable factors influence the development of the culture of human rights in the country. These factors involve historical realities, the political system, economic importance, and the social and cultural attitudes of the people who generally lack an understanding of how important these rights are.\footnote{334 The weaknesses of civil societies in Malaysia also contribute to the regress of human rights in Malaysia. More on civil society is discussed in chapter five.} Five factors regarding this must be highlighted:

First, the incumbent government, in power since independence in 1957, continued to be given the mandate to continue ruling,\footnote{335 The *Barisan Nasional* has, so far, not lost a general election since 1955; only two known setbacks made them lose the 2/3 majority vote in the Parliament in 1969 and 2008. Even so, the setbacks have not stopped the BN from winning the general elections by far.} giving the incumbent the authority to maintain its hegemonic rule and to sustain the repressive colonial-era laws. Such repressive laws from the colonial era that are still being implemented today are the Sedition Acts of 1948, the Emergency Laws of 1948, and the Internal Security Act of 1960. These laws were used during the colonial period to stifle dissidents, especially Communist insurgents. They are still in use today to suppress legitimate political dissidents and to generate a culture of fear to freeze critical speech and debate on sensitive issues.\footnote{336 H.P. Lee, “Human Rights in Malaysia,” in *Human Rights in Asia* supra note 9, 191.}
Second, Malaysia is a plural society threatened by an ethnic-religious fissure, and maintaining public order is of paramount importance. The Malaysian government considers maintenance of social harmony and stability vital for securing economic growth and foreign direct investment, which are excuses for curtailing the civil and political rights of the people. The state believes that exercising too much freedom in a plural society like Malaysia, if unchecked, causes destruction to public order. This goes back to the paradigm of “Asian values” for understanding the democratic and human rights practiced in countries in Asia and the East, where stability and harmony are more valued than individual basic rights and freedoms. Thus, a strong state that is armed with coercive tools and the political will to accomplish national growth and development is considered essential for tackling poverty and managing the politics of envy that is fueled by growing wealth and income disparity. In Malaysia, the New Economic Policy is one of the Affirmative Action Policies practiced through the state authoritative policies.

Third, the separation of powers among the executive, legislative, and judiciary bodies is not fully realized in Malaysia. Critics claim that Malaysia’s judicial system allows a wide scope for executive intrusion, and the extent of judicial independence has been placed in serious doubt since the dismissal of the Chief Justice and five other

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337 The debate of Asian values in Malaysia has lost its momentum. Critics and opponents of the political system in Malaysia are more focused on issues of the Islamic state. Non-Muslims and Muslims alike are more concerned with the revival of the Islamic culture slowly gaining momentum in the Malaysian society, as opposed to the Asian values that are from Confucianism.

338 The West typically dismisses the claims of Asian values as out of hand, a convenient excuse to continue the maintenance of an overly powerful state.

Supreme Court judges in 1987-1988. The judiciary can reasonably claim that it operates in strict accordance with the law; however, Malaysian law has been increasingly framed to restrict the Court’s freedom to determine their own procedures, interpret laws, and exercise review of legislation. Several times, Malaysia’s fourth premier has criticized the notion of judicial review as giving judges open-ended powers to oppose government policies and to throw out laws they dislike. Until 2008, the incumbents in Malaysia enjoyed the Parliament’s power of the two-thirds super majority to amend or restrict the power of the courts. Lately, since the opposition coalition won big in the 2008 general election, the power of the Malaysian Parliament has been checked. Good news for democracy.

Fourth, Parliament and state legislatures share the power to make laws over matters under the “Concurrent List” stated in the Constitution; however, Article 75 provides that, in the event of conflict, federal law will prevail over state law. In Malaysia, the division of powers among federal, state, and local governments reveals a central bias. While each state is recognized as an independent tier of government exercising legislative and executive powers within constitutional limits, federal laws take precedence over those of the states if for any reason there happens to be a conflict or inconsistency. It has been observed that, in practice, the states have little real autonomy. Although some


342 It was during the Mahathir era (1981 -2003) that the power of the judiciary was weakened by sustained attacks by his administration.


344 Articles 73-79 Legislative Powers: Federal, State and Concurrent Legislative Lists.
federal functions have been decentralized, most decision-making remains at the national level. State and local governments in Malaysia operate within a framework of being politically, financially, and economically subordinate to the federal government.\(^{345}\) This situation has created a subservient relationship on the part of the states in relation to the central government, which presents an unhealthy atmosphere for practicing political and civil liberties. Such a state of affairs, in the context of federalism, has contributed to an environment that can stifle free speech.\(^{346}\)

Fifth, various draconian laws specifically enacted to limit the practice of civil and political rights are the legacy of the May 13, 1969 ethnic riots that took place more than four decades ago. In the 1969 general election, the opposition parties won big, denying the two-thirds Parliament majority to the incumbent, resulting in riots on the streets and many casualties and losses. The Malaysian government has always used this incident to use restrictions to stifle civil and political rights as a justification for stability. The incumbent faced another setback after almost four decades, in the 2008 general election when they lost the super majority. However, no ethnic riots occurred. The point here is that the Malaysian government can stop using the rhetoric that stability will be jeopardized if the rights of the people are practiced in full. The societies in Malaysia are mature societies, even though pluralistic in nature, and do not want to stick to the ethnicity card when defining politics in Malaysia.


Despite the provisions in Article 10 of the Constitution, freedoms of assembly and association, laws such as the Trade Union Act 1959, the Societies Act 1966 and the Universities and University Colleges Act 1971, impose a straightjacket on the exercise of freedom of association and further undermine freedom of expression. In addition, below are several other significant legislative laws that, if un-repealed, pose even greater threats to peoples’ rights in Malaysia.

**Internal Security Act (1960)**

The Internal Security Act (ISA) enacted in 1960 is one of two outdated controversial draconian laws that most undermine the fundamental rights and liberties of the people in Malaysia. The other is the Emergency Ordinance of 1969 discussed below.

The state has many stringent laws\(^ {347}\) at its disposal to stifle basic civil and political rights of the people. Many of the draconian laws overlap; that is, for the same act, a person may be charged under different Acts. Among the most notorious ones is ISA. This preventive detention law was enacted as a substitute for the 1948 emergency regulations used to fight the Communist insurrection. ISA was intended to be a temporary detention law, merely to finish off the Communist insurgency; however, it has never been repealed and has become a permanent law.\(^ {348}\)

Under ISA, government officials may order persons to be detained without even the most basic due process of rights. Most importantly, the government may detain

\(^{347}\) Among other restrictive laws used by the authorities to stifle dissent within the country: the Sedition Act 1948, the Emergency (Public Order and Prevention of Crime) Ordinance 1969, the Restricted Residence Act, the Officials Secret Act (OSA) 1972, The Printing Presses and Publications Act 1984, the Dangerous Drugs Act (Special Preventive Measures) 1985, the Election Act 1958, the Legal Profession Act 1976, the Societies Act 1966, the Universities and University Colleges Act 1971, and the Trade Unions Act.

\(^{348}\) Critics challenge that ISA is irrelevant today since there is no longer a threat from communism, but the laws has never been repealed and still persists in modern Malaysia.
individuals whom it deems a threat to national security, for as long as it sees fit and with no meaningful judicial review.\textsuperscript{349} Under Malaysian criminal law as it normally operates, police officers and others are allowed to detain individuals only if they have a reasonable suspicion or probable cause. ISA requires that an officer have reason to believe that an individual is acting, or about to act, in a manner prejudicial to the security of Malaysia. In order to engage in long-term detention under Section 8, the minister must be satisfied that such detention is necessary for Malaysia’s continued security and stability. No attempt is made in the Act to further define specifically what constitutes a true security threat under ISA; and, without the possibility of narrowing the language of ISA through judicial interpretation, the government is left with a free hand to pull almost any behavior into the scope of ISA.\textsuperscript{350}

In the 1960s and 1970s, ISA was used as a tool against left-wing political parties such as the Labor Party of Malaysia and the Parti Sosialis Rakyat Malaysia. In October 1987, police arrested 107 people in Operation Lalang (weed), including prominent leaders and parliamentarians of the opposition Parti Islam SeMalaysia (PAS), the Democratic Action Party (DAP), and the Barisan Nasional (BN) coalition. ISA was later used against human-rights defenders, students, teachers, journalists, religious clerics, union officials, and political opponents. Indeed, ISA gained further international notoriety in the late 1990s when political differences led to the arrest of then-Deputy

\textsuperscript{349} Judicial review originally enshrined in the Malaysian Constitution to safeguard and protect the freedoms and rights of the citizens from being abused by power of the executive. However, it has been taken away by the government through an amendment made in 1988 that effectively negated the protective clause originally provide by the 1957 Constitution.

\textsuperscript{350} Humans Right Watch, \textit{In the Name of Security} (2004).
Prime Minister Anwar Ibrahim under ISA, before he faced trumped-up charges of sodomy and corruption.\textsuperscript{351}

After September 11, 2001, former premier Mahathir Mohamad publicly prided himself for Malaysia’s conscience in using ISA. He described the U.S. Patriot Act\textsuperscript{352} as a sign of U.S. endorsement\textsuperscript{353} of Malaysia’s ISA. The event that happened in New York City on September 11 gave some governments the opportunity to reinforce their anti-terrorist legislation and measures. Often, such legislations have served domestic-politics purposes, especially for silencing voices of the opposition, rather than effectively aiming at eliminating terrorist groups. In Malaysia, ISA is skillfully used, especially against Malaysia’s prominent Islamic party (PAS), which the incumbent government has considered a political threat.

Individuals detained under ISA have been regularly denied access to lawyers and their families. Some have been told that their families would be harmed if they did not cooperate. There are reports that ISA detainees had been physically and mentally assaulted and subjected to cruel, inhuman, or degrading treatment.\textsuperscript{354} According to Amnesty International, ISA remains the core of the permanent arbitrary powers to detain one without trial. Beyond the violation of basic rights experienced by particular

\textsuperscript{351} Humans Right Watch, \textit{In the Name of Security} (2004).

\textsuperscript{352} Forty-five days after 9/11, the Bush Administration made the Patriot Act of 2001 into public law. The law provides the tools required to intercept and obstruct terrorism; and enables the authorities to detain “suspected terrorists” without proving them guilty in a court of law. The ISA in Malaysia is similar.

\textsuperscript{353} The U.S. before 9/11 was critical of human-rights abuses in Malaysia. After 9/11, they shifted their position and made Dr. Mahathir one of their strongest allies in the region.

individuals, ISA has a wider intimidating impact on civil society and a marked influence on the nature of political participation and accountability in Malaysia.\textsuperscript{355}

Human-rights groups locally and internationally have worked tirelessly to push Malaysia’s latest premier\textsuperscript{356} to reform the laws under ISA. According to human rights watch, reform in Malaysia requires more than repealing ISA. The minister in charge of legal affairs has said that detention without trial would continue under two new counterterrorism laws even after a repeal of ISA and other laws, but that the detention periods would be shorter.\textsuperscript{357}

\textbf{The Emergency Ordinance (1969)}

The Emergency Ordinance (EO) was enacted in 1969 as a temporary measure to respond to the race riots on May 13\textsuperscript{th} that year. For the past forty-two years, however, the EO has been used to detain persons without the government having to prove any charges against them. As with ISA, the EO is a preventive detention law that allows the government to detain individuals whom it (and not a court of law) believes to threaten public order. Due to amendments to the law in 1989, the courts have been stripped of the right to review the virtues of EO detentions. Detainees may challenge their detention on procedural grounds, but that has limited use. Even when detainees file a habeas corpus, petitions are ordered released by the court and the government often re-arrests the

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\item \textsuperscript{355} “The Boa Constrictor: Silencing Human Rights Defenders,” \textit{SUARAM} (March 2003).
\item \textsuperscript{356} Dato Sri Najib Tun Razak was the sixth Malaysian prime minister. He is said to be the only PM who stated the intention of repealing ISA. However, actions speak louder than words for many activists, opposition politicians, and others who have suffered long-term detentions without trial under this notorious law.
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detainees on the same charges, thus rendering futile any procedural challenges to the EO orders. In October 2005, the government ordered the arrest of eight individuals under the EO for the same offense that they had been acquitted of only minutes earlier, violating their rights under the principle of double jeopardy.\textsuperscript{358}

The EO has not been limited to actions necessary to restore public order. According to Amnesty International, “it has become an extraordinary law to deal with categories of suspected criminals who are regarded as difficult to bring to justice by the ordinary process of law.”\textsuperscript{359} The EO also has been used by the police to justify the detention of persons under the Criminal Procedure Code (CPC). Having failed to solve a case, the police will use an EO order to continue detention of a suspected criminal. This is done without the detainee being brought to court or proven guilty. EO detainees are held incommunicado and denied access to counsel during the initial sixty days of detention. They usually suffer serious beatings and ill treatment from the authorities.

However, in May 2005, the government appointed the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police. The Commission concluded that the EO violates international human-rights laws, and recommended repeal of the EO, stating that it facilitates the abuse of fundamental liberties. To date, however, the Malaysian government has shown no sign that it intends to repeal this draconian law.\textsuperscript{360}

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\item \textsuperscript{358} Human Rights Watch, \textit{Convicted Before Trial: Indefinite Detention under Malaysia’s Emergency Ordinance} (24 August 2006): C1809.
\item \textsuperscript{359} Amnesty International, \textit{Justice in Jeopardy: Malaysia} (2000), 32.
\item \textsuperscript{360} Human Rights Watch, \textit{Convicted Before Trial: Indefinite Detention under Malaysia’s Emergency Ordinance} 18, no. 9c (August 2006).
\end{itemize}
The Sedition Act (1948)

The Sedition Act places wide limitations on freedom of expression, especially concerning the sensitive issues involving the Malays’ privileges, the non-Malays’ citizenship, language issues and culture. The original Act, adopted by the colonial government, was intended to address offenses such as sedition against the government, inciting contempt for the administration of justice, and provoking conflict in the societies. Thus, the Act has been used extensively against opposition parties and government dissidents.


This is one of the Acts introduced during the colonial era during the period of emergency against Communist insurgents. It required all newspapers and printing presses to obtain a license that must be renewed annually. The Ordinance was revised as the Printing Press Act of 1971 to provide more power to the government to revoke the licenses of newspapers that aggravated national sensitivities or were detrimental to national development goals. This Act had wider impact on the freedom of expression, the media, and the development of civil society in Malaysia. Authorities continue to use this Act to intimidate writers and publishing companies toward self-censorship. Publication of “malicious” or “false” news renders publishers, printers, editors, and writers, who fail to take reasonable measures to justify an item’s truth, liable to prosecution.\(^{361}\)

The Official Secrets Acts (OSA) 1972

This Act, based on the British OSA of 1911, also imposed wide, largely unjustified, restrictions on the right to freedom of expression, especially for opposition parties when discussing public issues and concerns. This Act gave power to the government to conceal virtually all government documents, which are subject to the discretion of ministers, meaning this Act weakens the public’s ability to hold the government accountable and transparent.

The Societies Act 1966

This Act provided the executive body with the means to block or impede the formation of any organization that it considers undesirable. This Act strongly impacted the development of an independent civil society. Amnesty International remains concerned that the Societies Act can be used to deny the rights of individuals and groups to associate freely and to express their opinions about government activities.

The Universities and University Colleges Act (UUCA) 1971

This Act was enacted in 1971 to help establish new universities. However, in 1975, the government introduced a range of amendments imposing restrictions on students’ rights to freedom of association and freedom of expression. This Act also applies to university staffs and lecturers, in the government’s effort to clamp down on political activism on campuses. Students are not allowed to hold posts in political parties or trade unions and are barred from expressing support, sympathy, or opposition to any of these groups. An observer wrote:
The raison d'être of universities is to promote learning; intellectual freedom should be encouraged, nurtured and cultivated. If ones do not allow university students the freedom to think, reflect and express themselves, what hope is there for thinking and reflecting intelligentsia?[^562]

In 1979, the government added Discipline of Staff Rules under the powers of the UUCA, which limits the possibility for university staff to engage in political activity.[^563]

**The Police Act 1967**

This is another Act that constrains the freedom of assembly of the people in Malaysia. This Act was tightened through amendments in 1987. It limits the citizens’ constitutional right to assemble peacefully. Under this Act, all public assemblies of three or more persons require a police permit, and a police officer may refuse the permit if he believes the three persons are representing an organization. Police officers are also empowered to arrest without warrant and to use force if participants ignore an order to disperse. In July 2001, the government issued a blanket ban on all political gatherings, once again on the grounds of national security. Critics from SUARAM (the voices of Malaysians) strongly denounce this ban, because it not only severely affects the normal process of democracy in Malaysia but seriously restricts the activities of human-rights defenders.[^564]


[^563]: Ibid.

Conclusion

It is clear that all the restrictions to the civil and political rights in Malaysia through the legislative acts and executive powers affect the implementation of these rights to Malaysians, which impacts the development of democracy in the country.

Economic and Social Rights

This section highlights the source of social and economic grievances among ethnic groups in Malaysia, with examples of ethnic grievances. Analysts and experts on Malaysian politics say that the policies of the Affirmative Action Policies (AAP) and the New Economic Policies (NEP) are the cause of these grievances and the discrimination toward not only non-Bumiputeras (sons of the soil) but also Bumiputeras.

The central question is, are economic and social rights equally guaranteed for all in Malaysia? Because Malaysia is a plural society, with a history of ethnic segregation during the colonial era on the basis of occupation, and with corrective policies that are affirmative and discriminatory in nature implemented by a post-colonial state with strong state apparatus, the issue of fairness regarding distribution of the country’s wealth is unavoidable. Analysts and critics claim that the source of the unfairness is enshrined in the NEP.

The ethnic disturbances in 1969, and vocal demands from the ethnic Malay for a greater share of the country’s wealth, forced the new post-colonial state to rethink the country’s economic policies. In the First Malaysia Plan in 1966-1970, a special provision was made to promote the Malays economic development; however, none of the measures adequately addressed the issue of Malay poverty. In 1970, the incomes of 49.3 percent of
all households in Peninsular Malaysia were below the poverty line, estimated then at M$33 per capita monthly; of these, 75 percent were Malays. These data show that the goal of eliminating economic disparity between the major ethnic groups simply was not being achieved.365

In 1971, under the leadership of Tun Abdul Razak, father of the present Msia premier, took a drastic measure in an effort to make right what presumably had been made wrong by the colonial master; that is, implementing affirmative action policies (AAP) in the form of NEP, to ensure that more resources and more opportunities would become available to the Malays. More than any other measure, the NEP has been responsible for the immense changes that have occurred in Malaysia for the past forty years. Implemented through four five-year plans, from 1971 to 1990, the NEP had two principal objectives: (1) to eradicate poverty irrespective of ethnicity, and (2) to accelerate the restructuring of society to reduce and eventually eliminate identifying one’s ethnicity with an economic function. This second principal caused the stir among the non-Malays, because it gave more advantage to the Malays.

Because the Malays (Bumiputeras, sons of the soil366) were overwhelmingly underrepresented in higher education and as professionals and equity owners, the NEP was designed to empower them as the disadvantaged group through the upper echelons of

365 Andaya and Andaya (2001), 302.

366 There are many debates on this bumiputera term. During the early period after independence, it was referred solely to the indigenous peoples of Sabah and Sarawak (two states on East Coast Malaysia). It was only during the Fourth Malaysia Plan (1981-1985) that the term was used to refer to the Malays and other indigenous peoples as a whole. The story of inequality in Malaysia constitutes around the issues of Bumiputera versus the non-Bumiputeras (Chinese, Indians, and others). [Maznah Mohamad, Ethnicity and Inequality in Malaysia: A Retrospect and a Rethinking (Centre for Research on Inequality, Human Security and Ethnicity, 2005.)]
society. The Malaysian government believes that the disparity between the economic and social positions of the poor and disadvantaged Malays populations, against the rich and advantaged Chinese, was the cause of the ethnic tensions and would be the major threat to political stability in the future. By reducing and finally eliminating the disparity, it was believed that the plural society in Malaysia would be in harmony and that future ethnic conflict would be avoided.

Critics have an opposite view of NEP and do not see it as a method to correct imbalances in society. They state that even though the discriminating affirmative action policies may have a positive outcome, the policies further alienate a plural society, because the government focuses on special ethnicities to determine and allocate government subsidies, scholarships, funds for business, and contractor licenses, etc. So that, the critics see the NEC policies as simply discrimination against ethnic groups who are not Malays. Thus, instead of integrating the plural society, the government is further alienating one ethnic group against another.

For example, Malay equity ownership has risen dramatically, from 1.5 percent in 1969 to 20.3 percent by 1990; while Chinese equity ownership rose from 27.2 percent in 1970 to 44.9 percent in 1990. All groups shared in the prosperity; however, the rise in Malay and Chinese ownership came at the expense of foreign holdings. Then in the 1970s to the 1990s, a new generation of middle-class Malays emerged, burgeoning from

\[367\text{ Andaya and Andaya (2001), 315.}\]
18 percent to 28 percent of the population; in addition, the Malay agricultural population decreased from 65.2 percent to 33.5 percent.\textsuperscript{368}

In order for the NEP to take full effect, the government set a target that, within twenty years (1971-1990), the Malays and other \textit{Bumiputeras} groups would manage and own at least 30 percent of the total commercial and industrial activities in all categories and scales of operation.\textsuperscript{369} This 30 percent target was a serious political issue with critics, especially from non-Malays. The government maintains that the Malays still have not reached the 30 percent target and, therefore, says that the NEP must be continued. Whereas, some analysts, mostly non-Malays, say that the \textit{Bumis} has reached its target and, thus, the NEP should not be continued.\textsuperscript{370}

\textbf{NEP May Cause Strain in the Plural Society}

Positive outcomes of the NEP are widely reported.\textsuperscript{371} However, analysts have identified two main strains on society, regardless of the NEP’s success or failure: (1) the strain from different ethnic groups (i.e., Malays and non-Malays), and (2) a strain among the Malays themselves. According to Milne (1976), the non-Malays might be antagonized by the fact that the NEP is doing more for the Malays than for them,


\textsuperscript{369} Milne (1976), 240.

\textsuperscript{370} Director for Public Policy Studies, Lim Teck Ghee was forced to resign after he released a report claiming the NEP had already achieved its goal of 30 percent \textit{Bumiputra} corporate ownership. [Kim-Hui Lim and Wai-Mun Har, “Political Volcano in 12th Malaysian General Election: \textit{Makkal Sakhti} (People Power) Against Communal Politics, 3Cs and Marginalization of Malaysian Indian,” \textit{Journal of Politics and Law} 1, no. 3 (September 2008).]

\textsuperscript{371} Official statistics suggest very impressive reductions of poverty in the 1970s and early 1980s, especially in Peninsular Malaysia.
particularly in areas where there may be inter-ethnic competition for scarce resources such as small manufacturing businesses and entry into university.\textsuperscript{372}

Fundamentally, the NEP identifies Malaysians in two main groups: \textit{Bumiputera}s and non-\textit{Bumiputera}s. The \textit{Bumiputera}s are given special privileges in many aspects; including economic rights, higher quota to entering universities, and public sector employment. These conditions make the non-\textit{Bumiputera}s feel like second-class citizens.

The NEP’s first prong, to eradicate poverty irrespective of ethnicity, drew attention to the poor Chinese. The Gerakan parties especially referred to the plight of the New Villages set up during the twelve years of the national emergency period. There had been little development and improvements in these settlements. The economic plights of the settlers were being neglected by the government. Also, some Chinese leaders from the DAP claimed that the government was overemphasizing the rural poor and tended to neglect the urban poor which comprised a large number who resided in towns where conditions were worse than in rural areas.\textsuperscript{373} The Chinese-based parties and organizations expressed unhappiness over the \textit{Bumiputera}s/non-\textit{Bumiputera}s distinction in the NEP and in all government policies. Lim Kit Siang, a Dap veteran leader, questioned whether the NEP policy with such an ethnic approach would bring national unity to the plural society and stated that the policy might backfire.


Intra-ethnic Strains

Despite the apparent success of the NEP in restructuring society, especially the Bumiputeras, many Malays have remained unhappy about the policy because of the widely held perception that the policy has helped only some Malays and not all, which has resulted in creating two distinct classes of Malays: those who have benefitted from the NEP and those who have not. Thus, some Malays have become rich and affluent, while the rest have remained entrenched in poverty. Dissatisfaction with the NEP also originated from the widespread corruption and cronyism that took place during implementation of the policy.\(^{374}\)

A study conducted on Malaysian Universities in 1986 by Ozay Mehmet and Yip Hat Hoong showed that only 12 percent of the Bumiputeras students who had received government scholarships had come from poor families. The study found that poor Malay families had far less opportunity of having a child at university than Chinese and Indian poor families.\(^{375}\) Also, social interactions between inter-ethnic Malays and non-Malays on campuses has been deteriorating under the NEP. This is blamed on a lack of trust and legitimacy in the system. Thus, the NEP has not been a successful instrument for overcoming ethnic inequality and integration issues.

The UMNO-led BN has used issues of Malay poverty as the backdrop to their political whims, and they have politicized the NEP to create money politics. Also, members of UMNO are trying to buy votes for position in the party and/or promoting


respective crony capitalists. In a wider context, Gomez (2007) described Malaysian money politics as including favoritism, conflicts of interest, and nepotism in the award of rent seeking by disbursing material benefits in order to secure votes during state and party elections. For power to be sustained, NEP is also a source of UMNO money politics.

As protector of the Malays, UMNO vocally criticized PAS about the poverty of the Kelantanese Malays under its rule. However, critics fired back with empirical and statistical data that shows clearly that after eighteen years of PAS rule, the Kelantan were no longer the second poorest Malay state in Malaysia; whereas, the state of Terengganu, which is under UMNO and BN rule, was suffering much higher levels of absolute poverty, with more people living below the poverty line.

According to Gomez, practice of UMNO political business has been facilitated through the extensions of authoritarianism, characterized by the centralization of power of the executive body with no checks and balances from the judiciary, which has led to the belief that the Malays poverty is not because they are being denied their rights to economic success by non-Malays; they are poor because their share of the economic prosperity is being snatched by the UMNO-putra.

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378 In 1988, the judiciary body was trampled by the executive when five supreme court judges were fired for disagreeing with the Prime Minister Mahathir. This incident indicates the ‘black period’ for the separation of power in Malaysia.

379 A mockery name given to capitalists and opportunists who are linked to UMNO. The term literally means “a son of UMNO.” [Gomez (2002), 82.]
It is through the NEP that the UMNO has been able to rebuild its credentials and legitimacy among Malay constituents. Through the dispensation of political patronage and access to material resources, the NEP created another opportunity structure for UMNO to build its power bases. The growth of money politics built around the largesse of the NEP has made the UMNO\(^\text{380}\) powerful and the UMNO has become the trustee and gatekeeper of the distribution process. Thus, the NEP has been a crucial instrument for distributing political patronage, which is used as a reward to gain loyalty from the Malays.\(^\text{381}\)

**Inter-ethnic Strains**

The NEP is largely about inter-ethnic redistribution. Since the main redistribution objective is to reduce inter-ethnic economic disparities, it was assumed they would also improve inter-ethnic relations and, thus, contribute to national unity. However, this assumption might have been simplistic and naïve; thus, the effectiveness of the main NEP prong—to restructure society—is questioned.

Poverty eradication measures mainly seem to involve Malay peasants; in particular, the target groups such as rubber tappers, rice farmers, and fishermen. Non-Malays, like the *Orang Asli* and the aborigines in Sabah and Sarawak who are also under the *Bumiputeras* categories, complain that they have been neglected by the NEP policies. Similarly, most of the urban poor from both the Malays and non-Malays feel that poverty eradication measures are not directed at them.

\(^\text{380}\) UMNO politics is further described in chapter five under the political parties assessment.

\(^\text{381}\) Maznah Mohamad, “Ethnicity and Inequality in Malaysia: A Retrospect and a Rethinking” (Centre for Research on Inequality, Human Security and Ethnicity, 2005).
The discourses on ethnic inequality in Malaysia always concentrate on the Bumis and non-Bumis; and this dichotomy, by default, refers to ethnic Malay (Bumis) and Chinese (non-Bumis) issues. Because both Malay and Chinese polities have evolved over time, their issues are homogeneously acknowledged, as compared to other non-Malay ethnics (e.g., the Indians) and the other Bumiputeras (e.g., the Orang Asli).

Recently in Malaysian politics, the country was stunned by the 2008 general election results when the opposition coalition party, the People Justice Party (PKR), succeeded in denying the incumbent BN the two-thirds majority of parliamentary seats. This was a huge blow to the government, because it meant they could not amend the Constitution at will.\(^{383}\)

One of the factors contributing to the incumbent BN getting a “black eye” for the first time in forty-two years of general elections was because a large section of the society were angry with the government’s policies and the leaders misbehaving. Throughout 2007 and early 2008, large-scale protests over unequal government distribution policies were held in the Kuala Lumpur city center, mostly led by officials from the opposition coalition parties—Parti Islam (PAS), Democratic Action Party (DAP), and National Justice Party (PKR). Among the protesters were the ethnic Indians, organized through the Hindu Rights Action Force (HINDRAF).

It is claimed that, unlike with the Chinese, who are already successful in Malaysia’s economy, and with the Malays, who are protected by the government, the

\(^{382}\) A short form of *Bumiputeras*, often used among Malaysians in an everyday conversation.

\(^{383}\) The BN is still in power and still has the majority vote to govern. I discuss party dominance and resilience in chapter five under the political party assessment.
Indians have been left to fend for themselves in an unfair social and economic environment. According to reports, over 300,000 poor Indians were displaced during the last two decades, when the plantations that traditionally had provided them modest livelihoods were acquired for property and township development. It is reported that FELDA, the country’s most successful poverty alleviation program, failed to take in large numbers of rural Indians who were displaced from plantations.\(^{384}\) Consequently, the Indians lost their basic livelihoods. Research indicates that the highest rates of suicide in Malaysia are in the Indian community, and Indian youths have resorted to gangsterism and crime. The combination of socio-economic exclusion and deprivation forced the Indians to shift their votes to the opposition in the 2008 general election.

Also, according to the 2011 World Bank report on Malaysia’s “brain drain,” better career prospects, compensations, and social justice\(^{385}\) outside of Malaysia are draining the country of its best minds. For example, 88 percent of Malaysian diasporas in Singapore are of ethnic Chinese origin, and 54 percent of all Malaysians are moving to Singapore; as well as 15 percent to Australia, 10 percent to the U.S., and 5 percent to the UK.

Two other issues have marked the sincerity of the state on eradicating poverty irrespective of ethnic origin. First, among non-Malays, the non-Muslim indigenous groups on Malaysia’s east coast in Sabah and Sarawak have long claimed they are being

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\(^{384}\) Kim-Hui Lim and Wai-Mun Har, “Political Volcano in 12\(^{\text{th}}\) Malaysian General Election: Makkal Sakhti (People Power) Against Communal Politics, 3Cs and Marginalization of Malaysian Indian,” *Journal of Politics and Law* 1, no. 3 (September 2008).

treated as third-class *Bumiputeras* and that they have limited access to NEP economic benefits. More significantly, even some Malays are being disenfranchised; in particular, Malaysia’s aborigines, the *Orang Asli*.\(^\text{386}\) Within the ethnic mosaic that comprises Malaysia, the aborigines of the Malay peninsula are today both the most deprived and under-represented community in the country. The controversial issues of Malay special rights and Bumiputra (indigenous) rights become even more complex and contentious when applied to the aboriginal peoples whose claim to indigenous status antedates\(^\text{387}\) all other communities.

It is also important to highlight the East\(^\text{388}\) and West\(^\text{389}\) Malaysia divide. On peninsular Malaysia (West Malaysia), the issue of *Bumiputeras* and non-*Bumiputeras* is given more attention by the federal government than to the East Malaysian *Bumiputeras* and intra-*Bumiputeras* of Sabah and Sarawak. Tensions between Malaysia East and West are becoming more acute with increasing inequality in federal allocations and widening socio-economic disparity gaps.\(^\text{390}\)

\(^{386}\) Until quite recently, the Malays referred to them as Sakai. However, but since that term carries the connotation of slave, the government now uses the term *Orang Asli* which, in Malay, has the literal meaning of “original people.” [Gordon P. Means, “The Orang Asli: Aboriginal Policies in Malaysia,” *Pacific Affairs* 58, no. 4 (winter 1985-1986): 637-652.

\(^{387}\) The original people were there at the Malay Peninsula some 27,000 years before the Malays migrated there.

\(^{388}\) East Malaysia, also known as Malaysian Borneo, is the part of Malaysia located on the island of Borneo. It consists of the Malaysian States of Sabah and Sarawak and the Federal Territory of Labuan. [http://en.wikipedia.org/wiki/East_Malaysia#cite_note-1](http://en.wikipedia.org/wiki/East_Malaysia#cite_note-1).

\(^{389}\) West Malaysia is the Peninsular Malaysia that consists of 11 states and 1 Federal Territory: Johor, Pahang, Trengganu, Kelantan, Perlis, Kedah, Pulau Pinang, Perak, Selangor, Negri Sembilan, Malacca & Federal Territory of Kuala Lumpur.

Conclusion

The active role of the state in its effort to socially engineer Malaysia’s plural society through the NEP has provoked many social and political contradictions. The inter-ethnic sensitivities and intra-ethnic deprivations have caused strain as NEP quotas and targets are imposed in many areas of social and economic life. Proponents of the NEP argue that its benefits cannot be seen only with economic successes but also with social integration.

Since the ethnic riots in the late 1960s, almost all policy issues in Malaysia are bound with ethnic issues. The role of the state has expanded in managing, engineering, and enforcing ethnic identities in Malaysia. Because of the ethnic-laden nature of the Malaysian state, implementing the Affirmative Action Policies is seen as the only way to correct the imbalances in the society that caused ethnic disturbances in the 1960s. Proponents of the NEP say that one cannot wish away ethnic discrimination without tackling the existing problem of inter-ethnic inequality and prejudice, to which discriminatory policies and actions respond. NEP is considered a state tool for society engineering. Thus, comes the question, is the NEP the right tool to socially engineer a complex society like Malaysia?

Chapter Six: Assessing Representative and Accountable Government

Electoral System

This chapter focuses on Malaysia’s electoral system, which is incompatible with the idea of a fully liberal democracy, and assesses the question: *Do Malaysia’s elections give the people control over their government and its policies?*

Critics of the electoral system in Malaysia claim that it contains elements of unfairness, that although elections are free, they are not entirely fair. Crouch (1996) wrote that:

> Malaysian elections have not been characterized by widespread fraudulent practices such as ballot-box stuffing or blatant physical pressure on voters. However, the electoral system was significantly biased in favor of Malay parties and the government coalition.\(^{392}\)

The electoral system in Malaysia greatly favors the incumbent coalition government party, the *Barisan Nasional* (BN) (National Front), at the expense of the opposition parties. In twelve general elections since Malaysia achieved independence in 1957, the BN has not lost even one election, and only twice has lost two-thirds of the seats in Parliament, in 1969 and 2008; which has brought some optimism to democracy proponents in the country.

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\(^{392}\) Crouch (1996).
In 1995, Malaysia’s fourth premier, Dr. Mahathir, said a democracy is a “means to choose the government”\(^{393}\) … if the people prefer another government, they are welcome to it\(^{394}\) and if they choose to retain the government “eight times consecutive” it is their “democratic right to do so.”\(^{395}\) Observers claim that factors that have kept the BN in power twelve consecutive times may be due to the maneuvering of the electoral process, which makes it impossible for opposition parties to win. Malaysia uses the simple majority process in which the candidate with the most votes gets elected. This method, inherited from the British, favors a stronger government rather than proportional representation. Analysts of the simple majority system claim that the inherent effect of a plurality election is its big-party bias, which awards considerably more seats to the biggest party relative to its share of votes won. Proponents of this plurality system claim that it is a valuable contribution to a strong and stable government; the ruling party has always argued that a strong government is needed to maintain stability in the country’s plural society and to promote economic development.\(^{396}\) By contrast, analysts like Reilly (2002) state that a society divided by ethnic diversities will fare better with proportional representation.\(^{397}\)

SUARAM and many other observers point out that unfair constituency delineations and gerrymandering also have made a mockery of the one-person one-vote

\(^{393}\) Mahathir (1995), 47.

\(^{394}\) Mahathir (1995), 47.

\(^{395}\) Ibid., 10.


democracy, which is fundamental in any electoral system that claims to be democratic:
“For the one-person one-vote system to function, the disparity in numbers of voters
between constituencies (whether at state or parliamentary level) must be controlled.” 398

Constituency Boundaries

Elections in Malaysia are competitive and a number of parties compete in the
process. However, the way the electoral system is maneuvered, it has always sided with
the ruling government’s party, the Barisan Nasional (BN). The UMNO-led BN has never
lost an election because the electoral boundaries favor this governing coalition. In
addition, the UMNO is the largest party in the BN, because it represents the Bumiputeras
and the most votes are from the rural Malays. Critics claim that over-representation of the
Malays in the electoral constituents is the key factor behind the BN’s consistent victories
in the federal general elections. 399

The 1957 Constitution allocated a provision that there should be some weight in
favor of the rural areas because of the size and difficulties of communication compared to
urban constituencies. The political significance of the disparity between rural and urban
constituencies lay in the fact that the rural areas were predominantly Malay and the urban
areas were predominantly non-Malay.

Since 1963, the bias of the electoral system against non-Bumiputeras in the
peninsular (West Malaysia) was reinforced by inclusion of the two East Malaysian states
and, as expected, the Bumiputeras majorities in both states (Sabah and Sarawak)


generally, although not always, aligned themselves politically with the peninsular Malays. Thus, the electoral system contained a built-in advantage for the Malay community.

Also, dissatisfaction is likely to be more widespread among the Chinese than other ethnic groups, and there has been no realistic possibility of a non-

**Evidence of Occasional Manipulation During Elections**

The UMNO-led BN has a majority stake in most press and media in Malaysia. Given their ownership of the mainstream media, it is not surprising that opposition party members have complained repeatedly that they are not able to get their manifestos publicized during campaign periods. Very often, their messages have been falsely reported and their statements taken out of the context. Whereas, the press has heavily favored BN campaigns and manifestos, giving them wide coverage and positive advertisements. The major influencing factors, commonly termed the “3Ms,” are money, media, and machinery. There have been many complaints about the BN’s excessive use of funds, abuse of its control of Malaysia’s leading newspapers, television and radio networks, and misuse of the government’s machineries.

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The UMNO, the dominant party in the BN, has been able to use its control of the government to win votes in many ways. In the 1978 general election, Razaleigh Hamzah (when he was in the UMNO before the split in 1988), revealed how the BN had won the majority against the PAS: “In cases where PAS had a majority of 80 votes in the last election, I brought in 100 new UMNO supporting families. That’s how they (PAS) lost their majority.”

Other factors that have benefitted the party in power (the coalition BN) include the shortness of the electoral campaigns, a ban on open rallies, and the application of state funds. The Election Commission decides the length of the campaign period and ensures that it is kept very short, normally just over a week, presumably to maintain public harmony. Since 1978, open rallies have been banned, especially toward opposition parties. Nonetheless, BN leaders have extensively campaigned at huge rallies and used government functions for campaign purposes.

Compared to the opposition parties, the BN’s campaign machinery, especially that of the UMNO, has been efficiently and effectively run during elections and is partly attributable to its easy access to funds. Through their control of federal funds, BN leaders have often promised new development projects and distribution of state largesse to party supporters. The most common allegation made during elections is that funds are used to buy constituency support.

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403 Crouch (1996), 62.


405 Ibid.
**Electoral Outcomes**

All twelve general elections in Malaysia since 1955 have been won by the incumbent government, the BN. Table 3 below shows how the BN has been able to win consistently more than two-thirds of the seats in Parliament, except in 1969 and 2008, yet still have had the majority of votes to lead the country.

<table>
<thead>
<tr>
<th>Year</th>
<th>Incumbent BN</th>
<th>Opposition</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% vote</td>
<td>% seats</td>
</tr>
<tr>
<td>1969</td>
<td>49.3</td>
<td>65.97</td>
</tr>
<tr>
<td>1974</td>
<td>60.7</td>
<td>87.66</td>
</tr>
<tr>
<td>1978</td>
<td>57.2</td>
<td>84.42</td>
</tr>
<tr>
<td>1982</td>
<td>60.5</td>
<td>85.71</td>
</tr>
<tr>
<td>1986</td>
<td>55.8</td>
<td>83.62</td>
</tr>
<tr>
<td>1990</td>
<td>53.4</td>
<td>70.55</td>
</tr>
<tr>
<td>1995</td>
<td>65.2</td>
<td>84.38</td>
</tr>
<tr>
<td>1999</td>
<td>56.5</td>
<td>76.68</td>
</tr>
<tr>
<td>2004</td>
<td>63.9</td>
<td>90.41</td>
</tr>
<tr>
<td>2008</td>
<td>50.14</td>
<td>63.1</td>
</tr>
</tbody>
</table>

Sources: Abdul Rashid Moten

Figure 3 below reveals the “hiccups” in general elections 1969, 1990, 1999, and 2008. The hiccup in 1969 was caused by the ethnic grievances and riots over distribution of wealth; in 1990, the split of UMNO into Teams A and B; and in 1999, Malay votes decreased because of the Anwar debacle. Despite some loses in these four elections, the

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UMNO-led BN continued to rule the country; although, now, its dominance is deteriorating.\footnote{UMNO dominance is described further in the next assessment of the political party system.}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure3.png}
\caption{Parliamentary Seats Won in General Elections, 1959-2008}
\textit{Sources:} Data for 1959-1974 compiled by researcher; data for 1978-2004 can be assessed from Election Commission of Malaysia (http://www.spr.gov.my/); data for 2008 was assessed from \textit{New Straits Time}, March 10, 2008.
\end{figure}

It is also important to discuss the general electoral outcomes in 1999, 2004, and 2008, which reveal the development of the people’s control over the government’s policies. Interestingly, during those three general elections, the number of parliamentary seats held by the incumbent government plunged slightly in 1999, then boosted up in 2004, then again plunged even deeper in 2008. Analysts and observers claim that this trend shows that the people of Malaysia were angry with the government’s discriminating policies and with how they were manipulating the electoral system, and that the Malaysian people communicated their anger through the ballot box.
Analysts say that the 1999 general election result was essentially a repeat of the past, that nothing much had changed between the incumbents in power (BN) and the opposition; that is, the BN continued to rule and the opposition continued to oppose.\footnote{Zakaria Haji Ahmad, “The 1999 General Elections: A Preliminary Overview,” Trends in Malaysia Seminar (Singapore: Institute of Southeast Asian Studies, 3 December 1999).}
The most significant aspect of the 1999 general election, however, was the “Anwar factor”; observers claim that a significant number of Malay votes shifted from UMNO to the Pan Malaysian Islamic Party (PAS) as a sign of the Malays’ anger over how Mahathir and UMNO had treated Anwar Ibrahim.

However, one of the main reasons the opposition parties had previously lost elections to the BN was because the opposition had been unable to bridge the ideological gaps among the DAP’s “Malaysian Malaysia” (seen as implying equal political rights for all citizens), alienated Malay support, and the PAS who advocated creating an Islamic state, which distanced ethnic non-Muslims.

In 2004, the number of seats won by the BN rose and UMNO-led BN won big, indicating that the people had put their trust in the new premier Abdullah Badawi on his promise to clean up the UMNO-led BN party of corrupt practices and leaders. However, Badawi was not up to the expectations of the people in fulfilling his promises. Consequently, in the 2008 election, dubbed a political “tsunami,”\footnote{Kim-Hui Lim and Wai-Mun Har, “Political Volcano in 12th Malaysian General Election: Makkal Sakhti (People Power) Against Communal Politics, 3Cs and Marginalization of Malaysian Indian,” Journal of Politics and Law 1, no. 3 (September 2008).} the ruling BN party lost big to the opposition and it was the BN’s worst performance ever in Malaysia’s fifty
years of independence. Crucially, for the first time since 1969, the BN lost the two-thirds majority in Parliament, which is needed for amending the Constitution.\textsuperscript{410}

Malaysia’s twelfth general election in 2008 witnessed the rise of people power against perceived suppression and dissatisfactions over communal politics, government-manipulated elections, deteriorating socio-economic conditions (dubbed the “3Cs”\textsuperscript{411} factor), and continued marginalization of the ethnic Indian community. Large-scale protests throughout 2007 and early 2008 before the election were mostly led by officials from PAS, DAP, and PKR (National Justice Party). The protests, inspired by grievances over distributive fairness, were most potent by ethnic Indians, who organized through the Hindu Right Action Force (HINDRAF) as the Indians felt barred from Malaysia’s rapid industrialization and neglected by the government. Protests also came from deprived Malay and Chinese communities, who increasingly have raised doubts about distributions from developmental performance and have decried that patronage from the government mainly benefits a lucky few.

As Malaysian citizens collectively began scrutinizing common procedures, an umbrella movement called \textit{Bersih}\textsuperscript{412} (an acronym for a protest movement for “Clean and Fair Elections”) took shape. Although the Bersih movement\textsuperscript{413} articulated diverse

\textsuperscript{410} In the 2008 Malaysian election, the opposition actually won 51% of the valid votes in Peninsula Malaysia. The Barisan Nasional was saved by its “fixed deposit” of votes in Sarawak and Sabah. The opposition swept all the urban cities throughout Malaysia. In Kuala Lumpur alone, 10 out of 11 seats were won by the opposition. The two most industrialized states of Penang and Selangor fell as well.

\textsuperscript{411} The “3Cs” refers to dissatisfaction over increasing (1) cost of living, (2) crime, and (3) corruption.

\textsuperscript{412} A Malay word that means clean.

\textsuperscript{413} Reportedly, the \textit{Bersih} movement has about 60,000 followers.
grievances, the center of attention was on the government’s electoral manipulation. The movement leaders, led by Anwar Ibrahim and top PAS officials, organized the demonstration, demanding electoral reforms.\footnote{William Case (2010).}

**Conclusion**

In general, Malaysia’s electoral system cannot be considered free and fair, because it does not fulfill the functions of what an electoral democracy requires. The Malaysian case serves as an example of a skewed, maneuvered electoral institution.

So, what is the answer to the overarching question, do elections give the people control over their government and its policies? The answer is somewhat yes and no. Some may argue that elections in Malaysia serve more to legitimatize the government rather offer a change to the government. Others may see a glimpse of hope for democracy; as seen in the 2008 election results, which showed a strong sign that democratic choice was exercised and that there is a possibility of an “alternative government” in sight.

One thing for sure, the government cannot ignore, anymore, the plight of the peoples. Yet, according to Lim (2002), the opposition members and other malcontents have focused attention on correcting the weakness of the present system rather than to push for proportional representation.\footnote{Lim Hong Hai (2002).} An interesting point from William Case (2010) in describing the disappointment of the Malaysian people during elections: They do not so much bring the opposition to power as show the government that they are angry with how the government is manipulating the electoral system.
Ultimately, until the unfairness of the electoral system is fixed, the incumbent is risking being thrown out of office; as continues to be evidenced, such as in the results of the 2013 election (see page 86).

**Political Party System in Malaysia**

Does the party system assist the working of democracy? This section discusses the issues and political parties’ function in enhancing democracy in Malaysia.

Politics in Malaysia has mainly been articulated in communal terms; thus, the main political parties have organized along ethnic lines: UMNO for Malay, MCA for the Chinese, and MIC for the Indians. Commonly, each party has sought to maximize its political power and economic benefits for a particular ethnic group and to promote group interests in areas such as language, education, and culture. For instance, UMNO presumably serves as the protector of the Malay communities.

The hybrid criteria of Malaysian politics have directed political activity and accountability to political parties, without clear boundaries between the parties and the state. In addition, this system undermines the space available for democratic political discourse and engagement, which has fostered a party-centric order with an autocratic background.

**Institutionalization of Malaysia’s Party System and Political Parties**

Malaysia’s key political parties\(^\text{416}\) are well-institutionalized. Enduring and stable, they are accepted and, across time, have gained stable roots in society. Moreover, with the legitimate electoral institution, the main political parties in Malaysia have been given

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\(^{416}\) The UMNO, MCA, MIC (coalition parties in BN) and the DAP, PAS, PKR (opposition coalition parties).
the mandate to rule the country and to carry on with the system. Malaysia’s hybrid system consists of political parties that are least volatile in the region. More than fifty years since independence, only once has the Parliament been suspended and democracy collapsed and that was during the 1969 riots. Then, when in 2008 the opposition coalition (PKR, PAS and DAP) succeeded in denying the incumbent two-thirds of the super majority in Parliament, unlike in 1969 no ethnic tensions occurred. Also, even though the elections system was designed to benefit the incumbent coalition (BN), the 2008 election was proof that democracy is relatively alive in Malaysia, because the opposition was able to win control of state governments.417

Parties in Malaysia have their general pattern of support in society, faith in organized interests, and a remarkably stable foundation in the system. In terms of longevity, the main party Barisan Nasional coalition members—UMNO, MCA, and MIC—who emerged before independence, have remained persistent until today. The opposition, comprised of two main parties—PAS418 and DAP—also have remained persistent since independence. In 2003, another party emerged to rival the UMNO and BN: the PKR.419

Parties in Malaysia at the earlier stage of independence defined themselves as communal ideologies. Different parties appealed to particular ethnic groups. UMNO was

417 In the general election 2008, for the first time in Malaysia history after independence, the BN lost five states (Selangor, Negeri Sembilan, Perak, Johor, Pulau Pinang, Kelantan, Trengganu) to the opposition coalition.

418 PAS (Partai Islam se-Malaysia, or Pan-Malaysian Islamic Party).

419 PKR (i.e., People Justice Party) was established earlier in 1999 under the banner of Parti Keadilan Nasional. It emerged during the height of Anwar’s sage and Reformasi movement. PKR is a coalition of the opposition parties, which gave the huge setback to the incumbent BN in the general election 2008.
for the Malays, the MCA for the Chinese, and the MIC for the Indians. On the oppositions’ part, the PAS and DAP (Democratic Action Party) claimed that their ideology was, contrary to BN, not communal issues but to represent all ethnicities in Malaysia. Even so, voters always have related the PAS with representing Muslim fundamentals and the DAP with representing Chinese communities.420

Parties in Malaysia remain a primary mode of political engagement among the people, who show less interest in other forms of participation. However, since the Reformasi421 movement in 1998, Malaysians have gone into the streets in protest, demonstrating their discontent, mostly toward the government and state policies. In 2007, two major demonstrations took place in Kuala Lumpur, organized by HINDRAF and Bersih.422

On the other hand, the government discourages such acts as demonstrating in the streets; as seen in the many laws423 enacted that limit citizen participation in protest activities, especially those regarding government policies. Jomo (1996) wrote that the BN encouraged the idea of democratic participation through voting in elections rather than

420 The opposition parties’ different ideologies are what caused the opposition weaknesses against the incumbents; the PAS with its goal of an Islamic state, and DAP demanding equal treatment toward all races in Malaysia and the abolishment of Malays special rights. These ideologies limited the challenges these parties could pose to the BN.

421 This movement was triggered by the conflict between the prime minister and his deputy Anwar Ibrahim in 1997. The manner in which Anwar was brought down from UMNO and “politically killed” by Mahathir and his men angered the Malay population and protests like never seen before spilled onto the streets of Kuala Lumpur in solidarity with Anwar.

422 These two movements are mentioned under the election assessment.

423 For example, Societies Act 1966 and the Right to Association.
through extra-electoral engagements\textsuperscript{424} like organized public meetings, street protests and demonstrations.

In a smaller earlier survey, Welsh (1996) wrote that Malaysians understand democracy in terms of procedures and the performance of institutions and leaders, and that most were satisfied with the regime, however illiberal.\textsuperscript{425} This tolerance of the illiberal political system is because Malaysians have a narrow concept of democracy, which is defined through involvement in registered political parties and participation in multi-party elections that are conducted regularly; and, unlike elsewhere in Southeast Asia (Singapore excluded), elections and party politics are the stuff of contemporary Malaysia politics.\textsuperscript{426}

Party organizations and disciplines are relatively solid and high in Malaysia. The networks created between parties and supporters keep party leaders informed of sentiments and priorities at the grassroots levels, which prepares a strong ground for parties to create strategies to gain the absolute confidence and votes of supporters. One main characteristic of parties in Malaysia is that they identify themselves through a particularistic ground; for example, UMNO based its main agenda as the protector of the Malay race and the Malay’s special positions, and the PAS are a Malay Muslim-based party that appeals to the Islamic state as well as justice for all.


The paradox of the party system in Malaysia is that it functions against the principles of democracy. According to Weiss (2009), the case of Malaysia shows a strongly institutionalized party system that is incompatible with democracy. Elements of domination are obviously criteria in the system; one single party dominates the power in the government, and the power structure is concentrated on a single party dominating rather than power being shared with other less dominant parties.

Thus, not surprisingly, the party system in Malaysia contributes to the literature in politics and government in terms of how party systems flourish in a semi-democratic political regime like Malaysia. The interesting phenomenon in the studies of Malaysia’s government is that coercive systems tend to reinforce stable party systems. The regime often uses coercion, such as threat of detention or confinement, as a deterrent to causing further trouble to the regime. This action might also have an exemplary function, in that it warns other prospective opponents of the consequences of their actions. On a grander scale, wholesale coercion in the form of a state of emergency might be employed in order to displace or out-maneuver successful members of opposition parties.

To justify the control of its domestic legitimate opposition and dissidents who are seen as a threat to the government’s agenda and interests, this application of coercion thus works as a form of political strategy. For example, coercion might simultaneously punish an opponent for his actions and prevent him from continuing them, while providing a deterrent to others who might contemplate a similar action.

Several broad categories of coercion are readily identifiable. A regime might employ coercive measures to prevent unwanted actions such as demonstrations and

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427 Meredith L. Weiss (2009), 11.
strikes, or the speeches, writings, and mobilizing activities of a particular leader. A persistently troublesome opponent might find himself subjected to punitive coercion and suffer a period of detention.

Coercion is the most appealing strategic option for a hybrid regime like Malaysia, which seeks to balance constraints from the divided societies and regime’s political goals. Thus, these acts of restraining divided societies through the mechanism of control are claimed to be justified in order to maintain social harmony and economic development.

**Political Engineering of the Party System in Malaysia**

Political parties in Malaysia mobilize support along ethnic lines. As mentioned, the BN and UMNO lay their ideology on the foundation of communal politics. Thus, their political leaders usually conduct their campaigns by playing the “ethnic card.” This often leads to increasing ethnic tensions and, in some instances, ethnic conflict. The common argument that says democracy fares better in mono-ethnic societies than in multi-ethnic ones is due to the particular ways that parties form, develop, and campaign in ethnically divided societies. Not surprisingly, ethnic conflict is often a direct result of ethnic politics imbued in the party system.\(^\text{428}\)

In such a system, the easiest way to mobilize voter support at election time is to appeal to the root insecurities of the population. For instance, during campaigns, the UMNO always remind supporters that, if they do not vote and secure the power of

UMNO, the tragedy of May 13, 1969 will repeat itself. The ideas of the May 13 riots often create uneasy feelings among voters who are of different ethnic backgrounds.\textsuperscript{429}

Sequencing the institutionalization of parties before state structures, specifically before meaningful democratization, helps to explain both the patterns of party development and the party-system institutionalization in Malaysia. Thus, a well-institutionalized system is unfavorable, rather than essential to democratic stability.

Complementing these effects has been a legacy of skewed rules of the game that deny representation of particular interests and that shift citizens’ decisions on whether to engage. The series of changes in these factors has yielded a polity in which elections are more honored than honorable, and a well-institutionalized system that is harmful rather than essential to democratic stability.\textsuperscript{430}

Malaysia’s dominant party-institutionalized system limits prospects for real democratization. Mainwaring and Scully (1995) see this as an asset, saying that institutionalization means parties play a key role in structuring the political system, which renders politics more predictable.\textsuperscript{431}

Conclusion

Over time, most likely Malaysia’s institutionalized and strong party system will remain institutionalized. However, the party system will become increasingly unclear as

\textsuperscript{429} As claimed by Gunther and Diamond, the logic of the ethnic party is to harden and mobilize its ethnic base with exclusive, often polarizing, appeals to ethnic group opportunities and threats. [Gunther and Diamond (2001), 23-24.]

\textsuperscript{430} Weiss (2009), 20.

increased transparency and broader participation in extra-electoral channels are more contingent on the lack of inspiring leadership in UMNO.

In sum, Malaysia’s institutionalized party system will not help move democratization along. Only when the system wavers, will liberalization be possible.
Chapter Seven: The Government’s Effectiveness and Accountability

It is very important for the development of a democracy if a government is accountable in all of its activities. Basically, accountability relates to responsibility, blameworthiness, answerability, and trust; and, thus, involves the obligation to explain one’s actions and to justify what one does. In a democratic system, accountability is a crucial factor in determining good governance and, hence, the legitimacy of power. Regardless of the form of the ruling system used to govern a country, accountability is the pillar of integrity and is the actual portrayal of the ruling government’s uprightness.

Figure 4 below shows the indicator of the voice and accountability that reflects perceptions on the extent to which a country’s citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media. The performance of the ASEAN six countries was not encouraging, including Malaysia, which has performed low since 2006 and dropped in 2010, below Singapore and only a little above Thailand, which has performed the worst. Indonesia shows an impressive improvement, becoming the best in the ASEAN six in 2010.
Issues with Malaysia’s Voice and Accountability Indicator

According to the Global Integrity Report, Malaysia scores poorly in many areas of accountability, especially regarding the significant implementation gap between laws on the books and their actual enforcement. Repressive laws in Malaysia hamper freedom of expression and deny citizens’ access to government information; there is no right-to-information law. Likewise, the separation of government powers in Malaysia is unclear.

The Global Integrity Report is a tool for understanding governance and anti-corruption mechanisms at the national level. Local researchers and journalists assessed Malaysia for the first time in 2010 and found the country’s performance in accountability unfortunately relatively poor.
and the executive body appears to enjoy relatively unchecked power. A supreme audit institution exists, but the public cannot access its reports.\footnote{433}{“Malaysia 2010,” \textit{Global Integrity Report}, \url{http://www.globalintegrity.org/report/Malaysia/2010}.}

**Freedom of Information Act**

The Freedom of Information Act (FOIA) is not guaranteed in Malaysia either constitutionally or through any specific legislation. The Malaysian government has repeatedly rejected requests for FOIA legislation from opposition parliamentarians, civil society representatives, and journalists. The government’s chief argument is that access to information could affect race relations within the multi-ethnic population.\footnote{434}{“Freedom of Expression in Malaysia in 2008: An Annual Review” (Center for Independent Journalism, 9 Oct. 2010).}

Such laws as these, however, are very important in any functioning government, because they can protect the people from corruption and help to promote transparency and good governance. With such laws, the government must share information so that the public is not in a state of ignorance regarding the government’s activities. When a government is transparent, this increases public confidence and deepens the citizens’ trust in their government.

The Centre of Independent Journalism (CIJ) in Malaysia has added to the calls for the Malaysian government to introduce a Freedom of Information Act (FOIA). With Malaysia performing badly in the Corruption Perception Index (CPI), for three consecutive years (2009, 2010, 2011), it would be best for the country to have the FOIA passed because it would be one of the best tools to keep corruption at bay.
One big achievement in Malaysia regarding the FOIA is that in April 2011, the Malaysian state Selangor\(^{435}\) passed an FOI Bill, the first in Malaysia. Following suite was Penang in November 2011.\(^{436}\) Critics allege that those bills still have many discrepancies and risk being overruled by the federal government’s Official Secrets Act (OSA), but are the beginning of good signs to come regarding transparency in governance and government accountability.

The FOI laws will face difficulties in implementation since they do not yet apply to information controlled by the federal government and they do not have the power to override OSA restrictions, which provides the government with broad discretion in classifying any government-controlled information; and with draconian laws such as the Internal Security Act (ISA), which sanctions imprisonment without trial of any individuals deemed to be acting in any manner prejudicial to the interests of the security of Malaysia. Moreover, the FOI laws require applicants to state the reason for and purpose of their information requests, and provides for the arrest and detention of individuals deemed to have used information contrary to the stated reason and purpose.

**Official Secrets Act**

Freedom of information is severely restricted in Malaysia, both by legislation, including the Official Secrets Act (OSA), and a pervasive culture of secrecy. Information on matters ranging from public health to government spending is classified. There also is

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435 Selangor is one of the five states (out of the 13 states in Malaysia) won by the opposition party in the general election 2008. It is the richest state in Malaysia and has the lowest poverty rate in the country.

no allowance for appeal to public interest when requesting documents, nor is there a culture of protecting whistleblowers.\textsuperscript{437}

According to \textit{Suaram},\textsuperscript{438} it can be fairly said that the amount of information subject to classification as a state secret is potentially unlimited. The list of documents and information provided in the schedule is extremely broad, placing even formally adopted Cabinet documents in the realm of secrecy. This is contrary to fundamental democratic principles of an open government.

In addition, any designated public official may, at any time and apparently for any reason, classify anything at all as an official secret.\textsuperscript{439} The absence of any check or balance on the powers of the minister or public officials to classify information is a serious flaw. There also is no penalty for misclassifying information, and section 16A attempts to place the decisions of even the most junior public official to classify a particular document beyond judicial scrutiny. This results in one-sided legislation that accords unlimited power to the state and its officials to deny the public information, and enables the use of the Act to conceal corruption, abuse of public power, and mismanagement of public resources, contrary to generally established principles of administrative justice.\textsuperscript{440}


\textsuperscript{438} \textit{Suara Rakyat Malaysia} (SUARAM), or Voice of the Malaysian People, is an organization for human rights in Malaysia, created in 1987. [Source: Wikipedia]

\textsuperscript{439} “Freedom of Expression and the Media in Malaysia: Article 19” (London and Suaram Kuala Lumpur, 2005), 83.

\textsuperscript{440} Ibid.
The OSA has created a culture of secrecy, which makes it difficult to access documents even when there is a legal obligation for the government to make these public, such as environmental impact assessments, budgets and local development plans. The Act has also made it illegal for journalists to have access to almost all official documents. As a result of these restrictions, the OSA is often invoked to silence dissidents. Many leaders and members of opposition parties have been found guilty of receiving and revealing information about the government’s excessive expenditures and misuse of public funds. Persecution relies on revealing the so-called government secrets.

Another problem is that ministers and government officials are not obliged to reveal the facts, even when the issue concerns the public interest. This is obvious during the debate and question-and-answer sessions in Parliament, where the minister to whom a question is directed can decide not to answer. This provision is available under Parliamentary Standing Orders, which defeats the purpose of a parliamentary question time. Even on minor non-sensitive issues, civil servants are often reluctant to speak out.441 Due to the prevailing culture of secrecy in Malaysia, there is a long list of information that is of public interest but which the public is unable to access; or, if it can be accessed, red tape and bureaucracy prevent the public from obtaining the information.

**Government Effectiveness**

A government’s effectiveness is reflected in its citizens’ perceptions of the quality of public services, the quality of civil service and the degree of its independence from

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political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies.

The most comprehensive and reliable source of information on government performance is the Worldwide Governance Indicator (WGI) first released in 1999 by Kaufman, Kraay, and Zoido-Lobaton. This indicator measures the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies. If a government is effective, it should be able to deliver goods that individuals need in order to improve their social welfare. At a minimum, an effective government provides an environment where all citizens enjoy reliable access to sufficient amounts of food. Malaysia since 1996 has been relatively consistent in the government effectiveness indicator.

In Figure 5 below, the ranking indicator between the ASEAN five (Indonesia, Philippines, Malaysia, Singapore, and Thailand), as of 2010 the Malaysian government’s effectiveness improved from 2009 and ranks second after Singapore, which has been consistent in the indicator.

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443 The global financial crisis of 2008-2009, with its epicenter in the United States, may have impacted Malaysia’s economy. The overall GDP growth rate of Malaysia slowed in the last quarter of 2008 and fell further in the first quarter of 2009, resulting in Malaysia’s government cutting public spending.
Kaufmann, Kraay, and Zoido-Lobaton (1999) found a strong positive association between government effectiveness and human development. For example, countries with higher accountability have had a more stable political environment, and more effective governments have had lower infant mortality rates and higher literacy rates.

Also, improvements in government performance have a very large payoff in terms of human development. The more effective the government, the higher the level of human development. This is especially true in middle-income countries, where each year,

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444 The WGI ranks countries with respect to six aspects of good governance: Voice and Accountability, Political Stability and Violence, Government Effectiveness, Rule of Law, Regulatory Quality, and Control of Corruption. These indicators have been used by researchers as explanatory variables.

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higher governance-effective rankings have resulted in a higher Human Development Index (HDI).

Figure 6. Human Development Index: Trends 1980-present
Source: The World Bank and researcher calculation

The Human Development Index (HDI) is based primarily on international data from the UN Population Division, the UNESCO Institute for Statistics (UIS), and the World Bank. The HDI is an average measure of basic human development achievements in a country, represents a push for a broader definition of well-being, and provides a composite measure of three basic dimensions of human development: health, education, and income. Between 1980 and 2011, Malaysia showed progress in each of these HDI
indicators, placing Malaysia above the regional average.\textsuperscript{445} In the broader picture, government effectiveness in Malaysia is reflected in its high HDI.

Many studies have noted positive correlations between an effective government and higher human development. Democracy promoters assume that democracy will improve human development. Ironically, Malaysia performed well in human development relative to it being a semi-democracy. Perhaps government effectiveness and efficient government institutions somehow influence human development regardless of the system of governance.

Like all averages, the HDI masks inequality in the distribution of human development across the population at the country level. The HDI can be viewed as an index of “potential” human development and inequality-adjusted HDI (IHDI) as an index of actual human development. Due to a lack of relevant data, the IHDI on Malaysia has not been calculated.\textsuperscript{446}

**Civilian Control of the Military and Police**

Civilian control is implicitly defined as a lack of military coups and military rule; or a low risk for such events.\textsuperscript{447} An uncontrolled military is a hinder toward full democratization. Fortunate for democratization in Malaysia, there are no serious issues with the military-civilian relationship. The military in Malaysia are fully controlled by civilian-elected officials. The same applies to the police forces. In fact, Malaysia is one of

\textsuperscript{445} International Human Development Indicators 2011 (UNDP).

\textsuperscript{446} Human Development Report 2011- Malaysia (UNDP).

\textsuperscript{447} Paul Chambers and Aurel Croissant, eds. *Democracy under Stress: Civil-Military Relations in South and Southeast Asia* (Bangkok, Thailand : Institute of Security & International Studies, Chulalongkorn University, 2010), 954.
the few countries in Southeast Asia where the military has not intervened in politics and where the civilian authorities have continued in power since independence. Since there are no real tensions between the armed forces and the political leadership in Malaysia, I foresee no possibility of a military take-over in Malaysia in the near future.

**Factors That Shape a Positive Relationship Between Military/Police and Civilian Authority**

Institutional Building of the Malaysia Armed Forces

Malaysia is a good example of a country where the civil-military relation is constitutionally instituted.\(^{448}\) The Malaysia Armed Forces (MAF)\(^{449}\) is a corporate entity that is completely loyal to the government and is subordinate to that civil power because of the rule of law (the nation’s Constitution), tradition, and its own sense of military professionalism. In this regard, the MAF adheres to the principle of civilian supremacy; that, in a stable democracy, patterns of civil-military relations are established by public law or constitutional tradition, assured control of the military by the civilian government, and are observed by the government and accepted by the armed forces as part of the military ethic.\(^{450}\)

According to Zakaria Hj. Ahmad (1985), the institution building of the Malaysian military itself is a factor that explains why there is no intervention by the MAF in

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\(^{448}\) The MAF was constitutionally instituted to protect the country and its people against outside aggression in general and, in particular, to exclusively safeguard the hegemonic position of the Malays and their interests.

\(^{449}\) The Malaysian Armed Forces (MAF) consists of the army, the Royal Malaysian Navy (RMN), and the Royal Malaysian Air Force (RMAF).

domestic politics. Its role has been clearly defined in terms of internal and external
defense missions, and the military are clearly subservient toward the civilian authorities.
In this sense, the non-intervention of the military in the political process might be
attributed to the lack of opportunity and to their preoccupation with well-delineated
military tasks.\footnote{Analysts report that the MAF had steadfastly stuck to its role in support of the
civilian authorities, such as in instances like the critical period of the May 13\textsuperscript{th} ethnic
riots in Kuala Lumpur. When the army was called to restore order, it could easily have
seized the political power but did not do so; this occurrence demonstrated the non-
interventionist stance of the MAF. Most importantly, the point remains that no matter
what changes that might happen in later Malaya and in present Malaysia, the MAF has
not transformed nor deviated from its role.\footnote{Another example is that during the twelve-
year Emergency Period (1948-1960), when the MAF had all the opportunity to take over
the country on the grounds of protecting the nation state against Communists insurgents,
there was no occurrence of the military taking over power from the civilian government.}

In the Malaysian context, the military is mainly responsible for the country’s
internal and external defenses. They are focused on implementing rather than formulating
national defense and security policies. The concept of loyalty to country and king has
resulted in a deep-seated belief in subordination of the armed forces to the civilian

\footnote{Aside from the conventional military tasks of securing Malaysia from external threat, the MAF also
fulfills a variety of other roles; including, nation building, regime protection, combating internal insurgents,
and a number of socio-economic roles. [K. S. Nathan and Geetha Govindasamy, “Malaysia: A Congruence
Muthiah Alagappa (Stanford, CA: Stanford University Press, 2001), 259-275.]}

\footnote{Zakaria Hj. Ahmad and Harold Crouch, eds. \textit{Military-Civilian Relations in South-East Asia} (1985), 119-
135.}
administration; accordingly, the military’s code of honor emphasizes political neutrality. The former army chief General Zain Hashim once remarked that the MAF’s primary concern was to carry out the missions issued by the civilian administration. As far as he was concerned, it is not even the duty of the armed forces to identify who the external foe is. This statement reflects the military’s commitment to non-interference in the political sphere.453

As a national institution confined by the control authority and Constitution, the MAF has not changed much during the political transition of the country from colonial to post-independence times. This is an important factor in explaining the military’s high degree of organizational cohesion and institutional stability.

**Dominant Political Party**

Experts advise that if we want to explain the role of the military in politics, it is not enough to focus on the military institution alone; we need to see the political system as a whole. For example, in Malaysia, the features of political systems are that political parties have deep roots in society. UMNO and its alliance partners have real organized roots in society and there is no doubt that many Malays in Malaysia believe that UMNO serves as a safeguard to their interests. The military elites and civilian elites are closely linked, and disobedience toward the civilian government is very unlikely because both parties share similar interests in the state.454

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Hence, civilian control in Malaysia refers to specific civilians (that is the Malays) and if in case there is transition in the regime, there will be still military compliance for as long as the new regime is still Malay dominated. So far, there have been no coups in Malaysia because the military has only served under the same regime (UMNO-led BN) since independence and only one ethnic community political control, the Malay and UMNO.\textsuperscript{455} Understandably, civilian control of the military in a semi-democracy or partially authoritarian political system like Malaysia is safeguarded by an informal networking between military officers and the dominant government party (i.e., UMNO-led Barisan Nasional).\textsuperscript{456}

As stated in the Constitution, the MAF is part of the Malaysian Government Department of civil service and is responsible for implementing government defense policies. Therefore, the MAF does not intervene in political activities and is always supportive of the ruling government; although this close relationship between the military and the ruling parties invites claims that the MAF and the police forces are used as the government’s apparatus to sustain the regime’s survivability.

**Ethnicity and the Civilian-Military Stable Relationship**

The question of ethnic relations remains an unresolved problem in MAF institution building; thus, it may also be a key factor of the military’s non-intervention in politics. According to Cynthia Enloe (1976), when discussing civilian control on the military, the question should be which civilians control the military, with what resources,

\textsuperscript{455} Zakaria Haji Ahmad and Harold Crouch (1985).

and for what ends? Ethnic considerations are vital in the social composition of the military and its subordination to civilian authority. In Malaysia, the military has always been identified with the Malay community; especially after the 1969 riots, when the Malay community and political leadership came to view the military and the police force as crucial to maintaining Malay dominance.

Harold Crouch (1997) argued that since Malaysia is sharply divided along ethnic lines, the ethnic factor has actually contributed to stable civil-military relations. The Malays are completely dominant in the armed forces and, since the government is also dominated by the Malays, there is little conflict between the military and the government. In fact, Malay military officers, Malay bureaucrats, and UMNO politicians are all part of the same elite and are often related to each other by either blood or marriage. In addition, the MAF are predominantly Malays and are controlled by the Malay high-ranking officers; thus, logically, they will not seize power because, basically, they enjoy the same privileges and rewards and share similar values. Basically, the military in Malaysia reinforces the Malay domination of the government.

Others argue that the MAF will not seize power because they are controlled by the Malays, and the key posts in the force are mostly held by Malays, with the composition of members in the military also being predominantly Malays, implying that the forces

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458 For instance, during the premiership of Tunku Abdul Rahman (Malaysia’s first prime minister), the armed forces staff general at that time was the nephew of the prime minister himself and, being related, the general would not have toppled his uncle in a coup de tat.

will not change a system that supports Malay privileges. Even if there is an intra-Malays power struggle,\textsuperscript{460} it would be unlikely to change the present structure and pattern of civil-military relations in Malaysia. Nathan and Govindasamy (2001) theorized that the MAF would politically take over power only if the Malays’ dominance and privileges were threatened. Practically, as long as there is no direct threat to Malay power and its privileges, the military will remain apolitical and independent.\textsuperscript{461}

**Strong and Stable Government Contributes to Stable Civilian-Military Relationship**

It is common sense that an ineffective civilian government and its weak political institutions can trigger interference from a strong military institution. We have seen military interference in Indonesia, Thailand, the Philippines, and others in the region, throughout the history of Southeast Asia. When civilian leaders fail to legitimize their governmental authority in a sustainable manner, military interference is unavoidable. Malaysia’s political legitimacy, which is based on Malay dominance, has had a high degree of legitimacy and has been effective in delivering public goods and raising the living standards of the people.\textsuperscript{462}

Malaysia, since independence, has experienced decades of impressive economic and social progress, enabling it to provide for the health and education of its people, to eradicate poverty in large measure, to build an excellent infrastructure, and to become a

\textsuperscript{460} The instances of intra-Malay conflicts: 1970s (Dato Onn leaving UMNO), 1980s (UMNO Baru led by Mahathir, and Semangat 46 led by Tengku Razaleigh), and 1990s Anwar-Mahathir dispute, have not impacted the good relations between the military and civilian authorities.

\textsuperscript{461} K. S. Nathan and Geetha Govindasamy (2001), 259-275.

major global exporter of goods and services.\textsuperscript{463} Political stability and economic growth have sustained the political system in Malaysia, which can be seen in the people’s endorsement of the ruling government through regularly held general elections.

The military in Malaysia are happy that their interests are well-looked after by the government and that the Malays supremacy and Malay interests have remained uninterrupted; which prompts the military not to interfere with the civilian authority. Furthermore, the Malaysian government’s legitimacy is amplified by the constitutional provisions of draconian laws,\textsuperscript{464} which are exercised by the legal body and the police force.

The military, however, has been excluded from the exercise of the internal political coercion. While important and evident, coercion is not the fortress of the Malaysian government. Those laws are used on the grounds of enforcing authority and maintaining social harmony. Critics, however, say otherwise and criticize that the government uses coercion to buttress opposition and dissidents.

**Police Force in Malaysia**

The problem with police and security forces has been that they are always seen as a police of the government, most of the time defending the political order along with the government of the day. In addition, they are also against the opposition.


\textsuperscript{464} The application of state coercion is rooted in legal provisions such as the Internal Security Act, which allows restrictions on freedom of assembly, association, and expression freedom of movement that suppress human rights. In addition, there are eleven other pieces of legislation that curtail and/or marginalize civil rights in Malaysia.
Lately, it has been reported by Amnesty International and human-rights groups that acts of police brutality in Malaysia are rising against civilians and opposition members\textsuperscript{465} as well as many deaths in police custody, with very few inquests conducted and the vast majority uninvestigated.

A 2007 survey commissioned by Transparency International Malaysia and conducted by the Merdeka Centre for Opinion Research found that the police are among the least transparent government agencies; 56 percent of Malaysians have named the police as the enforcement agency with the lowest level of integrity and transparency. Between 1999 and 2003, 5,726 cases of corruption involving the police were reported, more than any other government agency. Some officers had taken sizable bribes from brothels and other criminal operations, and amassed millions of ringgit in their bank accounts. The Royal Commission found a pattern of consistent neglect and abuse of rights, apparently ingrained in police practices despite strong safeguards and compliance with human rights in national laws.\textsuperscript{466}

\textsuperscript{465} Recent evidence concerning the Anwar episode has underscored the ability of the state to use the police and military forces as effective tools in managing state security (or more correctly the security of the present government) via the ISA and other restrictive laws pertaining to publication and dissemination of information. Furthermore, the global war on terror (GWOT) instigated by the U.S. worldwide has given the Malaysian government ease in limiting activities of the oppositions and disquieting dissenters who disagree with the government’s policies and actions. The WOT rhetoric serves well with the government that uses such laws to legitimize their actions against oppositions, to silence all internal dissidents, and to justify their acts of human-rights abuse.

Malaysia Military Spending

Malaysia’s defense budget is modest compared to many countries. Defense allocation therefore depends on the question of affordability on the part of the government. Malaysia spent money on defense whenever her budget allowed for it.

Figure 7 below shows that, on the government’s spending pattern on the military from 1990 to 1995, the trend is upward; after 1995, the military spending decreased until 1998, after which military expenditures trended upward trend but in small increases year to year. In general, Malaysia’s military expenditure as a percentage of the GDP has been about 2.4 to 2.6 for the past fifteen years.

Figure 7. Military Expenditure As Percentage of Malaysia’s GDP
Source: The World Bank World Development Indicators and researcher calculations

Internationally, Malaysia remained on the sidelines of the dangerous escalation of tensions between China on one side and the Philippines and Vietnam on the other over

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467 Based on data from the SIPRI Military Expenditure Database, and The World Bank.
control of the South China Sea, despite Malaysia being one of the numerous claimants to the disputed Spratly Islands. In fact, Malaysia has taken a notably pro-China stance on the issue, assuring its fellow ASEAN members that Chinese involvement in the region is to be encouraged rather than feared. Nonetheless, Malaysia has remained largely aloof from defense co-operation with China, and held back from conducting any major joint exercises with the Chinese, as other regional militaries now do. Tensions with traditional rivals Indonesia and Singapore have remained at an historic low, with the Malaysian government pushing for the formation of a joint parliamentary committee with Indonesia to resolve the question of the two countries’ disputed land and maritime borders.  

Speculation over the emergence of a regional arms race has not translated into defense spending increases on Malaysia’s part, perhaps impacted by the economic downturn. In October 2011, the government said it would be spending marginally less on defense in the coming year; according to the government’s figures, the budget was set to dip from MYR13.8bn (US$4.44bn) to MYR13.7bn (US$4.41 bn).  

**Conclusion**

Malaysia’s mixed political system, often called “semi-democratic,” understandably needs the backing of both the police and the military in managing public order and security. In appreciating this imperative for peace and stability, the MAF and the government complement each other under the rubric of national security and nation-building. Having said this, the system will remain the same because “entrenched institutions and interests have largely blocked fundamental change.” The country’s

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469 Ibid.
history and politics and geo-location helped create deeply entrenched identities, 
institutions and relations. Thus, any form of reform will be met with strong rejection for 
those benefits from the system.470

Malaysia has scored well for its civilian-controlled relationship with the military. 
Although it may not be to the complete satisfaction of all groups, the norms are already 
entrenched in the system, through years since colonialism. The positive step forward is to 
concentrate toward greater transparency and accountability in both institutions, both the 
police force and the MAF.

Assessing Corruption in Malaysia

Although corruption471 in Malaysia has not attained epidemic proportions, it has 
been on the increase in recent years.472 Professor Syed Hussein Alatas (1986) wrote that, 
apart from Singapore, of all the developing countries of Asia, corruption is least 
pandemic in Malaysia. The fear is that it is growing. Since 1957, the year of 
independence, corruption has definitely been growing in Malaysia. We see numerous 
political figures and others amassing wealth through being in office. It is public 
knowledge that there is a great deal of corruption going on in customs, the highway 
police, immigration, the courts, the land office, the supply acquisition units of the various


471 The Corruption Perception Index (CPI) defines corruption as the abuse of entrusted power for private gain in both the public and private sectors. Read more at: http://newsfeed.time.com/2010/10/26/what-a-rotten-world-it-can-be-report-says-three-fourths-of-world-is-corrupt/#ixzz1FfCvmnQ.

472 The Corruption Perceptions Index (CPI) 2011 report, issued in conjunction with the worldwide launch of the Transparency International CPI on Thursday Dec. 1, 2011, indicates that Malaysia slipped four places to 60th spot out of 183 countries in the Transparency International’s (TI) from 56th the previous year. Malaysia had shown a decline in its CPI score for the third consecutive year.

<table>
<thead>
<tr>
<th>Year</th>
<th>Ranking</th>
<th>CPI Score</th>
<th>No. of countries surveyed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>36</td>
<td>5.0</td>
<td>91</td>
</tr>
<tr>
<td>2002</td>
<td>33</td>
<td>4.9</td>
<td>102</td>
</tr>
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<td>2003</td>
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<td>56</td>
<td>4.5</td>
<td>178</td>
</tr>
<tr>
<td>2010</td>
<td>56</td>
<td>4.4</td>
<td></td>
</tr>
</tbody>
</table>

\textbf{Figure 8. Malaysia’s CPI Score: 2001-2010}

Source: \textit{Transparency International – Malaysia} (Jul - Dec 2010)

The score in Figure 8 depicts Malaysia at its lowest rating ever by the graft watchdog Transparency International. Malaysia is seen plunging down into serious corruption, with an index score of 4.4. The index has a range of 0 to 10, 0 being highly corrupt, 10 being very clean. An index score of 4.4 is deemed to be a serious corruption score and is ranked at 56 out of 178 countries being rated (see Figure 9). The CPI scores released in October 26, 2010 show that, since 2001, Malaysia has distressingly dropped in the international rankings and corruption in Malaysia has reached a critical level; Transparency International warned the government to act for fear of losing its
competitiveness. Dato Paul Low, president of the local branch of Transparency International – Malaysia, noted that the plunge was serious not only compared to the country’s perceived past performances but, more importantly, in relation to other countries worldwide, especially those within the ASEAN region. Drawing attention to neighboring Indonesia, Low marked that though Malaysia ranks 111 and scored 2.8 on the CPI, the country’s corruption level is seen to be improving steadily under the administration of President Susilo Bambang Yudhoyono.

![Figure 9. CPI Scores: Selected ASEAN Countries and South Korea](source)

In 2010, while Malaysia was slipping in its rank, Indonesia was rising, moving up fast and showing good improvement, mostly because of the political will of the country to improve itself and eradicate corruption. Indonesia’s powerful Corruption Eradication

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475 Transparency International – Malaysia 19 & 20, no. 2/2 (Julyu-Dec. 2010).
Commission (KPK) so far has been successful in bringing the country’s ranking up under CPI in the region. This brings one to suggest that the Malaysia Anti-Corruption Commission (MACC) be given more prosecution power in order to be more effective like what is practiced in Indonesia. Malaysia needs to be more proactive in addressing corruption, especially those involving the “big fish,” if the government is serious about improving their rank in the CPI. Although there have been many media reports about high-profile corruption cases involving ruling party politicians and powerful individuals, the public’s perception in Malaysia is that few are investigated or end up in court. In addition, the MACC has been ineffective in catching any “big fish,” fueling a widespread belief that the Commission is not completely independent.476

Recently, aside from a lack of political will and MACC’s lack of persecution powers, Malaysia’s fight against corruption has lost ground due to selective investigation and prosecution of graft cases. This lies solely with the attorney general who has made odd decisions not to take further action in certain cases. One example of how graft cases either go unnoticed or are not investigated is the Alcatel-Lucent bribery controversy in December 2010 when the French telecom giant was accused by U.S. officials of bribing officials in Latin America and Asia, including Malaysia; however, this case has gone unnoticed in Malaysia. It is unfortunate that we needed a charge from a foreign legislation (the U.S. Foreign Corrupt Practices Act) to highlight incidences of possible corruption in Malaysia.477

477 Ibid.
Although there are good initiatives and the public’s confidence in the government’s actions to fight corruption has jumped, as shown in Figure 10 below, unfortunately there are indications of insufficient political will to eradicate corruption. For example, no “big fish” being brought to book, poor progress in identifying and prosecuting culpable persons in the Port Klang Free Zone (PKFZ) fiasco,\(^{478}\) no further action by the Attorney General against those implicated in judicial appointment-tampering (Lingam tapes saga)\(^{479}\) despite the Royal Commission’s findings and recommendations, and the continuing and snowballing practice of awarding mega projects and contracts without open tenders or competitive bidding, and IPs yet to be implemented.\(^{480}\)

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\(^{478}\) Contracts worth RM1.8 billion were awarded to one company, KDSB, without any competitive bids; development proposals were not tabled for Malaysian Cabinet approval although the purchase of the land of 1,000 acres was approved by the Cabinet at the high price of RM1.088 billion against proposed compulsory acquisition cost at market value of RM442 million. Continue reading at [www.NowPublic.com: Billion Dollar PKFZ Fiasco Fallout | NowPublic News Coverage](http://www.nowpublic.com/world/billion-dollar-pkfz-fiasco-fallout#ixzz1fFmnjNwe).

\(^{479}\) The case on prominent lawyer (V.K. Lingam) who tried to fix the appointment of the chief justice, and some court of appeal judges, with the chief justice of the federal court, Ahmad Fairuz. Together, they appeared to broker judicial promotions and court rulings. This activity is a crime under the Official Secrets Act (OSA). However, the case was closed due to lack of evidence. It is one of the lowest points in Malaysia’s judicial history, after the removal of former lord president Salleh Abbas and four other senior judges in 1988.

\(^{480}\) *Transparency International – Malaysia* 19 & 20, no. 2/2 (July-Dec. 2010).
When Abdullah Badawi\textsuperscript{481} assumed office as Prime Minister on 31 October 2003, he pledged to implement reforms that are embedded in the National Integrity Plan (NIP), he tried to eradicate corruption and promote good governance and ethical values,\textsuperscript{482} and pledged war against corruption in Malaysia. This explains how the Barisan Nasional was able to capture 90 percent of parliamentary seats and won spectacularly in the 2004 general election. Under Badawi, the people finally had hope that the country was heading in the right direction, as opposed to the uncompromising style of Mahathir. However, Badawi’s glory did not last long, as critics said he had failed to keep up with his initial plans. The lack of real change in terms of openness became more and more evident throughout his tenure. Often, he stood by mutely as investigations into the corruption of high-level officials collapsed and whistleblowers were penalized. For example, Eric Chia,  

\textsuperscript{481} Malaysia’s fifth prime minister.  

\textsuperscript{482} Abdullah Badawi, “Integrity: The Basis of Good Governance,” special keynote address (World Ethics and Integrity Forum 2005, 28-29 April 2005, Kuala Lumpur, Malaysia).
a tycoon once close to Mahathir, was charged for making payments of RM76 million ($23 million) to a nonexistent company; he was acquitted for any wrong doing, and the opposition leader Lim Kit Siang characterized the acquittal as a major setback for anti-corruption.\footnote{William Case, “Malaysia in 2007: High Corruption and Low Opposition,” \textit{Asian Survey} 48, no. 1 (January/February 2008): 47-54.}

Also, to eliminate Malaysia’s endemic culture of patronage, Badawi ought to have explained in full how his son Kamaluddin had secured the position of a leading shareholder of Scomi Group, whose share price shot up by nearly 600 percent just a few months before Badawi was scheduled to take over from Mahathir as prime minister, making his son into a multi-millionaire overnight. The same thing happened with Badawi’s son-in-law, Khairy Jamaluddin, whose meteoric rise to become the nation’s most powerful young man took place during Badawi’s tenure when, in 2006, he made a fortune in the merger between ECM Libra Capital Bhd. and the government-linked Avenue Capital Resources Bhd.\footnote{Josh Hong, “Legal Immunity: No One is Above or Below the Law” (Apologies to Richard M. Nixon) (9 August 2010) \url{www.malaysiakini.com}.}

Transparency International – Malaysia (TI-M) urges the government to show strong political will to fight corruption without fear or favor. Given Malaysia’s aspiration to be a high income and developed country by the year 2020, the commitment to fight corruption must be clear and firm. CPI results, as in the graph “Relationship Between CPI Scores and GDP” have consistently shown a direct correlation between the level of corruption and the economic development of a nation. Nations with good CPI scores (less corrupt) are developed nations with a high Gross Development Products (GDP), such as
Denmark, New Zealand, and Singapore (joint top three in the 2010 CPI ranking).

Conversely, countries with low scores (more corrupt) are low-income nations. This indicates that Malaysia’s quest for a high-income economy will fail if corruption persists. A high-income economy can only be achieved where there are efficient delivery systems, and the organs of government and institutions govern and manage the country and its resources professionally, responsibly, and with integrity, transparency, and good governance in the interest of the nation and its citizens.\(^{485}\)

Najib Tun Razak,\(^{486}\) as Malaysia’s new premier in 2009, tried to prove that he was against corruption. Under his watch, ongoing high-profile court cases prosecuted by the MACC included former transport minister and MCA president Tun Dr Ling Liong Sik and former Selangor menteri besar Datuk Seri Dr Mohd Khir Toyo. Dr Ling was charged for cheating the government over his alleged role in the Port Klang Free Zone (PKFZ) scandal; Dr Mohd Khir was arrested and charged for alleged corruption linked to a land deal. Another former transport minister, Tan Sri Chan Kong Choy, was also charged in relation to the PKFZ case.\(^{487}\)

Critics claim that such improvements and upgrades might do the trick of silencing skeptics. However, what is more important is that the MACC should continue to curb corruption in Malaysia, without fear or favor. Elements that facilitate “grand corruption” are still prevalent; including the continued and snowballing practice of awarding mega


\(^{486}\) Malaysia’s sixth premier.

\(^{487}\) BERNAMA (29June 2011).
projects and contracts without open tenders or competitive bidding, limited access to information that contributes to a culture of secrecy and a lack of transparency, allegations of inflated pricing in military purchases, and the continued close nexus between business and politics in Malaysia.488

Corruption is a negative phenomenon often displayed in a hybrid political system. This is because the political system provides an able environment that accommodates corrupt practices.

Chapter Eight: Civil Society, Popular Participation Media, and Democracy

This chapter answers the question: Do the media in Malaysia operate in a way that sustains democratic values? In a healthy democracy, the power of the media is to highlight issues that best serve the needs of the public. In order to perform effectively, it is imperative for the mass media to operate in a free environment. Access to information is a key; democracy depends on a knowledgeable citizenry whose access to a broad range of information enables them to fully participate in public life, help determine priorities for public spending, receive equal access to justice, and hold public officials accountable.489

For a country pursuing a developed-nation status,490 there is a vital need for a plurality of independent media in order to achieve a good democracy. A variety of free and independent information sources, including the conventional media of printing and broadcasting (i.e., television, radio) and increased access to the new media that is the Internet (i.e., blogging, tweeting, social online networking), are essential in the contemporary democratic environment.


490 The vision calls for the nation to achieve a self-sufficient industrialized nation by the year 2020. It is a Malaysian ideal introduced by Mahathir Mohamad, during the tabling of the Sixth’s Malaysian Plan in 1991, well-known as Vision 2020, or Wawasan 2020. In order to achieve Vision 2020, Mahathir lamented that the nation requires an annual growth of 7% (in real terms) over the thirty-year periods (1990–2020), so that the economy will be eight-fold stronger than its 1990 GDP of RM115 billion. This would translate to a GDP of RM920 billion (in 1990 Ringgit terms) in 2020 [Mahathir Bin Mohamad (2008-11-17), The Way Forward, Prime Minister’s Office.]
Media Freedom in Malaysia

Figure 11 below shows that the press media in Malaysia consistently have not been free. The index provided by Freedom House shows that these results have been consistent for about a decade: “Not Free”\textsuperscript{491} (2002-2011). Information gathered from varieties of Human Rights Watch groups, Amnesty International, Reporters Without Borders, and World Press Freedom Index reveals government crackdowns on journalists and newspapers publications, especially news about criticizing and revealing government inefficiency and corrupt dealings.

The index at its highest peak of “unfree” media in 2002 and 2003 covered the last two years that Premier Mahathir was in office. These indicate a government ineffective in Malaysia, which increasingly resorted to the crudest and most repressive legislations in the Constitution; namely the ISA, OSA, and Sedition Act, to try to curb political mobilization and scrutiny over the exercise of power and related media activities. The year 2006 had the lowest indicator since 2002, and was the period when the new premier Abdullah Badawi had promised to stop corruption and give more media freedom, which had inspired positive expectations in Malaysia’s public and civil society. The other years show signs of consistently slow progress in media freedom. However, the new media, the Internet, has shown some good signs that it is not in the same “shoes” as the mainstream media.

\textsuperscript{491} Freedom of the Press Global Status in 2010 reported Malaysia as “Not Free.” World Press Freedom Index reported on Malaysia 2006-2010 as “in Difficult Situation.”
Main Issues on Media Freedom

In Malaysia, the concerns of a free and independent media involve two main troubling issues: (1) the issue of ownership, and (2) regulatory issues.\textsuperscript{492} Regarding ownership, much of the mainstream media in Malaysia is owned directly or indirectly by entities linked to the ruling political party. Many local newspapers, especially the daily published press, are either controlled or owned by either the government coalition parties under BN or companies that have strong relations with the ruling party.\textsuperscript{493}

For instance, UMNO controls the Fleet Company which owns major daily newspapers in Malaysia, such as the \textit{New Straits Times}, \textit{Berita Harian}, \textit{Business Times},

\textsuperscript{492} Lim Ming Kuok, \textit{Mass Media and Democracy}, \url{http://www.projectmalaysia.org/articles.html}.

the *Malay Mail* and *Shin Min Daily News*. In addition, the major *Malay* daily newspapers (i.e., *Utusan Melayu*, *Utusan Malaysia*) are owned by companies with a direct link to UMNO. Berjaya Group, the company that publishes *The Star*, *The Sun*, and *Watan* newspapers, is owned by Vincent Tan, a close friend to Prime Minister Mahathir Mohamad. The same goes with major Chinese newspapers, such as *Nanyang Siangpao* and *China Press* bought by the Malaysian Chinese Association (MCA). Likewise, Tamil newspapers, such as *Tamil Nesan*, *Tamil Osai* and *Thinamani*, have a close link with leaders in the Malaysian Indian Congress party (MIC). These cases clearly show the web of press ownership that directly links to the ruling *Barisan Nasional*, the longest serving party in the regime.

Powerful politically connected business figures have increasingly looked to the courts to silence and punish critical reporting through “mega-suits.” Two defamation cases were brought by Mahathir’s son pertaining to an article about Malaysia Inc. in the January 1999 edition of *Asia Wall Street Journal* (*AWSJ*); in another case, a RM200 million defamation suit was taken by Vincent Tan, Berjaya Group chairman and chief

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494 The “takeover” of these two daily Chinese newspapers by MCA (the second largest member of the ruling coalition) was suspected of a political move meant to curb independent journalism. The government suspected that these two newspapers had been actively campaigning against the government and were instrumental for the opposition parties [New Straits Times Interactive, 2001]. As a result, many editorial columns dealing with human-rights issues, activists, media freedom, social issues, politicians, political reforms, etc. were retracted.

executive, in response to “Malaysia Props Up Crony Capitalists” penned by Malaysian academic K. S. Jomo in the December 1998 edition of the AWSJ.\textsuperscript{496}

As a result of dominance in ownership, a monopoly is clearly unavoidable. Since almost all of the major media and daily newspapers in Malaysia, are under the BN government’s possession, the Radio and TV Malaysia (RTM) is used by the ruling party to spread its agenda and propaganda to the masses. All the media have been manipulated to direct people’s attention and support in favor of the ruling political parties. On the other hand, the opposition political parties are given bad reviews and negative media coverage; they are not given a fair share of the public access media to inform the masses of their political agenda and aspirations.\textsuperscript{497}

\textbf{Strict Regulations Confining Media Freedom in Malaysia}

In addition to the issues of ownership in Malaysia, the media are confined via the array of the government’s strict regulations and laws. The Malaysian Constitution guarantees freedom of expression under Article 10, which provides each citizen the right to freedom of speech and expression; but, at the same time, allows hordes of limitations to this right. Well-known laws (i.e., Sedition Act, Internal Security Act, Official Secret Act) and other harsh criminal-defamation laws are used regularly to impose restrictions on the press and other critics of the government of its policies and unfavorable behavior. The 1984 Printing Presses and Publications Act (PPPA) requires all publishers and


\textsuperscript{497} This is one criterion of the \textit{competitive authoritarian regime} proposed by Levitsky and Way (2002), in which the opposition parties do not get fair media access, and abuse of state resources skews the playing field heavily in favor of the incumbents. In short, there is real competition in this kind of regime, but it is unfair.
printing firms to obtain an annual operations permit, and gives the prime minister the authority to revoke licenses at any time without judicial review.\footnote{Freedom House, “Freedom of the Press 2011, Malaysia” (3 October, 2011), available at http://www.unhcr.org/refdworld/docid/4e89adc427.}

One of the many cases was the imprisonment of Lim Guan Eng,\footnote{Son to prominent leader of one of the opposition party, the Democratic Action Party (DAP), Lim Kit Siang.} a Malaysian opposition politician who spoke out against the rape of a schoolgirl by a government minister. For speaking out, he was sentenced to three years imprisonment, the schoolgirl to three years “protective custody,” and the minister so far has not been charged.\footnote{“The Choice,” Radio 4, BBC (May 1998).} Eng had raised the irregularities of the case after one of his constituents, who was also the girl’s grandmother, brought the case to him and sought his help. On 28 February 1995, Eng was charged under the Sedition Act for prompting “disaffection with the administration of justice in Malaysia.” On 17 March 1995, an additional charge was brought under the Printing Presses and Publications Act for “maliciously printing” a pamphlet containing “false information,” specifically that he had used the term “imprisoned victim” to describe the rape victim.\footnote{Amnesty International Media Statement, “The Trial of Opposition Parliamentarian Lim Guan Eng” (1 March 1997). http://malaysianunplug.blogspot.com.au/2010/07/when-lim-guan-eng-was-imprisoned-in.htm}

At his first trial in 1997, Lim Guan Eng was convicted on both counts and fined RM 15,000 (US$6,000). The state appealed to the Court of Appeal against the “leniency” of the sentence and, at a subsequent hearing before the Court of Appeal (1 April 1998), the sentence was increased to three years imprisonment. A consequence of that sentence is that Eng was automatically barred as a member of Parliament and is likely to be
declared bankrupt. The persecution of Lim Guan Eng is seen not as just an attempt by the government to silence a prominent critic, but as a warning to others. His constituents have been denied representation in Parliament.  

Not only local journalists and activists are sued and jailed, but also international journalists have faced the wrath of Malaysia’s controlled media freedom. The jailing of FEER correspondent Murray Hiebert further highlights the seriousness of the situation.

For those who do take the risk, there is always the cautionary example of Murray Hiebert, when Malaysia became the only Commonwealth country in half a century to jail a reporter (and a foreigner at that) for contempt of court. Hiebert, at the time Kuala Lumpur bureau chief for the Far Eastern Economic Review, was sent to prison for four weeks as a result of a story he wrote that was critical of the Malaysian judiciary.

The ordeal of the two-year trial and appeals process, during which Hiebert was barred from leaving the country, made him Malaysia’s press freedom poster child. “Why are they doing this?” he was asked rhetorically one afternoon in his office before he lost his appeal. “I think they want to send a message to reporters not to go too far in this country,” he answered.  

In an interview with the Public Broadcasting Service (PBS), Hiebert said, “They used antiquated British contempt of court law that allowed them to

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put me in jail for writing an article that in most settings would have been viewed as very innocuous.”

With such a complex web of ownership, conflict of interest is unavoidable, and it is hard to imagine that the mass media can be truly independent and free from the influence of political parties and strict state regulations that restrict freedom of media and expression. Media control through state legislation and shared ownership have brought a great impact on the level of media freedom in Malaysia. When media are controlled by shared ownership and legislation, media reports tend to be more biased toward individuals and groups that are linked to media companies and the government. Only selected news that is favorable to the government and its political parties is allowed to be disseminated by the media, and news that is critical and negative toward the government and its allies is intentionally avoided. In sum, the media serves the interests of the ruling government instead of the welfare of the people. The mainstream media is used by the government to suppress and demonize the opposition parties and dissidents.

**The “Unconventional” Media: The Internet**

Due to the mainstream media control by the government, an increasing number of Malaysians are turning to the Internet as their main source of news. In 1994, Malaysia

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505 During the Anwar Saga, then prime minister Mahathir Mohamad tried to rationalize his “character assassination” against Anwar, using government-controlled domestic media. However, this tactic backfired thanks to the new media (the Internet) used by Malaysians to get the alternative information on what’s going on in the country.
became the first country in Southeast Asia to offer Internet access to the public.\textsuperscript{506} The 2011 Freedom House reported that the Internet had penetrated 56 percent of Malaysians, or 28.9 million population.\textsuperscript{507}

The online media have not only broken Malaysia’s information blockade, democratizing access to critical perspectives, less-than-rosy news, details on opposition parties, and a heap of mindless chatter, to boot; but also have arguably pressed mainstream media to open up and incumbent politicians at least to gesture toward interaction and, hence, accountability.\textsuperscript{508}

Malaysians depend on the Internet as an alternative to the mainstream media for obtaining and disseminating information. The unprecedented victory of the opposition parties in Malaysia’s 2008 general election is proof of the successful role of the Internet. The incumbent government reluctantly admitted that they had underestimated the power of Internet.

Since 2009, the government has stepped up use of the Communications and Multimedia Act 1998 (CMA) to silence critics online. The authorities have carried out investigations against news portals and bloggers for making allegedly offensive comments. On August 2010, \textit{The Malaysian Insider} reported that Najib’s administration

\footnotesize{\textsuperscript{506} Yap Cheng Teng, “Malaysia Online Becomes First Private Net Service,” \textit{Asia Computer Weekly} (July 1995): 24-30.}


\footnotesize{\textsuperscript{508} Meredith Weiss, “The Long and Curious Trajectory of Regime Change in Malaysia” (17 March 2012).}
had started to evaluate the feasibility of using Internet filters to block undesirable websites, but backed off from the plan after public outcry.\textsuperscript{509}

\textbf{Internet Freedom}

The significant development of the Internet in Malaysia’s political backdrop was the launch of the online \textit{Malaysiakini} (Malaysia Now).\textsuperscript{510} This independent and critical newspaper soon had over 110,000 readers daily and won international journalistic acclaim. It exploited two loopholes: (1) existing laws did not require online media publications to be licensed; and (2) the previous commitment by the government not to censor the Internet.\textsuperscript{511} As an internationally respected, independent, non-party-political source, the \textit{Malaysiakini} has gained the trust of people who are concerned about the government.

As shown in Figure 11, Malaysia Internet freedom is only party-free. The extent of government surveillance of the Internet is unclear. In recent years, the authorities have repeatedly hinted that they may take steps to register bloggers. Meanwhile, they have put aside the plan of following protests by the blogging community and media outlets. The


\textsuperscript{510} \textit{Malaysiakini} (Malaysia Today) is leading non-government-owned political online news forum published in English, Malay, Chinese, and Tamil. Since its launch November 20, 1999, \textit{Malaysiakini} remains free from government regulation and, thus, is widely considered to be the country’s only independent voice. \textit{Malaysiakini} has gained both praise and notoriety by regularly covering subjects and viewpoints deemed taboo by the mainstream broadcast and print media; the fact that it is still allowed to operate is partly due to the Malaysian government’s tolerance regarding Internet censorship. Available at: http://en.wikipedia.org/wiki/Malaysiakini.

\textsuperscript{511} The aim of building an Asian Silicon Valley was considered so important by Mahathir that his government pledged in 1996 that there would be no censorship on the Internet. This was intended to reassure prospective investors. This undertaking was formalized in the Multimedia Super Corridor (MSC) Bill of Guarantee and subsequently incorporated in the Communications and Multimedia Act 1998. [Gary Rodan, 152-155.]
government so far has kept to its promise not to impose restrictions on the Internet as mentioned in the Act in 1996.

The Freedom House study, however, found mounting threats to Internet freedom. In 2001, the Prime Minister’s Department announced that a legislative review was under way to curb use of the Internet to incite public disorder and violence against the government; this included consideration of extending the embrace of the Printing Presses and Publication Act (PPPA) to the Internet. 512 According to Freedom on the Net 2011, A Global Assessment of Internet and Digital Media, cyber-attacks, politically motivated censorship, and government control over Internet infrastructure are among the diverse and growing threats to Internet freedom. 513

These violations on Internet freedom come at a time of explosive growth in the number of Internet users worldwide, which has doubled over the past five years. Governments are responding to the increased influence of the new medium, by seeking to control online activity, restrict the free flow of information, and otherwise infringe on the rights of users. These detailed findings clearly show that Internet freedom cannot be taken for granted, said David J. Kramer, executive director of Freedom House. Nondemocratic regimes are devoting more attention and resources to censorship and other forms of interference with online expression. 514


The New Media, Web 2.0

This new media is the latest achievement of the power of mass media technology to offer the promise of true freedom of information and away from the control of big corporations, political parties, and the government. Web 2.0 is a generic term used to describe the group of media technology that enables user-generated content. Video-sharing websites such as YouTube.com, social-networking websites such as Friendster and Facebook, and blogs, are examples of Web 2.0. The main difference between Web 2.0 and conventional media is the user’s ability to publish their own content and for the readers to respond without the interference of “gatekeeping” from editors. Web 2.0 also allows users to circumvent existing laws and regulations that govern conventional media such as print and broadcasting.\textsuperscript{515}

Web bloggers are imperative in the respect of keeping check on the mainstream media. Political bloggers, especially, perform on a regular basis, fact-checking the news and challenging the predominant point of view in the mainstream media. These bloggers highlight attention to issues that are, most of the time, neglected by the mainstream media. In Malaysia, blogging is becoming a form of political participation. Recently, there has been an apparent prominence of political blogs, in comparison to other Asian countries.

However, lately, bloggers\textsuperscript{516} and “netizens” in Malaysia are under pressure from the government. In 2007, legal action taken by government-prominent English

\textsuperscript{515} Lim Ming Kuok, “Mass Media and Democracy,” \url{http://www.projectmalaysia.org/articles.html}.

\textsuperscript{516} Famous political blogger Raja Petra Kamaruddin (RPK) hated by the regime, charged and detained by the authority for his repeated allegations of corruption and abuse of authority. He is still facing sedition and
newspapers against two prominent social-political bloggers sparked the formation of the National Alliance of Bloggers (All-Blogs). A cyber sedition bill is said to be under review. Introduced by the Council of Ministers in December 2010, it poses yet another danger to online freedom of expression in Malaysia. Aside from the Sedition Act, some thirty other laws may also be used to control the media and the Internet, including the ISA, the 1984 Press and Publication Law, and the 1998 Communications and Multimedia Act.

**Conclusion**

Why are the media controlled in Malaysia? In theory, Malaysia claimed to be a democratic state following its colonial master’s parliamentary system. In reality, the democratic system is “flawed” and “fettered.” The argument made by the state is that Malaysia being a developing country cannot practice a fully democratic system in support of a developmental paradigm chosen over economic growth and stability; thus, some form of authoritarian rule is necessary to ensure economic and political stability and good governance, including stringent control of the media and other institutions in the country.

The relationship between the media and Malaysian’s semi-democracy emphasizes the relevance of a “developmentalist” discourse that posits a payoff between stability and

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517 Julian Hopkins reviewed *Blogging and Democratization in Malaysia: A New Civil Society in the Making* by Jun-E Tan and Zawawi Ibrahim, a study on the impact of new technologies on democracy in Malaysia.

518 The Sedition Act is already very harsh, in that it punishes incitement to hatred, criticism of the government, promotion of hostility between races or social classes, and challenges the established order of the ruler’s sovereign rights and privileges.

economic progress on the one hand, and democratic and human rights on the other. This explains why the legislative restrictions on the media are still maintained. The leaders of Malaysia are laboring under an old paradigm that says you can have development or democracy, but not both. This fixed mindset is still inherent in Malaysia’s leaders, especially the ruling government of UMNO-led BN where the ethnic card is still being played to rule the country.

The truth is, ethnic politics are no longer relevant in Malaysia’s politics. The people are now demanding good governance, with accountability, transparency and justice at the forefront of the Malaysian political scenario. The Internet and the new media are seen as the only channels that are free of government control. The online new media have restructured Malaysians’ access to information and ability to challenge the mainstream media that are controlled by the government. The new media technologies offer a clear opportunity for greater freedom of information and, potentially, democratization.

Figure 12 below shows that Malaysia is ranked as one of the best in terms of media freedom in Southeast Asia. The lower score indicates the better freedom of press in the country; 2011-2012 shows freedom of press in distress in the region. Malaysia somehow has ranked ahead of other ASEAN countries like Singapore, Indonesia, Thailand and the Philippines.
Political Participation Assessment

This section focuses on the issues and present conditions faced by citizen participation and civil society organizations (CSOs) in Malaysia. Understanding civil society and citizen participation in politics is important for democratization in Malaysia. Using the observed analysis of academic works from daily newspapers, Internet bloggers, published academic journals and publications from experts and analysts of Malaysia’s civil society organizations (CSOs), this section explores issues and progress of CSOs in Malaysia, state relations with public participation in politics and the government, and issues that concern them every day.

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521 Ordinary citizens (especially women, poor people, and other marginalized groups) are largely excluded from the political processes that directly affect their lives. Lack of opportunities, rights and access to information, have made the people express a growing disillusionment with the government, through street protests and demonstrations. At the time of this writing, 25,000 Malaysians were filling the streets of Kuala Lumpur, protesting against the government’s gerrymandering of elections, and demanding electoral reform.
The State-Society Relationship

Citizen participation in Malaysia is characterized by state-society relations. Since the late 1990s, there has been active citizen participation in Malaysian politics. Analysts see this as a strategy for improving governance processes and for attaining good governance and democratization.

The state-society relationship has become a useful indicator to understanding public engagement in politics. It is conventional wisdom in Malaysian politics that the state is dominant in the society. The relationship has been variously characterized as soft-authoritarianism, quasi-democracy, statist-democracy, repressive-responsive, semi-democracy, and many others examples found in Malaysian politics literature.

These literatures describe how the state has managed the society through its policies and apparatus that regularly accommodate the different segments of society and, most of the time, shield itself from critics and opponents through state apparatus in the form of the restrictive laws that are sheltered by the nation’s Constitution.

For example, Jesudason (1995) wrote about how the Malaysian state has the ability to protect itself from civil society influences; because, as an independent post-colonial government, it inherited a well-developed state structure and institutional

523 Ahmad (1989).
527 The state’s ability to offer patronage and successfully incorporate a wide array of groups has been a critical factor in weakening the opposition.
patterns from the colonial state, which had been used to manage a society deeply divided along ethnic and religious lines, thus forging an identity of interests between the state and society in many areas of social life, with resulting limitations on the capabilities of civil society in Malaysia.528

As a post-colonial state, Malaysia inherited a well-developed civil service and bureaucracy from the British. Economic growth experienced by the young nation-state after independence made Malaysia pursue a developmentalist strategy with the society, and this strategy has effectively blocked civil society organizations (CSOs)529 from providing direct services to the masses.530 The UMNO, since its establishment in 1946 and being the dominant party in the ruling coalition, by default has been the main political party that sees to the needs and welfare of the people, especially the Malays. The UMNO has managed to provide patronage worthy of its dominance, making it possible to dispense various forms of assistance through various mechanisms. Thus, the Malays in return have given the UMNO their electoral support in every election since independence.

In her book, Vidhu Verma (2002)531 focuses on the relationship between the state and society, which influences contemporary Malaysian politics, and which she sees is key

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529 Not often have CSOs been involved in relieving the immediate suffering and needs of the poor and peasants. UMNO has always been the dominant party in the country, and seen as the champion of the have-nots.


to understanding future political developments. She acknowledges that civil society is weak in Malaysia, due to the state limiting activities and development. However, she does not see this weakness as something permanent, because the civil society is undergoing a period of profound change in democratizing Malaysia. She predicts that the UMNO is losing its traditional power and credibility among the Malays as their main protection and, instead, they have turned to PAS as the savior.\textsuperscript{532}

\textbf{The State of Civil Society in Malaysia}

Proponents of democracy claim that democratization is inevitable if a country achieves economic growth, because that will galvanize political mobilization. Thus, democratization is the outcome of the emergence of a civil society. Experts argue that the civil society factor is another explanation for the limited democratization in Southeast Asia in general, and Malaysia in particular. The paradox is that this claim is not realized in Malaysia due to the resistance of a strong state.\textsuperscript{533}

The conventional or liberal position on civil society claims that the general welfare of society and the process of democratization are enhanced when groups, organizations, and associations act as a shield to prevent the state from assuming too much control of the society.\textsuperscript{534} The failure on the part of a democratically elected

\textsuperscript{532} Verma’s predictions were based on her observations during the 1999 general election when PAS made dramatic gains at UMNO’s expense. However, through the manipulation of issues, institutions, and personalities, UMNO has continued to dominate politics. While UMNO may face a greater challenge from PAS in elections in 2004 and beyond, it is perhaps too soon to say that the floor has inevitably been conceded to PAS.


\textsuperscript{534} Larry Diamond (1994).
government failing to address basic issues pertaining to the welfare of the citizens will bring a situation where the social forces play a more active role.\textsuperscript{535}

In the last two decades, citizen participation in Malaysia has been based on the ground of good governance (government accountability and transparency),\textsuperscript{536} electoral reform,\textsuperscript{537} and social justice.\textsuperscript{538} People participation was galvanized by the Reformasi movement in 1998. Reformasi (in Malay) is one form of social movements that have taken place in Malaysia, mainly as a response to the 1997 economic crisis and Anwar saga.\textsuperscript{539}

Civil societies in Malaysia do not fit the theoretical ideal of a democratic country. The Malaysian experience demonstrates the difficulty of assigning civil society as a positive role for democratization. According to Jesudason (1995), the broader historical process of state formation in Malaysia, in particular the origins of the state from external


\textsuperscript{536} For three years in a row (2009, 2010, 2011), Malaysia has fallen behind in the international evaluation of its transparency and accountability index.

\textsuperscript{537} Malaysia is an electoral regime where general elections have never failed to take place every five years since 1955. However, the elections may be free, but they have never been fair, especially against the opposition parties. The BN has not once been ousted from office; one of the factors is the way the electoral system is designed. Thus, reforms are imperative for fair electoral outcomes.

\textsuperscript{538} Religious issues and discriminating against ethnic minorities (e.g., HINDRAF and aborigines).

\textsuperscript{539} Anwar Ibrahim, the Deputy Prime Minister during Mahathir’s premiership, was sacked from the ruling UMNO-led BN party and incarcerated. The accusations against him of corruption and sexual misconduct are believed to have been politically motivated. He is now a leader of the opposition political party coalition. His arrest, trial, and imprisonment provided a critical catalyst for the people’s engagement in politics and the growth of civil society in Malaysia.
implantation, has critically shaped the role of civil society and determined its development.\(^{540}\)

The ethnic factor is another way of explaining the vertical relationship between the state and society. Often in post-colonial politics, states have used ethnic and religious consciousness to gain legitimacy and sustain incumbency. The UMNO, while respecting other cultural rights of the non-Malays, has managed to position itself as the protector of the Malay culture and Islam, using this mechanism to sustain the vertical ties of dependency between the Malays and the UMNO elites. Hence, the state emerged as the champion in acquiring social prestige and gained power over the civil society.\(^ {541}\)

Ethnic and religious consciousness have hurt the development of a civil society, because it is difficult for larger communal groupings to cut across ethnic lines to emerge and be powerful. For instance, the *Perkasa*, known as the ultra-Malays, will not negotiate for anything when it comes to Malay special rights; and the *Dong Zhong*, the ultra-Chinese group that insists that Chinese schools have only Chinese teachers, accentuate existing, conflicting narrow ideologies that will not work in developing a vibrant civil society.

A civil society in Malaysia is also characterized through its communal organizations. Some analysts say this phenomenon is the outcome of British divide-and-rule policies; in other words, this colonial superstructure is still practiced by the state, even after independence. These communitarian organizations have continued to play an essential role in representing the interests of their respective communities. As a result,


\(^{541}\) Ibid., 350.
their exclusivity and hierarchical structures have somewhat impeded the formation of cross-cutting civic organizations that promote equality and openness.

A recent study shows that collaboration among Malaysian civil society organizations (CSOs) is difficult to find. Because Malaysia is a hybrid regime, combining both democratic and autocratic attributes in running the system, civil society activities are never autonomous and associational activities are heavily regulated by the state.

The Societies Act of 1966 (revised in 1983) defines the relationship between the state and civil society. The Registrar of Society (ROS) is responsible for monitoring the activities of voluntary associations and is empowered to accept or reject any application to form new associations. Oppressive laws, such as the Sedition Act of 1948, Internal Security Act of 1960, and the Communications and Multimedia Act of 1998, have created a culture of fear for people’s participation in Malaysia. The government passed an amendment on the Official Secret Acts (OSA) despite heated protests from the National Union of Journalists and other key civil societies actors. Increased intolerance toward opposition views and dissidents on government’s policies have led to self-censorship and have limited the opportunity for peoples’ participation and civil society organizations.

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542 Azeem, 2011.

543 Ibid.

544 Thanks to the efforts of CSOs, opposition political parties, and the Malaysian people, this Draconian Law was repealed in September 2011; the ISA will be replaced by two laws aimed at preventing subversive activities, organized terrorism and crime, to maintain peace and public order.

545 Azeem, 2011.
(CSOs) activities. Thus, civil society in Malaysia operates under the “watchful eyes” of the state.

As a multi-ethnic country, Malaysia has given the government grounds to restrict the activities of CSOs and warnings not to address certain issues that may incite ethnic or religious tensions, all in the name of maintaining ethnic and religious harmony. The government acknowledges that civil society is becoming increasingly influential. Yet, despite the recent active movements of citizen participation, the people are still hampered by stringent laws that restrict activities that the government designates to be subversive, especially protests against government policies. Laws like the University and University Colleges Act strictly forbid academicians, teachers, and students from entering into any political form of political participation.

The Malaysian government has frequently resorted to using the ethnic card in its attacks on civil society activities that go against its policies. Despite passing laws, adopting policies, and issuing threats that discourage discussion of matters concerning ethnicities, supposedly because this is too sensitive a topic, the government has repeatedly used ethnic issues to delegitimize its opponents.

This exploitation of the people’s ethnicities, say analysts, is not because of the heightened tension between ethnic groups in the country, but because the government wants to distract the people’s attention from the rifts happening within the government (e.g., internal divisions within UMNO).546

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Positive Expectations and Progress of Civil Societies

The civil society in Malaysia is relatively weak, compared to countries like South Korea, Taiwan, Thailand, and Indonesia. However, this condition is not stagnant. Civil society organizations (CSOs) in Malaysia are gaining momentum since Reformasi in 1998 and are championing unpopular causes\(^{547}\) and criticizing the government’s policies.\(^{548}\) The Malay middle class, who once shied away from criticizing the government, has become more outspoken in criticizing the malpractices in UMNO. This development, over time, will open the door to a vibrant and effective civil society in Malaysia.

Civil Society As an Electoral Force

Remember the watershed election of 2008? The startling result revealed a political alternative besides the ethnic politics of the incumbent BN government. It was a civil society that mobilized the public toward achieving the alternative.

Since the Reformasi movement in late 1990s, civil society organizations (CSOs) and activists have increasingly taken part in electoral politics, directly or indirectly. In the context of Malaysian elections, civil society refers to the opposition forces. Although these activists had played their roles in previous elections, the general election of 2008

\(^{547}\) Pertubuhan Pribumi Perkasa Malaysia, or Perkasa, is a non-governmental Malay-supremacy organization. Perkasa is said to be fighting and defending the rights of the Malays, which they feel are being challenged by non-Malays in Malaysia. Despite the public’s distaste for Perkasa’s agenda, it is one of the most successful advocacy groups promoting the Malay agenda. This NGO is labeled “militant” by the former U.S. Ambassador to Malaysia, whose strident voice gained a lot of attention. [Wikipedia]

\(^{548}\) Among others, the most common is the New Economic Policies (NEP). Some claimed as “positive discriminatory policies” to restructure societies are often criticized by activists from DAP, Su Qui, and Gerakan, etc. as racist policies that discriminate against the non-Malays. As another example, the ethnic Indians created HINDRAF, which fights for equal treatment from the government on issues such as economy, social justice, and university intake.
took on a new scope. According to Weiss (2006), CSOs promoted issues rather than communal identity, and introduced new politicians without the baggage of old-school politics, which boosted expectations for accountability and provided a new and independent media to facilitate public participation.

The ideas of reform and change owe much to the CSOs and activists, more than just the parties themselves. Political parties are much more confined in ideologies; whereas, activists operating within civil societies are less constrained. They are freer to go “outside the box” of the communal makeup and, effectively, cross ethnic and religious boundaries by focusing on mutually shared concerns. It is within Malaysia’s civil society that important new agendas were developed, from women’s rights and environmental conservation to approaches to Islamization.

Perhaps the most crucial aspect of the development of civil society organizations (CSOs) has been the new media, which indisputably altered the atmosphere and outcomes of the campaigns. The ability to access and publicize information is a fundamental need of a politically active civil society. A free media is the primary vehicle for both state and society to communicate their interests and concerns. Therefore, a plural array of nongovernmental, independent information sources, including print and broadcast media and increased access to Internet connections, is essential.

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Conclusion

Proponents of democracy may argue that people participation via active civil societies go hand-in-hand with democratization. However, in Malaysia this has not been the case. Public participation in politics and CSO activities still have too many challenges to overcome before a fully liberalized political system can be achieved. The limited options of a civil society may not just be the result of state control, but an overlapping of the interests of the state with other interest groups in the societies.

This assessment indicates that the condition of CSOs in Malaysia suits the political paradox of being partly democratic and partly autocratic: having the rights of participating through suffrage and, at the same time, those rights being restricted by laws that were designed to restrict participation. This is not to suggest that reforms cannot take place in the future. From what I have observed presently, positive transformations of CSOs and citizen participation are taking place in Malaysia.
Chapter Nine: Assessing the Government’s Responsiveness

This chapter addresses the question: *Is the government responsive to the concerns of its citizens?* A government elected democratically through election has an obligation to respond to its citizens who chose them to govern the country and take care of the people’s welfare. Good government is appraised through its responsive and effective governance.

The Malaysian government has done a good job, so far, of effectively implementing its policies in infrastructure development, education and healthcare, poverty and inequality reduction, and economic development strategies. The government’s effectiveness at addressing these critical social issues has earned politicians a high level of public trust.

However, when it comes to the government’s responsiveness to demands and pressure from the people, this assessment has revealed that the government has used the complex nature of its socio-political composition to respond with repressive measures to stifle those who challenge the government’s policies, while simultaneously responding to demands that will benefit the state and society.

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551 According to UNDP Human Development Index (HDI) Report, Trends 1980 to present, Malaysia’s HDI is 0.761, which gives the country a ranking of 61 out of 187 countries with comparable data, placing Malaysia above the regional average. See the chapter four assessment on government effectiveness.

552 Studies have shown that there are high levels of confidence and trust in the government’s response to the people’s problems. This is most evident in the people’s confidence and trust in civil service institutions; especially, the military, federal bureaucracy, local councils, and even the prime minister.
Three Factors Upon Which a Government Bases Its Responsiveness

Three factors serve as the backdrop upon which a government bases its responsiveness to its citizens’ demands and concerns: (1) the regime is a “syncretic state,”553 (2) the system is both “repressive and responsive,” and (3) the “strong state” factor.

The Regime Is a “Syncretic State”

This approach was made known by Jesudason (2001) in his discourse on the state-centered554 model of Malaysian polity:

…a product of a particular historical-structural configuration that has allowed the power holders to combine a broad array of economics, ideological and coercive elements in managing the society, including limiting the effectiveness of the opposition as a democratizing force…. The syncretic state operates at a multidimensional level, mixing coercive elements with electoral and democratic procedures; it propagates religion in society as it pursues secular economic goals; it engages in ethnic mobilization while inculcating national feeling; and it pursues a combination of economic practices ranging from liberal capitalism, state economic intervention, to rentier arrangements. These features are important ways a product of the externally implanted nature of the colonial state and the colonial capitalist economy.555

A syncretic state combines a variety of ideological orientations and political practices in managing the society. Thus, the management of a syncretic state can be challenging and crisis-ridden; but, if successfully done, it allows for a high degree of dominance. According to Jesudason, one of the interesting aspects of the syncretic state is its ability to mix democratic procedures and coercive practices. Both features are legacies

553 The terms “regime” and “system” are used synonymously to describe Malaysia’s polity.

554 Skocpol makes a persuasive case for the state-centered approach (1985).

from the colonial period and were deep-rooted and implanted well when the post-colonial state took over; the ruling elites sustained the system that they believed useful for future state-building tasks.\textsuperscript{556}

According to Tilly (1985), the top-down process of state-building under colonialism made it possible for post-colonial states to “harbor powerful, unconstrained organizations that easily overshadow all other organizations within their territories.”\textsuperscript{557}

The legacies of democratic procedure, such as election, left by the colonial state, were adopted by the new ruling elites of the post-colonial state. The new elites assumed and maintained power through electoral and constitutional means. Hence, it was relatively convenient for the new ruling elites to maintain power through the electoral mechanism left behind by the colonial state. The vast power and resources left by the colonial state enabled the elites to integrate vertically significant groups in the society.\textsuperscript{558}

In Malaysia, class politics has declined due to the ethnically infused nature of the nation’s politics since post-colonialism took over.\textsuperscript{559} This is because the ethnic Malays have dominated the political landscape since the day they took over from the colonial master, thus the franchise of power being automatic for the Malays and restricted for the non-Malays. This is why it is more beneficial for the dominant ethnic group when issues of race are focused as the main political issue rather than class issues.


\textsuperscript{557} Charles Tilly (1985): 186.

\textsuperscript{558} Jesudason, Ibid., 132.

\textsuperscript{559} Malaysian academics, such as Jomo (1986 and 1990) and Saravanamuttu (1991), suggest that a class-based analysis of Malaysian society has a greater validity than one made only within the framework of the politics of ethnicity.
Ethnic politics continues to play an essential role in the constant process of giving meaning to the concept of a Malaysian nation. Thus, in 1993, when Mahathir Mohamad spoke to the United Nations General Assembly of the “multi-ethnic time bomb we inherited from the colonial past,” he clearly still considered the multi-ethnic character of Malaysian society to be its greatest fault line; which follows various rhetoric that stability and ethnic harmony are more important than freedom and rights.

Democratic procedures, although highly manipulated by the political elites, nonetheless have given legitimacy to the dominant party in Malaysia. The ability of the elites to shape the electoral system has benefitted the UMNO-led BN (Barisan Nasional). William Case (1993) wrote that the way the Malaysian elites manipulate the semi-democratic nature of the new state forges a greater legitimacy than what a full authoritarian system could do and that, by avoiding full democratic procedures, should be permitted to gain legitimacy.\(^561\)

The appearance of democratic legitimacy allows coercion to be used as an effective political strategy, especially if the coercion is protected by legal procedures. In Malaysia, the laws that constrain the peoples’ freedom and suppress their rights are well-protected in the Constitution. For instance, the Emergency Ordinance of 1960 has been used against Kelantan, the opposition’s state government; and the Internal Security Act of 1969 has been used to detain individual opponents and dissidents. Also, coercion had been used persistently in the past against the class-based opposition, especially against

\(^560\) Statement at the Plenary of the 48th Session, UNGA (New York, 1 October 1993, mimeo), 2.

\(^561\) William Case (1993), 204.
parties of the Left; from the 1980s, the trend was used against Islamic opponents of the regime and political dissidents.

The interesting factor is that, in Malaysia, coercion for the most part has been accepted by the general public as legitimate.\textsuperscript{562} Hence, the mix of coercion and electoral mechanism in Malaysia that protects the dominant party from collective resentment by the people, to the point that it hinders regime change.\textsuperscript{563} One of the accomplishments of the ruling coalition in managing the syncretic state has been its remarkable ability to combine a mix of ideological orientations, which has allowed political leadership to blur the lines between state and society.\textsuperscript{564}

The syncretic state also has successfully exploited ethnic issues to secure its dominance. Unlike in the European experience, where the long process of state development led to a relative cultural homogeneity of the population, from its beginning as a post-colonial state, Malaysia has not needed to homogenize the population for the purpose of governing; because the ethnic division is part of the original colonial scheme.\textsuperscript{565}


\textsuperscript{563} This scenario may be applied to the period before the 1998 Reformasi movement when the opposition groups against the government were weak and disunited. The Reformasi period shows how the Malaysian people dared to protest against their government in huge numbers, whom they perceived were delivering bad governance.

\textsuperscript{564} Jesudason (1996), 133.

\textsuperscript{565} In 19\textsuperscript{th} century Malaya, British policy encouraged labor from China and India to migrate in huge numbers to Malaya for the purpose of colonial economy; when the societies became complex, the British dealt with them through policies of divide and rule. It is fair to claim the clear-cut ethnic “realities” that still persist today were constructed by the colonial state according to its capitalist interests.
However, since independence, to counter the ethnic issues, the Malay elites have included the need for cooperation with party elites from the Chinese and Indian communities. Also, through mobilizing ethnic attachments, high-growth policies and selective co-optation, the UMNO leaders have been able to contain absolute rebellion by the non-Malays.\footnote{Jesudason, Ibid., 134.}

The syncretic state managerial role in the economy toward all major ethnicities is mutually dependent for the government. Economic policies, while continuing to favor the Malays, have been modified from time to time to ensure that no long-term damage would be inflicted on the economy. Thus, the post-colonial syncretic state monitors internal and external economic and political conditions, so that the state as well as the society benefits.

In sum, the syncretic state has significant capabilities of structuring state-society relations. The syncretic state that made possible authoritarian traits in the form of repressive laws, at the same time has allowed democratic procedures like elections and political participation as some form of legitimacy so that the state’s actions and policies would have a foundation for how the government could respond to challengers.

**The “Repressive and Responsive” System**

In his analysis of Malaysia’s government and society, Harold Crouch (1996)\footnote{Harold Crouch (1996).} wrote that, despite the fact that Malaysia had undergone a successful socio-economic transformation since independence, it was still maintaining a conservative political system; the government was still led by the UMNO-led BN party, which ruled through a
mixture of repression, manipulation, and responsiveness.\textsuperscript{568} It is an ambiguous system, wrote Crouch, that in certain circumstances Malaysia is democratic and, in certain respects, the system has become more authoritarian.

This is Malaya’s political backdrop since she was a colonial state. After independence, the mostly autocratic “strong state” institutions were sustained by the post-colonial state to run the country. At the same time, the country also sustained its democratic Westminster model of democracy inherited from the colonial master. Thus, despite the state acquisition of enhanced authoritarian powers, the system was far from fully authoritarian. The same applies to democratic institutions and principles, which are strong and stable and at the same time maneuvered.\textsuperscript{569} The constitutional framework is democratic in form but cannot be described as democratic in practice, because it is combined with repressive controls. The power structure is authoritarian, yet the democratic political institutions (especially parties that contest in regular elections) force the government to respond to pressures from society.\textsuperscript{570}

The communal divisions in Malaysian society have also encouraged consultation and compromise. Although the Malays have dominated the government, they could not disregard the interests of other communities, for two main reasons: (1) the non-Malay communities were too large to be repressed continuously, and (2) the severe repression of non-Malays would have had disastrous economic consequences, because of the important

\textsuperscript{568} Harold Crouch (1996), 236.

\textsuperscript{569} Although the ruling coalition routinely manipulated the electoral process to ensure victories, it was faced with strong opposition parties. The BN has been defeated many times during elections at the state level since its formation in 1974. In the general election of 2008, the coalition lost five states to the opposition coalition. However, at the federal level, BN is still incumbent.

\textsuperscript{570} Crouch, Ibid., 240.
role of the ethnic Chinese in the domestic sector. Thus, the strength of the non-Malay communities meant it was far easier and, indeed, mutually beneficial for the representatives of the main communities to work together in the government.\footnote{Crouch (1996), 241.}

The Malaysian political system was subjected to pressures that pushed simultaneously in authoritarian and democratic directions. On the one hand, the state exercised strong authoritarian powers to preserve political stability and the continued domination of the Malay elites. On the other hand, it was faced with forces that limited its powers, while regular competitive elections, although unfair toward the opposition, managed to force the government to respond to popular pressures. Thus, the authoritarian and democratic characteristics of the political system were not necessarily in contradiction to each other but were often mutually supportive.\footnote{Ibid., 244.}

The government frequently responded to challenges with a combination of repressive and responsive measures, reflecting its combined authoritarian and democratic character. A well-known example is Malaysia’s first bloody ethnic riots in 1969. The new government reacted in an authoritarian way, with repressive measures of emergency declaration, suspension of Parliament, and arrests of opposition activists. At the same time, the government responded to popular grievances within the Malay communities (the subject of the riots) by implementing affirmative action policies (e.g., the NEP) to reconstruct the society.

Even though the policies after the 1969 riots were pro-Malay, nevertheless, the Malay leaders knew they needed their non-Malay coalition partners in order to maintain...
an adequate level of popular support to win general elections. Therefore, the government had to be responsive to non-Malay interests, even though not as much as to Malay interests. Thus, despite the implementation of pro-Malay policies in response to the demands of the Malay community in the 1970s and 1980s, Chinese businesses continued to obtain licenses, permits, and contracts from the government agencies. The non-Malays continued to be employed in the government’s bureaucracies and state enterprises; non-Malay students continued to obtain places in universities; Chinese and Indian children continued to attend Chinese and Tamil primary schools; and non-Malays continued to practice their cultures and religion.\textsuperscript{573} Although many Malay activists preferred the government to limit the rights of non-Malays in these areas, the government insisted on maintaining a substantial level of electoral support among the non-Malay communities and was, therefore, reluctant to pursue policies that would turn the non-Malays overwhelmingly against the BN government.\textsuperscript{574}

Critics claim that the Malaysian government became more authoritarian in responding to challengers in domestic politics. In the 1980s, many activists and government critics were detained under ISA\textsuperscript{575}; two Supreme Court judges were dismissed by the executive body for challenging the Prime Minister for abuse of powers. The government has made a series of amendments to strengthen restrictive laws, such as the Printing Press and Publications Acts and Internal Security Acts (ISA) by removing

\textsuperscript{573} Crouch (1996), 245.

\textsuperscript{574} Ibid.

\textsuperscript{575} During Mahathir’s premiership, he defended his ISA record, saying, “We have to put a stop to menace by all means, even before it happens. A law like the ISA, which is not bluntly used, is necessary as a preventive measure.”
them from judicial review. In the 1990s, the government sacked its vice-Prime Minister for challenging the government’s policies, which provoked the Reformasi movement. Many protesters were detained under ISA, along with their leader, Anwar Ibrahim.

Unprecedented protests against the government’s policies began during the Reformasi movement in 1998. Then, in 2007, for the first time, thousands of ethnic Indians, under the banner of Hindu Rights Action Force (HINDRAF), walked in the streets of Kuala Lumpur to protest the government’s discriminatory policies against them. This was followed by the BERSIH (clean) movements, in which the people protested against the government’s gerrymandered electoral system in Malaysia; the government overzealously responded by sending state police to use tear gas and water cannons against the protesters. The Malaysian government’s harsh response to the people’s demands cost the ruling party its two-thirds super vote in the Parliament in the 2008 general election. The ethnic Indians cast their votes in favor of the opposition. The government was also harshly criticized by the international community and civil-rights movements for overreacting to this peaceful rally by the people. Amnesty International called the event “the worst campaign of repression in the country for years.”

Consequent to the 2008 sea change in Malaysian politics, the authoritarian trends by the government were matched by civil-society mobilization and democratic competitiveness in the party system. Also, the government responded to the demand for a

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576 In the 1960s, the ISA was used against communist insurgents, but the trend has changed. Since then, the ISA has been used to arrest "suspect" terrorists, "Reformasi" activists, university students, bloggers, passport forgers, and those suspected of involvement in other offenses that might be prejudicial to national security.
free and independent media by stating that it would not impose regulations on the new Internet media. Thus, the Malaysian people had garnered a loophole.

After the Malaysian government has used the “repressive and responsive” method continuously for many decades, in order to maintain the system, the question now is, *Will this trend persist in the future of Malaysian politics?* I argue that the method will persist for as long as the UMNO-led BN is still holding the power and using state apparatus and repressive laws to silence critics.

**The “Strong State” Factor**

A “strong state” is a dominant state or government. In most multi-ethnic developing societies, the state attempts to play a crucial role in managing the ethnic variance and reconciling the diverse ethnic interests by undertaking relevant policies and programs. In Malaysia, the state has used a wide range of affirmative action policies to manage ethnic issues, because the ruling elites have believed that a relatively autonomous and strong state is needed to manage a deeply divided society like Malaysia. As stated by Mahathir, “Only the government was able to determine, from information it received, what action was necessary to preserve the country’s stability and security.” Up to the present, the Malaysian government has believed it is the job of the state, rather than the public, to set priorities; that it is the state’s responsibility, and not the public’s, to determine what is good or bad for them.

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577 The terms “state” and “government” are used interchangeably in this section.

Malaysia is a state in development, and a bleak feature shared by such states is the combination of their sometimes brutal suppression of civil rights, their apparently wide measure of legitimacy, and their generally sustained performance in delivering developmental goods. Such states are dominated by strongly nationalist developmental elites and combine varying degrees of repression and legitimacy in contexts where the civil society has been weak or weakened. These states concentrate considerable power, authority, autonomy, and competence in the central political and bureaucratic institutions of the state, notably their economic bureaucracies, and generate pervasive infrastructural capacity. The Malaysian state is the one that has determined incentives in order to ensure that domestic and foreign interests have been harnessed, both to pursue their own advantage and serve national developmental goals.

In the case of Malaysia, building on the British legacy, the state’s capacity has been considerable; and even more so since the government undertook, from the early 1980s onward, enhanced efforts to improve the performance of the public sector and civil service. The belief was that, in order to formulate national development strategies that would transcend narrow particularistic interests, the government and state bureaucracy must be autonomous and free from other social forces such as competing interests of civil society groups, working classes, and peasants.

579 The state in Malaysia plays an active role in guiding economic development and using the resources of the country to meet the needs of the people. The state’s government tries to balance economic growth and social development by using state resources and state influence to attack poverty and expand economic opportunities.

580 See the chapter four assessment on civil and political rights.

According to Trezzini (2001), developmental states have to be either especially consensual or authoritarian since they need to be able to co-opt or suppress demands of outside interests other than the state because these demands might block change.\(^{582}\) The darker side of developmental state theory lies in the possibility of a strong causal connection between the state being both dominant and authoritarian. Analysts like Johnsons deny that there is connection between a developmental state and authoritarianism, saying that authoritarianism might solve the main political problem, for instance by mobilizing a population to sacrifice for the sake of the government’s developmental projects.\(^{583}\)

Making things worse, in a dominant state system, the public is not brought in when it comes to discussing the government’s policies. Thus, in the absence of any policy discussions, ethnic and religious sentiments prevail, with the end result being a shortage of public policy measures being used to evaluate the government’s responses and capacity. This scenario has been slowly changing since the 2008 election (as evidenced by the results of the recent April 2013 general election); however, there has not yet been any significant development on public consultation.\(^{584}\)

Within this framework, it can be concluded that the Malaysian government does not function like a Western democracy, although it does respond to certain kinds of political pressure. Government responsiveness exists, but through negotiation within the


\(^{583}\) Ibid.

central coalition and through existing government policies. The ruling government, thus, does not hesitate to pursue repressive strategies to outlaw particularly threatening or “extreme” demands and pressures from the people, especially anything that threatens the core system of ethnic accommodation.

**Decentralization Under Malaysia’s Centralized Federalism**

This section addresses the question, *Are decisions taken at the level of government most appropriate to the people affected?* Decentralization is often viewed as a shift of authority away from the central government toward state or local governments. In a democratic government, decentralization is imperative to strengthen democratic participation, representation and accountability, as well as improve the government’s efficiency and effectiveness.\(^{585}\)

The process of decentralization takes many forms; one is federalism.\(^{586}\) To understand how decentralization works in Malaysia, it is important to know how federalism is practiced, the arrangements made between the federal and state governments, and the issues that come with the arrangements.\(^{587}\)

Malaysia is officially a federalist state according to the Constitution\(^ {588}\), and the relationship between the federal and the states was designed in the Constitution.

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586 Ibid.

587 The word arrangements in this assessment are interchangeably used with relationships, patterns, and models, and design.

588 As written in Article 1(2) of the Federal Constitution of Malaysia, “The States of the Federation shall be Johor, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Sabah, Sarawak, Selangor and Terengganu.”

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According to the Constitution, Malaysia has a multi-leveled system of government: (1) a federal government, (2) the thirteen state governments and three federal territories, and (3) one-hundred fifty local authorities. The federation that Malaysia evolved into is a union of several states and their governments, under the scope of a central government, with both the states and central government maintaining their autonomy over several “determined matters” which were designed into the Ninth Schedule of the Constitution and are specific responsibilities of the federal and state governments.

Malaysia still maintains its federal status because it still meets the conditions that allow it to be called a federal country, meaning there still exists a division of powers and responsibilities between the central and state governments. However, the actual implementation of the functions does not conform to the standard patterns of federalism as accepted conventionally.

589 In the thirteen states, nine are headed by Malay rulers; seven are headed by Sultans (Kedah, Selangor, Kelantan, Johor, Perak, Pahang and Terengganu); one by a Raja (Perlis); another by Yang Di-Pertuan Besar (Negeri Sembilan); and four (Penang, Melaka, Sabah and Sarawak) are headed by governors, or Yang Di-Pertua Negeri. [Malaysia.State.gov]

590 The three federal territories (Kuala Lumpur, Putrajaya, Labuan) are directly administered by the federal government. The federal territories have equivalent status to other states in Malaysia but do not have a head of state or a state assembly. [http://www.malaysia.gov.my]


592 The term “central government” is used interchangeably with federal government.


594 The scheme of federal arrangement in the 1957 Federation of Malaya Constitution is provided under Part VI – Relations between the Federation and the States. Chapter 1 provides for the distribution of legislative powers, and Chapter 2 explains the distribution of executive power. A relevant schedule to be read together with this section is Schedule Nine, which contains subject matters divided into three lists: federal list, state list, and concurrent list (see Appendix).

595 See Ninth and Tenth Schedule lists under Part IV: Chapter 1 and 2 in the Constitution (see Appendix).
I argue that working decentralization into Malaysia depends on how federalism is practiced; which is in accordance with the system of the regime itself, which is “a limited procedural democracy” in a hybrid/mix political system. Consequently, federalism in Malaysia is not practiced in its full sense; rather, it is limited and centralized. The practice of federalism in Malaysia also depends on who is in control of the state: the ruling coalition parties (BN) or the opposition parties (PKR).

Case (2007) claimed that Malaysia’s federation is a “minimalist federalism,” arguing that federalist arrangements in Malaysia facilitate the country’s semi-democratic political system, which helps the semi-democratic system in terms of patronage and democratic space in order to gain support and legitimacy. 596 Watts (2008) termed the Malaysian federation an “executive federation” due to the highly dominant central government. 597 Mohmmad Agus (2001), an expert on federalist systems, wrote that a country that is still observing federal principles although in a limited fashion is called a “quasi-federal” state. 598 Harding (1996) also concluded that Malaysia is not a true federation but a “quasi-federation” because of the strong centripetal forces at work. 599 For example in one of the opposition’s states, Kelantan, despite the control the central government had maintained in Kuala Lumpur, Kelantan’s state government still retained


some autonomy over land matters (see cases of *Pergau* hydroelectric dam and KESEDAR, land development schemes); Kelantan also has autonomy on issues concerning Islam.

**The Five Factors That Impede Decentralization in Malaysia**

The following five main factors hinder the effectiveness of the decentralization process in Malaysia’s federalism: (1) Constitutional Provisions That Empower the Central Government Over the States, (2) Finances/Monetary, (3) Dominant One-party System and Party Politics, (4) Implementation of Affirmative Action Policies, and (5) Local Governments and Civil Service.

1. **Constitutional Provisions That Empower the Central Government Over the States**

A major characteristic of Malaysia’s federalism is its design in the Constitution (supposedly the highest law in the land), which is highly centralized and unfair toward the thirteen component states. The Malaysian Constitution grants the central government strong official powers over an extensive list of functions and is meant to be highly centralized. The distribution of powers for the state and federal governments is binding in the Constitution and will be enforced by courts of law. These provisions are seen as

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601 Case *Mamat Bin Daud & Ors v Government of Malaysia* [1988] 1 MLJ 119 when the subject matter of the amendment was concerning “religion” which, according to the Ninth Schedule, belonged to the jurisdiction of the state legislature.

602 Many analysts and critics view the arrangements of federalism in Malaysia as biased toward the central/federal government rather than the state government. [See Andrew Hardings (1996), Francis Loh (2011), Mohammad Agus (2001), William Case (2007), Sabaruddin (2009).]

603 A closer look at the Ninth Schedule exposes an imbalance in the distribution of power between the states and the federal government in Malaysia. The contents of the federal list, especially in the areas of monetary, land, and laws, clearly sides with the federal government; the states were left with very little power and cannot stand on their own without depending on federal’s assistance.
accommodating federal dominance over the state governments in many aspects. In short, the federal government is so powerful that it can override state autonomy.

The provisions in the Constitution allow the federal to take precedence over those of the states in case there happens to be conflict or inconsistency. These can be seen in many aspects, including land issues: Although land is a state matter, the federal government may acquire land for federal purposes by virtue of Article 83(1). Also, the National Land Council, formed under Article 91, formulates land policy through the federation and, although the states have a say in this body, the control lies with the federal government, because any legislation enacted contrary to the directions of this Council might be held to be unconstitutional.

On issues regarding laws, federal laws are much more significant than state laws and take precedence over state laws in matters of incompatibility. The federal can overrule state laws, but states do not have the constitutional capacity to overrule federal laws. On emergency laws, once a state of emergency has been proclaimed under Article 150, where the executive “is satisfied that a grave emergency exists whereby the security, or the economic life, or public order of the federation or any part thereof is threatened,” Parliament may make laws on any matter, regardless of the Ninth

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604 The provisions for federal and state governments are discussed in Part VI of the Federal Constitution; both tasks and responsibilities are detailed and elaborated in the 9th and 10th schedules. The 9th Schedule lists explain the distribution of legislative powers and responsibilities between the federal and state governments. The lists include subject matters that are divided into three: (i) federal list, (ii) state lists, and (iii) concurrent list (see appendix).

605 Johan S. Sabaruddin (2009), 147.

606 Federal Constitution, Art. 76(2).

607 Federal Constitution, Art. 150 (1).
Schedule. In addition, during a declared state of emergency, the federal executive body can extend on any matter within the legislative authority of the state and give directions to the state’s government.\footnote{Federal Constitution, Art. 150 (4).} On issues of membership, the Constitution ruled that the states do not have a right of say in the federal government’s decision to include new members in the federation;\footnote{The establishment of Malaysia in 1963 worsened federal-state relations as the Kelantan state government was not consulted and was actually opposed to the favorable conditions granted to the new states of Singapore, Sabah, and Sarawak.} here lies a very significant indicator as to the strength of the bias of the federal government.

2. Finances, Monetary

The most significant negative biases against the states is on fiscal arrangements outlined in the Constitution. Financially, the federal government is dominant in Malaysia and the Constitution clearly allocates responsibilities to the federal and state governments. The pro-federal constitutional design of revenues and income from taxes gives the federal government the power to lead fiscal centralization against state governments.\footnote{The 10th Schedule elaborates on revenue assignments based on the 9\textsuperscript{th} Schedule. Income taxes, property, and capital gains taxes, international trade taxes, production and consumption taxes, are all assigned and monopolized by the federal government. State governments only collect from the natural resources related taxes such as revenue from lands, mines, and forestry.} In addition, the fiscal arrangement is a factor of the states’ financial dependency on the federal government.\footnote{Harihar Bhattacharyya, \textit{Federalism in Asia: India, Pakistan and Malaysia} (Hoboken : Taylor & Francis, 2010), 83.} For instance, the states may borrow money but
this is restricted to borrowing only from the federation, and borrowing from other financial sources is subject to federal government conditions and approval. The financially dominant federal government of the UMNO-led BN (National Front) for many years has adversely affected the states’ rights in many ways. Taxation, an important source of state revenues, is monopolized by the federal government, leaving the states with whatever little is left; this behavior has perpetuated a “culture of beggary” by the states toward the central government for financial assistance. Critics say that the monetary advantage of the federal government allows them to hold the “purse strings” against the state and that this consequently weakens the states, especially those controlled by the opposition parties such as Kelantan and the five new states that have broken away from the federal since 2008.

According to Mohamad Agus (2001), the government sees no reason to allocate generous levels of funds to a state that is in the opposition’s hands. When PAS lost to UMNO/BN in 1978, the state’s debt stood at RM74 million. In the twelve years that UMNO ruled the state of Kelantan, the UMNO-led state government went on spending freely, accumulating state debt to RM711.67 million plus RM10 million in interest. When PAS assumed power once again in 1990, it inherited the large debt left by UMNO-BN. Also, the federal government made a decree that, until the state government (PAS), made payment, the federal government would cease new financial assistance to Kelantan. The central government knew the present state government could not be held responsible for

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612 Article 111(2) of the Federal Constitution: For an interesting tussle between the state and center on this matter, see Govt of Malaysia v Govt of Kelantan [1968] 1MLJ 129.

the debt made by the previous UMNO state government, but the issue was purposely
highlighted by the central government to send a message to the people that, without
financial assistance from the federal, no state government could function effectively
without the federal, or risk the consequences of underdevelopment.  

Despite these biases, the federal government obliged to provide two major grants
to state governments: the capitation grant (based on population size) and the state road
grant (based on size of the state). Hence, the distribution of revenue and financial
resources are very pro-federal. The leader of the opposition coalition party, Pakatan
Rakyat, has claimed that the federal government is discriminating against states that are
governed by the opposition party; for example, the state of Selangor (controlled by PR)
was given an unreasonable amount of the capitation grant allocated in the Constitution.

This dominant monetary position of the federal government has not meant well
for the functioning of the federation. Politically determined and discriminatory payout of
revenues among the states by the federal government headed, by the Prime Minister
himself, is resented by many (e.g., scholars, analysts, the well-informed Malaysian
public, the affected states themselves). This resentment and discontent were actualized in
the twelfth and thirteenth general elections of 2008 and 2013.

3. Dominant One-Party System and Party Politics

The domination of a single party (i.e., UMNO-led BN party) that has ruled
Malaysia since independence in 1957 has further weakened the federation and

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decentralization in the political system. The political process that has allowed a single party, the BN, to control the center for more than fifty years has further facilitated a centralized federalism.

In Malaysia, it is impossible to understand the dynamics and complexity of federal-state relations without understanding the political control exercised by UMNO. Most of the component states have been governed by UMNO-led BN coalitions since 1957. Until the 2008 election, the UMNO-led BN government had retained power, with strong majorities at each federal election.\footnote{Mohammad Agus Yusoff, \textit{Malaysian Federalism: Conflict of Consensus} (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2006), 330.}

Mohammad Agus Yusoff (2006) wrote that the nature of federal–state relations in Malaysia is highly political. The federal government has always actively sought to ensure that state governments were formed from the same political party that ruled the center. UMNO successfully used its party apparatus for party discipline, organization, and financial incentives to align the center and state government.\footnote{It is the norm in the Malaysian government that the executive hold more power than the other two bodies. The increased power in the executive body was obvious during Mahathir’s premiership 1981 to 2004. Since the power of the judiciary was unceremoniously curtailed in 1988, upon the order of the executive body, the judiciary body suffered a severe loss of prestige and corresponding loss of independence; thus, more receptive to the wishes of the prime minister.}

Because the ruling party has usually won the general elections, and controlled the majorities in nine or more of the state assemblies, senators were appointed for their loyalty and service to the ruling party; thus, making the senate an important source of patronage for the ruling party. In practice, the senate has not defended state interests but,
instead, has become primarily a rubber stamp for government-sponsored legislation from the popularly elected lower house of Parliament (Dewan Rakyat).  

In Malaysia, a pattern of strong central dominance varies, based on the federal government’s relationship state by state. The ruling coalition party (i.e., UMNO-led BN) that controls the central government plays a prominent role in state government. States under the ruling coalition party have an especially good relationship with the federal, which is also under the ruling coalition party (BN). As a highly centralized, tightly knit party, UMNO and its central apparatus have usually been able to prevail over a state’s own politicians and officials.

For example, in the history Malaysia federalism, the state of Kelantan has been ruled the longest by the opposition party (Islamic Party of Malaysia, or PAS). One of the ways to weaken opposition states is to reduce the state’s budgetary grants and revenues. Since 1990, the year PAS took over Kelantan from the UMNO-led BN government, the state government has been discriminated against by the federal government over numerous issues. The obvious and most crucial issue has been the distribution of state grants and revenues. For example, receiving an annual grant late from the federal government, decrease of foreign investments in state economic activities; and, recently, the federal government’s refusal to allow natural gas in Kelantan to be processed in the

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state and, instead, it is transferred to the federal. Since Kelantan is led by the opposition party (PAS) and depends heavily on the central for its income, the federal government has been able to keep Kelantan functioning, but poorly developed in comparison to other Barisan-led states.

The same pattern of policy discrimination is seen in the federal government’s actions toward the state of Terengganu when it was ruled by PAS in 1999 to 2004. Mahathir’s then administration ordered PETRONAS to annul oil royalties promised to Terengganu, on the grounds that the opposition party did not have the ability to manage such large funds annually; therefore, the task should be given to the central government.

4. Implementation of Affirmative Action Policies

A primary example of the affirmation action policies is the New Economic Policies (NEP) that was instituted after the 1969 ethnic riots to improve the economic and social conditions of the Malays, which further contributed to the expansion and consolidation of the federal government’s power. The enforcement of safeguarding to improve the position of Malays in public service, education, and industry were explicit policy goals. If decentralization were to be implemented, it presumably would hamper the

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621 PETRONAS, short for Petrolian Nasional Berhad, is a Malaysian oil and gas company that was founded on August 17, 1974. Wholly owned by the Government of Malaysia, the corporation is vested with the entire oil and gas resources in Malaysia and is entrusted with the responsibility of developing and adding value to these resources [Wikipedia].


objectives and future goals of the government. Thus, in pursuit of implementing NEP, the federal government must be dominant in making decisions, or risk distractions and opposition from state and local governments, especially if they are under the ruling of opposition political parties.

In addition, to meet the explicit target to restructure the society and eradicate poverty, the NEP also serves as the federal government’s strategy to induce ownership and control over state and local authorities. One of the many instances is through establishment of the Federal Land Development Authority (FELDA) and regional development authorities. FELDA was established with the purpose of helping the government carry out rural land development and to uplift the economic status and living standard of the rural community, especially among the Malays. According to Francis Loh, through FELDA, the central government is able to penetrate into state jurisdictions, which could enhance the power of the federal over state governments and local authorities.

One opposition party, the Democratic Action Party (DAP), has offered to halt its plan to set up branches inside FELDA schemes if UMNO agrees to dissolve its hundreds of branches in the country. Critics claim that, in addition to developing rural lands for the Malays, the federal government is using FELDA for political purposes and that FELDA settlers are used for political gain, in terms of gaining voters for general elections.

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According to Lim Kit Siang (1987), “In Malaysia, land is being used as a political tool – as incentive, pay-off, or reward to political supporters and opponents alike.”

5. Local Governments and Civil Service

Under the Malaysian Constitution, bureaucratic and civil service in local government is the responsibility of the states. However, the federal government also exercises considerable power and influence over local government. Local governments in Malaysia usually function within a framework of being politically, financially, and economically subordinate to the federal government. Thus, this centralized relationship, has restrained local governments’ ability to engage freely with the local communities, and the system does little to encourage public participation at the local level.

This rigid bureaucratic culture, which is usually shaped by internal interests from the central and appointed state officials, is a factor regarding inefficiencies and bad public services. Thus, it is not unusual to hear public outcry and dissatisfaction with local government services. Various studies have revealed that, in addition to inefficiency in


626 Paragraphs 4 and 5 of the Ninth Schedule.

627 The Eastern Malaysia (i.e., Sabah and Sarawak) have special constitutional status and more autonomy when it comes to control over their local government, unlike what is practiced in the peninsular states (West Malaysia).


629 The power to appoint, promote, and confirm state officials are vested in the Federal Public Services Commission under the federal Constitution.
delivering services, local governments lack a transparent method for public participation and consultation.630

In a growing tendency toward recentralization, under the excuse of providing better services to the public, the central government is removing the traditional functions of local government by privatizing them. Critic claims that this as an effort to further cut back on local autonomy and make local governments rely more on central for help.631

In addition, state and local government autonomy is burdened by extra tasks that are not designated to them in the first place, such as reducing urban poverty and urban crime. These extra and major tasks have highly taxed both state and local governments’ financial and human resources, resulting in poor job performance and constant criticism from the public for not delivering the best of services.632

Undemocratic trends in the system hamper decentralization from being implemented. A clear example is regarding local government elections. Local council elections were practiced in the past, but were abolished in the 1960s. The abolition of local government elections took place when the Local Government Act was passed in 1976. The abolition of local authority elections has allowed the BN to further penetrate the third tier of government, where their appointed councilors dominate municipalities, town councils, and district councils.633 In addition, there is clearly potential for political


631 Ibid., 128.

632 Ibid., 129.

interference and federal-state conflict if the federal appointee takes a different view of matters from that adopted by the state.634

In the absence of a legitimate transfer of power via elections, the local leadership may become primarily accountable to itself and local elites instead of the people. Without elected local officials, further attempts to make local government more transparent, accountable and efficient may be in vain. In addition, by appointing state officials instead of them being elected by the people, the government has tarnished its record as well as denied the democratic rights of the citizens.

**Election 2008 and New Opportunities for Decentralization in Malaysia**

Results of the twelfth general election of 2008 showed the people’s resentment against the UMNO-led BN government. One of the factors was discontent over the federal government’s control over state autonomy. For more than fifty years, the federal government had consistently relied upon their power to amend the Constitution to enforce their view on any matters of dispute in the federal system. However, that power ended in 2008, when they lost their two-thirds majority in Parliament. The BN can no longer amend the Constitution as they wish. The political effect of this is that federal-state relations are now more awkward and unpredictable than they have been for most of Malaysia’s federation history. Some of the states won by the opposition coalition have begun to use their legislative power to enact laws, such as the Freedom of Information

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634 In 2009, a constitutional crisis occurred in Perak concerning the legitimacy of the Perak state government. It began when three PKR (opposition coalition party) state legislators defected to BN, causing a collapse of the state government. The Sultan of Perak sided with the BN not to call for a new election, instead forming a new state government. The matter is still unresolved.
(FoI) laws in Penang and Selangor, which is a sign of clear departure from central
government policies.\footnote{Ang Hean Leng and Amanda Whiting, *Malaysia*. \url{http://biblio.juridicas.unam.mx/libros/7/3054/14.pdf}}

There are now five state governments (i.e., Selangor, Penang, Kelantan, Kedah, Perak\footnote{Perak’s status is uncertain, due to the defection of its legislators to BN.\footnote{For instance, Anwar Ibrahim claimed that the state of Selangor had been given only RM400 million per year in grant, which is an unreasonably very low amount compared to the RM 16 billion revenues that Selangor was making per annum for the federal government. [Melissa Chi, *The Malaysian Insider* (15 March 2011.)]}}) that are not under the control of *Barisan Nasional* parties. These states have now found their voice to challenge the federal-state relationship. The richest states in Malaysia (i.e., Selangor and Penang) have put more pressure on the central government for greater federalism, particularly on issues of the concentration of wealth at the federal level.\footnote{In addition, since the 2008 election, local councilors are appointed by state governments without consultation with the federal government.} The federal government continues to be in the hands of the incumbent coalition, and no formal restructuring of the federal system has yet occurred. Nevertheless, the changing political landscape in Malaysia since 2008, is granting greater autonomy to state governments. Hopefully, this will lead to better decentralization and better participatory democracy and public involvement.

**Conclusion**

Analysts of Malaysian politics, and proponents of federalism and decentralization of state and federal power, believe that federalism needs to be strengthened in order for democracy to be practiced in full in Malaysia. The federation is not without issues and challenges, but this does not mean federalism cannot be improved. In the case of
Malaysia, its social, political, and economic diversity are simply too deep for a centrally controlled regime to be practical.

State and local governments in Malaysia operate in very centralized conditions where they are not free to interact with the public, which hampers encouraging public participation at the local level. The state subordination under the central government will impede transparency, accountability and participation, which are the principles of good governance.

The virtue of decentralization, to strengthen democracy, is not being practiced in a full sense in Malaysia. Instead, it facilitates a mixed political system or semi-democratic system. One may even say that the semi-democratic model is shaping the operation of the federalist principle of decentralization in Malaysia.638

638 See Appendix: “Malaysia: Summary of Federal and State Government Functions.”
Chapter Ten: Final Analysis and Conclusions

Political literature has focused more on fully democratic countries and their success stories. The functions of a “hybrid” political system have been less studied in political science and comparative politics. Therefore, this study focused on evaluating the positive and negative forces that affect political governance in a hybrid political setup, and analyzed the frequency of the interplay of the positive and negative components. In line with the claim that the Malaysian government is a paradigmatic case of a hybrid political system, a thorough assessment of Malaysia’s regime dynamics was necessitated.

The International IDEA assessment framework helped with evaluating the performance of the Malaysian “partial-democracy” in a “resilient hybrid regime,” and also helped with assessing the quality of the regime’s governance. In this study, I applied both a descriptive and analytical approach to the research methodology in order to form three theoretical claims and apply them to this case study on Malaysia.

This case study of Malaysian politics revealed an ambiguous style of governing, and displayed the approaches and variables in order to explain the complex issues and challenges of the political system. As highlighted in chapter two, no master variables were at the center of this analysis. Rather, I provided lists of important factors that are commonly used by scholars and students who study Malaysian politics.
Analysis Thesis One

The four positive components in Malaysia’s hybrid political system are: (1) elections (chapter six), (2) Internet and new social media (chapter eight), (3) peaceful social mobilization (e.g., HINDRAF and BERSIH movements in chapter six), and (4) elites strategies (chapters four, five, six). Elections in Malaysia are the main democratic attribute that has been loyally practiced by the regime for it to maintain the status “partially democratic.” Elections had taken place consistently since 1955. Critics may argue that since especially the 1980s and forward, elections have been badly tainted by “unfair practices,” especially against opponents of the ruling government (chapter six). However, proponents of elections in an “ambiguous regime” have claimed that elections open doors of opportunity for democratization and regime transition. Recent developments in Malaysia’s general elections, for example in 2008 and 2013, show that even in an unfair environment elections in Malaysia are competitive enough to allow for a change of government and, plausibly, regime change, too.

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The Internet and new social media (chapter eight) in Malaysia is the most positive thing that could ever have happened in Malaysia’s hybrid political setup. The conventional media had always been under the control and monopoly of the ruling regime, rendering unfair and biased information to the people. The Internet media have become a source of alternative media, thanks to no regulations restricting it. The surprising surge of opposition challenges and participation since the Reformasi movement in the late 1990s was galvanized by the new Internet communication media.

BERSIH and HINDRAF (chapters six, seven, nine) are two examples of peaceful social mobilization and show the importance of social forces to organize peaceful protests against the incumbent regime in Malaysia. The factor of social mobilization is important in a hybrid regime for affecting the strategic choices made by political elites. In Malaysia, the people’s discontent and protests caused the incumbent to lose its two-thirds majority in Parliament (chapter six). This positive factor in a hybrid political setup should increase the likelihood of democratization in Malaysia.

However, elite strategies in Malaysia’s hybrid political setup do not provide much of an effort to further democratize. This is because the ruling elites in Malaysia are too cohesive, with support from the patronage network and clienteles politics, which renders ineffective defection and cooperation with the opposition parties. The authoritarian attributes in a hybrid system are primarily protracted by the ruling elite’s capacity to maintain their elite cohesion by means of the policy concessions, distribution of

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640 Teorell, 151-152.
patronage and privileges, manipulation of political institutions such as legislature and parties to maintain elite unity, and the effectiveness of state coercive capacity.\textsuperscript{641}

**Analysis Thesis Two**

![Diagram](image.png)

**Figure 14. Negative Components in a “Hybrid” Political System**

Electoral manipulation and gerrymandering are, unfortunately, traits in Malaysia’s hybrid political setup. However, these unhealthy practices going on for too long did trigger protests from the people, changing the dynamics of the general elections starting in 2008. The coalition of the political opposition has become more cohesive than ever, with the help of the vibrant alternative media.

As a hybrid state, Malaysia acquires “highly developed coercive institutions.” The dominant party UMNO inherited a “sophisticated coercive apparatus” from the British, which allows them to monitor political activity throughout the country. With this mechanism of control, they have been able to put down challenges and disturbances resulting from dissidents and protestors against their policies (chapters five, seven, nine). The state in Malaysia is so strong that it is capable of tightly controlling civil society organizations and social movements. With repressive laws such as Societies Acts, the

\textsuperscript{641} Levitsky and Way, 353-354.
state has been able to bar nongovernmental organizations (NGOs) from engaging in any political activities for which they have not been officially registered. The UMNO also has made use of their Internal Security Acts, which enshrined a colonial-era principle whereby dissidents can be held indefinitely in detention camps without trial (chapters five, eight).

The strong state has been supported by a dominant single-party rule in Malaysia’s hybrid regime, maintaining a stable parliamentary regime in which the state and the UMNO-BN party have regularly been returned to power. Notwithstanding its democratic appearance, as a hybrid regime, Malaysia has been marked by an “uneven playing field.” Opposition activities have been restricted by a range of authoritarian laws, with support from illiberal practices from the powerful state and the dominant single-party rule.

The UMNO-BN has survived so far because of support from economic growth and the overwhelming resources concentrated in their hands (chapter six). As the ruling government, this party has used patronage and clienteles’ politics, favoring business and political allies. Also, money politics has been rampant during elections, to influence voters against the opposition parties. All of these practices became the source of rampant corruption and cronyism in the regime (chapter seven). Nevertheless, the centralized power vested in the ruling incumbent party UMNO-BN regime has held together a quite cohesive state apparatus and a firm grip on the economy, while at the same time paying much attention to disguising their authoritarian rule as a legitimate democracy. This assessment has shown the ruling party’s effort to preserve its core, namely that to maintain their power in the government they will resort to nondemocratic means.
This mixing of democracy and authoritarian practices in Malaysia’s politics is clearly shown in issues concerning individual liberties and civil liberties, such as freedom of the press. However, the components of positive democratic traits, such as social mobilization, can affect the electoral dynamics tremendously and may cause positive liberal outcomes. Today, we can see from the general elections in 2008 and 2013, the opposition’s coalitions and civil societies are more threatening to the ruling elite than ever before.

The case of Malaysia has supported generally the growing theoretical claims of a resilient hybrid political system. This study has sought to unravel how and which internal factors in the hybrid political system have influenced the political situation in Malaysia, which also include the ruling party’s resiliency and longevity.

Is political transition possible in Malaysia? In a press statement on the launch of his State of Democracy Handbook, Dr. Patrick Molutsi said:

We can no longer simply assume that every nation that has rejected tyranny and turned towards elections is in ‘transition’ to democracy. We need far more sophisticated tools for measuring the increasingly complex, varied and uncertain paths towards democracy that nations of the world are taking.  

Alternative Findings

The framework to assess the state of democracy in Malaysia, prepared by International IDEA, helped to evaluate the performance of the “partial-democracy” practiced in the country; it also helped to assess the quality of the regime’s governance. For example, this study found that factors of “good governance” (i.e., low corruption level, high government accountability and transparency, effective and responsive government, along

with decentralization) have further facilitated regime stability and sustainability. On the other hand, “bad governance” (i.e., rampant corruption, low government accountability and transparency, ineffective and unresponsive government, and centralization) has further aggravated regime instability and triggered regime transition. This study found that the notion of “good governance” can be a strong variable for regime longevity, and “bad governance” for a regime in decay; that good governance can plausibly legitimize even an illiberal hybrid state. The International IDEA assessment framework provided these important factors for assessing the conditions of the regime’s governance (see Figure 15).

Figure 15. Elements of “Good Governance” and “Bad Governance” and their Positive and Negative Impact on Regime Survival.
Good and Bad Governance

In the Index for good governance, indicators are deteriorating in Malaysia (see chapters seven, nine). The reasons are seen in the rampant practices of corruption, cronyism, and nepotism. Corruption and abuse of power have increasingly been common practices in Malaysia in recent years. The CPI index for Malaysia has dropped for four years consecutively since 2009 (chapter seven). Failed promises and policies to stop rampant corruption among government officers have been met with increasing criticism and protests from the people (i.e., Reformasi, BERSIH, HINDRAF movements).

Evidence shows that ruling party’s electoral setbacks in the recent 2008 and 2013 general elections originated from their bad governance. After decades of malpractice and corrupt activities by ruling coalition party members in UMNO-BN, the Malaysian people have increasingly grown more agitated, showing their frustration and anger with their votes.

Challenges to the Research

This study is the first time the International IDEA democracy assessment has been used for dissertation research. Originally, the participants for this assessment involved dozens of researchers from many sectors in society, including: academics, government officials, students, civil society groups, civil servants, members of business communities, advocacy groups, and stakeholders. Ultimately, I solely was the one assessing the research questions, through painstaking efforts in library and Internet research; the assessment answers were gleaned from various documentary reviews, academics and non-academics, e-research, review of non-official and official government and non-
government documents, and Internet public forum. In some instances, the answers may have had elements of bias, but I tried to be professional as a researcher and confine myself to the theories and approaches employed in the framework prepared by the International IDEA.

As explained previously, this study has analyzed the experience of the quality of democracy in Malaysia’s hybrid political setup. While I hope to contribute ideas to the debate on regime change in Malaysia, I also recognize the extraordinary theoretical and political complexity of the problems that I wished to analyze. In conducting the research, to find standard processes and variables to explain the subject matter of the study, I was confronted with difficulties in gathering as well as interpreting the data collected.

I am well aware that the answers I have provided, within the context of the IDEA assessments framework, are far from complete and at times may appear too ambiguous. This may be due to the open-ended nature of this research and also the nature of uncertainty in the democratization and transitions paradigm. However, I believe that research of this nature, which tries to grasp and understand the real world and to interpret and sum it up in the form of descriptive narration, is not an easy endeavor. In short, this research is far from perfect and is subject to improvement in the future.

This study was an effort to promote tools that citizens can use to evaluate their own regime type of democracy, and to generate public information about the problems and challenges and provide recommendations for improving policies. My objective has been to open a new vision of hybrid regime studies, beyond a pure democratic utopia. Therefore, I hope the readers will take this research as a point of departure, rather than
arrival, for studying democratization and regime change and will further explore those topics through empirical research.

**Conclusion**

Malaysia’s political system has been widely described as “partial,” “semi,” “quasi”, and an “illiberal” democracy; as well as soft-authoritarian, electoral authoritarian, and many other ambiguous descriptions. Analysts more or less agree that studies about Malaysian politics involve patterns of limited civil liberties, institutionalized control systems, and at least a reasonably manipulated electoral system; all driven by the strong state and its dominant one-party system that seeks to sustain its incumbency. The ruling party in Malaysia has been able to maintain its incumbency with support from its patronage politics, cohesion of its elites, historic loyalty of its military and police, the less than ineffective middle class and civil society organizations, and the weaknesses of the opposition parties.

It is the existence of such mechanisms that effectively have made the “hybrid” regime more resilient, with its partially practiced democratic principles. These mechanisms have blocked a transfer of power and regime transition, despite the existence of democratic institutions and a degree of political freedom granted to the citizens of the country. Malaysia’s resilient hybrid political system, however, may allow civil society to operate and hold fairly competitive and open elections, though totally unfair toward the opposition parties.

Nevertheless, it is the resiliency of the political system, or the configuration of its political setup, that has caused this regime to be remarkably stable overtime. Resilient
hybrid regimes do not stay in power through manipulation and repression alone. They often enjoy a degree of popular support because they can deliver public goods that some democratic governments are not capable of delivering. It is important to have good governance to support regime survival and stall democratization. The problem with the hybrid regime in Malaysia is that its “good governance” performance is deteriorating badly; and the people are tired of the rampant corruption, cronyism, and unaccountability. The main issue is not so much about changing the political system; it is actually about the people demanding clean and good governance.

Scholars acknowledge that Malaysia’s experience marks the paradigmatic case on the pattern of resiliency and survivability of a hybrid political system. However, being claimed as a “halfway house” does not apply to the Malaysian case. This study shows that even an unfinished transition has opened up opportunities for participation and alternation of power through formal institutions such as elections.

Some analysts agree that there are anomalies in studies of the Malaysian case, which make it more complex and challenging, mainly with the difficulty of applying just one theoretical chosen model to Malaysia’s political system. So, I have proposed that the reasons Malaysia is not acquiescent to a full democracy and regime change are very much related to the political configuration of the regime itself. The regime’s political setup, which combines both democratic and authoritarian attributes, creates a barrier to a democratic utopia. However, this does not mean there will be no room for opportunities that can lead to democratic openings and regime change. Therefore, I have suggested that
the hybrid regime configuration provides components that, on one hand, are positive for democratization and, on the other hand, negative for democratization.

The findings of this assessment show how Malaysia’s hybrid political system has both advantages and disadvantages for democratization and regime change. The assessment answers support my thesis about the relevance of partially practiced democratic traits; for example, how elections, Internet and social media, elites’ strategies and popular mobilization, serve as positive components in a hybrid political system and cause it to be resilient, thus facilitating democratic openings and plausible regime change. On the other hand, the partial authoritarian traits (e.g., control system, state power, dominant single party, patron-clientelism, electoral manipulation and ineffective civil participation) are negative components that will hamper the progress of democratization, thus maintaining the regime’s incumbency and plausible survival.

Nevertheless, I have found from this assessment that the main elements of good governance, if practiced by the regime even part and parcel, further facilitate the political system to either sustain it or transform it. The assessment framework lay the ground for analyzing the Malaysian government’s effectiveness, accountability, level of corruption, decentralization, and position of the military. The analysis shows that good government performance can help to sustain a regime and stabilize the whole political structure; “bad governance,” vice-versa.
Finally, as Jane Elliot wrote: “The wisest know that the best they can do … is not good enough. The not so wise, in their accustomed manner, choose to believe that there is no problem and that they have solved it.”

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References


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Appendix

Malaysia: Summary of Federal and State Government Functions

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<td>2. Defense</td>
<td>2. Land</td>
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<td>3. Internal security</td>
<td>3. Agriculture and forestry</td>
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<td>4. Civil and criminal law and the administration of justice</td>
<td>4. Local government</td>
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<td>5. Federal citizenship and alien naturalization</td>
<td>5. Local public services: boarding houses, burial grounds, pounds</td>
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<td>and cattle trespass, markets and fairs, licensing of theatres and</td>
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<td>cinemas</td>
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<td>7. Finance</td>
<td>7. State government machinery</td>
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<tr>
<td>8. Trade, commerce, and industry</td>
<td>8. State holidays</td>
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<tr>
<td>9. Shipping, navigation, and fishery</td>
<td>9. Inquiries for state purpose</td>
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<td>10. Communication and transport</td>
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<td>11. Federal works and power</td>
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<td>12. Surveys, inquiries, and research</td>
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<td>13. Education</td>
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<td>15. Labor and social security</td>
<td>13. Incorporation of state authorities and other bodies</td>
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<td>17. Professional licensing</td>
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<td>18. Federal holidays, standard of time</td>
<td>16. In Sabah, the Sabah Railway</td>
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<td>19. Unincorporated societies</td>
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<td>20. Agricultural pest control</td>
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<td>21. Publications</td>
<td>17. Personal law</td>
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<tr>
<td>22. Censorship</td>
<td>18. Adulteration of foodstuff and other goods</td>
</tr>
<tr>
<td>23. Theatres and cinemas</td>
<td>19. Shipping under fifteen tons</td>
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<tr>
<td>24. Co-operative societies</td>
<td>20. Water power</td>
</tr>
<tr>
<td>25. Prevention of and extinguishing fires</td>
<td>21. Agriculture and forestry research</td>
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<td>22. Charities and charitable trusts</td>
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**Supplementary list for Sabah and Sarawak**

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<td>12. Native law and custom</td>
<td>13. Incorporation of state authorities and other bodies</td>
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**Additional shared functions for Sabah and Sarawak**

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**Shared Functions**

1. Social welfare
2. Scholarships
3. Protection of wild animals and birds, national parks
4. Animal husbandry
5. Town and country planning
6. Vagrancy and itinerant hawkers
7. Public health
8. Drainage and irrigation
9. Rehabilitation of mining land, and land that has suffered soil erosion
10. Fire safety measures
11. Culture and sports, housing

23. Theatres, cinemas and places of amusement

*Source: Malaysia, Constitution of Malaysia – Ninth Schedule (Articles 74, 77) on “Legislative Lists.”*