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Democracy and Minorities in a Plural Society: A Malaysia Case Study

Ajay K. Raina

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Social and Political Sciences Program, Faculty of Arts, Monash University

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Abstract

This thesis argues that Malaysia's democratic deficit, as consistently reported in the freedoms and democracy normative audits by prestigious international monitory organisations like Freedom House and The Economist, is a consequence of structural, rather than procedural, infirmity. Unlike a liberal democracy which assumes politically equal citizens, the Malaysian regime is one that *de jure* allocates political capacity differentially to citizens according to their ethno-religious identity. In other words, the valid source of claims on the state is not a free, equal and autonomous citizen. It is instead this primordial corporate identity into which the "individual" is supposedly alienated. Moreover, the space of corporate identities is fully ordered by a dominance relation that assigns "rightful" place to each identity. This relation underlies the Malaysian political sphere and defines its majority and minorities.

Sociologically, identity-cleavaged societies are traditionally explained in terms of "plural society" classical models of Furnivall and Smith. Politically, their peacetime governance is explained in terms of classical "consociation" models of inter-identity elite cooperation and authority-distribution of Lijphart, Eckstein and Gurr. There are many advantages that these approaches offer, for example they are quite efficient at modelling the ontology of the public spheres of plural society polities. But they lack a frame of external reference, a norm so to say, by which to evaluate the standard of "democracy" in them. On the other hand, the normative "democracy" audits use a very broad brush of substantive and procedural variables to do such evaluation. This thesis presents an alternative minimalist perspective in that instead of developing the operating picture of the political sphere from monitored institutional and mass values variables, it measures the conceptual distance these regimes are at relative to Dahl's fundamental normative requirement of a liberal democracy. This is his substantive proviso of "political equality" that underscores all institutional guarantees of a Dahlesian liberal democracy. In brief, I measure the extent of institutionalised political inequality in Malaysia, which is representative of a major sub-class of plural society regimes in which government selection is done by periodic suffrage, a class of regimes I call identitarian.

Political equality, therefore, provides the normative frame of reference to judge the democratic deficit in identitarian regimes. It is shown that any other detailed system of variables, for example the one employed by the Freedom House, is isomorphic to political equality in terms of testing for democratic salience or deficit. In this thesis, political equality, or lack thereof, in Malaysia is mapped in three domains: preferences, opportunity and belief. It is empirically tracked in the institutions of Malaysia's social contract, its Constitution, and the laws that issue forth therefrom and cross-referenced to actual statistical data across these three domains. Thus are the hypotheses on Malaysia's democratic deficit validated and the potential of the much championed imminent transition to "real" democracy evaluated.

Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.



Ajay K. Raina

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List of Tables and Figures

- Table 1.1: Democratic deficit of Malaysia from large-scale and historic surveys
- Table 2.1: Colonial revenue from Resident-system Malay states
- Table 2.2: Features of Chinese Population 1901-1957
- Table 2.3: Features of Indian Population 1911-1957
- Table 3.1: Features of political inequality in Malaysia
- Table 3.2: Indicators of different audit frameworks
- Table 3.3: Urban-Rural ethnic profile 2010
- Table 3.4: Urban-Rural Constituency profile 2013 GE
- Table 3.5: Indicative spending on Malay/Bumiputera economic empowerment 1971-1985
- Table 3.6a: 2008-2013 electoral dynamics
- Table 3.6b: 2008-2013 ethnic support to BN
- Table 4.1: Ethnic and Religious Profile of Malaysia
- Table 4.2: Major MFK fatwas
- Table 5.1: Ideological comparisons between UMNO and PR constituents
-
- Fig. 1.1: Malaysia Human Development Index: 1980-2013
- Fig. 1.2: Malaysia GDP: 1960-2013
- Fig. 2.4: 1957 Ethnic demography (a) and Urban-Rural profile (b)
- Fig. 3.1: Parliamentary Seats and the ruling coalition's share
- Fig. 3.2: Ethnic income through the NEP
- Fig. 3.3: Impact of Asian Financial Crisis
- Fig. 3.4: Post-NEP ethnic income
- Fig. 4.1: a. 2010 Malaysia Ethnic profile,
b. 2010 Malaysia Religious profile,
c. 2010 Peninsular Ethnic profile,
d. 2010 Peninsular Religious profile
- Fig. 4.2: A 2013 BN election poster
- Fig. 5.1a: UMNO vs. PAS federal seats 1959-2013
- Fig. 5.1b: UMNO vs. PAS vote percentage 1999-2013

Contents

<i>Titlepage</i>	<i>i</i>
<i>Copyright Notice</i>	<i>ii</i>
<i>Abstract</i>	<i>iii</i>
<i>Declaration</i>	<i>iv</i>
<i>Acknowledgements</i>	<i>v</i>
<i>List of Tables and Figures</i>	<i>vi</i>
Chapter 1	Introduction: The Hypotheses and the Framework 1
1.1	Research significance of the hypotheses 1
1.1.1	<i>Relevance of Malaysia as the empirical field of the hypotheses</i> 2
1.2	The Conceptual Framework 6
1.2.1	<i>Plural society, identitarianism and minority</i> 7
1.2.2	<i>Models of governance in plural societies</i> 9
1.2.3	<i>Democracy, Liberalism, and equality</i> 11
1.3	Overview of Malaysia's Identitarian Regime 13
1.4	Structure of the Thesis 17
Chapter 2	Malaysia: Colonialism and Plural Society Formation 18
2.1	The East India Company and the 'Straits Settlements' 19
2.1.1	<i>The Straits' Regime: 1824-1874</i> 19
2.1.2	<i>The Political-Economy of Malay States: 1824-1874</i> 20
2.2	British Malaya: 1874-1942 22
2.2.1	<i>The Political Economy of British Malaya</i> 24
2.2.2	<i>Immigration, Economy and Racial Identity in British Malaya</i> 26
2.3	Malaya towards Independence 33
Chapter 3	Inequality and its Institutionalisation in Malaysia 36
3.1	Inequality of preferences 39
3.2	Inequality of opportunity 42
3.2.1	<i>The consociation phase 1957-1969</i> 43
3.2.2	<i>The consolidation phase 1969-1984</i> 46
3.2.3	<i>The corporatisation phase 1984-</i> 52
Chapter 4	Religion in Malaysia: Inequality by Other Means 60
4.1	Islamic law in pre-1957 Malaya 63

4.2	The social machinery of Islamisation	65
4.2.1	<i>The dakwah phase: the making of a ‘good’ Muslim</i>	67
4.2.2	<i>The fatwa phase: the unmaking of ‘bad’ Muslims</i>	68
4.3	The legal machinery of Islamisation	70
4.3.1	<i>Machinery at the Muslim-non-Muslim interface</i>	71
4.3.2	<i>Machinery more generally</i>	73
4.4	A summary	75
Chapter 5	Trend towards change?	78
5.1	The “real” alternative	78
5.2	The civil society	83
5.3	Conclusions	86
References		88
	Institutional Reports and Documents	88
	Media and Rights Reports	91
	Books and Journals	935

1 Introduction: The Hypotheses and the Framework

This thesis validates the following three hypotheses within a critical-empirical methodological framework:

H1: Malaysia's democratic deficit stems from the substantive infirmity of *unequal citizenship* in its social contract; other explanations are collapsible into this single proposition.

H2: This substantive infirmity is procedurally sustained by institutionalised control of access to primary goods and other social and economic advantages legitimised by pseudo-normative justificatory narratives.

H3: Partisan transfer of power over next few electoral cycles is unlikely. Even if it happened, substantive change in regime is not guaranteed. Also, the turnover is likely to be fragile.

Two sets of critical questions immediately arise. First, the questions of research relevance: do these hypotheses constitute any significant new contribution to political science? And, can conclusion from Malaysia be generalised? Second, the questions of framework justification and adequacy: how are conceptions of “minority” and “plural society” relevant to democratic theory (assuming that they are precisely definable)? I address these first.

1.1 Research significance of the hypotheses

If true—and to demonstrate that is the aim—hypotheses **H1-H3** constitute a significant advance in democratic theory as applicable to a large class of non-western *electoral* regimes which I call “identitarian” (Raina 2015). They are formally defined later below but can briefly be summarised as electoral political orders with institutionalised differential citizenship—the hallmark of plural societies—across ethnic, racial, linguistic, religious or cultural identity. Malaysia is a paradigm case of identitarianism, a phenomenon common in a large class of non-Western regimes, especially Islamic. **H1** claims that unequal citizenship (or, equivalently, political inequality) is the single most influential causative factor of democratic deficit in identitarian regimes. In short, to the explanandum “why democratic deficit?” **H1** provides the explanans “because unequal citizenship.” This leads to a parsimonious explanatory—and possibly predictive—political theory applicable to a large set (by number and by demography) of countries. This is a new perspective in political theory in that the deficit is identified as structural fault rather than as procedural deficiency. Also importantly, **H1** leads to a minimal set of variables for democracy audit as well as Pareto superior policy prescriptions for identitarian regimes (Raina *ibid.*).

H2 complements the economics-centred “limited access” theses of North *et al.* (2009) on “natural states”—identitarian regimes fall into this category—by grounding them in politics of distribution of primary goods (rights, liberties, access and inclusion). In identitarian regimes, “congruence” between supply-side authority patterns and demand-side authority beliefs is intricately tied to the system of institutionalisation of these distributions along identity faultlines. The regime’s legitimacy is, consequently, determined by the identitarian majority’s perceptions on congruence. This is what ensures a regime’s stability and longevity (Eckstein 1979). Elections in identitarian regimes, therefore, are principally mechanisms for regime legitimation rather than for selecting empowered delegates or representatives to legislate as in a liberal democracy (Morgenbesser 2014). The regime always has a *weltanschauung* narrative, often couched in pseudo-normative language, for justification of such unequal distributions. The contestation over these distributions constitutes the main inter-identity political game, which is won only if there is successful contestation of this narrative by an alternative one; only then can distributions change in principle and only then does a regime possibly change. Dominant elites constantly fortify and upgrade legitimation narratives to avoid such defeat and loss of congruence. Hence, regime change is a much broader transformation than a simple partisan turnover. **H2** provides a new comprehensive framework to explain how dominant elites sustain political inequality.

H3 is a Malaysia-specific hypothesis that leads to the broader conclusion that regime change is difficult if not impossible. It draws on *minimalist* theories of democracy, all of which consider partisan transfer of power every as definitive: implicitly in Schumpeter (1994 [1943]) and explicitly in Przeworski *et al.* (2000). By this reckoning, Malaysia has never been a democracy because there has never been a turnover. However, since the 2008 Malaysian general elections a partisan turnover has begun to appear probable. This has led numerous scholars to conclude that transition to “real” democracy is imminent (Case 2010; Chin & Huat 2009; Hing 2009; Moten 2009; Ong 2010; Pepinsky 2009; Weiss 2009). Although 2013 election outcome has muted this euphoria (Devaraj 2013; Guan 2013; Kessler 2013a, 2013b; Weiss 2014; Welsh 2013), **H3** argues that even if the expected turnover actually materialised, it would not be a strict-sense regime change. This challenges the dominant view in contemporary Malaysian liberal scholarship. This also challenges the “turnover” models of democracy.

1.1.1 Relevance of Malaysia as the empirical field of the hypotheses

Given the size-limitation of this thesis, not many identitarian regimes can be analysed in. Fortunately, Malaysia is a sophisticated paradigm case to understand institutionalised identitarian distributions and draw broader conclusions. It embodies all the major defining features of identitarianism: an ethnocentric polity with its ethnic groups, Malays, Chinese, and Indians, as corporatized political actors; an ordered “Malay → Chinese → Indian” relation of political dominance; and regime

legitimation narratives. It also offers a best-case scenario of a successful identitarian regime: ranked among “high” Human Development Index countries (rank 62) with sustained improvement in indices (Fig. 1.1); sustained economic growth and modernisation; apolitical military (no coups); regular conduct of free and reasonably fair elections; and absence of social violence. The HDI of 0.773 compares very favourably with other identitarian regimes like Afghanistan (0.466), Pakistan (0.535), Indonesia (0.681) or Rwanda (0.502). Of especial note are features like high literacy (93.1%), low Gender Inequality Index (0.21), and health and educational expenditures (3.58% and 5.13% of GDP respectively), on all of which indices it outperforms cognate regimes.

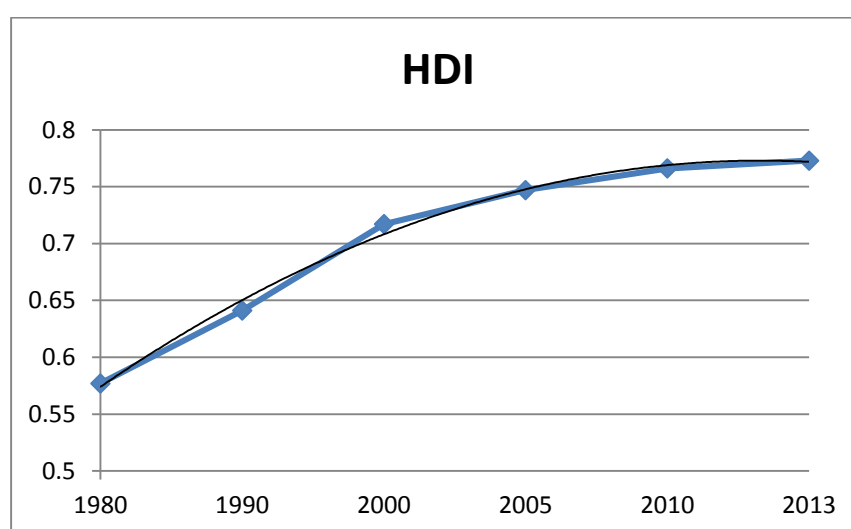


Fig. 1.1: Malaysia Human Development Index: 1980-2013

Source: UNDP (2014)

In economic terms, Malaysia’s 2014GDP of USD 312.44bn makes it a wealthy middle-income county with per capita GDP in real-terms over USD 10,000 (in 2011PPP terms it is USD 21,824).¹ This is impressive considering that 1960GDP (three years after independence) was only USD 2.4bn. As the (polynomial) trendline in Fig. 1.2 shows, the rate of growth in the current millennium is phenomenal, much of it driven by the resource sector. Malaysia’s GDP has contracted only once dropping from 100.8bn in 1997 to 72.17bn in 1999 in the wake of the Asian Financial Crisis; it clawed back to the 1997 level by 2003 and has maintained northerly trend since. Corresponding 2013 per capita GDP figures (2011 PPP reference in USD) for Afghanistan, Pakistan, Indonesia and Rwanda are, respectively, 1904, 4652, 8970 and 1403.

In terms of political stability, Malaysia is again a best-case: no military takeovers, no supra-state actors, no missed elections, and no social violence (with the sole exception of the brief 13 May 1969 riots around Kuala Lumpur resulting in 176, mostly Chinese, deaths.) Other identitarian regimes

¹ 2013 UNDP figure retrieved from <http://hdr.undp.org/en/data> 10 august 2014. The real per capita GDP is based on 2010 Census population of 28.4 million (GoM 2010b).

have been are far less stable marked by coups, fraudulent elections, jettisoned constitutions, and egregious inter-group violence as for example in Afghanistan, Pakistan, Rwanda and Indonesia.

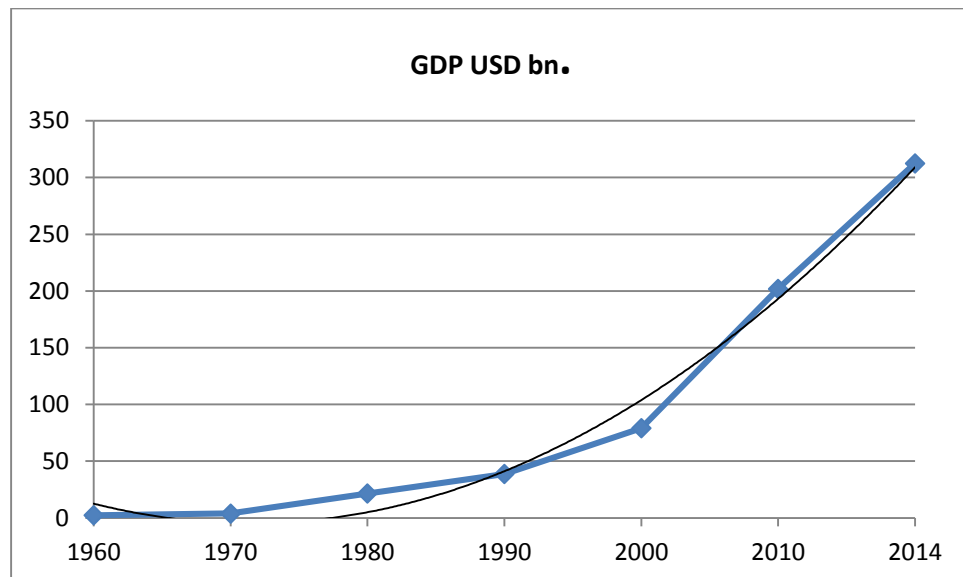


Fig. 1.2: Malaysia GDP: 1960-2013

Source: Trading Economics (2015)

Nevertheless, Malaysia is a powerful counter-example to the classical “economic development and modernisation lead to democracy” doctrine first propounded by Lipset (1959) and affirmed by many since (see, for example, the articles in Marks and Diamond (1992) volume in Lipset’s honour). In the democracy and freedoms audits conducted by leading international monitory organisations,² Malaysia invariably ranks poorly: it has, for instance, never been ranked “free” by *Freedom House* (2014) and never “full” democracy by *The Economist Intelligence Unit* (2015). Both these organisations use a broad array of liberal-democratic benchmark variables to evaluate institutions. Polity IV is the only monitory institution that has ranked Malaysia a “democracy” (though not a “full” democracy) since 2008 albeit with the lowest possible score (Marshall and Cole 2014). However, Polity IV’s regime classification is too narrowly scoped around electoral legitimacy of authority and institutional checks on it. These provide a coarse picture on governance, not regime: they lack the resolution required to evaluate institutional access to primary goods. This problem afflicts many large-scale survey based researches where technical sophistication of models and methodology tends to drive the theory rather than the other way around: excessive focus on issues of methodology and measurement (what to code and how to code) often weakens ‘the ability of empirical researchers to ground individual-level findings in theories about the polity’ (Weatherford

² For a conception of the role of monitory organisations in contemporary democracy, see Keane (2009).

1992, 149).³ Thus, it is not clear as to why Malaysia before 2008 is classified as “anocracy”—a regime type below democracy—which is characterised by ‘institutions and political elites that are far less capable [than democracy] of performing fundamental tasks and ensuring their own continuity’ when, as we shall discover later, neither the character of political institutions nor the capacity of political elites significantly changed in 2008 or after (Marshall and Cole 2014, 21): Freedom House audits show exactly zero change. Other, similarly narrowly scoped models declare the precise opposite: Przeworski *et al.*’s model to analyse development-democracy relationship across the whole world from 1950 to 1990 using a minimalist conception of democracy—elections with turnover—leads to a simplistic definition of dictatorship as \neg (elections with turnover).⁴ Consequently, Malaysia is classified as a “dictatorship” throughout: autocratic from 1969 to 1971 and a rule following one otherwise (Przeworski *et al.* 2000, 66). However, if one thinks of Stalin’s USSR, Pol Pot’s Cambodia or Pinochet’s Chile, or their softer versions elsewhere, ascription of dictatorship to Malaysian regime is clearly far-fetched.

The reason why institutional audits, rather than values surveys, are emphasised here is because my methodological framework is the critical analysis of “what is” and not of what the “opinion is.” The hypotheses are validated in terms of top-down supply-side institutions rather than from bottom-up demand-side beliefs. These institutional audits show that Malaysia certainly does not qualify as a “democracy” without ‘adjectives’ (Collier and Levitsky 1997); its democratic deficit is severe. On the other hand, it is also not an unconditional dictatorship. This is also reflected in the rich corpus of liberal scholarship on Malaysian regime: scholars often adjectivise it: “quasi-democracy” (Zakaria 1989), “semi-democracy” (Case 1993; 1997), “pseudo-democracy” (Crouch 1993; Case 2001), “soft-authoritarianism” (Means 1996), and “electoral authoritarianism” (Pepinsky 2007), etc.; most appropriately an “electoral one-party state” (Wong *et al.* 2010). Adjectives emerge because of the conflicting requirements of avoiding conceptual stretching (e.g. of “democracy”) and yet being able to differentiate between regimes with common as well as contrasting features (e.g. electoral regimes with differing authoritarian features). Malaysia signifies a regime form that lies somewhere within the convex set delimited by these adjectives. Scholastic (and institutional) studies adjectivise regimes based on normative requirements—e.g. associational freedoms, media freedoms, opportunity of offices, etc.—they find compromised. They overlook the crucial fact that these deficiencies are causal consequences of the relations of dominance (or, political inequality) in identitarian regimes. This limits generalizability of their theses.

This observation puts **H1** and **H2** in proper theoretical perspective: **H1** significantly claims that democratic deficit in identitarian regimes is a *natural* consequence of the absence of the

³ This is not to diminish the importance of survey-based researches but to caution against conceptual overstretching (Collier *et al.* 2012).

⁴ \neg represents the logical operator NOT.

substantive liberal requirement of political equality, while **H2** identifies the mechanisms (institutional and social) by which this inequality is maintained. In this sense these propositions confirm North *et al.*'s theses but from a political rather than an economic perspective, making our contribution that much more significant. Notably, political inequality in identitarian contexts follows from little else other than the dominant corporate identity's substantive belief in the relation of dominance as the premise and end of politics. This determines the political architecture of the regimes in a plural society (see Section 1.2.1): Malaysia clearly is a most sophisticated exemplar of this set. Its institutional audit categorisations are summarised below in Table 1.1

Organisation	Phases	Rating	Comments
Freedom House (1973 onwards)	1973	Free	Since 2005, both "political rights" and "civil liberties" have stagnated at same value; nothing to suggest that 2008 was in any way significant.
	1974-2014	Partly Free	
The Economist Intelligence Unit (2006-2014)	2006	Hybrid Regime	Malaysia escapes being ranked a "Hybrid Regime" only because of the strength of one index: "functioning of government". On "political participation" and "civil liberties" indexes, Malaysia is in clear "hybrid" range; this confirms Freedom House ranking.
	2007-2014	Flawed democracy	
Polity IV (1946-2013)	1957-1969	Full democracy	Polity IV's index "Polity" is strongly effectiveness vs. legitimacy oriented, i.e. determined by competitive openness and limits on authority; it is blind to turnovers, freedoms and rights. But what is noteworthy is that regime legitimacy is ranked much lower than its effectiveness (confirming EIU results). Also it is at the lowest end of democracy scale.
	1969-2008	Open Anocracy	
	2008-2014	Democracy	
Przeworski <i>et al.</i> (1950-1990)	1957-1968	Bureaucracy	Both these are dictatorship type seen as ¬(elections with turnover). But calling Malaysia a bureaucratic authoritarianism is a reasonable insight.
	1969-1970	Autocracy	
	1971-1990	Bureaucracy	

Table 1.1: Democratic deficit of Malaysia from large-scale and historic surveys

Sources: Freedom House (2014); EIU (2015); Marshall and Cole (2014); and, Przeworski *et al.* (2000).

1.2 The Conceptual Framework

The conceptual framework of this thesis is parametrised by three theoretical categories: plural society, identitarianism and minority; models of identitarian governance; and, democracy and the liberal conception of equality. These are discussed next in that order.

1.2.1 *Plural society, identitarianism and minority*

John Sydenham Furnivall (1878-1960), an outstanding British economist-administrator in colonial Burma, studied the political economy of Dutch East Indies in the 1930s. He coined the term ‘plural society’ for tropical colonial dependencies which comprised ‘...two or more elements or social orders which live side by side, yet without mingling, in one political unit’, these orders politically ‘existed in much the same position as independent political societies’ (Furnivall 1939, 446, 463). Because the community was organised ‘for production rather than for social life,’ and production was differentiated along social orders ‘no common will evolved’ (*Ibid.*, 459, 447). Furnivall’s moral argument was that before granting self-rule to such pre-political society, the colonialists must politically ‘integrate [such] society’ and economically ‘organise [its] social demand’ (*Ibid.*, 463) so that it becomes a successful post-colonial nation-state.⁵

Furnivall was not a critical social theorist. His project was to demonstrate the colonial creation of a plural society and the necessity of creating “general will” in it. Critical theories of plural society were first developed by sociologists M.G. Smith, Leo Kuper, van den Berghe and others (Kuper & Smith 1969). Smith delineated social orders, or ‘distinct societies’, of a plural society by ‘the maximum span of the institutional system on which their social organization and cohesion are based’ (*Ibid.*, 28). In western industrial societies, ‘people share a set of basic institutions and are differentiated at the secondary level of institutional organization in which alternative occupational, political, and religious or ethnic structures predominate’ (*Ibid.*, 28). Plural societies lack this pervasive secondary institutional heterogeneity: people share few institutions and norms across social orders. Smith made two very critical observations: a plural society is homologous with any regime, not just colonial; and, it is also homologous with any level of ‘economic and technological organization’ (*Ibid.*, 29). Such contra-Lipset wisdom that modernisation does not guarantee democracy is only now finding broader acceptance (Inglehart and Baker 2000; Inglehart and Welzel 2005). For Smith liberal-democracy in a plural society is extremely hard to establish, if not outright impossible, notwithstanding material progress. The capacity of pervasive heterogeneity to mediate identity conflict in western societies was actually posited by Ross much earlier in 1920 in his seminal *The Principles of Sociology*. Heterogeneity generates multifocal ‘cross-wave’ conflicts that cut across confocal primordial social-order cleavages (Ross 1920, 164):

The chief oppositions which occur in society are between individuals, sexes, ages, races, nationalities, sections, classes, political parties and religious sects. Several such oppositions may be in full swing at the same time, but the more numerous they are, the less menacing is any one. Every species of conflict interferes with every other species in society at the same time, *save only when their lines of cleavage coincide: in which case they reinforce one another* [emphasis added].

⁵ Guan (2009) provides an excellent review of Furnivall’s theses. Later Marxists and Gramscians reject this model though they do not rule out colonial heritage of contemporary identitarian polarisation (Hilley 2001).

He, in fact, asserts that multiplicity of such conflicts—multiplicity of cross-cutting associations and loyalties—is the ‘...disproof of that toxic pseudo-Darwinism which presents strife as universal law contributes to social peace’ (*Ibid.*, 166). Thus, in a sense, an identitarian regime implies controlled heterogeneity; in other words, different institutions are dominated by different identity groups.

To measure identity-spread in a plural society, Lijphart (1977) introduced *fragmentation index* (FI): the probability that two random individuals come from two different orders. FI is a popularly used measure in large-scale surveys (Fearon 2003) but needs to be carefully employed because plural societies with similar FI’s can be politically very different: Malaysia (Malay 50%, Chinese 24%, Indian 7%) and Lebanon (Sunni 27%, Shia 27%, Christian 40%) both have FI of around 0.7, but Malaysia has been stable and growing, while Lebanon has seen civil wars. Iraq (Shia 55%, Sunni 25%, Kurds 20%) has a lower FI of 0.6 but is violently unstable and Rwanda (Hutu 84%, Tutsi 15%) with an FI of just 0.27 has witnessed genocides. For a better understanding, FI cross-wave heterogeneity must be co-evaluated. Heterogeneity may be qualitatively measured by the ratio of inclusive to exclusive institutions across social orders (van den Berghe 1969, 71); no quantitative measures exist as of today. **H1** provides an alternative perspective that overcomes this limitation in a large class of plural societies.

In political theory, Rabushka and Shepsle (1972) were the first to analyse political integration—possibility of Rousseauvian “general will”—in plural societies through democratic (electoral) process. In this post-colonial or modern political stage, the social orders (identities) become political agents of their respective corporate goals (government and policy choices at the least). Therefore, Rabushka and Shepsle appropriately (re)define a plural society as one ‘with its cultural sections organized into cohesive political sections’ (*Ibid.*, 11). Using a deep utilitarian framework of (political) preference polling and management, they reached the discouraging conclusion that a plural society ‘...cannot be organized for social or normative ends, since these ends vary with the different cultural norms of the respective communities’ (*Ibid.* 21). More specifically, commenting on the capacity of a democratic framework to achieve integration as posed in the question ‘Is the resolution of intense but conflicting preferences in the plural society manageable in a democratic framework?’, they answer, much as M.G. Smith and others did earlier: ‘We think not’ (*Ibid.*, 217). Furnivall’s imperative is, therefore, hard to democratically satisfy: **H1** points to the root cause.

Is such pessimism totally justified? I think not. Indian experience at democratic resolution of identity preferences has, on the whole, been positive. South Africa is also likely to do well, as may possibly Bangladesh, Indonesia and, somewhat improbably, even Rwanda and Myanmar. And, in Malaysia, while “general will” is distant, not all procedural institutions of democracy have been jettisoned and neither has social peace been lost to conflicting preferences. This does not, however, mean that these regimes qualify as democracy *without* adjectives. Most are ‘basic’ natural states

which, as North *et al.* (2009) convincingly demonstrate, have no teleology: they can go forward but they can as easily go backward.

In summary, a plural society can be conceptualised as a collection of institutionally distinct social orders with low cross-wave heterogeneity in a single political unit: each order coheres around what Clifford Geertz (1963) called “primordial loyalties” to its corporate institutions. An identitarian regime is the political expression of a plural society under an ordered, or partially-ordered, relation of dominance over the set of underlying social orders corporatized as agencies of political action. In its extreme form an identitarian regime simply is the ‘external political form of the dominant corporate group, the instrumental framework of its domination, and the ultimate source and expression of prevailing inter-identity inequalities’ (Smith 1969, 33). Gurr (2000, 4-5) calls such regime an “ethnopolitical” society and Huntington (2002, 136) a “cleft” or “torn” country.⁶ This thesis, however, is restricted to *electoral* regimes; henceforth, “identitarian” will only signify these. And “identity” shall imply a corporate social order as agency of political action. Clearly then, mainstream politics in an identitarian regime is a contest for and against the reification of the relation of dominance.

A “minority” in an identitarian regime is a dominated corporate identity, while a “majority” is a dominating one: the former’s preferences are weighed lower, the latter’s higher.⁷ A minority often, but not always, is demographically and/or territorially non-salient (the Chinese minority is 24% of Malaysia’s population; the 25% South Sudanese Christian minority was territorialised in erstwhile Sudan). If the means of violence are accessible to minorities disadvantaged by such ‘[s]ubordination of political institutions to the interests of particular communal groups’, violence results (Melson and Wolpe 1970, propositions 6 and 7). If, however, the dominant group (not necessarily demographically overwhelming) is territorially consolidated and has monopoly over the means of violence, the discontent may remain indefinitely quiescent and subterranean as in Malaysia.

1.2.2 *Models of governance in plural societies*

Robert Dahl famously bemoaned in *On Democracy*: ‘...there are no *general* solutions to the problem of culturally divided countries. Every solution will need to be custom tailored to the features of each country’ (1998, 195). Plural society, therefore, does not tune well to liberal democracy (see section 1.3.3 below): thus the adjectives with identitarian democracies. Why? And, what are the best case models of these regimes?

⁶ An “ethnopolitical” society, however, need not have an electoral system. Also, Gurr rejects “primordial” in favour of “constructivist” (in-group) identity evolution. This neither changes the plural discourse nor is it helpful in explaining it. Constructivism in plural context must only be implied as the “constructive virtue” of democratic public sphere (Sen 1999).

⁷ Ted Gurr’s 1986 founded Minorities at Risk Project (MAR 2009) provides the largest dataset of minorities and minority discriminations worldwide, while Akbaba and Fox (2011) provide the religious minority discrimination dataset.

The why is explained by the concept of “political culture” introduced by Almond (1956) to explain his typology of political systems. He categorised Anglo-American political culture as *homogeneous* and *secular*: homogeneous because of shared belief in the ‘ends and means’ of politics and secular by being ‘a rational-calculating, bargaining, and experimental political culture’ (*Ibid.*, 398). Identitarian regimes, most of which are non-Western, are neither. Four of Pye’s (1958) seventeen characteristics of non-Western political systems are noteworthy: the political sphere is not sharply differentiated from the social (criterion 1); elites determine the political choices and actions (criterion 4); parties have *weltanschauung* orientation (criterion 2); and, there is substitutability of roles, institutional and personal (criterion 11). Consequently, politics is about mobilisation of identity (criterion 1) steered by elites representing the corporate identities (criterion 4) who leverage a teleological world-view based legitimisation narrative to secure, or challenge, the dominance relations (criterion 2) enforced through identitarian control of institutions (criterion 11). Politics basically is a communal enterprise without any consensus on homogeneity or secularity. Much has changed since the 1950s, but much remains the same. Public support for “democracy” (often understood only as elected governments) is mostly for ‘instrumental’ rather than ‘intrinsic’ or ‘constructive’ virtues as demonstrated in low degree of emancipative values, or self-expression, in these regions (Welzel and Inglehart 2008, Table 9.2, 135; Inglehart and Welzel 2005). Identitarian regimes, consequently, are more about Eckstein’s congruence than about responding to emancipative self-expressed preferences.

A best case model of identitarian regimes is “consociational” democracy, proposed by Lijphart (1977, 25-52). It has two primary features: a grand coalition of elites of major segments and internal autonomy of each segment. And two secondary features: proportional power sharing among segments and minority veto (Lijphart 1985, 4). Lijphart considered four non-Western identitarian regimes to be consociational democracies: Malaysia (1955-1969), Lebanon (1943-1975), Nigeria (1957-1966) and Cyprus (1960-1963). Their end dates—corresponding to conflicts, coups, or in Cyprus’s case, break-up—clearly suggest that consociational democracy outside of the West is an unqualified failure (all four of Lijphart’s western consociational democracies, Belgium, Netherlands, Switzerland and Austria, successfully graduated to liberal democracies).⁸ Malaysia was not strictly consociational to begin with: no proportional power sharing, no minority veto. Neither can the grand alliance said to have fully collapsed in 1969; it morphed into co-optation. Empirically, it seems that such consociations happen in high FI (≥ 0.7) plural societies.

A simpler and more general model, within which identitarian regimes form a special subset, is the “electoral democracy” model of Pippa Norris (2011): regimes with elected legislatures but restricted rights and liberties. The importance of this model is that unstable identitarian regimes adopt

⁸ Note that Lijphart (1977, 22-24) and others (e.g. Diamant 1959; Coleman 1971) are highly critical of, what they call, Almond and Pye’s “ethnocentrism”. But it is undisputable that homogeneity and secularity of political cultures underlies the success of European consociations. Lijphart has since advocated a broader, non-majoritarian, democratic framework for non-western identitarian regimes (Lijphart 1985; 1999).

this model between episodes of absolute authoritarianism like military takeovers or emergency rule. Empirically, non-consociational electoral democracies tend to occur in low FI plural societies, i.e. when a demographically overwhelmingly identity exists, for example Pakistan (96% Muslim; 3% non-Muslim), Cambodia (90% Khmer, 5% Vietnamese), or Rwanda (84% Hutu, 15% Tutsi).

There is a third interesting model. Although non-democratic (and thus not strictly a fit to an identitarian regime), Rawls' "Decent Hierarchical Peoples" (DHP) toleration model is specifically aimed at Islamic plural societies (1999, 59-88). DHP is a modernistic adaptation of the Ottoman *millet* system (Jaber 1967) that posits a "consultative" hierarchy: the rulers factor in the well-being of minority groups in policy making and regime institutions, especially judicial and bureaucratic, are sensitised to conceptions of common good. This model is a fiction of contrary propositions born out of poor understanding of Islamic societies in general and the Ottoman regime in particular.⁹ The *millet* model has come to be much romanticised in recent years: Bader (2007, esp. Chapter 7) even proposes an improvised *millet*-clone "Associative Democracy" for governance in contemporary multicultural West. Blackford, however, drawing on *millet* and Islamic history, cautions that the '*millet* system should not be sentimentalized' (2012, 25). Notably, Parekh argues that in as much as a *millet* state does not allow for a political community with its own distinct goals and values, 'it has no moral status' (2006, 200).

Contemporary Malaysia borrows from all three models: the narrative of ethnic consociation has morphed into a DHP of millets that is institutionally actualized by elections.

1.2.3 Democracy, Liberalism, and equality

The systemic structure of an identitarian regime has been outlined above, but to complete the conceptual framework we need a reference, a norm, against which to evaluate this standard: benchmark normative features to measure up such regimes against conceptions of liberal-democracy. Dahl's *Polyarchy* (1971) seems an appropriate frame of reference being broadly accepted as a comprehensive liberal-democracy framework. *Polyarchy* (modern day liberal-democracy) requires eight institutional guarantees (*Ibid.*, 1-3), which Dahl later configured into seven (1982, 10-11) before finally proposing the canonical set of six (1998, 85): elected officials; free, fair and frequent elections; freedom of expression; alternative sources of information; associational autonomy; and, inclusive citizenship. The audit vectors used by monitory institutions—The Economist, Freedom House, Polity IV, etc.—to test for democracy and freedoms can all be mapped onto these six institutions. However, these institutions acquire meanings only with reference to Dahl's critical prior *proviso*: '...democracy is the continuing responsiveness of the government to the preferences of its citizens, *considered as*

⁹ Kazanistan, Rawls' fictional ideal of an Islamic DHP, can institutionalise Shari'a, at least its Ottoman *qanun* or *mejelle* version. It, therefore, cannot deliver equitable justice because offices, taxes and punishments are distributed according to one's *millet*.

political equals [emphasis added]' (Dahl 1971, 1); the institutions themselves are the procedural wherewithal to substantiate this *proviso*.

This ontology of a liberal political community with individual citizens in relation to one another as “equals” is Enlightenment heritage. In effect Enlightenment was the moral project to create a political community as the bearer of political power democratised away from divine or hereditary right (thus liberty): hence political community conceived of as that of free and autonomous individuals who (and only who) are the valid sources of claims, of equal moral worth, on the state. This conception is obviously radically different from that in identitarian regimes of plural societies. The first articulation of this equality, I believe, was by Hobbes as the “ninth law of Nature” in his 1651 magnum-opus *Leviathan*: “That every man acknowledge other for his Equall by Nature” (Hobbes 1985[1651], 211). *Leviathan* proposes the first modern social-contract to establish the “state of peace” by political individuals who must enter into this contract as *intrinsically* equal partners. Notwithstanding numerous exclusions, this ideal of political equality has informed all philosophical expositions and practical attempts at establishing liberal social contracts ever since: from Hobbes to Kant and Rousseau, Madison, Mill and, in our times, to Rawls and Habermas.¹⁰ In democratic terms, political equality simply translates into equal weight to everyone’s preferences: thus Beetham’s definition of democracy as “popular control” and “political equality”, the former to substantiate the latter (1994). In this thesis, the conception of equality used is borrowed from Dworkin: ‘equal concern and respect for the other’ (1977, 266). This is because, as Dworkin argues that, in the final analysis, all liberties and rights flow from such a conception of equality since: ‘[it] sharply limits the extent to which ideal arguments of policy may be used to justify any constraint on liberty...[it] prohibits a government from relying on the claim that certain forms of life are *inherently more valuable* than others [emphasis added]’ (*Ibid.*, 274).

Identitarian regimes are predicated precisely on such claims buttressed, most sophisticatedly, by the argument of “positive freedom”: to be the ‘instrument of my own, not of other men’s, acts of will’ (Berlin 1969, 131). In the identitarian context, “positive” freedom means culture-affirming political institutions, seen as “*inherently more valuable*” than normative institutions: the legitimate regime forms could range from (positively connoted) “pseudo-democratic” (Volpi 2004) to “Twin-Tolerations” democracy (Stepan 2000), or, in the most sophisticated charter of political relativism,

¹⁰ The exclusions were many: not all people were deemed citizens and not all citizens were deemed capable. Slaves, women and the un-propertied were often excluded. The stoic silence of Madison’s (and others’) 1789 American Constitution – meant to ‘secure the blessings of liberty’ – on slavery ensued the continuation of the Roman “*servus nullum caput habet*” (slave has no right) doctrine until the Thirteenth Amendment 76 years later, that too triggered by the Supreme Court’s infamous 1857 “Dred Scott” ruling. Kant’s ‘self-dependency’ requirement (1791 [1793], 37) denied any political voice to slaves, women or non-taxpayers and Mill’s “plural votes” proposal was for class-based vote weighing (2004[1861], Ch. VIII, 108-125). Notably, French women got the vote only in 1944, the Swiss only in 1971 long even after many third-world countries. Such examples can be indefinitely multiplied. Roger Scruton’s observation that democracy may not always ensure political freedom or equality appears quite apt in context (2013).

simply good “fit” regimes (in “congruence” sense) that allocate primary goods and other social and economic advantages within culture-specific ‘social meanings of the goods at stake’ (Walzer 1980, 214; 1983, 140). Unlike “negative” freedoms that guarantee citizens protections from state’s coercive capacity—as, for example, characterised by Mill’s “Harm” principle (Mill 2001[1859], 13)—and thus enable freely willed pursuits and conceptions of good life, positive freedoms embody a utopian teleology: ‘an *a priori* guarantee of the proposition that a total harmony of true values is somewhere to be found’ (Berlin 1958, 168); liberalism, of course, contains no such guarantee (Shklar 1984, pp. 226-249). Berlin himself, not surprisingly, believed that positive freedoms lead to tyranny and only the negative liberties can enable democratic pluralism.

In fact, political equality—in other words, identity agnosticism—is central to every normative liberal doctrine of social choice even if all moral assumptions of intrinsic worth—or natural rights, or liberties, or virtues of being a political community (Sen 1999)—are discounted. Key characteristic of utilitarianism, as calculus of social choice and action, are “strong anonymity”, “strong neutrality”, “strong Pareto optimality” and “strong monotonicity”. Strong anonymity requires the ‘calculus to ignore personal identities per se’ while strong neutrality (welfarism) requires that social action be based only on ‘personal utility information’ and *nothing else* (Riley 1990, 339). These characteristics together mark “procedural equality” within utilitarian calculus of social choice and underlie, indeed reduce to, the democratic conception of a political community (*Ibid.*). To conclude, democratic politics is about institutional mechanisms to guarantee effective and equal weightage to citizen preferences while identitarian regimes are teleological enterprises (in the *weltanschauung* sense—Pye’s criterion 2—that underlies their legitimisation narratives) to institutionalise idealised preferences of the majority.

1.3 Overview of Malaysia’s Identitarian Regime

Within the above framework, Malaysia’s identitarian regime falls into three broad phases—consociational, consolidative and corporative—outlined below.¹¹ The “Malay → Chinese → Indian” dominance underlies each phase and its legitimisation narrative. In the consociation phase, signified by the “Alliance”—between UMNO (United Malays National Organisation), the political expression of Malay supremacy and Malaysian identitarianism, the Chinese MCA (Malay(si)an Chinese Association), and the marginal Indian MIC (Malay(si)an Indian Congress)—consent of the ethnic minorities was solicited and freely obtained. This is because the minorities accepted that the legitimisation narrative—rights of the native—of dominance had moral force and consociation was rational (prudent in self-interest) and reasonable. The governance discourse (and action) consequently

¹¹ Contemporary scholars identify regime phases differently; most approximate Saravanamuttu’s stages (2010): *ketuanan Melayu* (Malay supremacy) plural state, semi-liberal *Bangsa* (nation) Malaysia state, and a state with a palpable Islamic agenda. My description, I believe, provides a better political-economy perspective.

became modernising the traditional (pre-political; agrarian and non-monetary) political economy of the Malays.

This changed in 1969 when the Chinese mobilised for citizen equality challenging the Malay “special position” dominance relation. Malay elites closed ranks and hit back. They jettisoned consociation, consolidated their political hold and shut off challenges by enforcing *stare decisis*: precedence is law. This was codified in the *Rukunegara* principles (literally: pillars of the state) under which distributions *assumed* as settled were closed to contestation. Institutionalisation of this order was by laws and Acts limiting access to institutions and organisations and consolidating means of coercion in Malay hands. This “reification of inequality” sustained by (further) curtailment of political rights and circumscribed civil liberties immediately reflected in democracy audits: on Polity IV index Malaysia dropped to anocracy and in Przeworski *et al.*’s model to autocracy. This lends support to **H1** as well as **H2**. Malay elites now believed that Malay economic supremacy was necessary to sustain political superiority. The governance discourse, or policy focus, consequently changed to: the state is a Trust, a holding company, for the Malays.

Mahathir came to power in 1981 and quit in 2003. However, corporatisation of Malaysia, also called Mahathirism (Hilley 2001), continues. In this phase, Malaysia, while not altering its inward identitarianism, began to look outwards as well: to seek its “rightful” place in the world. Mahathir is an ideologue and a maverick visionary. His controversial 1970 book, *The Malay Dilemma*, written on his expulsion from UMNO in 1969 for criticising Rahman’s leadership in the lead up to the 1969 events, gives an interesting glimpse into his mind and his theories: he has not resiled from any of its positions as his updated preface to the 2008 reprint shows. Mahathir has four strong beliefs: Malay political supremacy is legitimate and necessary because “equity” must be antecedent to equality (otherwise Malays will become ruled by the Chinese); the entitlement regime creates “crutch-mentality” inhibiting the build-up of Malay initiative, capacity, competitiveness and self-reliance; given these capacities and certain institutions, Malaysia can become *the* model of development for the progressive Islamic world that respects its own cultural identity and rejects Western cultural (and political) imperialism (his disapproval of Kemalism is scathing, see Mahathir 2007); and, Islam has the capacity to shape the Muslim mind and Muslims’ institutions to this end (Mahathir 2003).

Two features, consequently, mark this phase: corporatizing Malaysian economy by offloading state-held “Trust” equity to Malay corporates (often UMNO apparatchiks and cronies but also MCA, MIC figures) and Islamising institutions of governance within a standardised-bureaucratic corporate framework. To Mahathir, rationality of ends could not be subject to the ethics of means: all institutions needed to be centralised to achieve his vision. The 1997 *Asian Financial Crisis* marks a crucial break in this phase because, when Anwar Ibrahim—an influential youth Islamist leader of the 1970s, co-opted into UMNO apparat by Mahathir close to 1984 elections to harness the Malay youth vote and the principal Islamisation vehicle of Mahathir—the Finance Minister and the Deputy Prime Minister and Mahathir split on strategy to handle the crisis. Anwar was removed, humiliated, arrested

and prosecuted on sodomy charges. In the wake of Anwar’s persecution, the simmering discontent on the regime’s corruption, collusion and nepotism spun off into the first, short-lived, big protest, the 1998 *Reformasi*, against UMNO government since 1969. This eventually seeded an opposition movement which gained best parliamentary strength in the 2008 elections—though it did not do as well in 2013—prompting scholars to announce imminence of regime change.

The regime hasn’t changed. Equality and inclusion, in spite of some cosmetic dressing, remain elusive. If anything Islamisation has dramatically reduced ‘equal concern and respect for the other.’ Democratic deficit continues as audits keep returning same conclusions: “partly free” and “flawed”, confirming **H1** and **H2**. Political through these phases is discussed in detail in the following chapters, but a summary of these phases is presented below for quick reference.

Phase-I: Consociation 1957-1969

Rule:	The grand alliance, the Alliance Party (UMNO, MCA, MIC; in that order of precedence)
Challenge to Rule:	None
Emblematic (Malay) Leadership:	Tunku Abdul Rahman
Regime principle (Ideology):	Malay special position: State of the Malay; State for the Malay; State by consent
Legitimation narrative:	Natural law primacy of (political and economic) rights of the native
Consociational narrative:	Lockean <i>Proviso</i> : No one worse-off (than before)
Discourse of governance:	Modernise the Malay-in- <i>kampung</i> , i.e. modernise the Malay rural political economy
Constitutional leverage: ¹²	Articles 89; 113-117 ; 152-153 (Malay entitlements)
Socio-economic outcomes:	Pareto-inferior agrarian capitalism; reification of identity

Phase-II: Consolidation 1969-1984

Rule:	<i>Barisan Nasional</i> (National Front: expanded Alliance party)
Challenge to Rule:	None
Emblematic (Malay) Leadership:	Tun Abdul Razak (1971-1976)
Regime principle:	Malay supremacy (<i>Ketuanan Melayu</i>): State of the Malay; State for the Malay (and other non-Indian non-Chinese); State by the Malay
Legitimation narrative:	Affirmative action to empower the native

¹² Throughout this thesis, “Article” (or shortened Art.) will refer to Article of the Malaysian Constitution from the latest official version published by the Commissioner of Law Revision Malaysia (GoM 2010a).

	Positive freedoms (<i>Rukunegara</i> principles)
Consolidation narrative:	Stability of the order (<i>non quita movere</i>), i.e., no questioning <i>Ketuanan Melayu</i>
Discourse of governance:	Economy as Malay Trust
New legislative Leverage:	Constitutional Articles 149-151 (Emergency powers). Acts: Sedition Act 1948 (1971); Internal Security Act (1960); Printing Presses Act 1948(1971); University Act (1971); National Language Act (1967)
Socio-economic outcomes:	Pareto-inferior state-capitalism; entrenched entitlements; hard state; congruence

Phase-III: Corporatisation 1984-

Rule:	Unchanged
Challenge to Rule:	1984-97: none 1998-2007: effectively none. Birth of protest politics 2008-2013: <i>Pakatan Rakyat</i> (People's Pact: a disparate coalition; generalised probity and inclusivism platform; harvesting minority discontent and Malay fatigue with incumbency) Emerging civil society movements
Emblematic (Malay) Leadership:	Mahathir Mohamad (1981-2003)
Regime principle:	Essentially unchanged. Re-defining consent: <i>Bangsa Malaysia</i> (Malaysian nation), Islam <i>Hadari</i> (civilizational Islam) and 1Malaysia
Legitimation narrative:	Rightful place in the modern world and positive freedoms (Islamisation).
Corporatisation narrative:	<i>Melayu Baru</i> (new Malay): Transitioning the Malay to corporate cosmopolitanism.
Discourse of governance:	Progress and culture: world economy, global leadership and Islam.
New legislative Leverage:	Total executive supremacy: over monarchy (Art 66), over judiciary (Arts 121, 145), over information (Printing Presses and Publication Act 1984), and over association (six Amendments to Societies Act 1966).

Socio-economic outcomes: Pareto-improvement (over earlier phases); Islamisation of all institutions; executive supremacy; personalised power; coercive state; crony capitalism.

1.4 Structure of the Thesis

The next chapter provides the gestalt background to contemporary Malayisan identitarianism in which the hypotheses are situated. It maps the evolution and concretisation of “plural society” in Malaysia during its colonial period. Chapter 3 then develops the theoretical and empirical support for hypotheses **H1** and **H2** in terms of institutionalisation of political inequality through the three successive phases into which post-independence Malaysian political-economy is partitioned. Here this institutionalisation is discussed along the dimensions of preference inequality and opportunity inequality. Chapter 4 extends this exposition to religious inequality. Chapter 5 is on hypothesis **H3** and summarises the findings and points to the possibility of a positive scenario. My approach is critical-empirical in that I evaluate the constitutional machinery and other institutionalised political and economic practices and their empirical outcomes. Because a considerable body of varied data is employed to test the hypotheses, the exposition may occasionally become terse given the word-length constraints that this thesis has to satisfy: for this I sincerely apologise.

2 Malaysia: Colonialism and Plural Society Formation

Justificatory narratives of Malaysian regime all draw on colonial history and lore. In extreme form, even today, the regime rejects equality of citizenship. At the 2004 UMNO General Assembly—politically more salient than the Parliament itself—the deputy leader of the Assembly, Badruddin Amiruldin, thundered: ‘Fifty-eight years ago we had an agreement with the other races [Chinese and Indian], in which we permitted them to “*menumpang*” (temporarily reside) on this land’ (Lee 2010, 45). This is not a one-off statement: Chinese and Indian “other races” narrative is *the* armoury of UMNO Malay nationalism. When the Chinese deserted the UMNO-led coalition in the 2013 elections, Noor Abdullah, senior UMNO leader and a former Appeals Court judge, proclaimed the necessity of “jihad” to counter the Chinese threat saying that: ‘The *Orang Asli* are our cousins, the Sabah and Sarawak *bumiputeras* are our relatives, other than that, they [Chinese and Indians] are only our neighbours...they came to stay here before, we gave them recognition and protection and finally we gave them citizenship until they became wealthy’¹³ (Malaysiakini 2013; see also Chooi 2013). Since “other races” is a colonial graft, the formation of Malayan plural society, the basis of contemporary Malaysian identitarianism and its political inequality, needs to be situated within the colonial political economy.

The Strait of Malacca (Malay: Melaka) has been an arterial shipping channel of trade between Europe and the Far-East since ancient times. ‘By the beginning of the Christian era,’ Milne (1967, 11) says, ‘the early inhabitants of the Malay Peninsula had contacts with traders from India and China.’ Around seventh century, Malay Peninsula was incorporated into the Palembang (Sumatra) based Hindu-Buddhist Sri Wijaya Empire, and on its decline into the Mataram (Yogyakarta; Central Java) based Hindu-Buddhist Majapahit Empire in the fourteenth century. Indigenous written sources of Malay history are scant; the earliest known is *Sejarah Melayu* (Malay Annals; about c.1540), a blend of fact and folklore (Gullick 1958, 6-7), often quoted by Malay nationalists to claim heritage and continuity. The *Sejarah* reasonably establishes that around 1400, Parameswara, a refugee Palembang prince, founded the Melaka kingdom, converted to Islam and ruled as Megat Iskandar Shah. Melaka greatly flourished during the sultanate of Mansur Shah (r. 1459-77) but fell to the Portuguese in 1511 in the earliest phase of European trading-post colonialism. Malay nationalism since then has ‘historically converged’ on the Melaka sultanate: ‘The several Sultanates in Malaya were either

¹³ *Bumiputera* (literally, sons of the soil) is an overarching category of “entitled” natives that includes the Malays and the Borneo indigenes of Malaysia; it does not, however, include the peninsular aborigines, the *Orang Asli* (literally, original person). It came into official currency at the incorporation of the Borneo regions into Malaya in 1963 when the Federation of Malaysia was born (Singapore also joined but exited in 1965). Malaysian Constitution, however, does not recognise *bumiputera*; it only refers to “Malays” and to “the natives of Sabah and Sarawak”.

directly or indirectly connected with the Sultanate of Malacca and the Malays took pride in the fact' (Soenarno 1960, 5).

2.1 The East India Company and the 'Straits Settlements'

The Dutch took Melaka from the Portuguese in 1641; soon thereafter, the northern sultanates of Kedah, Kelantan and Terengganu fell to the Siamese (Milne 1967, 12). Portuguese Melaka was simply a garrisoned trading-post port-city, but the Dutch, the paramount colonial power in the Eastern Mediterranean until late eighteenth century, introduced a structured business model: the United East India Company (VOC: *Vereenigde Oost-Indische Compagnie*), headquartered at Batavia (Jakarta). The British East India Company (EIC), then headquartered at Calcutta, heralded its East Indies arrival with the acquisition of Pinang Island from the Sultan of Kedah in 1786 after numerous unsuccessful attempts to establish base in the Indonesian archipelago (Baker 1999, 82-83). In 1791, the EIC also took Prai (mainland opposite Pinang), after defeating the Sultan's attempt to re-take Pinang; it became Province Wellesley (*Ibid*, 84; Milne 1967, 12-13). Melaka was temporarily added in 1795 in a curious twist in European history, when King William sought refuge in England after the French occupied Netherlands in 1794. He handed Melaka to the EIC until his sovereignty was reclaimed: Melaka was duly returned to VOC in 1818.

In 1824, the landmark Anglo-Dutch treaty was signed to establish *entente* in the archipelago. The Strait was divided in the middle into British north and Dutch south; Melaka returned to the EIC in exchange for Bencoolen given to the VOC. Previously, in 1819, the EIC had acquired the 'barely inhabited Island' of Singapore, being ceded by the Riau-based Johorese Sultan, Tengku Hussein, when Stamford Raffles anointed him, against his younger sibling's claim, as the new Sultan (*Ibid*.; Baker 1999, 91): a most successful British colonial stratagem, perfected earlier in India. Pinang had been a great trading-post but, being far too north, lacked the strategic advantage of Melaka. With the strategic control over Strait's trade, the free port of Singapore now emerged as world's greatest *entrepôt*. In 1826, Penang, Melaka and Singapore were integrated into "The Straits Settlements", its capital was moved to Singapore from Penang in 1832. The EIC also secured itself from southward Siamese adventure by Anglo-Siamese treaty (Burney's treaty; 1826): Kedah, taken by the Siamese in 1821, was acknowledged as theirs and Kelantan and Terengganu as their "region of influence"; in return, Siamese non-intervention elsewhere in the peninsula was secured (Milne, *Ibid*; Baker, *Ibid*, 95-96).

2.1.1 The Straits' Regime: 1824-1874

The EIC's brief, as that of the VOC, was trade "for shareholder profit." It underwent a commodity revolution in the nineteenth century. The advent of canning in Europe and America in late 1820s, made tin a much-in-demand commodity. Tin was abundant in the peninsular west, where the Malays had mined small alluvial quantities for centuries. However, to systematically mine it in large

quantities, Chinese labour (and capital) began to be imported: 'By sustained labour and primitive mechanization the Chinese were able to work down to deeper and richer deposits than Malays. Between 1840 and 1860 the major mining areas had passed into the occupation and use of Chinese miners' (Gullick 1958, 6).

As long as tin flowed smoothly from-mine-to-port, the EIC, in tune with its brief, avoided physical expansion into the sultanates. This strategy also had sound business reasoning: the profits were low (6300£ in 1845, 23,000£ in 1855 and 78,000£ in 1865), insufficient for expansionary expeditions (Swettenham 1907, 106).¹⁴ Yet another reason, in Milne's words, was that: '...the simple economy of the Malays did not then yield enough beyond subsistence to justify the expense [of expansion]' (1967, 13). Thus, the EIC had poor knowledge of indigenous political economy.¹⁵ Even in 1874—sixteen years after the EIC was disbanded (finally dissolved on-paper in 1874) and seven years after the Straits Settlements had become Crown colony—when physical intervention actually began, 'little was actually known' about Malay states within the EIC's region of influence—Perak, Selangor, Negeri Sembilan and Johore—as Swettenham laments (*Ibid*, 112):

...there was probably not a European, and very few Malays, who could have given correctly the names of all States in the Peninsula...how the States should be placed on a map, nor what were the real titles of their rulers...

2.1.2 *The Political-Economy of Malay States: 1824-1874*

Milner says that '...in 1786 [Pinang acquisition by EIC], the Malay Peninsula was divided among several sultanates...These Muslim polities possessed systems of governance owing something to pre-Islamic models' (1995, 10). The Sultan, titled *Yang di-Pertuan Besar* (he, the great lord), symbolised the State (*Negeri*), territorially often a river basin from coast to the central watershed. All inland communication was riverine—even in 1874, Malaya was virtually 'roadless'; Perak, the main tin-state, had just one track, a twelve-mile mine-to-estuary strip—therefore the capital was located at the estuary to collect taxes, control people's movement, and defend the *Negeri*. Beyond the capital, central authority ceased and local noblemen/chiefs (*rajas*), theoretically Sultan's appointees, ruled virtually autonomously (Gullick 1958, 44).¹⁶ 'Government was *kerajaan* [kingdom], the state of having a ruler [Sultan], and they [Malays] visualized no other system' (*Ibid*. 21); not having a Sultan was considered disastrous (Milner 1995, 16). *Kerajaan* symbolised a custom-sanctified 'sacred'

¹⁴ The figures are in equivalent pound sterling; actual revenues were then booked in Indian Rupees. The surpluses came from Singapore; Penang and Melaka were a financial drag, although strategically important.

¹⁵ This lack of politico-geographic knowledge cost the EIC dearly in 1831 at Naning. To realise \$600 default from a recalcitrant chieftain, Abdul Said, the EIC's campaign cost \$600,000 and nearly 120 soldiers (Baker 1999, 118-119).

¹⁶ Jong and Josselin (1960) and Swift (1960) provide excellent reviews of Gullick's sociology of pre-modern Malaya.

covenant binding the Sultan, the rajas and the *rakyat* (subjects; literally, flock) into a cohesive social organisation or sphere (Milner 1987, 789). In *kerajaan*, the government, Soenarno says (1960, 1):

...existed for...providing for the Sultan and his chiefs and courtiers. From the Ruler's point of view, government existed mainly for exhorting loyalty, dues and all sorts of levies. With few fixed laws, the quality of government depended very much upon...the Sultan. A commoner's duty was to carry out the commands, or 'Titah', of the Sultan at all cost. Rebellion against him never occurred.

Malays believed that the Sultan, on ascension, became vested with divine majesty (*daulat*), disrespecting which (*timpa daulat*) invited divine retribution (Gullick 1958, 45); disobedience was 'darhka, treason,' punishable by 'death and disgrace' (Swettenham, *Ibid*, 141). Sultans belonged to 'royal patrilineage' and, while succession rules varied across sultanates, chiefs' needed to acquiesce to the candidate (*Ibid*, 54-61; Soenarno 1960, 2).

Below the State, territorial district (*daerah*) formed the next political unit, ruled by variously titled *rajas* who were (Gullick, *Ibid*, 21):

drawn from the lineage which usually had a long-established connexion with the district...the lineages of chiefs also formed...ruling class of the whole state...Some chiefs were drawn from royal lineage...typically however chiefs came from non-royal but aristocratic class

These big chiefs held the *daerah* on their own, with the help of followers, kin and clansmen, minor chiefs and sundry aristocrats, fighting bands, and debt-slaves; the size of this following determined their power, autonomy and title (*Ibid*, 95-8). They taxed the riverine trade for revenues; Chinese tin became especially lucrative after 1820s (*Ibid*, 126-7). Chiefs in Negeri Sembilan were bound by a formal code of conduct, *Adat Perpatih*; elsewhere they ruled by customary sanction, *Adat Temmenggong* (*Ibid*, 37).

Below big chiefs were sundry minor chiefs, clan leaders and, most importantly, at the village (*kampung*) level, the headman, *penghulu*, the only non-aristocratic authority in this feudal hierarchy. The *kampung*-bound *rakyat* farmed padi (rice-crop), caught fish and traded surplus, if any. If times got hard due to human or natural oppression, the Malay-in-*kampung* moved elsewhere and set up all anew (Swettenham, *Ibid*, 136):

Land had no value...it was the custom for anyone to settle where he pleased on unoccupied and unclaimed land, and leave it when he felt inclined...there would be a family cottage on a bit of land ... with an acre or two of rice land hard by

He adds: 'He [Malay] must have rice, but the smallest exertion will give it to him; and if he will not grow it, he can buy it for very little,' furthermore, 'Less than one month's fitful exertion in twelve...would supply a man with food. A little more than this and he would have something to sell' (*Ibid*, 136-7). This ease of supporting their (simple) lifestyle rather than paucity of natural talent—

‘practically no Malay paupers’ (*Ibid*, 305)—made Malays, Swettenham believes, lazy and disinclined to hard work.

Clearly, this society was ‘pre-political’; Malays were a people, not a public. Milner sums it up succinctly: ‘there was no tradition of political engagement...Indeed there is no specifically secular sphere in which such engagement might occur’ (Milner 1995, 26). EIC, and later form of colonial rule, did not alter this sphere substantially. Peet (1949, 3) notes that Malaya through to World War II remained a ‘country with no politics,’ displaying a ‘tranquil and complacent atmosphere of public life.’

2.2 British Malaya: 1874-1942

Britain abandoned its fifty-year old non-intervention in *kerajaan* policy ‘...because of the *political and economic realities* of the peninsula [emphasis added]’ (Baker 1999, 120). The main reality was tin. By 1860s, large mines were all Chinese owned and operated, medium ones were co-owned with local chiefs (as sleeping partners) though operated by the Chinese, while a few smaller ones were operated by the chiefs themselves using migrant Chinese labour; Malays did not work the mines (Gullick, *Ibid*, 24, 129-30).

The Chinese were organised into *kongsi*, region/dialect based mafias that constantly fought turf wars in which the local chiefs took sides. Larut in Perak was the biggest tin-mining district in the 1860s and run by the Go Kuan and Si Kuan *kongsi*. Their turf war apparently caused three thousand deaths once ‘in a single day’ in early 1870s (Swettenham, *Ibid*, 123). Larut’s powerful chief allied with the Go Kuans, brutally crushing the Si Kuans with the help of a colonial officer, Captain Speedy, and his Indian soldiers. Si Kuans, in turn, rampaged in Pinang, Dindings and Province Wellesley, destroying police stations, chief’s properties, and savaging the riverine traffic. The Sultans lacked military capacity to control the *kongsi* or the chiefs; they also resented chiefs’ cheating them of ‘rightful’ tin-revenue share: tin had weakened the *kerajaan* moral order (Gullick, *Ibid*, 127). *Kongsi* wars and weaknesses of native authority threatened tin, the lifeline of the colony; it needed to act.

The EIC had secured consolidated leverage with the Sultans through trade-related treaties over the years since 1826. By mid-nineteenth century, British influence at the Royal Courts had become decisive. Thio (1969, xvi) says:

...these states tended to look on the Company as the arbiter of local politics to whom they reported the accession of new Rulers, and appealed for help to settle internal disputes as well as quarrels with their neighbours. The Company accordingly found itself guaranteeing some states from attack or pledging to uphold boundary settlements... [by] 1867, the British were already bound by treaties with four of the five states south of Kedah, two of whom they were pledged to protect and “three over whose external relations they had a right of control.” But as yet Britain had no right of interference in the internal affairs of any state.¹⁷

¹⁷ The inner quote is from Cowan (1961).

British action—the so-called “indirect rule”—began with the Treaty of Pangkor, signed in 1874 (Milne 1967, 14-18). In a déjà vu replay of Raffles’ stratagem, the Colony’s Governor, Andrew Clarke, enthroned Raja Abdullah as Perak’s Sultan dismissing rival claimants. Abdullah duly returned the favour in the form of the Treaty. Critical clauses of the Treaty were (Swettenham, *Ibid*, 176-177):

Clause-VI: That the Sultan receive and provide a suitable residence for a British Officer, to be called Resident, who shall be accredited to his Court, and whose advice must be asked and acted upon in all questions other than those touching Malay religion and custom.

And,

Clause-X: That the collection and control of all revenues and the general administration of the Country be regulated under the advice of these Residents [including Assistant Residents, in districts].

Selangor, the most important tin-state after Perak, received its “Resident” the same year, Pahang in 1888 and Negeri Sembilan in 1895. The Sultan remained notionally sovereign; the *kerajaan* retained its façade. A “State Council”, with Sultan as president, was created as legislature; big chiefs, some Chinese capitalists, and the Resident were its other members. The Resident was state’s chief executive; all heads of departments (mostly British) reported to him. The *daerahs* (districts) were identically run by British “Assistant Residents” reporting to the Resident. Below this, the traditional hierarchy of minor chiefs and *penghulus* was left undisturbed: the *rakyat* lived as before; the padi economy was not of colonial interest.

Legislation was introduced in simple steps: Resident’s draft, Council’s approval and Sultan’s Assent, all but the first a formality. Common law courts were established (jury system died soon) and were presided ‘over by European magistrates, often assisted by Malay magistrates, where all classes and nationalities, Europeans, Malay Rajas and *raiat*s, Chinese capitalists and coolies, were treated alike’ (Swettenham, *Ibid*, 228). The resulting predictable order resulted in explosive tin-led revenue growth—twenty-one fold in two decades—of the Colony (Table 2.1):

Year	Revenue (Surplus) (£)	Tin Revenue (£)
1875	81,000	-
1885	441,600	166,000
1888	731,500	-
1895	1,696,200 (180,000)	675,000

Table 2.1: Colonial revenue from Resident-system Malay states

Source: Swettenham (1907, 222-3)

Note: The Straits colony used Spanish (or Mexican) dollar as currency after 1867; the conversions here are at \$5=£1 as was applicable then.

In 1895, these four ‘indirectly ruled’ states were integrated into a new centralised framework: the Federation of Malay States (FMS) with capital at Kuala Lumpur where its chief executive, the “Resident-General”, held office heading an exclusively British Federal Civil Service instituted to administer centralised FMS departments. The Resident-General reported to the Straits Governor, dually designated as the High Commissioner to the FMS, who also presided over the “Federal Council”, established in 1909, whose other members were the Sultans, his (Straits Governors’) four nominees (Chinese and British capitalists), the Resident-General and the state Residents. FMS revenues jumped to £4.8 million by 1905, 40% of it or £1.85 million coming from tin. The next step in expansion was to enter the Malay north.

In 1896, British and French leaderships decided to keep Siam independent as a buffer between their respective domains. The decision was firmed up in 1904 in a replay of 1824 Anglo-Dutch Treaty: French supremacy in Indo-China and British in Malaya (Milne 1967, 17). The 1909 Treaty of Bangkok then secured the colony Perlis, Kedah, Terengganu and Kelantan from the Siamese in return for paying off the colonial debts, surrendering British citizens’ immunity in Siam, and loaning Siam £4 million to build railways (Baker 1999, 140-56). These undeveloped *kerajaans*, however, opted for more autonomy: they accepted “Advisors”, but not the all-powerful Residents. In 1914, these and Johore were grouped—when Johore acquiesced to a “general Advisor”—into Unfederated Malay States (UMS).¹⁸ These three different, albeit interdependent, regimes—FMS, UMS and the Straits Settlements colony—constituted British Malaya before the 1942 Japanese occupation.

2.2.1 *The Political Economy of British Malaya*

By the close of nineteenth century, colonialism, Furnivall says, had become ‘modern’, expressed ‘in the theory of dual mandate, professing to reconcile economic progress with native welfare and to regard native interests as paramount’ (1948, 313). As in Netherland’s “Ethical policy” in Indonesia (Ricklefs 2001, 193-205), “dual mandate” underscores the post-EIC colonial policy in British Malaya. A major architect (especially of FMS and UMS regimes) of this policy was Frank Swettenham, quoted above. His thirty-two year career in Malaya, from a civil service cadet in Perak in 1871 to the 1901-1903 Governorship of Straits colony, best demonstrates the evolution of ‘modern’ colonialism. To Swettenham, dual mandate in Malaya implied that the British officers ‘remember always that... You are there for the benefit of the people of the country’ and he believed they “remembered” it quite well during his governorship (1907, 304). He clarifies that: ‘The Malays are “people of the country”; we went to Malay States for their benefit’ and ‘Malays are “the people of the country”’

¹⁸ Abu Bakar, Johore’s *maharaja* (1862-1895), introduced common law institutions, integrated Johore economically with Singapore and welcomed the Chinese. Johore greatly prospered. Bakar ceded (only) Foreign Affairs to the colony (Anglo-Johore Treaty, 1885) in return for being titled *Sultan*. Although a Malay State, it was only 48% Malay even in 1957 (Ratnam 1965, 4).

whose confidence we have gained by making their interests our first consideration' and so on *ad infinitum* (*Ibid*, 304, 345).

Thus, dual mandate's first precept: Malays, and none else, are the "people of the country." This dictated that Malay sustenance, the land, was not alienated by the vagaries of *laissez-faire* to plantations whose era had arrived as discussed below. In 1913, Reservation Enactment Act was passed, which, along with its many later amendments, ensured that vast land tracts in every state were reserved for exclusive Malay ownership. To understand the importance (and necessity) of this Act, note that even in 1921 94% Malays were rural and land dependent away 'from the influence of civilization' (Baker 1999, 199). However civilisation, as reflected in the production economy that fed into the colonial coffers, needed to keep growing. This needed an industrious people but: 'You cannot make people virtuous by Act of Parliament, and you cannot graft the Chinese nature on to the Malay body' (*Ibid*, 305). Milne (1967, 15) categorically states: 'Economic development in Malaya was carried on almost entirely by non-Malays, mostly European and Chinese.' Thus the second precept: the Chinese (who by precept one could not become "people of the country") are but needed. Continued development of production economy needed accelerated labour immigration, especially now in this post-EIC British Malaya because both economy and capital were being transformed.

Soon after FMS was formed, British and other western capitalists arrived. In the EIC-era production capital was Chinese as said above. The large new capital investments in technology, transportation and handling transformed production. Tin exports, jumped from \$30 million during 1898-1903 to \$78 million during 1924-28, eventually reaching one-third of world's supply (Baker, *Ibid*, 176). Almost exclusively Chinese-owned in 1900, by 1930s two-thirds tin was British-owned. At the turn of the century, tin began to yield place to a new, more lucrative, commodity: rubber. European investments in rubber plantations were heavy. By 1930, when rubber acreage in Malaya reached a staggering 2 million acres, half the world's acreage, its ownership was three-fourths British, one-seventh Chinese and one-twentieth each Indian and the Malay. Trading partners also changed: America became the biggest importer of Malayan commodities by mid-1920s, rising from 12% (\$24 million) of all exports in 1913 to 47% (\$261 million) in 1926 while exports to Britain fell to 16% (Foster 2010, 49). Barring the 1942-1945 occupation years, Malayan commodity market steadily grew through to the independence in 1957.

After the Great War and the collapse of the Ottoman Empire, British political discourse shifted to moral doubt on imperialism (Kedourie 1970). The new moral precept, replacing the white man's burden of having to civilise the barbarian (Wright and Reid 1912), became to undo colonialism, to "fast-track" the "people of the country" to civilised self-rule. Training for self-rule began in earnest: governance began to be increasingly entrusted to the native elites. Swettenham's centralisation was drastically reversed under Guillemard's 1920-27 governorship (Ghosh 1977). Decentralisation under the 1930-34 Clementi governorship moved even faster without care for consequences to non-Malay population. Initially, some departments and budgetary powers were returned to the Sultans. Then in

1927, their position, role and power were radically enhanced by establishing the all-powerful “Durbar [Court] of Rulers” whose membership was limited to the Sultans, the Governor and the Chief Secretary. The Resident-General was downgraded to Chief Secretary in 1911 to give Sultans status equivalence with and direct access to the Governor and then further downgraded in 1935 to ‘Federal Secretary’ without a say at the Durbar (Milne 1967, 17). The Federal Council was all but dead. The immense political significance of this “Durbar”, precursor to the contemporary “Conference of Rulers,” is often glossed over by scholars. It formally institutionalised the first precept: non-Malays, no matter how many and no matter how long resident, not being “people of the country” had no political role or possibility.¹⁹

The unfolding of the second precept is discussed next.

2.2.2 *Immigration, Economy and Racial Identity in British Malaya*

The Chinese

A small Chinese community, settled during the Melaka sultanate and largely integrated into Malay culture, are the *Peranakan* (literally: crossbred) Chinese now dispersed across the peninsula. Some Indians, Persians and Arabs also settled but assimilated completely and became effectively Malay (Mahathir Mohamad is of this extraction).

The principal ethnic minorities, however, are the Chinese and Indian descendants of colonial-era immigrants. The Chinese came with tin, the Indians with rubber (a few for railroad development, and as police, clerks and soldiers). The Chinese supplied the capital, labour and taxes to the colonial machine eventually taking over the whole non-agricultural monetary economy: production, distribution, retail and services. Swettenham summarises their role as (1907, 232-3):

Their [Chinese] energy and enterprise have made the Malay States what they are to-day, and it would be impossible to overstate the obligation which the Malay Government and people are under to these hard-working, capable and law-abiding aliens. They were already the miners and the traders, and in some instances the planters and the fishermen, before the white man had found his way to the peninsula. In all the early days it was Chinese energy and industry which supplied the *funds to begin the construction of roads and other public works*, and to *pay for all the other costs of administration*...it is their work, the taxation of the luxuries they consume and of the pleasures they enjoy, which has provided something like *nine-tenths of the revenue* ...The part played by the Malay has already been told: *it was mainly negative*... [Emphases added].

From a trickle in the 1820s, Chinese immigration had, by 1901, nearly submerged the FMS demography: 312,456 Malays (and “other Natives”), 299,739 Chinese and 58,211 Indians or 46.6%,

¹⁹ Milne considers such hindsight ‘illegitimate’ but a) his focus is on Chinese integration into ‘a Malayan nation’ while mine, quite differently, is on political power distribution, and b) he believes that because the British considered Chinese ‘transients’ (which is wrong, as shown later) they ‘did not accord them equal treatment with the Malays’ (Milne 1967, 20). Also such argument leaves the moral question open.

44.7%, and 8.7% respectively (Thio 1969, 188). Table 2.2 below gives Chinese 1901-1957 demographics across Malaya.

Year	Pop. (million)	% Total	%Urban Chinese (Malay)	Females / 1000 Males	% Native Born	Comments
1911	0.9			215		Low ratio as mines used contractual, migrant male labour only
1921		35		371	21	
1931				486	30	
1941	2.4	43				Malay population was only 41%
1947	2.6		43.1 (11)	815	63.5	
1957	2.3	37.1	73 (19.3)	926	74.5	Excludes Singapore

Table 2.2: Features of Chinese Population 1911-1957

Sources: Ratnam (1965), Baker (1999), Hamzah (1964; 1966)

In 1957, the Chinese in FMS states outnumbered Malays in Perak (539,368 versus 484,878) and Selangor (488,634 to 291,393), were matched in Negri Sembilan (149,911 versus 151,426) and sizeable in Pahang (108,140 versus 179,113). They were also matched at 392,425 versus 444,907 in Johore, and dominated Penang 327,287 versus 165,081. Malays were in majority only in the backward northern UMS states and in Melaka (Ratnam 1965, 4).

This demographic profile, especially the native born percentages, unmistakeably shows that by late 1930s, if not earlier, the Chinese had ceased to be “transients”, they were becoming settled; by 1940s, Malaya was home. Thus when the 1942 Japanese occupied Malaya, the Chinese formed MPAJA (Malayan Peoples anti-Japanese Army) and resisted militarily while the British escaped, the Malays cooperated,²⁰ and the Indians leveraged the occupation for India’s freedom. Ratnam rightly says that ‘[in] the reactions of different communities to Japanese rule...common interests were absent’ but his claim that ‘The Chinese fought their *own war* against the Japanese [emphasis added]’, which has become the received wisdom, is questionable (*Ibid*, 19). “Own war” theory situates MPAJA resistance in historical Sino-Japanese hostility, most recently the 1937 war and the Nanjing massacre. While Japanese brutalisation of Malayan Chinese was certainly rooted in that hostility, MPAJA’s stated aim and resolve was to free Malaya, not Shanghai. The British funded MPAJA precisely for this resolve.

²⁰ After Japan ceded northern UMS to Siam as reward for collaboration, some Malays, notably *Wataniah* party, did organised resistance. Razak, later Prime Minister, was a *Wataniah* resistance officer (Baker, 1999, 218-9).

MPAJA resistance produced a remarkable post-war political harvest. British attitude towards the Chinese (and, by transference, the Indians) changed. Earlier, the British lacked empathy: the Chinese were either mercenary bourgeoisie or boorish (and threatening) proletariat in contrast to the genteel Malay (see Hugo Clifford's views in Chai (1967, 104-106)). They were needed but needed to be kept under control. Thus while Clementi was decentralising power back to the Malay royalty, he banned Kuomintang, fragmented the Chinese-dominated Malayan Communist Party, withdrew grants to Chinese schools, censored their presses and tightened Chinese immigration (Kingsbury 2005, 271). After 1945, the British acknowledged Chinese claim to a Malayan home—if not “people of the country” at least “people in the country”—and set-out on Furnivall's agenda of “integrating the plural society” by granting them citizenship. Malays resisted. The fracas took long to resolve. Malayan independence, consequently, took twelve years after 1945 to materialise.

The Indians

When rubber plantations began, Indian (and Ceylonese) labour ‘on whom they [European capitalists] and...the Government depend so largely for cheap labour’ began to be requisitioned from (colonial) India (Swettenham 1907, 302). They were treated ‘like an ordinary economic commodity by the local employing authorities: imported at times of need and shipped back when their presence was not profitable’ (Ratnam, *Ibid*, 9). Thus when the Great War ended and rubber demand dropped, production and immigration cuts were introduced (Khoo 1999). However, as Indians were “subjects”, India Office maintained some oversight on émigré welfare through appointee “Agents” in Malaya. Consequently, Malayan employing authorities (Malay officers) needed to ensure at least rudimentary housing, healthcare and education on plantations (Baker 1999, 186; Milne 1967, 20-21). By 1931 ‘there were over 620,000 Indians resident in Malaya and the Straits Settlements of Singapore, Penang and Malacca’ (Amrith 2011, 239). In 1938, the Indian Government stopped assisted migration on issues of wages and welfare, while after World War II, the Malayan authorities ‘favoured “the importation of Javanese labourers who are Mohammedans like the Malays, speak the same language, and are easily absorbed by the Malay population”’ (*Ibid*, 246).

The Indian demographic details are sketchier than the Chinese (Table 2.3), but some comparisons are interesting. Before the end of assisted migration in 1938,²¹ Indian females relatively outnumber Chinese females, but children born are fewer because Indian women, unlike their Chinese counterparts, immigrated as tappers rather than family. The latter native-born evolution is similar. This data suggests that by late 1940s Indians too had also decided to settle; few anyway returned. Indeed, it was the early FMS policy was to encourage Indians to become ‘potential settlers’ (see labour commissioner's reports in Chai (1967, 135)).

²¹ A small number of Indians came in 1950s when the “national service” to fight communist insurgency (1948-1960) was commissioned and needed trained manpower (Ratnam, *Ibid*, 20).

Year	Pop. (million)	% Total	%Urban Indian	Females / 1000 Males	% Native Born	Comments
1911				320		Females as tappers
1921				424	12.1	
1931	.62			514	21.4	
1947				687	51.6	
1957	.7	11	30.6	746	64.5	Excludes Singapore

Table 2.3: Features of Indian Population 1911-1957

Source: Ratnam (1965), Amrith (2011)

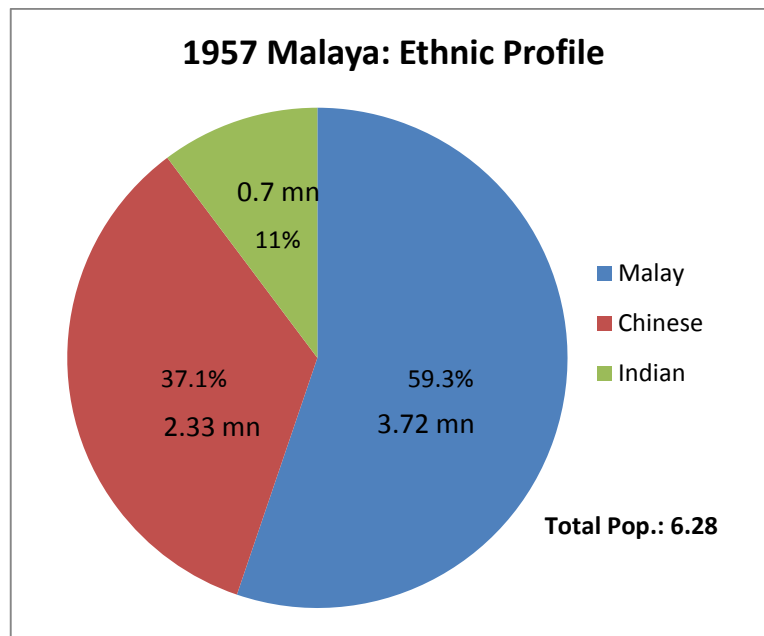
The plantations were rural, so were the tappers; urban Indians were mainly petty public servants. According to Ratnam, from 17.8% in 1921 Indian urban fraction dropped to 8.7% in 1957, while Hamzah's (1964) data suggest that it dropped from 16.5% in 1947 to 13.5% in 1957 (his figures differ because his definition of "urban" is complex, though more reasonable). This fall was caused by massive increase in Malay urbanisation (1947-1957 urban Malay population increased by 119%; from 11% they came to be 19.3% of urban population) due possibly to government jobs that were given exclusively to Malays (after independence, Indians have increasingly urbanised: 34.3% in 1970, 41% in 1980 (Jain 2010, 127) and 89% in 2010 when Malaysia was overall 71% urban, reflecting occupational diversity (GoM 2010b, Table 2.1)).

Indians had negligible ownership in the colonial economy. They were mainly labour who 'when they have saved a little money, they become cultivators, owners of cattle, cart drivers, and follow other useful avocations' (Swettenham 1907, 302). They were not pre-political, but like the Chinese whose politics was mainland bound, Indians' politics was focussed on the anti-colonial movement in India. The Central Indian Association (CIA), a loose federation of Pan-Malayan Indian social community networks formed in 1937 in Kuala Lumpur, but had no political salience or agenda. It, however, played an 'important role in the formation of the Indian Independence League (IIL) during Japanese occupation' (Ratnam *Ibid*, 16). Thus a collective "Indian" identity did form in Malaya, but it was a diasporic identity unclear of its post-war future in the land it had begun to call home.

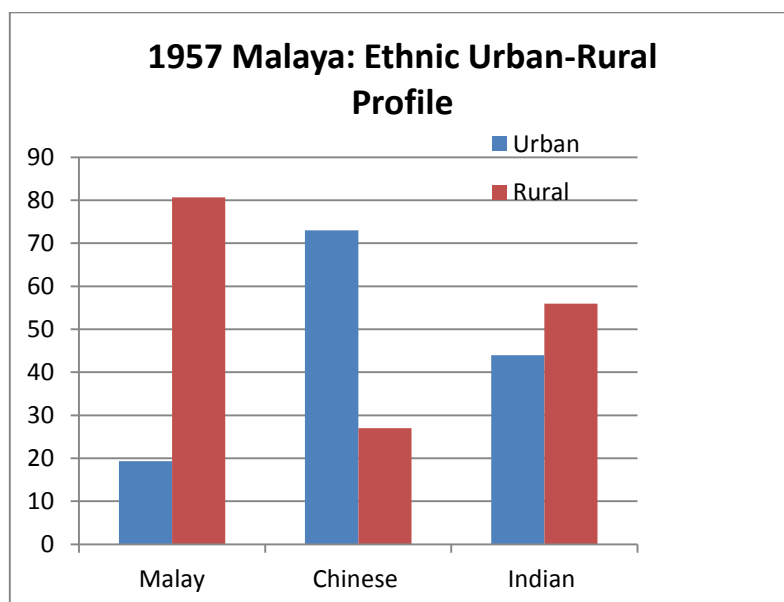
The Malays

Colonial Malay political economy and demography has been explained above. Fig. 2.4 below gives the 1957 ethno-demographic profile: Malay majority was due to low immigration into the traditional northern UMS states (had Singapore, 75% Chinese, 8% Malay (Means 2009, 76), been included, Malays would have been an overall minority). The pre-colonial pre-tin peninsula was, however,

undeniably Malay: they had populated it over centuries, migrating from elsewhere in the archipelago. They lived there, within the comfort of *kerajaans*, when the Europeans colonialists arrived and brought with them the “other”: people of exotic races and cultures. “Other” underlies many a nationalism, most certainly that of the Malay. To complete the formation narrative of Malayan plural society this is discussed next.



(a)



(b)

Fig. 2.4: 1957 Ethnic demography (a) and Urban-Rural profile (b)

Sources: Ratnam (1965), Hamzah (1964) and other

Mahathir Mohamad (2008[1970]) says that two historical imports define Malay consciousness: Islam, which the Malays effortlessly absorbed, and the Chinese, which they never did (he does not consider colonialism *per se* of consequence). Soenarno, on the other hand, asserts: 'British administration brought to the Malays a sense of unity. The forces of unity were both local and foreign. But it was the British administration that set these forces in motion and gradually welded the Malays' (1960, 12). This welding, he argues, happened in three stages: 1906-1926 religious revivalism; 1926-1937 social and economic discourse; and, 1937-1957 political institutionalisation.

The first is not important here, the second began with the formation of *Kesatuan Melayu Singapura* (Singapore Malay Union, SMU), the forerunner of Malay political parties. The revivalist stage pan-Islamism was supplanted by the deconstruction of Malay backwardness in reading groups and associations. In the third stage, a two-way Malay political mobilisation began. First, SMU, which functioned within-the-system (was not anti-colonial) was cloned in all states to lobby the government for Malay-first policies, which anyway tied neatly with dual mandate colonialism.²² This was top-down royalist elites' political drive supplemented by earlier associations (with pan-Islamic, pan-Malay and sometimes left-wing orientations) that carried the task into the society. Secondly, the non-aristocratic elites formed radical anti-colonial pan-Malay (e.g. *Kesatuan Melayu Muda* or Union of Malay Youths; KMM) and communist parties. Pan-Malay ideology collapsed when Indonesia declared Independence in 1945. Communism remained mainly Chinese vocation. Thus, the mainstream Malay leadership that guided post-war Malay politics was the royalist-aristocratic elites.

These leaderships mobilised Malay identity singularly on anti-immigrant (essentially anti-Chinese) platform. They were cast as quintessential outsiders of foreign races and religions without any allegiance to "Malay" values and institutions. They were also ruthless economic exploiters and determined to numerically overwhelm the natives, take over their country and rule over them (this was never said about colonialists, possibly because they had no numerical-supremacy intent). The Chinese, numerous and economically powerful, were especially perceived and framed as existential threat. Leading English intellectuals of the era fed the frenzy: Toynbee announcing that Malaya will become the 'nineteenth province of China' and Somerville elegiacally proclaiming that 'the days of the Malays are over' (Soenarno, *Ibid*). The Malay owned *Free Press* on 22 March 1938 expectedly editorialised (*Ibid*, 15):

...if [Malays] are to succeed against the encroachments of other races in Malaya, they must combine...

Malays needed to properly organise and develop trained and educated leadership to avert this existential threat: 'Then only,' said Tengku Ismail, the Selangor prince, in his inaugural Presidential

²² For similar expectations, SMU cooperated with the Japanese during occupation.

address at the Selangor Malay Association in 1938, ‘will we be free from this oppression and ‘milking’ by these foreign races in our Country’ (*Ibid*, 25). What is striking in these debates, discussions and addresses of the then Malay elites is the total absence of socio-economic critiques: colonial rule, exploitation and subjugation; freedom, decolonisation and self-rule; class, tradition, and self-expression; and, modernisation, development of economic capacity and enterprise (this tradition continued long after, see Chee (1973)). Instead Malay nationalism is sought to be reified on exclusivism, on keeping the Chinese juggernaut at bay, if not out; on reclaiming the settler-threatened realm for the Malay, for his exclusive benefit and privilege of power.

Dual mandates policies fed into this reification. In addition to the land Acts, which kept non-Malays out of “land”, four other major colonial policies, in denying any recognition to non-Malays, contributed to Malay exclusivism.

First, since Pangkor, Malay was the *sole* language of administration (Swettenham, *Ibid*, 257):

The whole business of the country was carried out in Malay...It was the language of the State councils and the courts, of hospitals and police stations, and of all Government departments in their dealings with *natives of any nationality* [emphasis added]

Second, the policy that state’s responsibility is to educate Malays and only them. Beginning early 1900s, indigenous Arabic and religious schools provided Islamic education to Malays (Hamid 2010). To modernise their education, the British introduced “free” vernacular schools to teach ‘Malay reading and writing, arithmetic, and some geography’ as well as Koran (Swettenham, *Ibid*, 258); non-Malays were not admitted. “English” schools in towns with ‘English masters’ were also started where ‘most promising boys in the vernacular schools,’ were admitted (*Ibid*). For royalty and aristocracy, the prestigious Malay College was established in 1903 in Perak to impart European knowledge; non-Malays were not allowed. For non-aristocrat Malays, Sultan Idris Training College (SITC) was opened in Perak in 1922 to produce well-trained Malay teachers for vernacular schools; non-Malays were again excluded. No investment was ever made to educate the Chinese (irrespective of their contributions to the exchequer).²³ Indian children received education up to primary level in Tamil on plantations only because of Indian government’s terms of assisted migration.

Third, Malay Administrative Service was instituted in 1910 to create a purely Malay bureaucratic cadre. It was to absorb the ‘increasing number of Malays who, with “hereditary or customary claims to office” are being trained [at Malay College]...to take an active and responsible share in the Government’ (*Ibid*, 259). Non-Malays were thus completely excluded from bureaucracy

²³ However, to ensure that Chinese schools eschewed (anti-British) nationalism, some grants-in-aid (but no free education) were provided to them in the 1920s (Baker 1999, 191); later Clementi withdrew these. Purcell (1964) believes that Chinese allegiance to own language is the bottleneck in social integration; I think the point is moot.

and higher administration no matter how well educated or talented; the best they (Indians) could become was clerks.

Fourth was the exclusion of all non-Malay presence from the Durbar of Rulers.

Race-based relations of dominance were thus colonially sanctified; the plural society thus created: ‘Everything political or economic...is dominated, and must be dominated, by considerations of “racial arithmetic”’ (Milne 1967, 4). Early colonial immigration policy was that immigrants should settle permanently as Chai (1967) demonstrates from several Reports of “Labour Authority” over the years. And as Swettenham (*Ibid*, 302) confirms, saying that the government, ‘strove...to induce natives of all nationalities *to settle in the States*. They spared no pains to persuade Malays, Chinese and Indians to come into the country to take up land, to build houses, to start industries, *and then to bring their relatives and friends to do the same* [emphases added].’ However, under dual mandate policies this was completely overlooked and conditions created wherein any non-Malay concern invited the hostile Malay retort that they were “temporary” ‘no matter for how many generations they have been in this Country’ (Soenarno 1960, 14); Amiruldin’s *menumpang* thesis discussed above shows that non-Malay “exclusion” still plays part in the legitimization narrative of the Malaysian identitarian regime.

2.3 Malaya towards Independence

Japan surrendered in August 1945, the war ended, and the British returned. The colonial agenda, however, again changed radically: Malaya (and other colonies) was to be transitioned to “democratic” self-rule as fast as possible. Thus Furnivall’s precept, “integrating [plural] society”, to make ‘national’ self-governance possible became priority. The first attempt, brusque and quick, was the launch of “Malayan Union” on April 1, 1946, integrating Malaya (minus Singapore) into a single political unit administered by the Governor at Kuala Lumpur with the help of Legislative and Executive Councils. The Union was premised on the liberal conception of “equal” citizenship to Malays and (settled) non-Malays.

Malay reaction, expectedly, was implacably hostile. End of sultanates (*kerajaan*), loss of special position and, most importantly, the threat of politically empowered Chinese (they were the economic power by default) was a brutal colonial turn-around impossible to accept (Verma 2002, 29). On 1 March 1946, 41 Malay Associations held the Pan-Malayan Malay Congress in Kuala Lumpur to strategise against the ‘the ignominy of racial extinction’ (Milne and Mauzy 1978, 123). On 11 May 1946, this Congress launched UMNO as the Malays’ political organisation with the slogan “*Hidup Melayu*” (Long live the Malay).²⁴ Dato Onn bin Jaafar, the *Mentri Besar* (Chief Minister) of Johore, became UMNO’s first president. UMNO very efficiently led the nationwide anti-Malayan Union

²⁴ In 1951, three years after the Union was shelved, the slogan was changed to “*Merdeka*” (Independence) by Tunjku Rahman (Milne and Mauzy 1978, 132).

protest movement. Leveraging SMU networks, it quickly spread across Malaya forming *kampung* councils and district- and state-level committees guided from the national headquarters at Kuala Lumpur (it formally registered as a political party in 1950 when local governments were announced to be elected). Under Malay protest, the Union was jettisoned and “Federation of Malaya Agreement” announced instead. The Federation came into force on 1 February 1948 as interim arrangement during which local governments would become representative and constitution of independent Malaya would be negotiated. Sultans were re-instated as rulers, powers divided between the Centre (now under High-Commissioner instead of Governor) and the states and Malay superiority in government, education, legislation, administration and employment rearticulated (Baker 1999, 242; Fernando 2002, 73-74).

Citizenship in the Federation was handled more complexly. Nam (1973, 9) contends that ‘citizenship provisions were made in such a way as to limit the citizenship opportunity of the Chinese.’ This is substantially correct—of about 2.011 million only 320,000 Chinese became citizens immediately (Fernando, *Ibid*, 73)—but glosses over the fact that the British also did not leave non-Malays completely unsecured and subject to Malay whims. They insisted on ‘as a matter of policy “...there should be a common form of citizenship... to be extended to all those who regard the said Federation or any part of it as their real home and the object of their loyalty”’ being written into the preamble of the Federation Agreement, (Vasil 1980, 24). Procedurally, non-Malays could become citizens by “Operation of Law” (automatic citizenship; as of the 320,000 Chinese) and by “Application” if (and when) they satisfied ten-year residence requirements (these provisions still superfluously exist in the Constitution as its unwieldy Part III, Articles 14 to 31 and the first two Schedules (GoM 2010a, 27-39 and 168-174)). Consequently, by mid-1953 of the 4.139 million automatic citizens (including Malays), 2.727 million were Chinese and 0.255 million Indians and others (Vasil, *Ibid*, 28). The British ensured that prior to self-rule *most* Chinese and Indians became Malayan citizens.²⁵ They also proposed in 1952, a 25% Civil Service quota for non-Malays though this provision was never complied with.

Now the Chinese proletariat reacted. Malayan Communist Party (MCP) launched an insurrection, an anti-colonial “war of national liberation”. On 18 June 1948 “emergency”, which lasted till 1960, was declared. This insurgency was eventually crushed by a two-pronged approach: military operations (called “police action”) and settling of the Chinese squatters of the jungle fringes—erstwhile cadres of MAJPA who formed the mainstay of MCP’s insurrectionary wing, the Malayan Races Liberation Army—in new villages under “Briggs Plan.” Simultaneously, the British encouraged Chinese elites to organise politically and on 27 February 1949 MCA was formed

²⁵ This still left a large number of domiciled non-Malays—1.28 million out of a total population of 5.7 million in 1953—as non-citizens (Fernando 2002, 73); citizenship remained politically contested long after independence. Citizenship by application, for many domiciles, became much harder after restrictions were enforced in 1960 and then in 1962 (Wong *et al.* 2010, 930).

(Fernando, *Ibid*, 10). The MIC was formed earlier in August 1946, but Indians being politically marginal MIC took long to be counted.

Fernando (2002) provides the most extensive account of Malayan politics from Federation to *merdeka* (independence). All multi-ethnic political initiatives collapsed. Jaafar, the UMNO president, wanted UMNO to be inclusive (his state Johor was demographically matched, had greatly benefitted from Chinese enterprise and was economically tied to the Chinese dominated Singapore) but that was rejected. He quit and founded the inclusive Independence of Malaya Party (IMP) in 1951 with British encouragement and MCA and MIC endorsement (Means 2009, 120). IMP was routed in the 1952 Kuala Lumpur municipal elections in which MCA allied with UMNO, led now by Tungu Abdul Rahman, brother of the Sultan of Kedah. This ended multi-ethnic party experiments forever (Vasil 1971). The 1952 success of the UMNO and MCA tie-up led to their formal “Alliance” (*Perikatan*) in 1954, later joined by the MIC. Alliance axiom since then has been ‘UMNO political dominance and Malay unity. Within these boundaries UMNO is willing to compromise with its coalition partners’ (Milne and Mauzy, 1978, 133).

The Alliance won by a landslide in the 1955 elections: 51 of 52, or 98.1%, Federal Legislative Council seats with a 79.6% vote share;²⁶ Rahman became the Chief Minister of the Federation. Malaya appeared stabilised. Consequently, a constitutional commission headed by Lord William Reid was appointed by Her Majesty and the Rulers. A Constitution, incorporating the Commission’s recommendations, was adopted on 27 August 1957 by the Federal Legislative council; four days later, on 31 August 1957, the Federation of Malaya became independent. This polity was not an integrated one, but its segmental elites had agreed to an electorally sanctified “consultative hierarchy” which Lijphart called “consociation”.

²⁶ Under Federation citizenship, only 11% Chinese (mostly from Straits colony) and only 3.9% Indian qualified as electorate.

3 Inequality and its Institutionalisation in Malaysia

Political inequality implies unequal citizenship, in our case institutionalised identity-based differential rights. This differential manifests in the control of access to policy institutions, authority frameworks and associational organisations (North *et al.* 2009). Therefore, political inequality in identitarian regimes primarily manifests in unequal weightage to citizens' preferences, unequal opportunity (to offices, economy and education) to citizens and, wherever relevant, unequal respect for citizens' beliefs. Table 3.1 below summarises attributes of these inequalities, their constitutional support and their narratives of justification in Malaysia.

Form of Inequality	Institutions of access control	Mechanisms of access control	Constitutional Leverage	Legitimation Narrative
Unequal preferences	Legislatures	Gerrymander Election control	Arts. 113 and Thirteenth Schedule	Rights of the "people of the country"
Unequal opportunity	Offices	Employment	Art 153	+ Affirmative Action
	Economy	Regulation and ownership	Arts. 89, 153, Ninth Schedule	
	Education	Admissions and scholarships	Arts. 153	
Unequal belief	Judiciary	Islamisation	Arts. 3, 12, 121(1A)	+ Positive Freedoms

Table 3.1: Features of political inequality in Malaysia

These inequalities show-up in all normative audits of democracy, for example those conducted by the Freedom House (FH) or The Economist Intelligence Unit (EIU). FH audits "Political Rights" and "Civil Liberties" using 25 culturally-agnostic indicators (2014b). Political rights by ten indicators: three, A1-A3, for "electoral process"; four, B1-B4, for "political pluralism and participation"; and three, C1-C3, for "government functioning". And civil liberties by fifteen indicators: four, D1-D4, for "freedom of association and belief"; three, E1-E3, for "associational and organisational rights"; four, F1-F4, for "rule of law"; and, four, G1-G4, for "personal autonomy and

individual rights”. Each indicator is polled by an exhaustive set of questions. EIU, on the other hand, uses 60 single-question indicators in a five-category framework (2015, 40-49): “electoral process and pluralism” (questions 1-12); “functioning of government” (questions 13-26); “political participation” (questions 27-35); “democratic political culture” (questions 36-43); and, “civil liberties” (questions 44-60). The principal methodological difference between FH and EIU audits is that FH evaluates only the institutionalised salience of each indicator, while EIU factors “values” surveys into some. Although my conceptual framework synchronises better with FH methodology—evaluating “what is” rather than “what the opinion is”—the two audits are essentially equivalent on indicators of interest. This is shown in Table 3.2 below. Beetham indicators (1994, 36-39) are added to highlight the fact that all normative audits are essentially isomorphic.

Type of Inequality	FH Indicators	EIU Indicators	Beetham's Indicators
Unequal preferences	A1(8), A3(6), B4(2)	2, 4, 28	4, 27
Unequal opportunity	F4(1), F4(3), G1(3), G2(1), G4(5)	11, 54, 56, 59	15, 19, 20
Unequal belief	D2(5, 7, 8), E2(1), F1(1-3), G3(6)	43-49, 52, 53	10, 13, 20

Table 3.2: Indicators of different audit frameworks

Note: FH indicator Xm(n) is the bulleted nth sub-question of Xm.

FH’s A1(8), A3(6) and B4(2) correspond respectively to equal weightage to votes, gerrymander and minority inclusion in the political process, whereas EIU’s questions 2, 4 and 28 correspond to fair elections, universal suffrage and minority voice in political process and Beetham’s indicator 4 includes equal weightage to votes and 27 includes equal weightage to political participation of all sections. Thus, these three sets essentially measure the same variable: equality of preferences. Similarly F4(1), EIU-54/59 and Beetham-19 all test for equality under law, F4(3)/G1(3), EIU-11/59 and Beetham-15 measure equal opportunity in employment and education, and G2(1)/G4(5), EIU-56 and Beetham-19/20 imply equality of economic opportunity. All these correspond to the variable: “equality of opportunity.” D2(5,7,8)/G3(6), EIU-43/53 and Beetham-20 query institutionalised religious discrimination and/or favouritism while F1(1,2,3), EIU-52 and Beetham-13 evaluate judicial integrity and E2(1), EIU-43-49 and Beetham-10/20 the associational freedoms. In Malaysia, control of judiciary and associations has been the principal mechanisms of institutionalising unequal belief. For this reason, I have subsumed them under the unequal belief category.

This isomorphism among normative audits is expected because, one way or the other, they all evaluate Dahl’s institutional guarantees given the *proviso* of political equality. Compromise on equality is reflected across the state’s institutional system of the state. It is, consequently, reflected in

multiple metrics of normative audits, as we see in Malaysia's case. FH, which began auditing freedoms in 1972, has always rated Malaysia as only "partly free" except in the first two years when it was rated "free". These initial audits employed coarse Gastil indexation on sparse data from the third world, so their conclusions lack the fidelity of later mature audits. From 1969 to 1971, Malaysian parliament was suspended, government ruled with draconian emergency powers under which no rights and liberties existed; thus the sharp drops in Polity IV and Przeworski ratings in 1969. When the parliament reconvened in 1971, the Constitution was amended to make questioning of state policy (even inside parliament) treasonable; many such laws are still on the statute. 1972, 1973 FH ratings are, therefore, misleading. Later FH audits, with their improved methodology and data-collection, correspond reasonably well to reality as evidenced in the fact that major changes in political rights and civil liberties scores correspond to very specific political events. For example, although Malaysia's overall FH rating remained "partly free", civil liberties dropped in 1983-84 when media and organisations came under totalitarian executive control, political rights dropped in 1987-89 when large-scale crackdown on dissent and oppositions took place. Scores in all categories hit their lowest in 1997 and 1998 surveys when state authoritarianism became extreme in the wake of the 1997 Asian Financial crisis. On the whole, the indexes see-saw marginally once in a while but the overall position is an entrenched "partly free". FH indicators of Table 3.2 cut across all FH indicator sets, except the set C on "government functioning" where Malaysia always performs well, because in Malaysia the state is the *sole* authority.

EIU audits confirm these observations exactly. In its seven completed audits so far, the first in 2006 and last in 2014, EIU has consistently rated Malaysia as a "flawed democracy" except in 2006 when it was categorised lower as "hybrid regime". What is of critical significance and what validates **H1** and **H2** is the observation that Malaysia (barely) scores "flawed" rating by virtue of (expectedly) high "functioning of government" index. Otherwise, its "political participation" and "civil liberties" indexes consistently fall within the hybrid range. As in the FH case, the EIU indicator categories of Table 3.2, which map political inequality, are precisely the ones that reflect "political participation" and "civil liberties".

Clearly, therefore, Malaysia's democratic deficit follows from institutionalised political inequality, or inclusion-exclusion imbroglio as Kingsbury puts it (2001). As long as audit metrics are normative (e.g. Dahlesian), *all* audit methodologies converge on this. In the remainder of this chapter, the institutionalisation of the first two types of inequality are discussed (inequality of belief, as noted in Chapter 1, is discussed in Chapter 4). Inequality of preferences has been institutionalised through all regime phases in a similar manner and with the same legitimisation narrative of the rights of the "people of the country". Therefore, it is discussed next in general form without reference to regime-phases.

3.1 Inequality of preferences

Malaysia is a constitutional monarchy. The monarch, the *Yang di-Pertuan Agong* (He who is supreme lord), is the “Supreme Head of the Federation”, elected (usually rotated) from among the Sultans of the nine Malay states, collectively called the “Conference of Rulers”, every five years or on vacancy (Article 32). The federal legislature is bicameral, consisting of the *Dewan Rakyat* (House of Representatives), the Lower House, and the *Dewan Negara* (Senate), the Upper House. The monarch is also part of the legislature (Article 44) with a role akin to UK’s Queen. *Dewan Rakyat* has a five-year term (Article 55(3)) and is populated through universal adult franchise in general elections; at present it has 222 seats. The 70-member Senate has 2 members elected by each of the thirteen state legislatures (which are mostly unicameral), 4 come from Federal Territories and 40 are nominated by the Monarch; senators may serve a maximum of two three-year terms (Article 55(3, 3A)).

The inequality of preferences manifests in the inequality of representation across identity groups. Let us briefly look at the Senate first. Monarch’s 40 nominees are supposedly those who ‘have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service or are representative of racial minorities or are capable of representing the interests of aborigines’ (Article 45(2)). Parliament of Malaysia currently lists 64 senators (PoM 2015). Of these 31 belong to UMNO, 10 to MCA, 5 to MIC and 9 to other minor parties of the ruling coalition, the *Barisan Nasional* (National Front, BN). In other words, 55 of 64 members are directly bound to UMNO’s identitarianism, of the 9 outside UMNO control only 4, 2 of Democratic Action Party, DAP and 2 of *Partai Keadilan Rakyat*, PKR, profess identity-neutral inclusive politics. Consequently, any minority-affirming inclusive bill, assuming the rare case of its having been passed in the Lower House, is likely to fail here. Notably few, if any, senators appear to ever have made any broader contribution to the society as required.

However, it is in the extensive gerrymander of Lower House electoral districts that preference inequality is blatantly institutionalised. This gerrymander, rather than blatant electoral fraud, is how UMNO has uninterruptedly ruled, as the autocrat of a tribal confederation, since independence. Fig. 3.1 below provides a perspective of the legislative stranglehold of UMNO (and BN) since the first general election were held in colonial Malaya in 1955. In the proposed 100-seat Legislative Council, 52 members were to be elected, 48 were to be nominated by the colonial government. The Alliance, as said earlier, won 51. Few Chinese (11%) and fewer Indians (3.8%) could vote; choice outside of the ethnic-confederation, the Alliance, did also not exist. Presently, of the 222 seats, UMNO has 88, its allies 45. The two-thirds curve has been an important marker of the power and prestige of UMNO because a two-thirds majority allows (Article 159; Eighth Schedule Clause 19(4)) unfettered Constitutional emendation, a power generously utilised by UMNO: by 2010, 57 Constitutional Amendments (and subsidiary Acts) were enacted impacting, frequently quite extensively, 143 of the

183 Articles in the Constitution and all its thirteen Schedules (procedures for Constitutional articles);²⁷ only 40, mainly declarative, Articles remain unaffected (GoM 2010a).

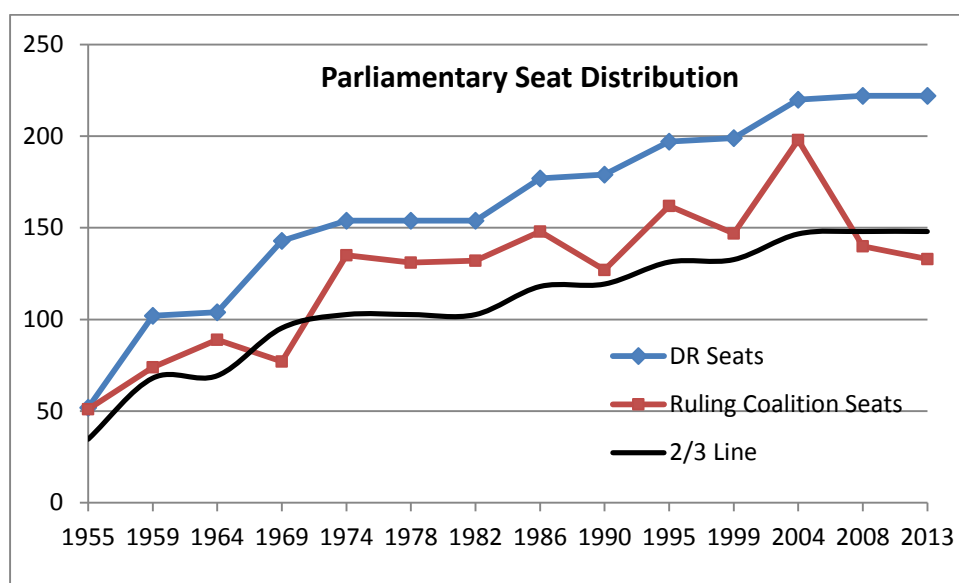


Fig. 3.1: Parliamentary Seats and the ruling coalition's share

Source: Recalculated from PoM (2015) archives; Wong *et al.* (2010).

How has the gerrymander worked to maintain UMNO, or equivalently Malay, dominance? Article 113(2) (also 116(1)) allows review of electoral districts and delimitation every eight years. After review, the Election Commission submits its recommendations to the prime Minister, who in turn, tables the report (Thirteenth Schedule, Part-II, Clause 9)

As soon as may be...before the House of Representatives, together...with the draft of an Order to be made under section 12 for giving effect, with or without modifications, to the recommendations contained in the report [emphases added]

The Prime Minister (equivalently UMNO) can virtually present whatever he (it) wants and whenever. This power is further strengthened by Thirteenth Schedule (Part I, Clause 2C) which says that:

...the number of electors within each constituency...ought to be approximately equal except that, having regard to...disadvantages facing rural constituencies, a measure of weightage...be given to such constituencies

The Prime Minister, therefore, has *carte blanche* to define “rural” (and, by default, “urban”) constituencies and their electorate sizes; the “approximately equal” is neither specified nor ever followed. This is a throwback to the colonial 1954 constituency delimitation (for 1955 elections)

²⁷ There are actually only twelve schedules because the Twelfth Schedule, which dealt with the Federation of Malaya Agreement, was repealed in 1963.

when “Merthyr Commission” was mandated to delimit the peninsula into 52 electoral segments with due “weightage” to rural constituencies *within an overall max-to-min constraint* of 2:1 or +/-33% of the average. Later the Reid Commission in 1957 recommended +/-15% variation (Wong *et al.*, 932). Since independence, however, the delimitation has been biased towards preponderance of small, Malay dominated, “rural” constituencies—UMNO’s electoral base—over “large” urban constituencies which tend to be ethnically mixed and thus likely to favour oppositions (*Ibid*). Malaysia’s population’s location profile (2010 Census) given in Table 3.3 below puts this in perspective:

Population Category	Aggregate			Urban			Rural		
	Pop.	%age Pop.	Citizen %age	total	In- group %age	Citizen %age	total	In- group %age	Citizen %age
Total	28.334	100	-	20.124	71	-	8.209	29	-
Citizens	26.013	91.8	100	18.606	71.5	-	7.406	28.5	-
Bumiputera	17.523	61.8	67.4	10.964	62.5	42.1	6.559	37.5	25.2
Malay	14.191	50	54.55	9.456	66.6	36.35	4.734	33.4	18.2
Chinese	6.392	22.5	24.6	5.814	91	22.35	0.578	9	2.22
Indian	1.907	6.73	7.33	1.7	89.1	6.53	0.207	10.9	0.8

Table 3.3: Urban-Rural ethnic profile 2010

Source: Recalculated from GoM (2010b)

The contrast between this population profile and constituency delimitation is stark. Table 3.4 below presents some contrast aspects from the recent 2013 general election. Urban/Rural citizenship and Urban/Rural seat distributions are in exactly inverse ratio: 71.5% citizens are urban, 71.1% (158 of 222) seats are rural; 28.5% population is rural, 28.8% (64 of 222) seats are urban. More importantly, on the peninsula, which decides the politics of Malaysia, 90% of rural seats (99 of 110) are Malay majority in total defiance of the statistics that only 33% Malays are rural who constitute only 18.2% of total citizenship. In contrast, for example 91% Chinese are urban and constitute 22.35% of citizenry, but only 22 urban seats are Chinese majority, about 10% of the total seats. Not surprisingly, of the 133 seats that BN won in 2013, 121, or 90.1%, were rural. Clearly, this skewed delimitation can exist only if the Malay-majority (and *bumiputera*-majority) rural constituencies are demographically small while urban constituencies are large.

Constituency	On the Peninsula	In East Malaysia	Malay majority	Chinese majority	Mixed seats	Bumiputera* majority
Urban	55	9	20	22	21	1
Rural	110	48	99	7	15	37
Total	165	57	119	29	36	38

Table 3.4: Urban-Rural Constituency profile 2013 GE

Source: MCOR (2013).

*: *Bumiputera* here are restricted to East Malaysia indigenes.

In the 2013 elections, Putrajaya (96.8% Malay) was the smallest constituency with an electorate of 15,798, while the largest constituency Kapar in Selangor, which has a mixed population, had 144,369 voters: a ratio of 9.14 (in the 2004 elections their ratio was a mind-boggling 20.5 because Putrajaya was much smaller then (Guan 2013, Table 3)). In the elections from 1955 to 2008, the average of (max/mean) constituency size has been 2.2 (worst 2.90 in 1982), while the average of (min/mean) constituency size has been 0.33 (worst 0.11 in 2004); Malay over-representation hovers at around 1.20 (Wong *et al.* 2010, Tables 5, 6). For the largest opposition party, the number of votes that match 1 ruling coalition vote, on an average over elections from 1959 to 2008, is over 4.07 (in 1955 it was infinity) (*Ibid*, Table 8). Six times in these twelve general elections the largest opposition has been the Chinese dominated DAP, which points to the fact that the net-worth of non-Malay vote, on an average, is about 25% of that of Malay. This is how inequality of preferences is institutionalised in Malaysia. Crouch, poignantly commented two decades ago (1996, 134):

If elections are seen as means by which citizens can change their government, elections in Malaysia do not make a difference at the national level or in most of the states. The electoral system has been arranged in such a way as to make the re-election of the government inevitable—at least in normal circumstances—at the national level and in nearly all of the states.

They are yet to make a difference; the gerrymander of preferences ensures that. Consequently, the corresponding metrics of monitory audits return “democratic deficit” values.

3.2 Inequality of opportunity

Since the legitimisation narrative of inequality of opportunity—justification of unequal access to social and economic advantages—has varied across regime phases (see Chapter 1), tracking corresponding changes in state policy through these phases is methodologically best suited to evaluate this inequality.

3.2.1 *The consociation phase 1957-1969*

The institutional superstructure of this phase is the 1957 Constitution because state policy has directly followed from its UMNO interpretation. Broadly, this Constitution incorporated Reid Commission's (1957) recommendations that fast-tracked a "consensus" deal among all stake-holders, the most important deal being the UMNO-MCA-MIC "Bargain", dubbed "The Social Contract" later (Lee 2010, 40), submitted to the Commission as the "Alliance memorandum" (Fernando 2002, 68-76). Malaysia's ethnic politics, which is all its politics (Gomez 2007, 3), has since been conducted around differing narratives of this contract in which UMNO secured four major *ketuanan Melayu* victories: Sultans, special position, language and state religion. The Commission's riders on these benefits, in favour of minority inclusion, were conveniently dropped from the Constitution itself. For example, Malay special position on jobs, education and economy entitlements was supposed to be reviewed after fifteen years (Reid 1957; Clause 167) but the Constitution (Article 153) mandates no such review; the entitlements are indefinite.²⁸ Similarly riders on Malay Reservations and on the legislative use of minority languages (Reid 1957; Clauses 166 and 171) were ignored in the Constitution (resp. Arts. 89 and 152). The consensus among scholars of that period (Lijphart, Eckstein, Ratnam, Milne, etc.), however, is best captured in the words of Esman (1972, 25):

The Malays gained political independence, control of government, and a polity which was to be Malay in style and in its system of symbols. In return the Chinese gained more than overseas Chinese in Southeast Asia had dreamed of—equal citizenship, political participation and officeholding, unimpaired economic opportunity, and tolerance for their language, religion and cultural institutions

This view is not empirically supportable. Malaysian polity became Malay in all its institutional aspects, not just style and symbols but substantively. Citizenship has been discussed earlier. Article 152 disallows Chinese (also Tamil) from any "official purpose". Impairments to economic opportunity will become clear below and tolerance of religion and culture in the next chapter. In fact, Milne's contention that the Bargain was '*short-term* rough justice between the claims of the communities...[emphasis added]' (1967, 41) is also unsupportable: Bargain justice has continued to be interminably rough. The reason the explanatory (and predictive) models of these scholars fall short is (with the benefit of hindsight) because their frame-of-reference is exclusively Malay, the "people of the country", the majority; there is little engagement with the "other". The reasons are not far to seek: Malay sociology was well-understood (indeed it was the only sociology researched during colonial era) and there was the moral fear, given their economic backwardness and lack of enterprise capacity, that they would be vulnerable to the economic might (and numbers) of the Chinese unless protected

²⁸ Contrary to the received wisdom that Reid Commission insisted on fifteen-year review, it was in fact suggested by the Alliance itself (Fernando 2002, 127), though not publicly announced. Later the drafting group, headed by Tun Abdul Razak of UMNO, argued that it was unacceptable to Malays; it was thus dropped (*Ibid*, 163). Same happened to the language clauses.

(at least until their capacities became matured): thus Reid Commission's (1957) terms of reference mandated it to 'safeguard' Malay special position (and 'legitimate interests of other communities'; this became a concern after 1945 as explained in chapter 2). This backwardness—average Malay, Indian and Chinese household incomes in 1957 were \$1463, \$2013 and \$3223 respectively (Baker 1999, 195)²⁹—was also often portrayed as colonialism's moral failure: Lennox Mills famously said: 'when the British came, the Malay was a poor man in a poor country, when they left he was a poor man in a rich country' (*Ibid.*). Thus the Bargain was seen, 'if the political and the economic spheres are considered together', as fair inter-ethnic 'trade-off: political and governmental superiority for the Malays and continued economic hegemony for the Chinese' (Lijphart 1977, 151). What is completely lost in these models is that institutional access is a political matter, not economic. It is a function of who the polity assumes are the legitimate sources of valid claims on the state. Also because the settler society was little understood, their vulnerabilities went unnoticed.³⁰

One can only speculate (this needs more research) on the answers to the important question: why did the Chinese acquiesce to UMNO's draft constitution without the Reid riders, given their economic power, numbers, their war experience, the fact that most were already citizens and, most importantly, the obvious British disinclination to handover Malaya to the Malays without guarantees to "others." At a minimum, they could have leveraged Reid's unease with contradictory demands of Malay privilege and democratic citizenship (1957; Clause 163). Instead, the Chinese seem to have quickly accepted Alliance chief Tunku Abdul Rahman's assurances on the review of privileges, even though, at the same time, he was assuring the sceptical Malay leaders—sceptical of ceding too much to the Chinese—that UMNO will have 'power with an overwhelming majority and if any changes appeared necessary we would amend the constitution,' which, of course, they liberally did (Guan 2001, 31). It is possible that the Chinese elites wanted to allay Malay fears by being accommodative, or it was the Chinese cultural trait of "doing business" by trust and promise. Two other explanations, however, are also plausible: one, they were wary of the (now waning) communist insurgency that threatened *bourgeois* enterprise, power and leadership, and, two, they wanted inter-ethnic peace and public order for the continuation of post-war economic recovery.

In the economic sphere, the Bargain adopted the Lockean *proviso* of no one worse-off. For the Chinese, this was the most important enshrined guarantee (Articles 13(2): 'No...compulsory acquisition...without adequate compensation') because there was some Malay demand for nationalisation of Chinese businesses. Also the main Malay "special position" entitlements Article

²⁹ This is a monetised comparison, thus not strictly fair. Malays were 82% rural in 1957 and rural economy was not monetised. Also without supporting variables—expenditure, taxation, savings and investment—such comparisons are fraught.

³⁰ The Chinese elites, for example, had nowhere to go after the communist takeover in 1949 and the Chinese proletariat had for long legitimised its claim to the country. In addition, it is curiously disregarded that Malay nationalism hardly ever expressed itself in economic terms.

153, guaranteed that there would be no deprivation of current business licenses and no classification of businesses as fully reserved (clauses 7, 8 and 9); land and agriculture was, of course, exclusively Malay province (Article 89). Again, no restrictions were placed on “private use” of language: Chinese and Indians schools could run (Article 152 (1a)) and could even receive state help (Article 12(1b)). Also *zeitgeist* demands of general liberties (Article 5: Right to life; Article 8: Equality before law and equal protection under it; Article 10: Freedom of speech, assembly and association; Article 11: Right to belief; etc.) were incorporated and, in this phase, reasonably respected, even though each Rights Article had multiple caveats and riders on it.

The discourse of governance in this phase was modernising the rural Malay political economy: in 1957, 80.7% Malays were rural, as were 27% Chinese and 56% Indians (Hamzah 1966, 485). However, non-Malays, though denied affirmative benefits, were also not seriously disadvantaged. Attempts by UMNO apparatchiks to purloin Chinese businesses were discouraged.³¹ Thus while Malay “entitlements” regime was initiated, common good was not completely jettisoned. Given the reasonable freedom-of-speech condition, these entitlements constituted the focus of political debate and contestation which became especially acute after the 1963 expansion of the Federation when Singapore’s leader, Lee Kuan Yew’s Chinese-dominated People’s Action Party (PAP) began mobilising on “Malaysian Malaysia” equal rights platform.

Through the first and second Malaya Plans (1956-60 and 1961-65), the state effort was at rural modernization, educational reform and bureaucratic consolidation. In the first Malaysia Plan (1966-70), the normative force behind the legitimation of Malay entitlements was increased by extending affirmative action to the natives of Sabah and Sarawak, who along with the Malays, were now clubbed into the new category of *Bumiputera*. As Saravanamuttu (2010, 283) says: ‘...the concept of *ketuanan Melayu* could not be applied to Sabah and Sarawak...where non-Malay indigenes were in the majority or were the largest plurality’. These very underdeveloped tribal Borneo principalities joined the Federation on conditions of extensive legislative autonomy (guaranteed by Article 95B) and socio-economic entitlements on par with Malays. Remarkably, the Malays did not extend any affirmative entitlements to the Chinese and the Indians (Indians were equally backward) who had been citizens of the Federation for as long as the Malays themselves and, unlike the Borneo natives, part of their peninsular society for decades if not centuries and, in the main, architects of its development. This reinforces the argument that Malay identitarianism is defined by relations of political dominance over Chinese and Indian Malaysians rather than by anything else.

The political power remained firmly Malay, who also remained the biggest “entitlements” beneficiaries. Rural development was budgeted at 23% of all allocation in the First Five-Year Malaya Plan (1956-60) and raised to a massive 50% in the second Plan (1961-65): it covered agriculture, education, health and welfare, bank loans, road and transport Infrastructure, electrification and

³¹ In 1960, Aziz Ishak, the Agriculture and Co-operatives minister, stealthily transferred some Chinese businesses to Malay co-operatives; he lost his job and the transfers were annulled.

telephones. The corresponding industrial budget (where the Chinese would function) was allocated 1.3% in the first Plan, raised to 2.5% in the second, and left to stagnate thereafter (Shome 2002, 74-77; Baker 1999, 290-95). Around 20% of all budgeted expense was on education, which yielded great dividend: the school enrolment rose from 0.8 to 1.27 million during 1954-60, with English schools scoring over Malay schools (Shome, *Ibid*). A Federal Agricultural Marketing Authority (FAMA) was established to acquire crops at pre-determined support prices to cut farmers' debt-to-earnings ratio. Tentative steps to introduce Malays to modern (and monetised) economy were also taken with the establishment of Malay co-operatives. In 1960, Malayan Industrial Development Finance was established to fund Malay owned ventures. All new ventures had to be Malay (later *Bumiputera*) owned and managed. They were given 40% tax relief and were protected by import tariffs. Interestingly, this led to the era of the so-called "Alibaba" companies, where "Ali" (the Malay), who owned the licence but lacked business skills, became the (sleeping) owner receiving commission from "baba" (the Chinese) who ran the venture though he could not own it. In this period: 'Malaysia managed a steady 5 percent growth rate. In the 1960s, private sector investment averaged a credible and impressive 7.3 percent while manufacturing hit 10.2 percent surpassing expectations. The manufacturing component of GDP rose from 8.5% in 1960 to 13 percent in 1970' (Shome, *Ibid*, 77).

3.2.2 *The consolidation phase 1969-1984*

The consociation phase ended abruptly when Malay-Chinese riots erupted in Kuala Lumpur on 13 May 1969 during elections. PAP had been crushed in the 1964 elections; Singapore had quit (or been expelled from) Malaysia in 1965. Chinese disaffection with unequal access, however, remained: the *bourgeoisie* chafed at the denial of economic opportunity and the *proletariat* at the 1967 National Language Act that mandated phasing-out of Chinese (and Tamil). Some Chinese elites, dissatisfied with MCA's poor leverage in the Alliance, formed *Parti Gerakan Rakyat* (People's Movement Party); DAP, the left-over PAP vestige, represented the broader Chinese segment (Vasil 1980, 145-186). In the elections, the Chinese deserted MCA, whose federal seats dropped from 27 to 13 (in state legislatures from 67 to 26), while Gerakan and DAP opened accounts with 8 and 13 seats respectively (PAP had only 1 seat in 1964).

UMNO faced its first major political crisis. The Alliance lost two-thirds majority for the first time—denting its ability to amend-the-Constitution-at-will, the biggest signifier of *ketuanan Melayu* and the source of its prestige and following—but more importantly, some core (and affluent) Malay states became exposed to possible non-UMNO governance. Perak was lost: Alliance 19, Opposition 21; Selangor was precarious: Alliance 14, Opposition 13, independent 1, vulnerable to MCA/MIC defection; Kedah was barely retained: Alliance 14, PMIP 8, Gerakan 2; Terengganu win was pyrrhic: Alliance 13, PMIP 11; and Pinang, though not a Malay state, had become irretrievable: Alliance 4,

Gerakan 16 (NSTP 1990, 47-53).³² Provocative Chinese victory rallies and counter-mobilisation of Malays to ‘teach the infidels a lesson’ (a call by Selangor’s Chief Minister, Haji Idris) triggered riots that claimed 178 lives in a 1:6 Malay: non-Malay ratio because of all-Malay police’s partisanship (Lee 2010, 41; Shome and Baker report 196 deaths). The ‘belief that Malay political hegemony was being challenged,’ brought rural Malays to urban centres where they rioted (Means 2009, 82).

Scholastic analyses commonly offer two explanations for consociation’s collapse. One that it fractured under conflicting pressures: on the one hand, from UMNO and the Islamic (PMIP) right who recoiled at any accommodation of MCA’s demands and, on the other hand, from Chinese (and Indians) cacophony on Malay hegemony (Means, *Ibid.*; Lijphart 1977, 155). We shall see in chapter 5 that “UMNO reacts to PMIP (PAS)” theory is empirically unsustainable. Instead, the reason is that sustaining *ketuanan Melayu* dominance relation requires political submission, not just political compromise, of its detractors; a state that is logically inconsistent with an open public sphere. The second theory is: ‘In short, it was Malay under-development and Chinese prosperity’ (Shome, *Ibid.*, 85), or equivalently, the ‘persistent economic inequality between the races which *laissez-faire* management of the economy failed to alleviate’ caused Malay fears that ‘political control might also be in jeopardy’ (Stafford 1997, 560, 567). This “economic” theory is even less convincing for three reasons. Firstly, there was no *laissez-faire* as follows from above discussions unless *laissez-faire* is interpreted as non-nationalisation of existing Chinese businesses (new ones were only Alibaba). Secondly, by this theory, the consociation should have more likely collapsed in 1964: Malays, with the inclusion of Singapore, had become demographically inferior and “Malaysian Malaysia” unabashedly signified that *ketuanan Melayu* was “in jeopardy”. Yet, the consociation did not collapse. The only logical explanation is that PAP was crushed, Singapore was expelled, demography restored, and *ketuanan Melayu* two-thirds majority retained. Also, the ethnic income profile in 1970 was Chinese \$4644, Indians \$3720 and Malays \$2148 (Baker 1999, 195), which reflects 47% Malay gain versus 44% Chinese gain; neither was the gap diverging, nor were the Malays not growing. Most importantly, thirdly, the Malays themselves did not subscribe to “economic” interpretation: Government’s own white paper on these riots, *Towards National Harmony*, as Shome (*Ibid.*, 98) himself admits, ‘stressed that political and psychological factors had contributed to the conflict’ and informs that most independent experts ‘while accepting that the Malays still lagged behind the Chinese economically, did not subscribe to “relative deprivation” as a reason for the conflict.’ As I have been emphasising, every economic-inequality theory of Malaysian identitarianism in this phase is empirically falsified: economic parity, indeed superiority, is what Malays see as a political right and *a*, not *the*, guarantor of Malay Malaysia; the converse that political superiority is sought to address

³² In Selangor and Perak, DAP and Gerakan constituted the main opposition. PMIP was the Pan-Malay(si)an Islamic Party, the forerunner of the contemporary PAS (*Partai aIslam Se-Malaysia*; Islamic Party of Malaysia), entrenched in the backward northern Malay states of Kelantan and Terengganu.

economic backwardness, which otherwise would not be addressed, is also false. It is clear from how UMNO reacted to this crisis.

UMNO reacted by redefining public sphere. Emergency was promulgated, parliament suspended. A nine-member National Operations Council (NOC), with one MCA and one MIC member, under the chairmanship of Tun Abdul Razak, Rahman's deputy, became the emergency cabinet under powers of Part XI, Articles 149-151, of the Constitution. Soon Razak also became the Prime Minister when UMNO eased Rahman out in September 1970. Razak, a strong *ketuanan Melayu* votary, subscribed to '[the] parochial views of Malay resentment which he suggested was the result of generous government concessions to Chinese concerns in language and educational issues; and he maintained that measures to uplift the Malays economically were frustrated by persistent Chinese reservations about Malay special rights' (Shome, *Ibid.*, 90). Therefore, he quickly set to "enforce" a new consensus on *ketuanan Melayu*.

First, the political: in January 1970, Razak established the Department of National Unity and an advisory National Consultative Council to evolve 'positive and practical guidelines for inter-racial co-operation and social integration for the growth of a Malaysian National Identity [*Bangsa Malaysia*]' (*Ibid.*, 93-94). This resulted in the five *Rukunegara* (pillars of the nation) principles: belief in God, loyalty to the King and country, upholding the constitution, rule of law, and good behaviour. Constitutional inclusion of these pillars was made a precondition for NOC's dissolution and return to parliamentary process which happened on 23 February 1971.³³ Henceforth Malay privileges (and non-Malays' rights, basically Chinese and Tamil medium in their private ethnic primary schools) became "sensitive issues", questioning which, even inside parliament (Article 63(4)), became treasonable inviting full force of the now amended (P.U. 282/1970) Sedition Act 1948. Significantly, the 'Council [Conference] of Rulers' was made the Trustee of Malay and other *Bumiputera* 'special position' (Means, *Ibid.*, 83). No amendment to "special position" (e.g. Articles 152 or 153), or draconian laws (Article 10(4)), was possible anymore because this now required consent of the "Conference of [Malay] Rulers" (Article 159(5)).³⁴ *Ketuanan Melayu* was consolidated by taking contestations on equality out of the public sphere, the calculus of people's preferences, and the mandate of elected parliaments. 1971 *Rukunegara* amendments (Article 10(4), 38(2c, 5), 63(4), 159(3, 5) and others) enforced the *stare decisis et quieta non movere* "consensus."

³³ In the reconstituted cabinet, only one portfolio, finance, was given to non-Malays, but taken back after 1974 elections.

³⁴ In addition to "emergency" constitutional wherewithal (Part XI: Articles 149-151), Federal legislative powers (Ninth Schedule: List-I) over individuals, corporates and institutions are anyway extensive: Clauses 3 (Internal Security), 8 (Trade and Commerce), 10 (Communication), 13 (Education), 21 (Press and Publications), 22 (Censorship), 25 (Co-operative Societies). States' legislative capacity on any of these issues is little (List-II) and constrained by concurrent powers (List-III, esp. clauses 1, 2, 5, 9B, 9C, 9E). Laws regulating rights, preferences and opportunities are uniform and federally administered.

To support this consensus, Razak, the architect of the 1957 Bargain, cobbled a new, necessary, coalition. 1969 Malaysia was different: physically and politically. There were the new eastern *Bumiputera* ethnicities (Iban, Kadazan-dusun, Bajau, Bidayuh, Melanau, Murut, etc.) and new peninsular Chinese expressions (Gerakan and DAP). Then there was also the vocal Malay-Islamist PMIP, which functioned as Islamist thought police and public auditor over UMNO and which was politically important in the peninsular north. Razak, always deft and methodical (he ran the administration while Rahman gave speeches), struck a new bargain, accommodating most stakeholder tribes, to ensure the continuity of the UMNO identitarian regime. *Rukunegara* power made this easy. Thus *Barisan Nasional* (BN), registered as a political party at the 1974 elections, was formed by co-opting PMIP, Gerakan, Sabah's ruling party, Sarawak's Chinese and a few Iban chieftains, and a few other fringe parties into the Alliance: PMIP quit in 1977 (and became PAS), DAP never joined. Since then, Malaysia has been an "open politics with pre-determined outcomes," a *Rukunegara* public sphere, a "democracy" tied to adjectives.

Secondly, the recast economy: agricultural modernisation continued apace, but capital ownership in industrial economy was defined as the new "affirmative" direction. On 11 July 1971, the New Economic Policy (NEP)—directive principles for the next four five-year Malaysia plans (1971-1990)—was launched. NEP's objectives, as stated in the Second Malaysia Plan (1971-75), were laudable: 'to eventually eradicate poverty' (from 49.3% in 1970 to 17% by 1990) and 'to reduce and eventually eliminate the identification of race with economic function'; its targets bold: 30% Malay/*Bumiputera* capital ownership in 1990 (2% in 1969) (GoM 1971, 1).³⁵ Stafford (1997, 557) argues that because NEP 'promoted the redistribution of new and expanded economic activity rather than that of existing assets' its claim that 'no particular group' will 'experience loss or feel any sense of deprivation' (the Lockean *proviso*) is valid. The technology deployed is, however, interesting. Instead of creating entrepreneurial capacity among the Malays to leverage a free market, the marketplace itself was reconstituted as Malay Trust (Chee 1973). All NEP programs 'were designed to provide Malays with privileged access to education, to promote Malay employment in the professions and in management positions, and to secure substantial Malay ownership of and employment in all sectors of the economy' (Means, *Ibid*, 84). Much more importantly, a raft of state-owned special purpose vehicles (SPVs) was launched. In 1970, Pernas (National Corporation) was formed to acquire mature companies and hold them in trust till their eventual transfer to Malays/*Bumiputeras* (Means, *Ibid*, 122); it quickly acquired all foreign owned rubber and tin businesses. Notably, only Malays/*Bumiputeras* could be employed in these trust companies at any level; others were excluded from this opportunity. In the third Malaysia plan (1976-80), PNB (National Equity Corporation) was launched to augment Pernas and accelerate all types of businesses acquisitions. Some other SPVs created to supplement the effort were MIDF (Industrial Development

³⁵ Razak believed NEP was Malays' 'last chance' for economic empowerment (Chee 1973, 42).

Finance), MARA (Council of Trust), SEDCs (State Economic Development Corporations), FTZs (Free-Trade Zones), UDA (Urban Development Authority), Hicom (Heavy Industries Corporation), etc.³⁶ There was also a corresponding push into the private sector: Industrial Coordination Act was enacted in 1975 mandating 40% Malay employment and 70% Malay equity (30% if foreign owned) in all private companies (Shome, *Ibid*, 118, 166).

The investment in (just) the abovementioned state SPVs and in the rural sector between 1971 and 1985 is reflected in the Table 3.5 below. The scale of government expenditure became such that by ‘mid-1980s, about a third of Malaysia's national income was generated by government spending’ (Baker 1999, 351). After the 1973 Arab embargo, this spending was cushioned by oil income that reached 7.2 billion Malaysian Ringgit (180,000 barrels/day) by 1980 displacing both rubber (4.8 billion Ringgit) and tin (1.5 billion Ringgit); Petronas, the state-owned petroleum corporation became the richest Malaysian corporation, fully Malay controlled, managed and staffed.

Category of Investment*	2 nd Malaysia Plan (1971-75)	3 rd Malaysia Plan (1976-80)	4 th Malaysia Plan (1980-85)	YoY growth
Corporate Vehicles	573	1907	5008	16.7%
Rural Modernisation	911	2368	8714	17.5%
Total	1484	4275	13722	17.2%

Table 3.5: Indicative spending on Malay/Bumiputera economic empowerment 1971-1985

Source: Recalculated from Stafford (1997, Table 3)

*: Ringgit Million

Under NEP, Malaysia's GDP jumped from 4 to 21.4 billion USD by the end of 3rd Malaysia Plan (Trading Economics 2015). From 62.3% in 1970, the Malay/Bumiputeras Agricultural population dropped to 37.4% in 1990. Malay capital ownership rose from 2.4% in 1970 to 7.8% in 1975 to 12.4% in 1980 (Shome, *Ibid*, 100). A sizeable Malay middle-class emerged. The ethnic household income distribution during NEP is shown in Fig. 3.2 below. Since, all post-1970 Malaysian Household Income Surveys use the category *Bumiputera*, rather than Malay, it is difficult to estimate Malay incomes. This obfuscates the reality that East Malaysian *bumiputeras* have benefitted much less than Malays, especially in wealth ownership.

³⁶ Interestingly, both UMNO and MCA formed their own trust companies to invest in these vehicles to eventually benefit at their disinvestment (Means 2009, 84).

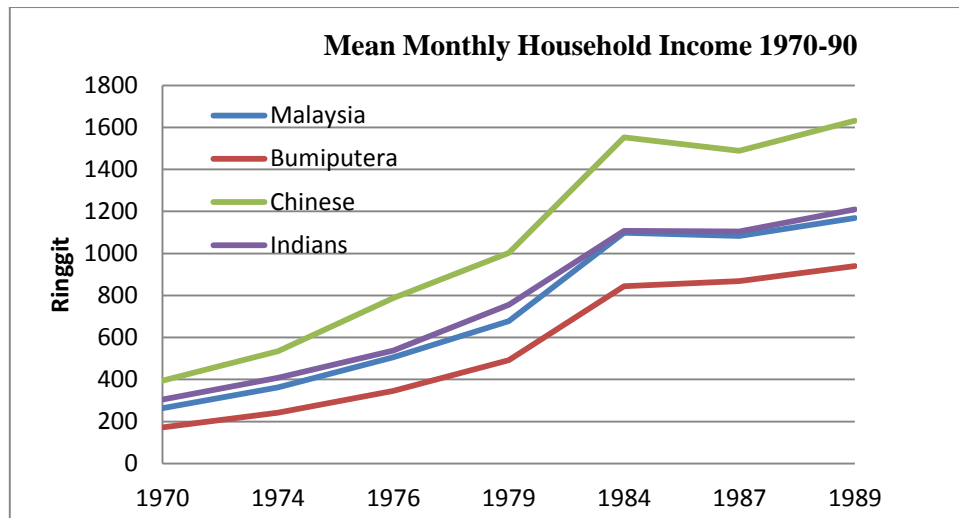


Fig. 3.2: Ethnic income through the NEP

Source: EPU (2015; Table 2)

Fig. 3.2 shows that during the 20-year NEP period, *Bumiputera* incomes increased annually by 9% (Malay percentage is likely 11-12%) while the Chinese and Indian incomes each increased by about 7%. Still, NEP's (affirmation/discrimination) strategy missed the goals. Tzannatos (1991) has theoretically shown that identity-based quotas always deliver Pareto-inferior outcomes even for the target group by causing enhanced socio-economic stratification, rather than equalisation, within it. Although Tzannatos's focus is on identity-based educational quotas in the NEP agenda, his theoretical model is generalizable, *mutatis mutandis*, to identity-based quotas in every domain. Yet, it is an entrenched tradition that every UMNO annual General Assembly announces further carving of the state for Malay/*Bumiputera* benefit, irrespective of the state of the economy. For example, while Fitch Ratings downgraded Malaysia's sovereign credit rating to 'negative' in July 2013 (Leng 2013), the UMNO chief, Prime Minister Najib Razak, announced at the General Assembly on 14 September yet another 10 billion USD to 'boost' Malay/*Bumiputera* 'ownership of commercial property' (Zahid 2013). Enhancement of entitlements is an 'indispensable avenue through which UMNO has managed to secure Malay support' and also for 'UMNO politicians...to consolidate their position in the party' (Gomez 2007, 6).

Inequality of opportunity to public offices can be appreciated in the statistics that, in this phase, government and public-sector recruitment was 98% Malay in violation of the 4:1 agreed norm at the Bargain (Shome, *Ibid*, 100). As we shall see below, this state-of-affairs continues.

More than limiting minority access to employment and economy, it is in education—pathway to economy and employment—that inequality is stark. Note first that education is "sensitive" under *Rukunegara* rules; questioning it, even inside the parliament, can invite the Sedition Act. NEP posited education as the 'crucial instrument' to achieve the twin objectives of 'economic development

and social restructuring', i.e. eradicate poverty and make "economic function" independent of race (Tzannatos 1991, 178). Consequently, education became highly regulated; curricula and examination systems standardised. Ethnic minorities are allowed primary schools (with compulsory Malay teaching), but beyond that all schooling is "national" and Malay-medium. High Malay-language competency at secondary graduation (Malaysian Certificate of Education) is a *prerequisite* for any government employment (Singh and Mukherjee 1993). Though schooling is fully state-funded, minority schools get little (in 1983, the 27.3% Chinese primary schools received 3.4% primary education funding) and their children have to do an extra year at secondary "national" school entry ostensibly to hone Malay-language skills and "Malaysian" values (*Ibid*). MARA, however, is allowed to run an extensive network of sophisticated residential schools and colleges providing high quality English medium education and training and also scholarships. This network of institutions is the best pathway for Malay/*bumiputera* students to elite universities and foreign scholarships; it is, however, out of bounds to non-Malay/*bumiputera* students (*Ibid*).

Early NEP set the *bumiputera* quota in tertiary education at 75%, by mid-1980s it probably stabilised instead around 55% in general institutions (MARA institutions are nearly 100% *bumiputera*) (Tzannatos, *Ibid*, 183). At the prestigious University of Malaya, Malay enrolment rose from 49.7% in 1971 to 66.4% in 1979 during which period university expenditure per-student correspondingly rose from 3700 to 12,900 Ringgit primarily on account of enhanced Malay scholarships which in 1974-75 alone were raised to 4930 from 3505 Ringgit (Shome, *Ibid*, 99-100, 120). Tzannatos (*Ibid*, 184) says that during the 1980s, 'only one in five students in tertiary institutions is a non-*Bumiputra*' and diploma courses are 'almost 100% *Bumiputra*.' Singh and Mukherjee (1993) explain how discrimination affects Chinese and Indian students: denied admissions, sometimes the Chinese manage to study overseas but Indians mostly lack options. Notably, students are disallowed any protest: any form of student politics, on and off-campus, is banned by the Universities and University Colleges Act 1975; Muzaffar (1986, 16) says that this has caused 'the greatest damage on rational, progressive political thinking.'

In short, in this phase, Malay supremacy was consolidated by *Rukunnegara* instrumentalities to limit access to any all institutions of education, economy and employment.

3.2.3 *The corporatisation phase 1984-*

This phase marks radical change from the previous ones. Politically, power became personalised; mediated by a pyramid-structure of patronage networks. Economically, transition from industrial to finance capital took place; the state-held trust equity was liquidated into private hands within the patronage networks. Culturally, religion became institutionalised in the state process. The first two aspects are briefly discussed below, religion in the next chapter. In the later (post-1998) part of this phase, the regime began to be challenged: protest and opposition (civil society and partisan) were

born. This challenge and its meanings and possibilities are discussed in the concluding chapter with respect to hypothesis **H3**.

Mahathir was re-admitted into UMNO by Razak in 1971, appointed to its supreme council in 1973, given various cabinet positions by Razak and made deputy Prime Minister by Razak's successor, Hussein Onn, in 1976. Mahathir became the first non-aristocrat Prime Minister of Malaysia on 16 July 1981 after Onn resigned on health grounds (Milne and Mauzy 1999). He had powerful rivals and detractors, mostly royals and aristocrats, within the UMNO and outside it. He began to consolidate his position against any potential adversary without and within the party. In 1984, he divested the monarchy, after a bitter struggle, of power to withhold assent (Art. 66 (4A); royalty's capacity to challenge his legislative supremacy ended.

In his next big move, he simultaneously silenced potential political challenge (from within UMNO) as well as potential judicial oversight. In 1987, Mahathir was accused of manipulating UMNO elections to put his faction in command; Supreme Court's justice Hashim allowed the motion and ruled the reconstituted UMNO *ultra vires* of the Societies Act 1966. Mahathir re-registered UMNO as UMNO *Baru* (new UMNO) with a new constitution centralising all powers of appointment to offices in the presidency and mandating pledges of loyalty by members and office-bearers to it. Soon more than 50% of the original UMNO leadership joined and UMNO *Baru* was renamed UMNO. The minor split—Razaleigh formed *Semangat 46* (Spirit of 1946 to recall the formation of UMNO) in 1988 but folded back into UMNO in 1996—did no political damage to Mahathir. He, however, hit back at the judiciary amending Articles 121 and 145 to severely constrain judicial reach and jurisdiction. Protests by the judiciary were rewarded by summary transfers, dismissals, appointments of acolytes and impeachments of the intransigent, most infamously that of Justice Salleh Abbas, the Lord President of the Federal Court (Shome 2002, 157; also Means 1991, 239-242). Judiciary has since functioned at the pleasure of the executive.

Mahathir also closed other institutional avenues of opinion. His Printing Presses and Publication Act 1984 superseded Razak's Printing Presses Act 1971. It brought all information, including from overseas, under executive control. Nothing that diverged from government's hand-outs could anymore be disseminated; the Minister's decision was final and beyond appeal (Muzaffar, *Ibid*, 1-5). Associational freedoms were also restricted in a series of six amendments to the Societies Act 1966; the Registrar of Societies became the final authority on registration/de-registration of any corporate body and the Minister the last court of appeal (GoM 2006). He also liberally employed the Internal Security Act 1960, under which even obtaining a writ of *habeas corpus* has become near impossible (Fritz and Flaherty 2003). Its 2 year (and repeatable) provision incarceration without charge has been used frequently against mainstream political oppositions (DAP and PAS leaders) and civil rights NGOs like HINDRAF (Muzaffar, *Ibid*, 18-26). Most brazenly, Mahathir slapped ISA on 106 political activists and senior DAP leaders in 1987 during *Operasi Lalang* (Operation (de)weed) to crush Chinese protest against Education Ministry's takeover of their schools (Shome, *Ibid*, 144).

Notably, under Article 150(6), emergency laws like ISA are immune from constitutional challenge. Mahathir made Malaysia a corporatized police state.

Economy, during early Mahathir years, grew at 12% average annual rate (21.6 billion to 34.5 billion USD). However, commodities crashed in 1985, growth slowed to 2.5%, GDP in 1990 reached only 38.8 billion USD (Trading Economics 2015). Noting that NEP targets would be missed at this rate, Mahathir war-footed the entitlement regime greatly upscaling existing quotas and extending them to newer sectors like share transactions and housing sales (Means 2009, 122-23). The 1990 30% Malay ownership NEP target was still missed by 10% (Stafford 1997, 558, Fig.1), although the Chinese parties, MCA and Gerakan, have long argued that it was met by 1983 (Shome, *Ibid*, 169).³⁷ The revenue drop during commodity crash exposed huge non-performing public assets: Hicom, Perwaja Steel, and Proton being the worst. Mahathir (always) believed that the NEP's mono-focal instrumentality of license-quota affirmative action had 'contributed to a "crutch mentality", specifically among [Malay] business people' (Gomez 2007, 4). He instead, without demolishing entitlements regime all-at-once, believed in Malay capacity development to make them economic agents on their own. Consequently, when NEP expired in 1990, Mahathir made a bold, albeit calibrated, policy departure in his 1991 National Development Policy (NDP), the strategic plan for the next two five-year Malaysia Plans. NDP did not abandon ethnic restructuring of economy, but offered 'fewer [state] guarantees to Malays and greater concern for overall economic growth objectives' realisable by measures like low tariffs and high foreign investment (Means, *Ibid*, 134). NDP envisaged gradual stepwise divestment of state-held trust equity into Malay-Bumiputera hands: minority holding to joint ownership to majority holding (Means, *Ibid*; Shome, *Ibid*, 165). The calibration was necessitated by political turf interests. Mahathir's NDP sales-pitch to Malays was: 'UMNO is still around to ensure that the Malays are protected' while they achieve a 'standard of development that will enable them to compete well with the other communities in the country, or with the rest of the world' (Shome, *Ibid*, 170). His successor, Abdullah Badawi, echoed it verbatim at the 2004 UMNO General Assembly: 'UMNO has a duty to help the Malays become stronger...If we fail to hone the competitive skills of the race, we will eventually become a defeated race' (Lee 2010, 12). (The political turf, clearly, is Malay; not *bumiputera*.)

Mahathir estimated that 30 years are reasonable for capacity building of the Malays for transition to a fully deregulated free-market finance-capital economy. That would make Malaysia a 'developed country' and Malaysian system a role model for progressive Islamic societies. It would be a 'democratic, liberal and tolerant' Malaysia that was 'united' and 'confident' with 'strong moral and

³⁷ Even in 2011, the government declared that this target is still not met. Hector (2013) argues that that is a deliberate misinterpretation. 30% must be interpreted as 30% of Malaysian owned wealth, but Hector says that the government includes foreign owned equity as well. According to him in 2011 Malay-Bumiputera corporate equity was 23.5%, other Malaysians' holdings 34.8%, the rest was foreign owned; thus Malay-Bumiputera holdings are actually 40% of Malaysian holdings, far above the target.

ethical values’ and ‘economically just and equitable, progressive and prosperous’ with an ‘economy that is competitive, dynamic, robust and resilient’. This was his Vision2020 (Wawasan2020) launched simultaneously with the NDP.³⁸ In it, Mahathir articulated nine challenges such as creating a ‘fully moral and ethical’ *Bangsa* Malaysia, evolving a ‘community-oriented’ Malaysian democracy, ‘pursuit of excellence’, a ‘fully competitive’ economy, etc., that need to be resolved to achieve the Wawasan. In other words, Wawasan2020 is liberalism, socialism and “Asian [and Islamic] values” mix; a logically inconsistent and internally conflicted soup of ideas that attempts to synergise freedoms and despotism (Robison 1996; Jayasuriya 1998; Lan 2012, 123-125).

NDP’s de-regulation and debt-financed privatisation heated the economy to a 20% average annual GDP growth, from 38.8 billion to 100.8 billion between 1990 and 1997. Then as the Asian Financial Crisis struck, the Ringgit crashed by 50%, property sank, bad privatisation loans surged and ‘[Malaysian] government struggled to find the political will and expertise to set things right again’ (Weiss 2006, 124). The contagion hit Malaysia especially badly because Mahathir’s handouts generated huge non-performing assets and bad debts (Kui 2003): crony capitalists, especially the UMNO apparatchik and other BN elites, had been the biggest beneficiaries of privatisation transfers and mega state-contracts (Means 2009, 135; Shome, *Ibid*, 165-170). Mahathir himself in 2002 acknowledged that ‘his concerted attempts to develop a new breed of privately owned Malay conglomerates through selective patronage and much protection had failed miserably’ and added ‘the only way to promote entrepreneurship [was] to expose businessmen to competition’ (Gomez, *Ibid*, 4).

The Crisis took almost six years to level-off (Fig. 3.3 below, also Fig. 1.2 above). The GDP has since grown at over 16% annual average: Malaysia’s economic growth since independence—per capita real-income has grown more than tenfold—has, notwithstanding structural inequality, benefitted all ethnicities; a major reason why discontent has not translated into conflict.

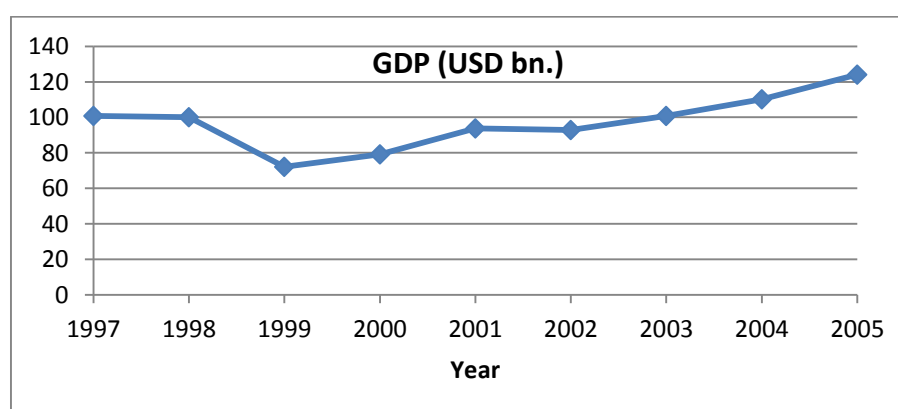


Fig. 3.3: Impact of Asian Financial Crisis

Source: Trading Economics (2015)

³⁸ The website is <http://www.wawasan2020.com/vision/> accessed 10 Feb. 2014.

The political fallout of the Crisis, however, was major and is yet to level-off. Because of this fallout, many scholars consider post-1998 Malaysia, and even more strongly post-2008 Malaysia, to be a new “post-Mahathir” phase (Case 2010; Chin & Huat 2009; Hing 2009; Moten 2009; Pepinsky 2009; Weiss 2009). However, the regime did not change, even a turnover did not materialise. I, therefore, consider post-1997 Malaysia to be continuing in the (identitarian) corporatisation phase albeit with a widened public sphere.

Mahathir and Anwar Ibrahim, his deputy and the finance minister, split on crisis-handling strategy. Mahathir favoured currency controls, Anwar IMF intervention; Mahathir expectedly won. In three weeks of September 1998, Anwar lost ministry (2 September), UMNO membership (4 September), and freedom (jailed on 20 September). A fledgling protest movement, ambitiously called *Reformasi* (following Indonesia’s *Reformasi* that derailed Suharto), was born. Nascent NGOs, Anwar acolytes, disaffected young urban Malays and Chinese and Indians rallied against KKN (*korupsi, kolusi, dan nepotisme*: corruption, cronyism and nepotism). *Reformasi* was short-lived; it died before the year ended. Its visible achievement was little but it heralded the birth of a political public in Malaysia.

An anti-Mahathir coalition, *Barisan Alternatif* (BA), consisting of DAP, PAS, Anwar’s new party PKR, and other minor parties was quickly cobbled to challenge BN’s hegemony in the 1999 polls. However, Mahathir’s deft play on Malay nationalism limited BN’s loss to just 19 seats; two-thirds majority remained. Mahathir’s persona had, however, taken a hit; it began to fade. The fear that BN could be ousted at the 2004 hustings gripped UMNO; Mahathir, to minimise the possibility of a turnover, quit on 31 October 2003. His successor, Abdullah Badawi, thus far untainted by charges of corruption (he was called “Mr. Clean”), promised ‘an anti-corruption drive’ (Lee 2010, 48). He also promised *Islam Hadhari* (civilizational Islam), a ‘nebulous concept’ of ostensibly inclusive (but never fleshed out) ten principles that softened the ‘forcedness’ of Mahathir’s Islamisation (Camilleri 2013, 233). This brought all the Malays back to UMNO. The BN won by a landslide (198 of 219 seats) crushing the fragmented BA (DAP had quit on account of conflict with PAS). However, corruption, collusion and nepotism only worsened under Badawi (Camilleri, *Ibid*; Weiss 2014) reigniting public resentment. In the 2008 elections, BN lost two-thirds majority (and 59 held seats), first time since 1969, winning only 140 of 222 seats; its vote-share plummeted to 51.39% from 63.84%. UMNO’s seats dropped by 28%, while MCA’s crashed by 51% and MIC’s by 67%; MCA-MIC vote-losses were much worse than UMNO’s (Pepinsky 2009). BN’s slide continued into the 2013 elections when for the first time ever BN’s vote-share also dropped below 50%; it also lost seven more seats. The gains were that of the opposition coalition, *Pakatan Rakyat* (People’s Pact: PR), the reconstituted BA since 2008 elections. Major statistical electoral changes from 2008 to 2013 are summarised in Tables 3.6a and 3.6b below.

		2008 Elections		2013 Elections	
		Seats (+/-)	Vote % (+/-)	Seats (+/-)	Vote % (+/-)
Barisan		140 (-59)	51.39 (-12.45)	133 (-7)	47.38 (-4.01)
Nasional (BN)					
	UMNO	79 (-31)	29.33 (-6.6)	88 (+9)	29.32 (0)
	MCA	15 (-16)	10.35 (-5.15)	7 (-8)	8.14 (-2.21)
	MIC	3 (-6)	2.21 (-1.0)	4 (+1)	2.64 (+0.43)
Pakatan		82 (+62)	46.75 (+12.75)*	89 (+7)	50.87 (+4.12)
Rakyat (PR)					
	PKR	31 (+30)	18.58 (+9.68)	30 (-1)	20.39 (+1.81)
	DAP	28 (+16)	13.77 (+3.87)	38 (+10)	15.71 (+1.94)
	PAS	23 (+16)	14.05 (-1.15)	21 (-2)	14.77 (+0.72)

Table 3.6a: 2008-2013 electoral dynamics

Sources: SPR (2013), Chin and Huat (2009), Pepinsky (2009)

*: 2008 PR seat and vote changes over 2004 include DAP numbers although in 2004 DAP had exited BA. Also PR was formally launched after 2008 elections, not before.

Ethnic Support to BN	% Malay (+/-)	% Chinese (+/-)	% Indian (+/-)
2008 Elections	58 (-5)	35 (-30)	48 (-34)
2013 Elections	58 (0)	22 (-13)	40 (-8)

Table 3.6b: 2008-2013 ethnic support to BN

Sources: MCOR (2013), Weiss (2009)

These tables clearly reflect gerrymander: poor correlation between votes and seats. However, other observations are more relevant here to hypotheses **H1** and **H2**. One, Chinese exodus from MCA was extreme in 2008 (then called the “Chinese Tsunami”); that exodus continues. BN’s hegemony is most threatened by this (Amiruldin and Noor’s comments in chapter 2 must be seen in this context). The Indian exodus from MIC was also high in 2008 but seems now stabilised. This shows that the two communities do not share all political agenda. Bridget Welsh’s “attitudes to democracy” survey confirms this: on the whole, Indians favour expansion of democracy; Malays are opposed to expansion of democracy; and, the Chinese are ‘ambivalent’ about it (1996, 900). Two, Malay voters have neither abandoned UMNO nor defected to PAS in any big way (more on this in chapter 5). This reflects Malays’ concern with political power and entitlements, neither of which PAS can guarantee on its own. Islam’s (2011) limited survey of attitudes to Wawasan2020’s nine challenges shows that

Malays consider building “a mature democracy” the least important and “equitable distribution of wealth” the most important. Three, and most important, instead of weakening, UMNO has actually emerged stronger with the BN; this means it has more control of legislation and policy. Therefore, regime transition to liberal equality is off-the-table for the foreseeable future. UMNO is unlikely to drop any more significantly in the near future. Also, it can always do course correction by further co-optations into BN, if necessary.

In terms of inequality of opportunity in this phase, privatisation improved economic participation of minorities. This is reflected in the differences between the NEP and the post-NEP relative rates of household income growth (Fig. 3.2 above and Fig. 3.4 below). During NEP, the average annual *Bumiputera* growth 22.3% (for Malays, it would be much higher) against the Chinese 15.7% and the Indian 14.9% growth rates. In the post-NEP (1992-2012) period, these growths have become more even at 12.4%, 9% and 10.9% respectively.

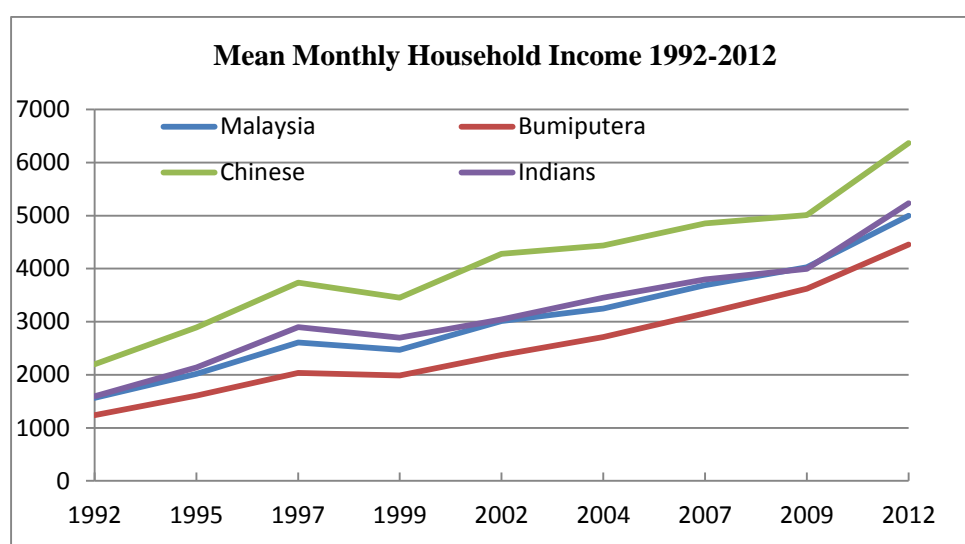


Fig. 3.4: Post-NEP ethnic income

Source: EPU (2015; Table 2)

The inequality of access to offices and education, however, worsened in this phase. This can be gauged from the simple fact that Putrajaya, the federal administrative capital, that houses all federal offices and bureaucracy, is 96.8% Malay (GoM2010b) and that even in 2014 only 1.87% Malaysian police is Chinese, a 24.6% population segment (Bernama 2014). The Educational inequality has reached such absurd levels that even the highest ranking (GPA = 4.0) Chinese and Indian students can be denied university admissions; government scholarships of course remain almost exclusively Malay-*bumiputera* entitlement (The Star 2013).

These inequalities, all institutionalised for political dominance, get reflected in monitory audits as democratic deficit in as claimed by **H1**. The control of access processes through which political dominance is made manifest have been demonstrated and confirm **H2**.

There is another critical dimension of the dominance relation. It is the inequality of belief which became extreme in this phase. It is discussed next.

4 Religion in Malaysia: Inequality by Other Means

At independence in 1957, the 6.28 million Malaysians were ethnically 59.3% Malay, 37.1% Chinese and 11% Indian (Fig. 2.4a). Corresponding religious demography is unclear, but around 60% Malaysians being Muslim is a fair estimate. Contemporary Malaysian Censuses poll religious affiliations in addition to the ethnic, so identity distributions are more refined. Most recent ethno-religious profile is summarised in Table 4.1, while Fig. 4.1 provide an aggregated visual pie-chart picture. A striking fact emerges: peninsular Muslims, state-by-state and territory-by-territory, are almost exclusively Malay (columns 9 and 4); non-Muslims are overwhelmingly Chinese and Indian. Therefore, peninsular ethnic and religious cleavages are coextensive and reinforcing.³⁹ Thus religiously-defined dominance relations, or religious inequality, impact the very same minorities that suffer relations of ethnic dominance: religious inequality becomes political inequality by other means. The legitimisation narrative of dominance is reinforced by conceptions of positive freedoms: to ‘be the instrument of one’s own acts of will,’ to configure society according to ‘[one’s own] social meanings of the goods at stake.’

Religious inequality in Malaysia, as said earlier, began to be formally institutionalised in the corporatisation phase to govern the complete spectrum of social, economic and political transactions among Malaysians and to shape the public sphere as inalienably Malay-Muslim. Influential Malay scholars, like the late Ahmad Ibrahim, the *Shaykh al Kulliyah* (leader or chief of the Faculty) of Laws at the prestigious International Islamic University of Malaysia (IIUM)—established by Mahathir with OIC funding—and an important advisor to Mahathir have argued that because pre-colonial sultanates followed Islamic law, its contemporary institutionalisation amounts only to correcting colonial aberrations (Lee 2010, 54-5). This is the dominant view of Malaysian Islamists and their partisans.

³⁹ Chinese are mainly Buddhist, Buddhists mainly Chinese. All Hindus (and Sikhs) are Indian as are a few Muslims and Christians. Christians, a 3% peninsular minority, are mostly Chinese. In eastern Malaysia, which at 5.7 million people constitutes 20% of Malaysian population, religious demographics are different. Sabah has a small Malay population (9%); its main tribes Bajau (23%) and Kadazan-dusun (29%) have Muslim and Christian majorities respectively. Sarawak has a large Malay population (32%), its largest tribe, Iban (41%), is, however, mainly Christian. East Malaysian indigenes have *bumiputera* entitlements, but political power in Malaysia is primarily a peninsular and Malay preserve, even though BN retained power in 2013 only because of the good performance in Sabah and Sarawak where it took 47 of 56 seats, 14 by UMNO and 33 by other BN affiliates.

	Pop. (million)	Pop (%)	Citizen (%)	Ethnic Profile of Citizenship (%)				Religious Profile of Citizenship (%)					
				Bumiputera		Non-Bumiputera							
				Malay	Other Bumi.	Chinese	Indian	Other	Muslim	Buddhist	Christian	Hindu	Other
Malaysia	28.334	100	91.8	54.5	12.9	24.6	7.3	0.7	61.3	19.8	9.2	6.3	3.4
Peninsula: The Malay States													
Selangor	5.462	19.3	92.3	55.8	1.3	28.5	13.5	0.8	57.9	24.4	3.8	11.5	2.4
Johor	3.348	11.8	91.9	57.2	1.7	33.6	7.1	0.4	58.2	29.6	3.3	6.6	2.3
Perak	2.352	8.3	97	54.2	2.9	30.4	12.3	0.3	55.3	25.4	4.3	10.9	4.1
Kedah	1.947	6.9	96.6	77.7	0.2	13.6	7.3	1.3	77.2	14.2	0.8	6.7	1.1
Kelantan	1.539	5.4	97.9	94.6	1.1	3.4	0.3	0.6	95.2	3.8	0.3	0.2	0.5
Pahang	1.5	5.3	95	73.9	5.1	16.2	4.4	0.4	74.9	14.4	1.9	4	4.8
Terengganu	1.035	3.7	98.2	96.8	0.2	2.6	0.2	0.1	96.9	2.5	0.2	0.2	0.2
Negeri Sembilan	1.021	3.6	94.3	59.4	1.9	23.2	15.2	0.4	60.3	21.2	2.4	13.4	2.7
Perlis	0.231	0.8	97.6	88	0.4	8	1.2	2.4	87.9	10	0.6	0.8	0.7
Peninsula: non-Malay States													
Pulau Pinang	1.561	5.5	94.2	43.2	0.4	45.6	10.4	0.4	44.6	35.6	5.1	8.7	6
Melaka	0.821	2.9	95.8	65.8	1.1	26.4	6.2	0.5	66.1	24.2	3	5.7	1
Peninsula: Federal Territories													
Kuala Lumpur	1.674	5.9	90.6	44.8	1.1	43.2	10.3	0.6	46.4	35.7	5.8	8.5	3.6
Putrajaya	0.072	0.3	97.7	96.8	1.2	0.7	1.2	0.1	97.4	0.4	0.9	1	0.3
East Malaysia: States													
Sabah	3.206	11.3	72.3	7.9	76.9	12.8	0.3	2.1	65.4	6	26.2	0.1	2.3
Sarawak	2.471	8.7	95.3	24.2	50.6	24.5	0.3	0.4	32.2	13.5	42.6	0.2	11.5
East Malaysia: Federal Territory													
Labuan	0.086	0.3	86	40.1	43.6	13.4	0.9	2	76	9	12.4	0.4	2.2

Table 4.1: Ethnic and Religious Profile of Malaysia

Source: Recalculated from GoM (2010b)

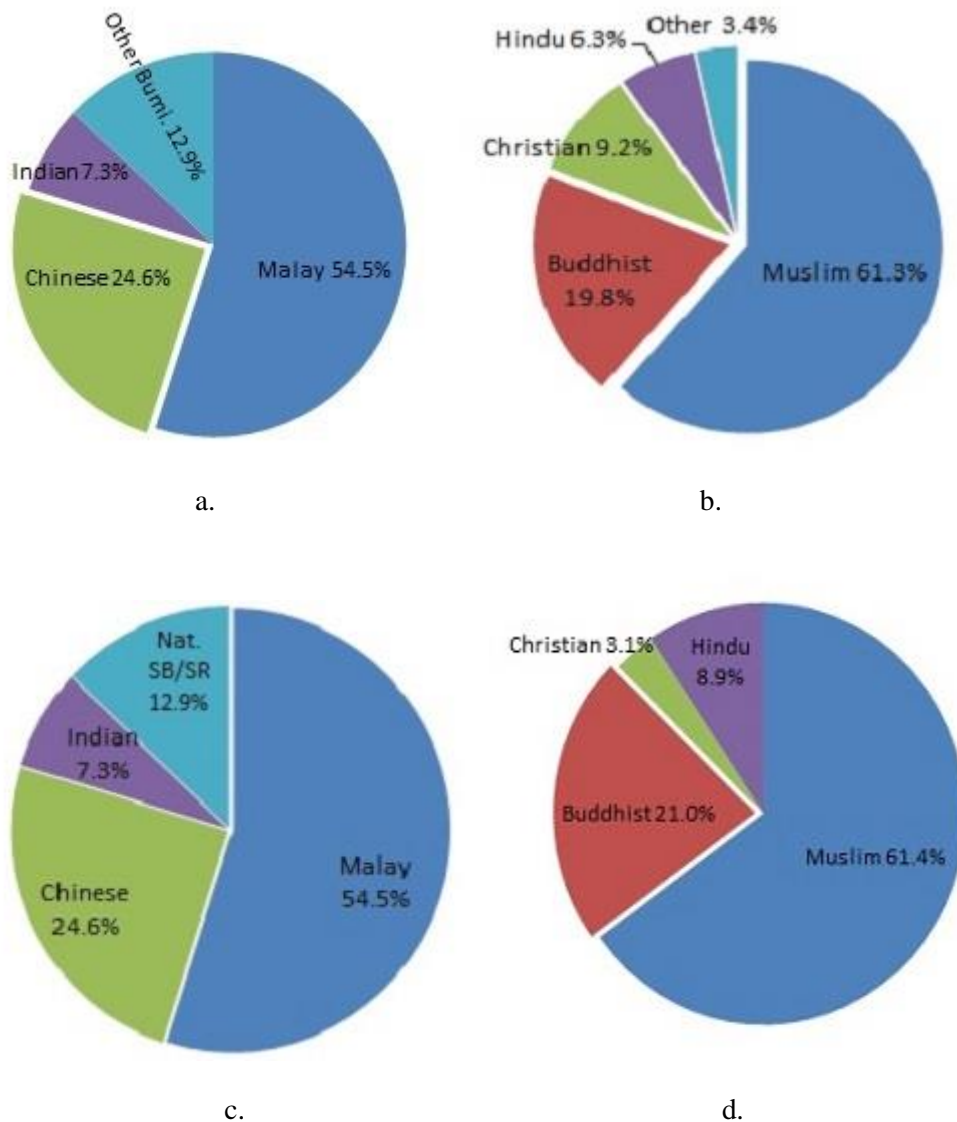


Fig. 4.1: a. 2010 Malaysia Ethnic profile, b. 2010 Malaysia Religious profile, c. 2010 Peninsular Ethnic profile, d. 2010 Peninsular Religious profile

Source: Recalculated from GoM (2010b)

Modernists, like Mahathir and Anwar, on the other hand, do not leverage history because their ostensible political project is to synergise positive ideals of Islam and liberal democracy. Modernist Muslims believe that orthodox Shari'a can be 'reformed in order to regain its true [original] spirit...', and that such a 'dynamic rather than static' Islamic law is compatible with 'liberal values' because their ideals are cognate (Zaman 2011, 208-9). This "compatibility" model, however, suffers at the liberal *proviso* of political equality. Abdullahi an-Na'im, a leading scholar of contemporary political Islam, says: 'Shari'a principles prohibit the recognition of women and non-Muslims as full citizens of an Islamic state...' (1999, 107; also el-Gaili 2004, 511). Also, in practice, modernists rarely engage in *ijtihad* (Shari'a innovation). Instead they often borrow from received compendiums of statutes, for

example the Ottoman *Mejelle* (Layish 2004). Endorsements by esteemed scholars provide high leverage among the faithful for any such laws; thus Ahmad Ibrahim's value to Mahathir. A brief exposition of the role of Islamic law in pre-colonial Malaya will help put contemporary Islamisation in proper context because the historical arguments in its support confound the difference between an institutionalised framework and covenants of tradition; in addition, the evidence is also very thin.

4.1 Islamic law in pre-1957 Malaya

Chevallier-Govers asserts that pre-colonial sultanates were 'Islamic States' with 'courts staffed with *qāḍīs* [Malay *kathis*; Islamic judges] and enforcing the *sharī'ah*' (2010, 90), a position subscribed to by many leading Malaysian scholars, notably Shamsul (1986). Chevallier-Govers' evidence: the single archaeological find of *Batu Bersurat Terengganu* (Inscribed Stone of Terengganu), of *Seri Paduka Tuan*, the ostensible Terengganu ruler (in light of Chapter 2, one whose enforceable jurisdiction beyond the maritime trading post of *Kuala Berang* where the stele was discovered would be suspect), now on UNESCO's "Memory of the World Register" (UNESCO 2009). Its description says (*Ibid*, 2): '...inscription...dated 702 Hijrah (1303 [AD])...promulgation of Islamic Laws established Islam as the state religion of Terengganu...' While, the inscription points to a pre-Melaka Islamic regime—surprisingly ignored by the *Sejarah Melayu*—there is no evidence that beyond the demand of observance of the inscribed ten Shari'a-inspired laws (mainly on cheating, adultery, alms, evidence, etc.) there was actually an operative Shari'a legal framework with an institutionalised *kathi* system.

In fact, Gullick (1958, 114-5) says, '...there was no written law in the Malay States of any significance as established law' and continues: 'In a sense all law was *droit administratif*' with 'close correspondence between (1) the content of the law and the machinery for its enforcement and (2) the distribution of political power.' It is true that some Malay legal codes (*Kanun*), for example the *Undang-Melaka* (Melaka law), that loosely incorporated some Shari'a precepts, were indeed available later in sultanates, but 'Islam was not to any significant extent a "state religion"...There were no *kathis*...there is no evidence to show that this [Islamic legal] doctrine, or any part of the codes, was effective law'; in fact, 'Perak had its first Chief *Kathi* in 1880 and Selangor in 1885...' (*Ibid*, 139). As a matter of fact there is no evidence to support that Islam was *juris et de jure*. Horowitz, a foremost scholar of Malaysia's legal history, confirms Gullick's view: 'Malay law was an amalgam of Islamic practice and customary law, much of the latter pre-Islamic. There were some Islamic digests and codifications, but there was nothing like a uniformly-enforced Islamic law' (1994b, 254-5). Or in Harding's terms: 'Islamic law played an important role as personal and religious law...while *adat* played an important role in criminal law and property...' (2012, 227). The claims that pre-political pre-colonial *kerajaan* was a Shari'a state are poorly supported. Peletz (2002, 62) says: '...there is

little if any solid evidence to indicate widespread knowledge or implementation of such [Islamic] laws in the Malay Peninsula prior to the nineteenth century'. Indeed, Horowitz (*Ibid*) says that when, towards the end of the nineteenth century, Islamic laws were sought to be implemented, neither qualified *ulema* (Islamic scholars) nor proper codes were available and, therefore, as a first step, *Mejelle* was adopted and *kathis* imported.

Pangkor, as explained in chapter 2, ruptured *kerajaan*'s cohesion. The British needed structured administration and institutionalised common law for economic efficiency. 'Malay Religion and Custom', and little else, was left to the Sultans. With British help (possibly also "persuasion") they began to similarly structure the administration and law for their jurisdictional vestige. Islamic laws 'according to the Shafi'i school of jurisprudence'—the Malays' *mazhab* (Arabic *madhab*)—to be administered by 'Sharia courts or *kathi* courts' began to be codified in common law parlance (Means 2009, 47).⁴⁰ "Mohammadan", or "Anglo-Muslim" law, was thus born (Moustafa 2013, 5-7). A statutory regime of "administered" laws—with punishments for un-Islamic conduct for example failure to attend Friday prayers at the mosque, intoxication, unlawful sex, disobeying husbands, teaching of religion without permission, propagating false Islamic doctrines, contempt of Islamic law or Islamic tenets, and contempt of Islamic authorities and officials—was initiated. Consequently, a reified self-conscious Malay-Islamic identity (aided also by early revivalisms) emerged that later became the bedrock of its nationalism (Soenarno 1960).

Post-independence Islamisation followed three, often coextensive, trends: the top-down scholastic-political movement PAS (earlier PMIP) demanding a constitutional Shari'a state; the ground-up apolitical Islamic revivalism across the 1960s rural Malaya which morphed into a political agency after reaching the urban educational complex in the 1970s; and, the Mahathirian modernist corporate Islamism since the 1980s. Scholars often suggest that Mahathirian Islamisation is UMNO's response to the PAS challenge by co-opting its agenda. On evidence, as I will show in the next chapter, this theory is also unsupportable: UMNO's Islamisation is autochthonous, gyroscopic and consistent with its agenda of Malay supremacy.

In the last three decades, the reach and infrastructure of state Islamisation have been continuously upgraded. Malaysia is not (yet) a fully doctrinaire Shari'a state. As Hussin (1993, 104-122) argues, multilevel contestations preclude that in the short-to-medium term of a decade or two. However, multilevel contestations still continue. Indeed they have intensified since 2008 with the widening of the public sphere. Still, the state is undeniably maximising doctrinaire penetration within the constraints of possibility imposed on UMNO's progress-bound political elites. That in specifics, their interpretations may lack fidelity to classical Islamic epistemology or may have narrower opportunistic goals (Moustafa, *Ibid*)—an argument which, in the wider global context of political Islam, is proffered by many leading scholars like Esposito, Feldman, an-Na'im, Talal Asad, and

⁴⁰ In contemporary Malaysia, Hanafi, Maliki and Hanbali schools are also context-sensitively allowed in 'public interest' (Federal Territories Act 505, Section 39(2) and its state equivalents) (GoM 2006a).

others—is simply beside the point; that does not make this Islamisation something else. Specifically, its fallout on non-Muslim minorities’ democratic rights has been egregious. Writing in 1992, when this fallout was relatively imperceptible, Jomo and Cheek (1992, 104) commented: ‘While essentially mute spectators to the rapidly unfolding drama of Islamic resurgence as far as Muslims are concerned, most non-Muslims have felt ignored, if not threatened by what they see as increasingly powerful, assertive and intolerant Muslims and Islamic movements,’ adding that non-Muslims within BN ‘view it as another confirmation of the secondary status of the non-Muslim, non-Malay allies of UMNO in the coalition. Non-Muslim fears are fuelled by ignorance [of Islamic in-group dynamics] and a growing sense of alienation, bordering on helplessness.’

The first two trends transformed the Malay-Muslim socio-political landscape without substantively impacting non-Muslims. The third state institutionalisation trend, which has teleological overtones, covers the whole gamut of “freedom of conscience” constitutional guarantees and has seriously marginalised religious minorities. Its (multilevel) contestation comes from the small, embryonic, civil society NGO complex which has some leverage with sections of the PR opposition. However, as we shall see in the next chapter, PR *fundamentally* lacks the capacity for inclusion. Hence this contestation will take a long while to produce any appreciable containment much less reversal. A brief discussion of the machinery of this Islamisation and its “inequality” consequences follows next.

4.2 The social machinery of Islamisation

The machinery is the web formed by the interplay of five constitutional provisions:

1. Article 3(1) *inter alia*: ‘Islam is the religion of the Federation’⁴¹
2. Article 12(2) *inter alia*: ‘it shall be lawful...to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam’
3. Article 121(1A): civil courts have ‘no jurisdiction in respect of any matter within the jurisdiction of the Syariah [Shari‘a] courts’
4. Article 160(2) *inter alia*: Malay means Muslim; no non-Muslim Malay
5. Articles 153, 89, 90, etc. *inter alia*: state as Malay-only entitlement regime

⁴¹ The Reid Commission did not recommend a ‘state religion’. Only one commission member, Justice Hamid of Pakistan, argued for Islam as state religion; his dissent was duly noted. The Sultans too opposed a state religion, while, expectedly, UMNO was its weightiest protagonist (Fernando 2002, 129-31).

In continuation of the Pangkor tradition of maintaining the *kerajaan* façade of the Malay-Muslim sphere, Article 3(2, 3) decrees the monarch as the Head of “the religion of Islam” over Malaysia and over its non-Malay states and territories, while the respective rulers of Malay states head Islam in their realms. *Syariah*, to the extent of personal law, managing religious institutions and education, etc., is state jurisdiction (Article 74; List-II, item 1, Ninth Schedule). However, criminal law is strictly federal territory (Ninth Schedule, List-I, item 4) which also includes power to override any state legislation (Article 75) in addition to extensive legislative powers generally (Ninth Schedule, List-I and List-III). States can do little without federal concurrence, a reason why PAS has failed, since 1991, to institutionalise Shari‘a punishments for *hadd* crimes in Kelantan.⁴²

These constitutional provisions, except Mahathir’s 121(1A), hark back to the Bargain era UMNO insistence on the recognition of the Malay sphere as also Islamic. UMNO leaders like Rahman and Razak, who fronted the Reid Commission and later wrote the Constitution, were modernists who could ‘analyze political issues with a “rational calculus”’ while simultaneously recognising their ‘roles as leaders of the community of Muslims’ as Means (2009, ix) explains from first-person observations. UMNO’s programmatic intent, right from these beginnings of independent Malaya, was at least to retain the *kerajaan* Islamic façade as a principal expression of *ketuanan Melayu*. Since the *zeitgeist* mandated obligatory fundamental rights to be associated with a democratic form, concessions were duly made to others. Thus, Article 3(1) adds:

other religions may be practised in peace and harmony

And, Article 11(1) acknowledges that:

Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.

The Clause 4 rider is:

law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam

⁴² Religious institutionalisation across states shows some differences—Kelantan is most Islamic and Johor the least—because states are allowed some leeway (Harding, *Ibid*, 230-231; Moustafa 2013, 1). However, on the whole, states simply copy territories’ legislation—federal subject under Article 3(5)—into their statutes: thus religious administration generally follows Act 505 “The Administration of Islamic Law (Federal Territories) Act 1993” (GoM 2006a) and Islamic penal law follows Act 559, the “Syariah Criminal Offences (Federal Territories) Act 1997” (GoM 2006b). In 559, *hadd* crimes—transgressions against God-set limitations which have fixed punishments, e.g. stoning to death for adultery—are adjudicated within the milder *tazir* framework where the *kathi* is allowed discretion in awarding punishments.

The ‘peace and harmony’ boundaries are nowhere clarified, but 11(4) needs no clarification: it simply prohibits proselytising Muslims (as was the case with Anglo-Mohammedan law). Interestingly, while apostasy from Islam is not technically prohibited (though it is made impossible by subsidiary rules), an apostate Malay loses ethnicity too (Article 160(2)) and, thus, access to the whole “entitlement” regime.

Contemporary Islamisation machinery was developed in three overlapping stages, the first two follow and the third is discussed in section 4.3.

4.2.1 The dakwah phase: the making of a ‘good’ Muslim

Dakwah (Arabic *da‘wa*: call) means a revivalist call to Muslims to return to the true, original, precepts of the faith and eschew un-Islamic corrupting influences. Islamic revivalisms emerged in the middle-east in the late nineteenth and early twentieth century and then spread across the whole Muslim world, in reaction, many scholars argue, to the loss of political supremacy which was attributed by many leading Islamic scholars to deviation from true values of faith. Two major Malaysian dakwah movements, PERKIM (*Pertubuhan Kebajikan Islam SeMalay(si)a*: All Malay(si)a Muslim Welfare Organisation) and ABIM (*Angkatan Belia Islam Malaysia*; Muslim Youth Movement of Malaysia) are of note (Nagata 1986); others, e.g. Tabligh and Arqam, had limited impact. These led the ‘Islamic resurgence in the late 1970s’ (Saravanamuttu 2010, 285), and, unsurprisingly, were, along with others, liberally funded by the oil-rich Gulf Wahhabis (Camilleri 2013, 227). Rahman founded the apolitical PERKIM in 1960 for grassroots (rural) Islamisation through Islamic schools, Koranic training and prayer centres (*surau*, *madrasah* and *pondok*). After 1963, its main activity shifted to conversions and convert-welfare, especially among the East-Malaysian indigenes. Between 1960 and 1980, PERKIM converted over 160,000 people; 42% of all Sabah’s aborigines in only five years between 1975 and 1980. On the peninsula, 70% converts were Chinese: in 1981, of the 587 converts, 319 were Chinese and 130 Indian. Daily conversion average was 15 in 1980 and 25 in 1984 (Hussin 1990, 91-93). Rahman also, leveraged Article 12(2) heavily, using huge state resources for large-scale mosques building and Islamic schools and education programs. PERKIM is ideologically pan-Islamist and extensively engaged with Muslim issues worldwide (Rahman served as OIC’s founding Secretary-General at Jeddah during 1970-75 after losing premiership).

PERKIM organised Islam in the rural backwaters. Urban Malay mind, during this pre-Mahathir period, was captured by ABIM launched during the ‘upsurge of Malay consciousness’ after the 1969 riots and formally registered in 1971 as a ‘National Muslim Organisation’ (Hussin, *Ibid*, 86, 75). The flipside of Malay educational “entitlements” was a mass of rural Malays culturally disorientated at the modern, westernised, higher-education institutions in big cities. To them, and to similarly challenged scholarship returnees from western universities, ABIM, founded ‘through the

efforts of the Faculty of Islamic Studies at the Universiti Kebangsaan Malaysia', provided a hermeneutically accessible socio-religious comfort zone (Means 2009, 85-88; quote at 86). ABIM's first political act was large-scale anti-government student protests in December 1974 against government's ostensible failure to alleviate Kedah's rubber farmers distress caused by price slump; PAS was then in BN, so ABIM became the expression of Malay opposition with its mandatory anti-Chinese subtext. Anwar Ibrahim, who had recently become ABIM's president after Siddiq Fadil, the founding president, was arrested and jailed. This won him champion status. Razak responded with the 1975 Universities Act banning all student politics and Anwar returned to dakwah. Then in 1982, barely three weeks before elections, Mahathir co-opted Anwar into the UMNO apparat to harness ABIM's youth following for BN (ABIM then split and majority went over to PAS). Anwar's modernist worldview on democracy with Islamic values exactly matches Mahathir's (Ibrahim 2006). This is also reflected in Anwar's cultivating international linkages with similar modernist outfits: 'Jama'at-i-Islami in Pakistan and India...*al-Ikhwaniyyah* in Egypt and other Arab countries...and the *Muhammadiyah* ...from Indonesia' (Hussin, *Ibid*, 75-86; quote on 79).

4.2.2 The fatwa phase: the unmaking of 'bad' Muslims

Kerajaan was an Islam-custom sphere (Milner 1995, 26). *Adat* diversity, rather than Islamic purity, guided social practices in pre-colonial Malay sultanates. As explained above, after Pangkor, standardisation of laws drive was launched. Anglo-Muslim codification necessitated that a) a *true doctrine* is made available and b) every Muslim follow it; hence criminalisation of "teaching of religion without permission," and "propagating false Islamic doctrines." Initially, the implementation was easy-paced, supervised by a few Meccan (and the occasional Malay trained in the middle-east) *fuqah* (Islamic law scholars) who instituted *Mejelle* codes while accommodating aspects of *adat* that did not egregiously violate them. The requirement of well-trained local *ulema* was partly addressed by the Sultan Idris Training College after 1921.

After independence, the well-structured dakwah movements reduced the role of *adat* further. However, given their epistemological idiosyncrasies, doctrinal diversity remained. These 'contestation over the "right" Islam' continued almost until 1990 (Maznah 2010, 361). Since Article 12(2) (and Anglo-Muslim laws) mandated that the state be *the* teacher of Islam, a correct (standardised) doctrine syllabus and well-trained *ulema* to teach it, became necessary; the powers to do so were already secured (Ninth Schedule, List-I, item 13). This process was finally completed during the Mahathir era. Contestations on "right" Islam were ended. The 'consolidation of statist Islam in society, through the implementation of the Sharia and the elevation of the Islamic bureaucracy' achieved (Maznah, *Ibid*, 362). The "right" Islam is now fully centralised and bureaucratically administered: educators, judges, lawyers, enforcers, and court officials are all salaried state employees.

Religion has always been in the Prime Minister's portfolio, which is a state-in-itself (thus in its post-2008 "democracy" rating for Malaysia, albeit with the lowest score, Polity IV overstretches its own concepts on authority: constraints on Malaysia's PM are negligible).⁴³ Mahathir, reorganised the Department of Religion (*Jabatan Agama*), which in 1968 had a staff of eight, into the Department for the Advancement of Islam (*Jabatan Kemajuan Agama Islam Malaysia*; JAKIM) in 1982; its staff grew to 608 by 1987 (Shome 2002, 163). JAKIM's Council for Islamic Affairs (*Pusat Islam*) provides policy advice to the government: by 1982, Mahathir raised *Pusat's* *ulema* count to 100 (from about six); he also recruited 715 *ulema* to the Education department to standardise Islamic curricula, syllabi and teaching materials at schools. An extremely important *Pusat* committee is the *Majlis Fatwa Kebangsaan* (MFK; National Fatwa Committee), which issues fatwas: religious opinion on what is "allowed" (*halal*) and what "disallowed" (*haram*). Socially, these fatwas have decree force. Legally, their legislative compliance is now mandatory across Malaysia. A "right" state-directed and supervised Wahhabi Islam has thus been institutionalised in a process isomorphic to "democratic" Pakistan's: consequences to minorities are also isomorphic (Raina 2014a; 2014b).

MFK's fatwas proscribe "deviant" (from JAKIM's *true* standardised version) in-group beliefs. The government supposedly maintains a secret list of over fifty such "deviant" organisations presently (USDoS 2012, 7). A few MFK fatwas, proscribing large belief (in)-groups, are listed in the Table 4.2 below.

Date	Proscribed Belief	Grounds
14 May 1980	Muffaridiah Sufism	deviant and un-Islamic
15/16 November 1981	Naqsyabandiah Sufism	deviant and un-Islamic
24/25 September 1984	Ahmadiyya	non-Muslim
22/23 May 1985	Bahai'i	non-Muslim
31 March 1994	Darul Arqam (dakwah)	deviant and un-Islamic
5 May 1996	Shi'ism	deviant and heretic
June 2005	Sky Kingdom	deviant cult
12 September 2006	Rufoqa company	Arqam front

Table 4.2: Major MFK fatwas

Source: Official MFK portal <http://www.e-fatwa.gov.my/>

⁴³ Presently, the Prime Minister, in addition to Religion, controls forty-one other Departments and Agencies, all eight federal commissions (e.g. election commission, Human Rights Commission, Judicial Appointments Commission, etc.), five federal agencies (Public Service, Economic Planning, Public-Private partnership, etc.), and most Statutory bodies (FELDA, PERDA – regional development, Pilgrimages, etc.).

The small Ahmadi and Baha'i' offshoots of Islam have been declared non-Muslim and marginalised everywhere in the Muslim world and Sufism is a principal Wahhabi target. But proscribing Shi'ism is a highly non-trivial statement of complete identification with Saudi-Wahhabism and carries the geo-political cost of alienating worldwide Shi'i regimes. Darul Arqam, a Sunni dakwah movement, had over 100,000 followers spread over forty-eight communes when it was proscribed (Harding 2012, 239-40). These communes were its founder Asha'ari Muhammad's way of putting 'into practice the teachings of Islam' (Hussin, *Ibid*, 85). Note that Asha'ari was a highly respected PAS *ulema* politician from 1958 to 1968 when he quit to briefly join the *Jamiah Dakwatul Islamiah* before founding the Arqam in 1969 (he even briefly merged with ABIM in 1971). Ayah Pin's 'Sky Kingdom' was also a popular syncretistic cult—with Islamic, Buddhist and Christian influences—that was quickly silenced (McGirk 2005; The Economist 2005).

JAKIM's programs, other than funding and standardisation of Islamic education, teacher and *ulema* training, supervision and oversight of Islamic universities and centres, building of mosques and Islamic training of bureaucracy include keeping every institution in check through religious police, media and publications control, enforcement of mandatory prayer times and places at all public and private workplaces. Its impact on Malaysian life—social, economic and political—is extensive (Means, *Ibid*, 123-31).

4.3 The legal machinery of Islamisation

Islamic doctrine rejects sacred-temporal, moral-legal and state-society disjunctions: 'In Islam, God is Caesar', Huntington famously said (2002, 70). Thus, of necessity, an 'Islamic state', as (Feldman 2008, 6) says 'is pre-eminently a shari'a state, defined by its commitment to a vision of *legal order* [emphasis added].' In other words, a state is 'Islamic' only to the extent of institutionalisation of Shari'a laws, howsoever interpreted (Layish 2004). Thus "Islamisation" is best defined as increasing absorption of Shari'a into the legal regime. In Malaysia, "Islamic State" debate has been long and vigorous (Munip 2012); specifically Mahathir, as also the present PM, Najib Razak, see Malaysia as an Islamic state albeit one in which Shari'a implementation, given the specific conditions, can only be slowly done via a process called the "Harmonisation of Shari'a and Law" (Lee 2010, 52-3). Horowitz (1994a, 579), at the peak of Mahathirianism, wrote:

there has been discussion in Malaysia of centralizing Islamic law, of synthesizing it with English law to produce a new, over-arching Malaysian common law, ultimately removing non-Islamic features from statutes, and then, perhaps, breaking down the barrier between the secular law and the Islamic law altogether

Ahmad Ibrahim of IIUM—which trains the highest-level cadre of Shari‘a legal professionals for the state—advised Mahathir on harmonisation and was its main driver. Harmonisation was made part of Attorney-General’s brief (Abdullah 2007, 271), who was simultaneously given “discretionary” powers, under Article 145(3A) to decide the courts and venues for civil law adjudication (Act 704, 1988). Part IX, “The Judiciary” (Articles 121-131), lists the civil judicial hierarchy as High-Court (One for the peninsula and one for the east), Appeal-Court and the Supreme (Federal)-Court. Act 704 empowered the executive, through the PM appointed Attorney General, over this hierarchy. The PM, rather than an independent judicial commission, is also the real appointing authority for Chief Justices of the High Court, the Appeal Court and the Federal Court (Article 122B(1)). As noted above, by Article 121(1A), this Act also divested civil judiciary of *any* jurisdiction over *syariah* matters. *Syariah*, as said earlier, is technically a state subject (in territories it is federally administered) and most states operate a three-tier *Syariah* Court hierarchy—Subordinate (*kathi*) Court, High Court and Appeal Court—although some (e.g. Johor, Kelantan) have an Appeal Board or Committee instead of the Court (Horowitz, *Ibid*, 237). On the civil-bureaucratic side, all states have JAKIM counterparts (e.g. JAIS in Selangor) for religious administration with dedicated enforcement officers (from 5 in Perlis to 122 in Selangor) and religious police (Prud’homme 2010, 59).

4.3.1 *Machinery at the Muslim-non-Muslim interface*

What Horowitz called “discussion” in 1994 is by now advanced implementation. The vast “harmonisation” machinery legislated federally (e.g. Act 704) and in subsidiary state legislations, has created an inexorable expansion of *syariah* into the civil domain: ‘Indeed in contests over whether a matter ought to be decided under *Syariah* law or civil law, it is to *Syariah* courts that the civil courts increasingly defer’ (Lee, *Ibid*, 6; Harding, *Ibid*, 233). The transformation of judicial delivery within two decades is stark. Before the impact of Act 704 had set in, the Supreme Court, in the famous *Che Omar bin Che Soh v Public Prosecutor* case in 1988, stated that Article 3(1) did not make Malaysia an Islamic state, its significance was only ceremonial, that Constitution (by Article 4(1)) was the supreme law and Shari‘a was only the Muslim personal law as in Ninth Schedule (List-I, Item 1), etc. (Harding, *Ibid*, 235-6; Abdullah, *Ibid*, 266-7). By 2007, this argument was stood on its head. The Federal Court Chief Justice, Ahmad Fairuz—an Ahmad Ibrahim acolyte and successor to deanship at IIUM and a major harmonisation architect (Kuppusamy 2007)—decreed in the infamous *Lina Joy v Majlis Agama Islam Wilayah* (Federal Territory Islamic Council) & *Anor* case that: ‘[Islam] is the primary religion which takes precedence over other religions in Malaysia, and this is the implication of the stipulation of Islam as the religion of the Federation [Article 3(1)]’ (Harding, *Ibid*, 236). Lina joy was a Malay convert to Christianity who requested change of religion at the National Registration Department—NRD issues national identity card, the *MyKad*, to every citizen over 12; for Muslims “Islam” is printed on the *MyKad*, for non-Muslims, religion is encoded into the embedded RFID chip—which rejected her application arguing that apostasy from Islam requires *syariah* court’s

clearance; she contested arguing that being non-Muslim, she is not governed by *syariah*. Eventually, the Federal Court upheld NRD's stand in a 2-1 majority decision: Fairuz and Justice Alauddin Sheriff, both Muslim, delivered their majority judgement in Malay, while the dissenting judge, Justice Richard Malanjum, a Christian, delivered his in English (Abdullah 2007, 267-9).

Article 11(1) protections to apostates from Islam were thus voided: the law recognizes only their *status quo ante*. In most states, exiting Islam is now criminalised.⁴⁴ In Negri Sembilan, where it is still technically allowed, of the 100 applicants at the *syariah* courts, between 1999 and 2003, only 16 succeeded and, in the same period, of the 750 applications at the NRD only 220 succeeded; most of these are recent conversion to Islam cases (Harding, *Ibid*, 240). Abdullah (2007) and Adil (2007a; 2007b) map the impact of 121(1A) on a much larger number of cases; even lawyers sometimes face arrest for filing such apostate's cases (see Nor'aishah case, Maznah (2010, 369)). Apostates often live double lives (Pressly 2006). In cases of conversion to Islam, however, the law recognizes only the *status post ante*. When one partner (usually the male) of a non-Muslim couple—Muslim-non-Muslim marriage is disallowed (the non-Muslim must first convert to Islam) under section 10 of the Islamic Family Law Act (Federal Territories) 1984 copied elsewhere—converts to Islam, or is deemed to have so converted, (s)he immediately comes under *syariah* ambit. In such mixed-religion contestations, the non-Muslim spouse suffers because civil courts quickly cede jurisdiction to the *syariah* system on account of the case involving a Muslim; cases like the *Dalip Kaur v. Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor*, *Shamala Sathiyaseelan v. Dr Jeyaganesh C. Mogarajah & Anor*, and *Soon Singh v. PERKIM* amply demonstrate this (Abdullah 2007; Maznah 2010). In contestations on divorces, inheritance, performance of rites, the custody and religion of minor children, etc.—under Article 12(4), a minor's religion is determined by parent or guardian, but if the father converts to Islam, *syariah* courts routinely declare minor children as his wards—the non-Muslim spouse is handicapped right at the outset. Some scholars believe that eventually non-Muslims in mixed-religion cases—being completely locked out of civil courts—maybe pushed to approach *syariah* courts for redress; they point to the precedent set in the recent *Nyonya binte Tahir* case where non-Muslims, for the first-time, were “persuaded” to give evidence at a *syariah* hearing (Lee 2010, 93).

Clearly, this disadvantaging of the minorities, on account of belief, does not conflict with UMNO's conception of “right” Islam since, without federal acquiescence, such laws could not exist. Allowing PAS's *hadd* legislations would visibly damage Malaysia's profile, possibly also exact economic cost which would hurt UMNO's progress project. However, legislations like the above do not cause diplomatic furores and consequences. But, unavoidably, this de-institutionalisation of Article 3 and Article 11 guarantees shows up as democratic “deficit” in monitory audits. Justified as positive freedoms, the Islamisation of Malaysia has, Freedom House's Prud'homme (2010, 57) says,

⁴⁴ Under the Syariah Criminal Enactment of Perak copied by most states (Maznah 2010, 379).

‘brought severe limits to freedom of expression and freedom of religion’, and these are variables in Freedom House audits (see Table 3.2).

4.3.2 *Machinery more generally*

Clearly the theory that *syariah* affects only the Muslims, and only to the extent of personal law, is rather naïve. This standard UMNO thesis finds support from Malay thinkers (Azmi 2012; Majid *et al.* 2011) and, sometimes also from academic researchers (Chevallier-Govers 2010; also loosely Shah and Sani 2011 and Harding 2012). *Syariah* governs outcomes for non-Muslims minorities at the interface of faiths. It also governs much more.

Malaysia’s states follow a near-identical “Enactments of Control and Restriction of Non-Islamic Religions” law regime, whose Section 9 controls usage of lexical terms from a ‘scheduled’ set of words (Part-I) and a ‘scheduled’ set of expressions (Part-II). Under 9(1), *anyone* commits an offence upon using Part-I words, or their ‘derivatives or variations, to express or describe any fact, belief, idea, concept, act, activity, matter or thing pertaining to any *non-Islamic religion*’; under 9(2) a *non-Muslim* commits offence by using the Part-II expressions in the 9(1) sense except for ‘quotation or reference’ [emphases added] (Weng 2004, Chapter 5). Kedah has no Part-II list; Johor has no lists but leaves the scope open for ‘any of the words (or expressions) of Islamic origin’ (*Ibid*).

Part-I words include: Akhirat; Allah; Al-Quran/Quran; Al-Sunnah; Azan; Baitullah; Dakwah; Fatwa; Firman Allah; Fitrah; Hadith/Hadis; Haj/Haji; Hajjah; Hauliak; Ibadah/Ibadat; Ilahi; Imam; Iman; Injil; Kaabah; Kadi; Karamah/Qaramah; Khalifah; Khutbah; Masjid; Mubaligh; Mufti; Mussabaqah; Mussala; Nabi; Qiblat; Rasul; Salat/Solat; Shahadah/Syahadah; Sheikh; Surau; Syariah; Tabligh; Ulama; Wahyu; Wali; Zakat, etc.

Part-II expressions include: Subhanallah; Alhamdulillah; Lailahaillallah; Walillahilhamd; Alahu Akbar; Insyallah; Astaghfirullahal Azim; Tabaraka Allah; Masyaallah; Lahaula Walauquata Illabillahilaliyil Azim; Assalamualaikum; Wallahi; Wabillahi; Watallahi; Auzubill, etc.

In recent years, the church’s usage of “Allah” for God in its Malay literature has become most contested. It is instructive to note that a) in Malay, or *Bahasa Malaysia*, the national language that the state has determinedly championed, the word for God is Allah, b) the majority of Christians are East Malaysian indigenes for whom *Bahasa* is made the medium of education, and c) because Christianity and Islam both proselytise—unlike, for example, Hinduism—“church” is seen as a threat by the Malays and accused of proselytising Muslims by circumventing Article 11(4), among other ways, through deft use of language (*Ibid*, Chapter 4).⁴⁵ A 2013 election UMNO campaign poster, Fig. 4.2 below, exemplifies it best.

⁴⁵ UMNO states often conduct “educational” programs to counter this threat, for example Johor held a big educational seminar in 2012 with the “Threat of Christianity towards Muslims” theme, see <http://libertysentinel.wordpress.com/2012/03/30/christian-threat-seminar-in-johor-sparks-religious-row/> accessed 20 January 2014. Church’s reaction can be seen at <http://www.heraldmalaysia.com/news/‘Seminar-will-undermine-religious-harmony’-11289-3-1.html> accessed 20 January 2014.



Fig. 4.2: A 2013 BN election poster

Source: Lenz (2013)

The poster depicts two church façades inscribed with “Rumah Allah” (house of Allah) and rhetorically asks whether voters (Malays) want their offspring ‘to pray in such houses?’ ‘If we allow the Allah word in churches,’ the poster warns ‘we sell our religion, race and nation’; ‘to avoid such disaster vote BN.’

In 2007-8, *The Herald*, a leading Catholic publication, was ordered by the Home Ministry’s Publication Control and al-Quran Text Division to stop using “Allah” in Malay editions; Christians claim that Allah has been in use in Malay Bibles, which they call al-Kitab, since 1612 (Xavier 2012). *The Herald* went to court, and while its ruling was pending, tens of thousands of Malay-language Bibles were stamped “For Christians only.” On 31 December 2009, *The Herald* won at the Kuala Lumpur High Court; the government order was declared unconstitutional. This led to Malay unrest and vigilante attacks on churches. The government appealed the judgement and won. The Appeal Court, on 14 October 2013, unanimously overturned the High Court 2009 and ruled the ban legal reasoning that usage of Allah by church ‘will cause confusion in the [Muslim] community’; a surprise observation, given Malaysia’s high literacy levels. Since then, bibles using Allah have been routinely confiscated: JAIS in Selangor seized 321 Malay and Iban bibles from the Bible Society on 2 January 2014, an action that will echo elsewhere because the church seems to be resisting the ban under the legal finesse that the Appeal Court ruling applies only to *The Herald*. And vigilante events have followed: on 27 January 2014, churches in Penang were firebombed for displaying banners with the ‘Jesus is the son of Allah’ legend (BBC 2014).

Other religious communities, the Hindus, Buddhists and the “deviant” Muslims fare little better. The deviants are disallowed places of worship. Hindu temples are demolished on flimsy grounds of lack of titles even when on private property (Jiun 2008). The government, of course, claims even-handedness in supporting everyone’s religious places, but statistics tells otehrwise: between 2005 and 2008, non-Muslim religious places received 8 million Ringgit while Islamic religious places were granted 428 million (*Ibid*). The tiny *Orang Asli* communities, the peninsular animist aborigines who do not even qualify as *bumiputera*, are reportedly close to extinction as the Department of Orang Asli Affairs and JAKIM continue to “persuade” them to join Islam and assimilate into the Malay-fold; information on *Orang Asli* is strictly controlled and academic research discouraged.⁴⁶ Any person, community or institution outside of state’s “right” Islam has become “unequal” Malaysian.

4.4 A summary

Religious inequality in Malaysia is deepening. ‘In recent years,’ Harding (2012, 225-6) says, ‘religion has played a larger role even than ethnicity in defining identity and interest in this complex and contested polity.’ Most liberal scholars agree. Saravanamuttu (2010, 298) avers: ‘Religion has become the major cleavage rather than race or ethnicity.’ As we have seen religion and ethnicity in peninsular Malaysia, where Malaysia’s politics is fundamentally constructed, are co-extensive; they reinforce cleavages rather than cross-cut them. Two reasons can be adduced for this Mahathirian turn.

Firstly, Mahathir’s belief that a vibrant, modern and advanced economy and an ethically Islamic community were compatible or, in Lan’s words, that an ‘alternative Islamic capitalist modernity’ was possible (2012, 124; see also Mahathir 2003 and Wawasan2020 portal). *The Malay Dilemma* (Mahathir 2008[1970]) shows that Mahathir wished Malays to possess both these capacities. He is a fierce critic of Kemalism which he equates to moral enervation and slavery to the West (Mahathir 2007). He believes that “Islamic capitalist modernity” serves as a model for the progressive Muslim world. However, early Mahathir was little versed in Islamic law; his paradigm of analysis in *The Malay Dilemma* is basically rational ethno-nationalism. He certainly considers “Malay” to be conjoined to “Islamic” but the drive is that this relation needs to be modernised. Co-optation of the modernist youth celebrity dakwah leader Anwar, who shared his “Islamic capitalist modernity” *weltanschauung*, gave Mahathir the perfect instrument to address the “Islamic” modernisation part of this worldview. Anwar was expectedly given education as his first portfolio to build-up the required human resource infrastructure while Mahathir himself commandeered the corporatisation of the whole

⁴⁶ For the Department’s role, see AITPN (2008) and *Indigenous Rights Quarterly* Issues Vol. I (1) and Vol. II (1) available at http://www.aitpn.org/assessment.htm#_Toc170881559 10 August 2013. For JAKIM’s role see Prud’homme (2010, 115, n.16). For risks faced by academicians see Dentan and Charles (1997).

political economy. A critical contribution was the ‘Islamic politicization in the bureaucracy’ (Shome 2002, 164) which became trained to understand, frame and implement policy in terms of Islamic, rather than common, good. This all-Malay and Muslim bureaucratic resource helped Mahathir create Islamic institutions of Banking, Insurance, Business Corporations, and Universities and Research Centres. To make the system self-organising, funding for Anwar’s Islamic educational and training institutions was vastly increased. Thus, in this phase of ‘state-sponsored Islamization policies’ (Saravanamuttu, *Ibid*, 285), Mahathir managed ‘to “centralize” and “bureaucratize” Islam’ (Camilleri 2013, 228) as he did every institution of state. This re-set UMNO’s gyroscope to Mahathirian model; the regime legitimization narrative became “positive freedoms.”

Secondly, the “capitalist” part of “Islamic capitalist modernity” required guarded and supervised dismantling of the state as trustee of Malay “entitlements” holdings. He believed that trusteeship had reached (or would soon reach) saturation possibility and was now becoming a counterproductive instrument creating the “crutch mentality” among Malays. Trusteeship was yielding diminishing rate of “equity” returns; it could next lead to diminishing political returns for UMNO. The legitimization narrative of the “rights of the native” with its affirmative action rubrics to sustain the ethno-centric identitarian regime for so many decades would lose force if the rate of returns was not radically improved. And, this could be achieved only by transference of economic responsibility to the Malays themselves: corporatisation, Mahathir believed, was the answer. But quick corporatisation, though necessary, could cause the immediate political fallout of the alienation of the entitlements-hungry Malay constituency. Islamisation provided the perfect foil: it retained Malay loyalty by providing the constituency with an alternative agenda and discourse. Also the NDP ensured controlled and guided transference of responsibility with the Lockean *proviso* that equity returns, though more competitively distributed, were not lower for the Malays (and also others) with respect to the NEP. This instrumental use of religion had also the benefit that the segmental order in the relations of dominance did not change; the main concern of the constituency of concern remained protected. The so institutionalised “right” Islam (re)defines “Malay” in a new (added) narrative without upsetting the old order or jettisoning its narrative. In the highly regulated political sphere of Malaysian plural society, a “standardised” descriptive morality now formats contemporary Malay life, re-defining self-representation (the Malay-Muslim) as well as individuation (relational matrix with others). In this ontology, the out-group “other”, the Chinese and the Indian as religious communities, is, once again, seen as legacy load, tolerated but not held equal; the in-group “other” (the deviant, the heretic) is simply exorcised.

Harding cautiously forewarns of the asymptotic possibility of the institutionalisation of religious inequality in terms of Islam-Constitution tension (2012, 246):

Islam largely concedes, in practice and *for the time being*, that Islamic law is not the fundamental basis of the constitutional and legal order, while the constitutional order itself

concedes that strict equality between Muslims and non-Muslims will not apply...The Constitution and the institutions of the common law have provided the means whereby accommodation between two fundamentally contradictory conceptions of legality, one secular, the other religious, has been achieved. *Whether this will continue to be so remains, of course, to be seen* [emphases added]

Given the self-organising dynamics “harmonisation” has achieved, the survival of “accommodation” seems uncertain given that identitarian regimes reject normative concerns. Lee believes that Islamisation has reached a stage where “others” are unable to ‘participate in the public realm equally, not even in principle’, they have become ‘marginal to, if not totally excluded from, all civil law making’ (2010, 95, 54). The remote, but the only, mitigating possibility is that increasing economic complexity and differentiation may eventually force Malay elites to seek Pareto-superior socio-economic outcomes, which will necessitate broadened political inclusion (Raina 2015).

5 Trend towards change?

In this brief chapter, evidence to affirm hypothesis **H3** is offered followed by a summary of conclusions that follow from this thesis. A caveat is required: **H3** is somewhat predictive and predictive political theories are notoriously vulnerable to falsification by later events.

As explained in chapter 1, the 2008 general election outcomes led many (and longstanding) scholars of Malaysian politics to conclude that transition to “real” democracy was imminent (Case 2010; Chin & Huat 2009; Hing 2009; Moten 2009; Ong 2010; Pepinsky 2009; Weiss 2009). The 2013 general election outcomes showed that that fervent prediction was premature if not totally falsified; yet hope survives (Devaraj 2013; Guan 2013; Welsh 2013; Weiss 2014). Clive Kessler, a critic of “imminent transition”, argues that the 2103 outcomes should have been ‘no surprise to the knowledgeable’ (2013a; see also 2013b and 2013c). In what follows, I will elucidate my own reasons for Kessler’s “no surprise” thesis and extrapolate these to show why no surprise is likely over the next few electoral cycles as well.

Broadly, the “imminent transition” prediction was predicated on two (mis)readings of 2008 scenario:

1. PR signifies “real” political pluralism. An imminent partisan turnover in PR’s favour is likely. A broad-based demand-push is driving this transition to “real” democracy.
2. Liberal civil society organisations are instrumental in organising this demand. They are coming of age and hold the Hegelian promise of becoming the mediator between the society and the state.

5.1 The “real” alternative

Let us for the moment restrict ourselves to major coalition partners of BN and PR, which respectively are UMNO, MCA and MIC and PKR, DAP and PAS. In terms of political outcomes this restriction causes no loss of generality. 2008 unquestionably caused upheaval in Malaysian politics: BN lost two-thirds majority, dropped by 59 seats and 12.45% votes (Table 3.6a). But BN did not lose the government, nor did UMNO lose its salience within the BN; the regime continued. In fact, if we measure UMNOs relative strength within this three-party principal subset of BN, it went up from 73% in 2004 (when BN won by a landslide) to 81% in 2008 even while it lost 31 seats and 6.6% vote. Thus it became more powerful in dictating government agenda. This strength actually went up further in 2013 to 89% with a gain of 9 seats and without further erosion of vote share. Consequently, UMNO continues to rule the BN and the country; the *régime* remains *ancien*.

The opposition PR, which gained 62 more seats and 12.45% more votes in 2008 relative to 2004—PR did not exist in 2004, it was formally launched only after the 2008 elections, so this is rather reflected equivalence—has no built-in hierarchy. Therefore relative factional power is not relevant. The fact to note however is that while both PKR and DAP gained seats as well as votes in 2008, the former 30 seats and 9.68% votes and the latter 16 seats and 3.87% votes, PAS gained 16 seats but actually *lost* 1.15% votes. Furthermore, in the 2013 elections only DAP scored gain in both seats and votes, by 10 and 1.94% respectively, while PKR scored 1 less seat while gaining 1.81% votes and PAS lost 2 less seats while gaining a nominal 0.72% in votes.

UMNO decides BN policy (other ethnic constituents of BN lack this leverage) and, as has been explained earlier in this thesis, it defines the identitarian nature of the regime. Table 5.1 below presents a comparison of ideological disposition of UMNO’s vis-a-vis PR constituents.

	UMNO	PAS	PKR	DAP
Political paradigm	Malay supremacy	Malay-Islamic state	Modernist Islam	Democratic
Economic paradigm	Malay entitlements modern economy	Same as UMNO with Islamic sector	Modern Welfarist	Open economy
Religious paradigm	“harmonised” institutional sphere	Shari’a law	Islamic symbolism	Secular state
Core Constituency	Malay	Malay and Muslim	Urban Malay +	Chinese

Table 5.1: Ideological comparisons between UMNO and PR constituents

Source: Party Constitutions.⁴⁷

Some observations are:

- a. DAP is the only party with a different agenda. Others differ in degree not in kind: they are all defined by the Malay-entitlements-harmonisation triad of political, economic and religious preferences. The core constituencies of all, however, are ethnic.
- b. Therefore, at least as of now, PR is simply an opportunistic anti-BN alliance. It offers no new capacity for a fundamental recast of regime in terms of political equality, democratic pluralism and a secular-homogeneous public sphere. Opposition to BN is what holds them together which can only be sustained by the limited (mobilisation) agenda of “probity in

⁴⁷ The UMNO constitution is available at <http://umno-online.com/wp-content/uploads/2009/etc/perlembagaan/umno.pdf> and can be used as reference. PAS’s constitution (in Malay) is available at <http://www.pas.org.my/v2/index.php/info/perlembagaan>; see especially Articles 5 and 6. PKR policies are available at <http://www.keadilanrakyat.org/keadilan/pengenalatan/matlamat-dan-asas-perjuangan-politik/>; see especially Articles 5, 6, and 10. DAP constitution is available at <http://dapmalaysia.org/en/about-us/party-constitution/>. All retrieved 10 August 2013.

governance” against the supposed personalisation of power, crony capitalism and corruption of BN.

- c. Given their ideological incompatibility and limitedness of shared agenda, PR could become fractious, fragile or moribund if it came to power. This conflict is the sharpest between PAS and DAP because they lack any ideological mid-point.⁴⁸

Let us briefly evaluate each party’s possibilities and options. I begin with PAS for three reasons: a) to critique the standard account of PAS-Islamisation relationship as suggested in chapters 3 and 4, b) to provide a reference to evaluate other PR members and, most importantly, c) because it is the oldest party in the coalition that is also ideologically the most straitjacketed by the narrowness of its agenda: Shari’a, culture (language) and sultans. (Consequently PAS will take relatively more space in this section). As a ruling party, or as a partner in a ruling coalition, PAS *must* demonstrate Shari’a delivery capability to its core constituency for sheer survival. Otherwise, it remains a stand-alone oppositional thought-police except in its traditional backyard of Kelantan and sometimes Terengganu. Its agenda, however, strongly conflicts with DAP’s ideology (and constituency) and this conflict is likely to be the single most important reason for the collapse of a coalition in which they are partners. There is precedence: DAP quit *Barisan Alternatif* (BA), the original avatar of PR, at the time of 2004 elections, precisely on account of this ideological conflict with PAS (both PAS and PKR were then decimated by the Badawi wave).

Interestingly, the worst political consequences in case of such a collapse are for PAS itself (as in 2004) for the following reasons.

1. The core constituency of PAS and UMNO is the same: peninsular Malays (even though PAS may appeal, more broadly, to sections of the whole Malaysian Muslim community). This is most clearly seen in Fig. 5.1a which shows that UMNO-PAS seats are always negatively correlated. A reading of this is that PAS’s gain is, to a large measure, UMNO’s loss: gain and loss both occurring in Malay heartland. From this reading, most liberal scholars of Malaysian politics conclude that PAS constitutes *the* threat to UMNO. Indeed it is often argued that UMNO’s Islamisation is its strategic response to PAS: co-opt its agenda and alienate its support-base into UMNO; in other words, consolidate all Malays into the UMNO-fold by juxtaposing “positive freedoms” to the legitimisation narrative of the “rights of the native.”
2. This reading is, however, flawed as Fig. 5.1b shows. PAS’s voter-base is largely invariant to its seat holdings (partly on account of gerrymander). After 1969, and including the major anti-

⁴⁸ This thesis draft was completed in early May 2015. PR collapsed in June 2015 within a few months of Anwar Ibrahim’s final conviction and imprisonment (see <http://www.bbc.com/news/world-asia-33171555>). However, this does not change the essential content of my argument that opportunistic alliances cannot be stable and are not harbingers of any “real” democratic transition. It also strengthens, rather than threatens, my argument of Pareto superior potential alignments.

incumbency periods of 2008 and 2013, PAS has always hovered around 14-16% vote-base with the exceptions of 1990 when it shrank to 7% (with 7 seats) and 1995 when it collapsed to an all-time low of 3.3% (again with 7 seats). In both these elections, PAS's Malay voters did not significantly defect to UMNO which gained a modest 2.3% (from 27.3% to 29.6%) in 1990 and stayed put. The significant gainer of non-UMNO Malay votes instead was Semangat' 46, a 1988 royalistic Malay UMNO splinter. And when Semangat' 46 folded back into UMNO in 1996, PAS's *status quo ante* of 14-16% voter base was restored. Thus PAS having the threat advantage of Malay erosion over UMNO is wrong; it is rather that UMNO gain, or another Malay alternative, actually constitutes a threat to PAS (see also Tong 2007).

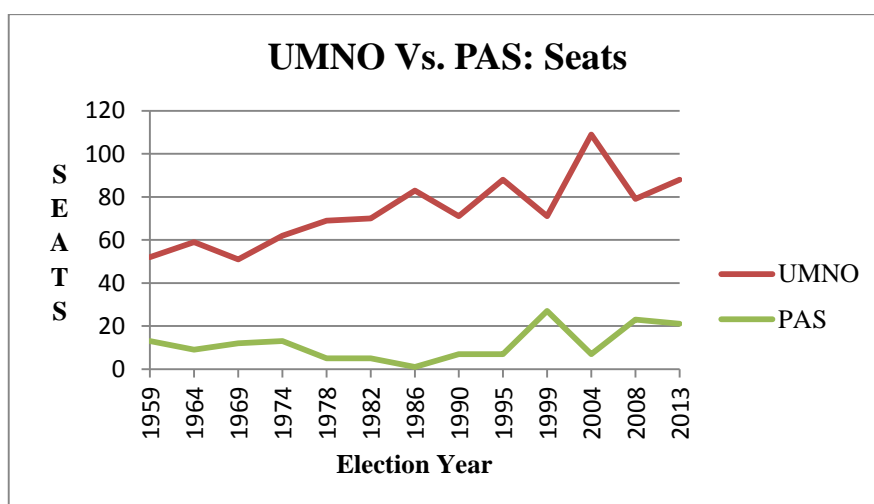


Fig. 5.1a: UMNO vs. PAS federal seats 1959-2013

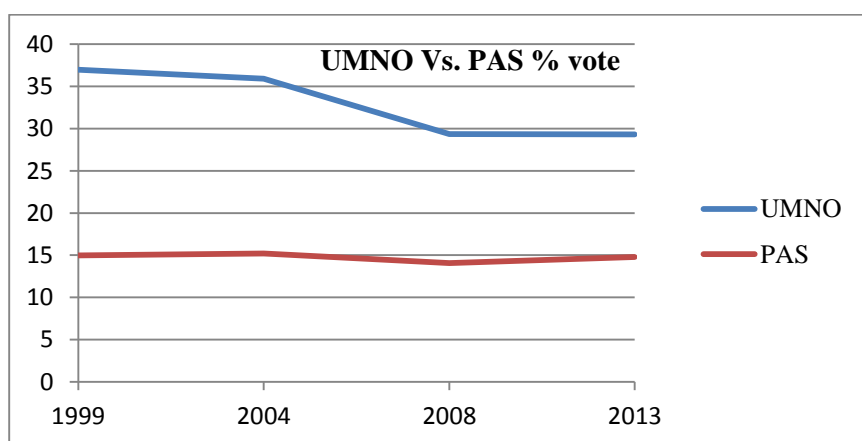


Fig. 5.1b: UMNO vs. PAS vote percentage 1999-2013

Sources: multiple⁴⁹

⁴⁹ For 1959, 1964, and 1969, Vasil (1972, 73-96); 1974, Hing and Ong (1987, 132); 1978 and 1982, Crouch (1982); 1986 and 1990, Hoong (1991); 1995, 1999, 2004 Gomez (2007, 8-10) and Brown (2005); 2008, Pepinsky (2009); 2013, MCOR (2013). An archive of Malaysian parliaments is available at the official site of the parliament (PoM 2015), but the data are partial (no vote percentages) and very difficult to use.

3. Again, with regard to UMNO's strategic co-option of PAS's Shari'a agenda, note that Islamisation of Malaysia took off during Mahathir's ascendant phase between 1982 and 1997. During this whole period, as Fig. 5.1a shows, PAS never crossed single figures in seat numbers (5 in 1982, 1 in 1986, 7 in 1990, 7 in 1995) nor did its voter-base threateningly increase in any of these elections (14.5% in 1982, 15.6% in 1986, 7% in 1990, 3.3% in 1995). PAS constituted no political threat to UMNO or to Mahathir whose Islamisation ("harmonisation") project, as explained in chapter 4, was gyroscopically fixated at UMNO's ideological fundamentals.
4. That PAS will be the worst sufferer of PR collapse is also clear. Since 1969, PAS has crossed single-digit seat figures *only* as part of a coalition: 1974, 13 seats in BN; 1999, 27 seats in BA; 2008, 23 seats in PR; and, 2013, 21 seats in PR. Thus all three PAS vital statistics are fixed:
 - i. Maximum vote base: 15%
 - ii. Maximum stand-alone seat capacity: 10
 - iii. Maximum in-coalition seat capacity: 27

Therefore, reversion to stand-alone will disadvantage PAS most in terms of seats if not votes: in 1977 it quit BN and dropped from 13 seats to 5 in the 1978 elections; in 2004 it caused BA collapse and crashed from 27 seats to 7. Also, the limit on its vote base shows that PAS cannot alienate UMNO percentages to itself, confirming further that it is no threat to UMNO. As a matter of fact, when PAS is in a coalition, it is the other coalition partners who actually become a threat to UMNO because they alienate the support base of UMNO's BN partners. This is especially true of DAP in PR (see Table 3.6a). UMNO understands this well as is seen from its "Chinese Tsunami" reactions. It strategizes appropriately to retain its Malay core (Kessler 2013a).

5. The reasons for PAS's saturation limits are also simple. Its agenda is narrow; in socio-economic and developmental domains, it offers nothing new (different from UMNO) nor any demonstrable capacity to deliver (Kelantan is still the least developed of Malay states). That, to an entitlements-savvy Malay population, matters very seriously.

PKR, formed in the throes of the 1998 *Reformasi* movement, was Anwar's response to Mahathir that leveraged Malay disaffection with personalisation of power, crony capitalism and corruption and which, by reasons of natural correspondence, found favour with BN's Chinese and Indian malcontents. Being "modernist" (liberalism-Islam synergy), PKR constitutes the arithmetic mean of PAS and DAP ideologies. Thus it can do business with both: hence its manifesto of economic development, ethnicity-muted welfarism and Islamic values-laden narrative. However, PKR, bound to Anwar and his legacy as it is, is umbilically tied to the Malay universe. But it can only harvest, on its own, the

(urban) “modernist” and liberal segments of this universe; beyond that only some non-BN Indian support may come unconditionally. However, this is insufficient to guarantee PKR any safe-seats. When BA formed in 1999 and anti-BN votes were consolidated for the first time ever, PKR got 5, all urban, mixed population, seats; these dropped to an unceremonious 1 when DAP quit BA in 2004 and the Chinese deserted PKR. Thus PKR’s safe-seats come from non-BN Chinese DAP voters who vote for it as DAP’s coalition partner. This is strongly confirmed by 2008 and 2013 election results (MCOR2013; Weiss 2009; Chin and Huat 2009). Thus PKR requires DAP as a coalition partner if it has to retain political salience.⁵⁰ It also needs PAS for the lesser, but politically critical, reason of legitimacy among Malays who need to be reassured that the Chinese are not taking over by crook. In addition, alliance with PAS also helps PKR in mopping up the non-BN religious-conservative vote.

DAP is in a similarly curious position. Like other PR constituents, it cannot rule on its own (the only party that can possibly do so is UMNO leading a minority government) because it has been unable to broaden its support base much beyond the Chinese. It is, however, reasonably consolidated as is evident from the fact that since 1999 its strength has continuously increased (1999, 10; 2004, 12; 2008, 28; 2013, 38). It can make others win or lose seats, but it cannot, as PAS cannot, go far alone.

This vote-seat calculus shows that PR represents aggregated segmental demand not political inclusion. It is not designed to create a homogeneous and secular democratic pluralism, or “real” democracy as reflected in Dahl’s *proviso* and institutional guarantees. In power, it will be vulnerable to collapse or stasis. A correct way to understand PR is that it is an early milestone on Malaysia’s democratic journey not its destination: much recombination will (and needs to) happen along the way. The question is: is a Pareto-superior recombination possible? I think that it is.

DAP and PAS (but not PKR) have consolidated bases that can be leveraged by any coalition that accommodates their agendas. DAP cannot be co-opted into BN by UMNO. PAS can be (as in 1974). PKR, if it does not implode (especially since Anwar is now incarcerated), can provide a middle-ground Malay anchor to DAP. They can merge under an alternative constitution that could be weakly “modernist” but strongly inclusive: DAP can always pull out if needed, that will only return *status quo ante* and nothing worse. This is politically prudent for both as well as eminently possible. PAS will leave and either remain where it is or it may join UMNO. In the latter case, DAP-PKR entity will benefit highly from the haemorrhaging of MCA, Gerakan and MIC’s voter base from BN. This is the best possible foreseeable structure of a genuine “two-party” system in Malaysia. It has the capacity to cause a partisan turnover over the next few electoral cycles in Malaysia. If instead PKR and PAS came together excluding DAP, long-term prognosis of PR cannot be much different from 2004 outcomes.

⁵⁰ The Court of Appeal recently on 10 Feb 2015 overturned Anwar’s acquittal on sodomy charges and sentenced him to five years imprisonment. This may have consequences for PKR’s future.

5.2 The civil society

Before the 1990s, Malaysia had no civil society in the Hegelian sense: all social demand was managed by the state without any intervening interface. The public sphere was the set of party allegiances and elections represented both the “general will” and the social demand neither of which needed interpretation or organisation. Anwar Ibrahim, then deputy to Mahathir and the driver of Islamisation promoted the concept of civil society, or “*Masyarakat Madani*”, to situate his “modernist” worldview in the public sphere. It was, Lemiere (2007, 46) says: ‘a way of “rethinking and refashioning modernity for Muslim society” that would pave the way for Islamic principles in an imagined modern future.’ Thus, civil society in the Malaysian context represents only a broadened—that is beyond the confines of scholastic debates on “right Islam—public contestation on the political role of Islam. ‘In fact,’ Lemiere continues, ‘the Malaysian civil society is intrinsically linked to religious issues. Among those representing human rights, women rights, consumer rights and so on, numerous Malaysian NGOs are religious and a majority of them are Muslim.’

The short-lived 1998 *Reformasi*, basically a protest against Anwar’s sacking, was the first mobilised expression of this civil society. Its demand—“probity in public life”—was narrow and squarely within the territory of “modernist” Islam; it was not a demand for transition to liberal politics even though it resonated, for prudential reasons, with non-Muslims as well. However, a major consequence of *Reformasi* was making protest possible for the first time since 1969; the credibility crunch of the Badawi rule also helped later. Liberal NGOs, working in specific social sectors, began to co-operate in joint action. Much of this cooperation was against discrimination caused by Islamisation. MCCBCHS (Malaysian consultative council of Buddhism, Christianity, Hinduism and Sikhism; a recognised state advisory body with little leverage) along with Malaysian Bar Council’s Human Rights group first attempted to form an Inter-Faith Commission of Malaysia (IFCM) in 2005 to advise and educate state actors on proper interpretation of “religion” in the constitution. Muslims refused to join and the attempt collapsed (Liow 2009, 134-35). Again on 26 June 2004, Article 11—eponymous with the Constitutional Article on religious freedom—coalition was formed to educate and mobilise public opinion through seminars and protests, becoming most active during the pendency of Lina Joy case (Lee 2010, 84). Malaysian Bar Council played big vocal role in it (Harding 2012, 232). Liberal media NGOs, leveraging the hard-to-police emerging Internet, also surfaced, the most notable being *Malaysiakini* (Malaysia Today; founded 1999) that heralded the era of “informed” online political debate. 2007 was the year of protests: in June Malaysian Trade Union Congress demonstrated for minimum wage legislation; on 26 September Malaysian Bar Council organised the ‘Walk for Justice’ march against judicial corruption; on 10 November five opposition parties and sixty-four NGOs organised 40,000 protestors in Kuala Lumpur, in the first of *Bersih* (Clean) rallies, seeking reform in electoral practices; in the same month HINDRAF (Hindu Rights Action Force) held

two rallies, the second on 25th attended by 30-40,000 people, to protest against the marginalisation of ethnic Indian Hindus (Lee, *Ibid*, 127-31).⁵¹

The role of the civil society organisations comprised of these and other civil rights NGOs in influencing BN's electoral fortunes through 2008 and 2013 elections has been extensively analysed (for 2008 elections see for example Chin & Huat 2009; Weiss 2009; and, Whiting 2010. For 2013 elections, see Camilleri 2013; Lumsden 2013; Weiss 2013; Wang and Keong 2014; and Welsh 2013).⁵² Most of these accounts provide the narrative a vigorous (and victorious) public sphere in which these organisations have become very "effective" in holding governments to account and in engendering emancipatory values in the broader society. That these NGOs have had some effect is undeniable because the state has taken notice and (predictably) reacted: Badawi used "sensitive issues" theory with its accompanying threat of the Sedition Act to silence all "religious freedoms" debate immobilising Article 11 coalition (though its constituents regroup under other banners and themes, e.g. *Bersih*); HINDRAF was similarly proscribed in 2008 (Camilleri, *Ibid*, 234). However, the limitation of these accounts is that they are generally one-sided: they focus on the Anglophone liberal NGOs to the near exclusion of the numerous conservative Islamic NGOs which have high leverage with UMNO (also with PAS); they *successfully* mobilise Muslims and lobby governments against Article 11 kinds of agenda. A reason for this is that liberal scholars and Anglophone media tend to ignore politics conducted in Malay language and hinterland (Kessler 2013a).

In response to Article 11 coalition—which could boast of only a single Islamic NGO, Sisters in Islam, as its member—ABIM on 16 July 2006 launched *Pembela* (*pertubuhan-pertubuhan pembela Islam*; defenders of Islam): 'a coalition group comprising seventy Islamic NGOs that consisted mostly of professionals, students and Islamic clerics...to address the issue of apostasy among Muslims...defending the Islamic faith and its status as the official religion of Malaysia from legal challenges posed by apostate Muslims and non-Muslims' (Liow 2009, 117-8).⁵³ Perkim-led ACCIN (Allied Coordinating Committee of Islamic NGOs; 37 according to ACCIN's claim at <https://accinmalaysia.wordpress.com/>) is another major coalition of Islamic NGOs since before *Pembela*. It was ACCIN that stymied the IFCM attempt. Its 'common enemy is the "Article 11" coalition and their partisans' and its aim to end the "Article 11" threat of freedom to apostatize or choose religion (Lemiere, *Ibid*). It was the combined pressure from *Pembela* and ACCIN that forced

⁵¹ Interestingly, the second HINDRAF rally planned to submit a memorandum to the British monarch at the British High-Commission in Kuala Lumpur to a) seek reparations for exploitation during colonial rule and b) lodge protest against leaving their welfare unsecured on the grant of independence to Malaya. The rally, of course, never reached its destination: it was brutally crushed, its leaders incarcerated, and media unleashed to demonise it.

⁵² Whiting (2010, 28) wrongly dates "Article 11" formation in 2006.

⁵³ Weiss (2008), for whom the emergence of liberal NGOs signifies "New Politics" in Malaysia, mentions "Defenders of Islam" (and not by its Malay moniker) just once without giving any idea of its social or political leverage. Camilleri (2013) is perhaps the only exception in the list of civil society analysts mentioned here.

Badawi to clamp down on Article 11 coalition and religious freedoms debate (Whiting 2010, 28-29). Most liberal NGOs since then have instead been pooling their collective energies into improving the fidelity of the electoral process (gerrymander, advance and postal voting, campaign constraints, etc.) in the hope that that will reduce UMNO's advantage and possibly cause a partisan turnover which, in the long run, might enable a more secularised public sphere where basic freedoms can be directly addressed. This, as yet, has not happened. Also, there are not many signs that it will happen soon: UMNO's control of the state and its institutions will not yield easily.

5.3 Conclusions

This thesis has demonstrated, by establishing the truth-value of hypotheses **H1** and **H2** as “true,” that Malaysia is structurally determined by an ethno-religious relation of identitarian dominance rather than a conception of “equal” citizenship. Again, validation of **H3** as “true” shows, against much contemporary thought, why this is unlikely to change soon. Malaysia's democratic deficit will continue into the foreseeable future.

The approach of this thesis can be termed neo-classical in the sense that while it borrows from the classical sociology of “plural society” theories of Furnivall and Smith it imposes on them the superstructure of state in terms of dominance or, equivalently, in terms of access to institutions in the tradition of North, Wallis and Weingast. Thus the classical partitioned and un-integrated plural society is analysed in the new situation in which it finds itself: political interaction on the mosaic of segmental identity with contestations on the rules of the game. As discussed in chapter 1, Malaysia is a “natural state,” though not in its early “fragile” phase, but rather in its middle “basic” phase. It, however, is yet to graduate to the “mature” phase where it can support ‘a wide range of elite organizations outside the immediate control of the state’ (North *et al.* 2009, 21). It is only when the natural state becomes mature that the possibility of a democracy, or open-access society, can be posited, not before (*Ibid*).

So, can Malaysia become a mature natural state that could satisfy “doorstep conditions” to transition to “real” democracy (*Ibid*, 26)? I have addressed this question in detail elsewhere (Raina 2015). Briefly, it needs to be noted that while ‘Natural states are stable, but not static’, they can go forward but they can also go backward (North *et al.* 2009, 21). This makes a certain answer difficult. However, a positive possibility is suggested by the fact that clearly emerges from the discussions so far. The Malay elites seriously value economic benefit—“rent” creation within the North *et al.* paradigm—whatever else they may hold dear. Erosion of the rate of growth of economic dividend would be a serious challenge. Malaysia is a mixed economic scenario: great GDP (312 billion USD); high per capita income (25,000 USD PPP); good terms of trade (105); good exchange reserves (140 billion USD); and, low inflation, poverty and unemployment, etc. On the other hand, the debt to GDP

ratio is very high at 54.8%, government loans to private sector area at staggering 400 billion USD, and government spending is over 10% of GDP, etc. (Trading Economics 2015). The economy is narrowly differentiated and largely resource driven. Malaysia is quite vulnerable to fluctuations in international commodity demand. Any sustained slowdown in demand can seriously jeopardise the rate of growth of economic dividend for the Malay elites. In such a situation, many possibilities can emerge one of them being extreme authoritarianism. However, given the rent-creation interests of Malay elites, the possibility that they may seek Pareto-superior outcomes cannot be ruled out. This will require broader inclusion to compound and fortify capacity which, in turn, requires rational bargaining. This can—possibly, not certainly—lead to broader political inclusion because others would be able to table their preferences.

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