

Federalism in Malaysia: the transformative potential of democratic politics in a culturally diverse polity

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Malaysian federalism emerged when Singapore, Sarawak and British North Borneo joined the Federation of Malaya in 1963. Underlying Malaysian federalism is a constitutionalism where Malays and indigenous peoples of Sarawak and North Borneo have special economic and political privileges. The Malay culture underpins the identity of state. This constitutional edifice is reposed on democratic politics and a Westminster-transplanted model of government. Political parties compete in general elections for the right to rule the States and control the federal government in Kuala Lumpur. This paper argues the original basis of constitutionalism cannot be sustained in a culturally diverse polity such as Malaysia and shows the transformative potential of democratic politics.

Introduction

Federalism emerged in the Malaysia region when Singapore together with Sarawak and British North Borneo joined the Federation of Malaya in 1963. Of prime concern in Malaysian formation is ensuring Malay political dominance is not unduly threatened by Singapore's large Chinese majority. The constitutionalism which underlied Malaysian federalism thus provided ethnic Malays and natives of Sarawak and North Borneo with special economic privileges. In so far as it privileged Malay culture in forming the core identity of the state, freedom of other cultural practises was also guaranteed. This constitutional edifice is reposed on Westminster 'transplanted' model of government and democratic politics. Political parties compete in general elections for the right to rule the States and the Federal government. Comments and remarks Malaysia is not a democracy or is some prefix thereof are misconceptions.

This paper shows some of the ramifications of democratic politics on constitutionalism which underlies Malaysia's federalism. It argues that in a culturally diverse polity democratic politics can render the essence of constitutionalism that informed federalism to become unsustainable in the long run. Suggesting much has changed in essence though not necessarily in form, the paper contends federalism when reposed on democratic politics can strengthen the democratic process.

Adopting a historical approach the paper begins by discussing the origins of federalism in Malaysia. This is followed by an examination of democracy and democratic politics. The next section examines some of the ramifications of democratic politics on BN rule (*Barisan Nasional*, National Front) in general and on constitutionalism in particular. The conclusion summarises the main points.

The ethno-nationalist roots to federalism in Malaysia

The theoretical literature on federalism suggests it a mode of uniting regionally diverse peoples and polities intent on preserving their political identities.¹ Imputing economic, political or security among the factors motivating unity, the notion of 'negotiated cooperation on issues and programs based on a commitment to open bargaining between all parties in such a way as to strive for consensus or, failing that, an accommodation' is singled out as federalism's strong point.² Government in a federal state maybe structured along decentralised lines, organised hierarchically similar to a pyramid with the federal government at the apex. On the other hand it could be non-centralised along the lines of the matrix model 'with powers so distributed that the rank of the several governments is not fixed...there being no higher or lower power centres only larger or smaller arenas of political decision making and action'.³ Scant attention is paid in the literature on 'the fundamental regulation that determines the manner in which public authority is exercised' and which informs the manner different groups live together and the identity the state should adopt.⁴ That these important issues are undiscussed stems largely from their political science angle emerging 'from a desire to objectify, and it forgets that no elements, no elementary technical determinations, and no dimensions of social space

exist until they have been given a form. Giving them a form implies both giving them meaning (*mise en sens*) and staging them (*mise en scene*).⁵ In which regard, both the historical origins of a federalism and its politics are important. The former will highlight the particular origins of Malaysia's constitutionalism approached from the perspective of Malay ethno-nationalist interests.

To be sure, there are two stages to the development of federalism in Malaysia. The first emerged when States in British Malaya together with the Straits Settlements of Penang and Malacca came together to form the Federation of Malaya in 1948. The second followed Singapore and Sarawak and British North Borneo joining the Federation of Malaya to form Malaysia in 1963. Both federalisms bear characteristics of the 'covenant (choice) model of federalism in that they [the States] have come freely together and retain their respective integrities'.⁶ They are of the hierarchically centralised kind with power concentrated in the federal government in Kuala Lumpur. Although it is true that States managed to preserve their integrities as geographical units there is no provision in Federal Constitution in inability to secede from the federation (short of being evicted as Singapore was in 1965), raise tax, source overseas credit directly, bound and made them heavily dependent on the federal government. The formation of the Federation of Malaya and its expansion to become Malaysia has its roots in the conjuring of Malay ethno-nationalism by regional political elites in response to British post war re-colonisation plans for the region.

Basically, Britain had wanted to use the opportunity provided by the end of WW2 to transform British Malaya which was a mosaic of nine Malay sultanates and two Straits Settlements of Penang and Malacca into a unitary state. Called the Malayan Union under the charge of a British Governor this new state would also be the basis of citizenship for not only the Malays (the original inhabitants) but also Chinese and Indian immigrants whose labour had principally made Malaya a global tin and rubber producer. Exploiting inter-ethnic fears (inter-ethnic harmony was severally strained during the Japanese interregnum, whence Malays by and large came to see non-Malays, particularly Chinese, as communist collaborators) and the economic realities of British rule the elite led United Malays National Organisation (UMNO) successfully opposed the Malayan Union. In its place a federal state called Federation of Malaya in June 1948, comprising the ten Malay sultanates and the Straits Settlements of Penang and Malacca was formed. Regional governments retained residual powers (principally over land and religious matters), having transferred most of the others to the federal government in Kuala Lumpur, symbols of statehood were linked to the Malay Sultans, Islam became the official religion, Malay was made national language, and ethnic Malays were provided special privileges in public sector jobs, business licenses, and scholarships. Provisions were made for Indian and Chinese immigrants to acquire citizenship status under fairly relaxed terms and also freedom of religion and cultural practices as well as a right to vernacular education upon independence in 1957.

In 1963, the Federation of Malaya was expanded to include Singapore and the Borneo territories of Sarawak and Sabah (British North Borneo) leading to the creation of Malaysia. If the goal of securing regional political bases and through it Malay ethno-nationalist interests were paramount to Malayan federalism, concern to ensure the cherished goals of ethno-nationalism are not undermined informed Malaysia formation. That is, the concern was with facilitating Singapore's independence without undermining

prevailing demographics which favoured Malays. To counter the island state's huge Chinese majority the indigenous natives of Sarawak and North Borneo were accorded the same privileges as Malays by extending the tag "original inhabitants of the land" to them as well. However political elites in the Borneo States like UMNO nationalists before them were concerned with preserving their respective State identities, leading to the creation of a federation with two distinct power ratios was created.

Thus, at the time of Malaysia formation, Singapore, Sarawak and British North Borneo enjoyed greater regional autonomy in matters such as local government, language, entitlement to federal grants as well as protection of business and employment opportunities. Notwithstanding the fact they have been whittled away by successive State governments in the so-called interest of national integration.⁷ This notwithstanding Malaysian citizens from peninsula Malaysia still need to have valid travel documents and work permits when either visiting or working in the Borneo States. To be sure, although the Malaysian constitution extended natives from Borneo same privileges as Malays, the identity of Malaysia remained that of a nation along lines spelt out in a number of policy documents . . . it is one which privileges many aspects of *bumiputera* culture as the "core" of the Malaysian "national" identity while recognising, if peripherally, the cultural symbols of other ethnic groups'.⁸ That is, the UMNO-defined identity of and for the state.

If the cornerstone of constitutionalism in Malaysia is the inequality between citizens in terms of race/ethnicity defining terms of privileged access to public sector jobs, business licenses and scholarships, effectively creating a two-class citizenship, it did not come at the cost of cultural, language and religious freedom of non-Malays. In fact, it may be argued granting of such "freedoms" were the sine qua non of sustaining differences and "us and them" sentiments. Malaysia's demographic composition shows Malays and *bumiputera* in the majority accounting for approximately 55 per cent of the population with Malays recording largest growth. The constitutionalism which underlies federalism in so far as it helps preserve cultural diversity it also wants to impose on the polity a dominant Malay-based identity.

This constitutional edifice was reposed on a Westminster 'transplanted' model of government and politics.⁹ There is the separation of 'power between the executive (symbolically vested in the king, but actually vested in the prime minister and the cabinet), legislature (federal parliament) and judiciary.'¹⁰ Elections are held in five-yearly intervals to determine who runs the federal government and who rules the States. Yet, it is this two-class or unequal citizenship and matters such as opposition access to media, the role of money politics, government control of the election machinery, gerrymandering, the first-past-the-post electoral system which challenge Malaysia's claim to being a democracy.

Democracy in Malaysia

The equality theme that underlies democracy and distinguishes it from monarchy is its doing away with aristocratic right to rule making government a rule of the people. However, as Claude Lefort points out, if 'by the people' we mean a common substance shared by all members of a political community it would do well to note the social bond suggested in conceptions of the people is a representation that depends on political

discourse and upon sociological and historical elaboration which is of course bound up with ideological debate.¹¹ Where elaborations 'of the people' are given the space or stage to contest each other a democracy exists. Struggle over representation is essential to a democratic society and informs what political parties compete over, to allow them to lay claim as agents of power.¹²

Democracy thus, contains two aspects: 1) antagonism and struggle are constituents of a democratic community and, 2) the democratic social bond (rule by a people) is symbolic, not substantial or natural and created through convincing arguments and performances. The community is therefore as much as being a logical and ontological construct is also a rhetorical one as well. Thus, creating or constructing a stage (and hence institutionalization) where these debates can take place is essential for as much as it has divisive features it is those features which will hold the whole together, through the generation of new ideas and new differences. Democracy thus is something never achieved but always to come.

Such a perception allows democracy to be conceptualised as an ecology where competing debates (articulated by political parties founded on ideas of the people or community) flourish, and whose character can be ascertained from the nature and content of the debates. These debates help to mark a social space which 'unfolds as a space (social space) of intelligibility articulated in accordance with a specific mode of distinguishing between real and the imaginary, the true and the false, the just and the unjust, the permissible and the forbidden, the normal and the pathological'.¹³ The meaning these debates give to the social space also serves as representative markers as Lefort writes 'this space contains within it a quasi-representation of itself as being aristocratic, monarchic, despotic, democratic or totalitarian'.¹⁴ The important aspect of debates and competing ideologies standing as a marker of a democracy, more important whose proliferation thereof can contribute to a government that is more accountable, for ultimately in a democracy, the representatives of the people are appointed by the people.

Debates, elaboration and contests by political parties over representations of the people in Malaysia centre on the postcolonial nation-building project to create a nation-state along the lines defined by the UMNO-led BN (*Barisan Nasional*, National Front) government.¹⁵ Containing an economic theme aimed at even development along capitalist lines and a political theme to create a culturally homogenous polity based on the Malay culture, they are pivotal to the democratic debate. Obviously, UMNO's ethnic categorisation of the polity was the lens through which nation building would be approached which also meant compressing the different State-defined conceptions of Malay.

Thus, for example, its adoption by UMNO had created a situation where its perspective of who or what constitutes Malay and articulated in the Federal Constitution differs from representations found in State Constitutions. This is important because the special rights given Malays (and following 1963, the term bumiputera expanded to include the indigenous peoples of Sabah and Sarawak) in the Federal Constitution does not entitle them to equal rights in the States. According to Kedah and Perlis enactments (Kedah No.63 and Perlis No.7 of 1953) Arabs are categorised along side Malays and may own land in a Malay reserve. This privilege is also shared by a Siamese agriculturalist permanently residing in the State. In Johore only Malays defined in Enactment No.1 of 1936 as a person belonging to the Malay or any Malaysian race who habitually speaks the

Malay language or any Malaysian language and professes the Muslim religion has right to ownership in land in that State. Negri Sembilan, Pahang, Perak and Selangor are States where F.M.S. Cap. 142 is used, a Malay is someone who habitually speaks the Malay language or any Malayan language and professes the Muslim religion. Enactment No.18 of 1930 used in Kelantan defines a Malay as someone belonging to any Malayan race and speaks any Malayan language and professes the Muslim religion and is a subject of the Sultan of that State.

Article 160 (2) of the Federal Constitution defines a Malay as someone who professes the Muslim religion, habitually speaks Malay and conforms to Malay customs. Hashim correctly notes 'to be a Malay for the purpose of this constitution you need not be of Malay ethnic origin.'¹⁶ An Indian is a Malay if he/she professes the Muslim religion, habitually speaks Malay and conforms to the Malay customs. Conversely, even a person of a Malay *suku* (stock) is not a Malay . . . if for instance he/she does not profess the Muslim religion.'¹⁷ Matters are not easily resolved if we turn to religious criteria.

Religion under the terms of federalism is a State matter, with the Sultan as head. He is advised by the Council of Muslim Religion and the State *Mufti*.¹⁸ To be sure, the Islamic college where a *Mufti* is trained will influence how Islam is interpreted and adopted. Thus, in the State of Kelantan, Thursday and Friday are public holidays for religious purposes. In Trengganu and Kedah, Friday, is a public holiday while Thursday is a half-day. Sunday is a full working day for all the three States. This contrasts with the other States where Saturday is a half-day and Sunday a public holiday.

Interestingly and perhaps ironically the opposition too chooses to adopt this categorisation in its criticisms of the ruling party's policies related to governance.

The DAP's (Democratic Action Party) main bone of contention is related to the constitutional privileges given bumiputera, entitling them to favoured access to public sector jobs, educational scholarships and business licenses. It advocates equal treatment of all citizens and assistance to the needy, irrespective of race. The economic agenda is broadly social democratic. Thus, DAP never tires (and in fact prides itself) of exposing mismanagement, corruption, the condition of the disadvantaged while at the same time staying clear from blatantly challenging UMNO's idea of a nation-state dominated by Malay culture. PAS (Islamic Party of Malaysia) like DAP does not directly challenge the notion of a state dominated by Malay culture, except it desires Islam (to be a Malay is to be Muslim) to be given a paramount role. It sees adopting Koranic principles in governance as a better way to manage inter-ethnic relations and shares ideals of a theocratic state a la Iran. It constantly criticises BN for economic mismanagement and corruption without advocating an alternative economic model.

The regional Sabah United Party (PBS) had once attempted to strengthen parochial sentiments articulating Sabah for Sabahans which although did not directly challenge UMNO's nation-building project, nevertheless hoped to moderate its cultural influence in the State. With regards to the economic theme of nation-building, PBS attempted to point out the unequal relationship in financial contributions made by Sabah to federal coffers and agitated for a greater share of resources from the Federal government. Party Keadilan Rakyat (Justice Party) which emerged following what its supporters see as the sabotaged career of former Deputy Prime Minister Anwar Ibrahim, shares all of UMNO's goals politically and economically.

Democratic politics: its ramifications and ensuing transformative potential

Since Malaysia formation in 1963, UMNO-led coalition (till 1969 in the form of Alliance) and thenceforth the BN, has maintained two-thirds majority of seats in parliament. State governments on the other hand (notably Sabah, Kelantan and Trengganu) have from time to time come under non-BN rule. It is generally contended that the strict media control, the short election campaign period, gerrymandering, first-past-the-post electoral system, has unduly worked in favour of the ruling BN. Commentators have tended to the prefix - semi, quasi, pseudo, authoritarian, among others - to democracy when describing politics in the country. These are mistaken conceptions against the foregoing discussion. There is no shortage of debates on "the people" in Malaysia, although the scope given non-BN parties is not comparable to say in Australia. This notwithstanding, the space for such debates (often very passionate and emotive) exists, allowing Malaysia to be categorised as a democracy.

Adopting ethnic categorisations used by BN in the struggle for government has worked to render them genuine rather than constructed and contrary to categorisations found in the States as mentioned earlier. PAS in particular has been successful among Malays/Muslims and has ruled the State of Kelantan (1959-1977, and uninterruptedly since 1990) and Trengganu (1959-61 and 1999-2004). PBS ruled Sabah from 1985-1999, during which time it had an on/off relation with BN.¹⁹ Keadilan has not been able to govern any State although it had 8 members of parliament following the 1999 general elections; this number declining to one in 2004.

Since its formation in 1970, BN has been able to win two-thirds of seats in parliament in all general elections. Based on Malaysia's electoral constituencies this stems in large measure from perception held of DAP and PAS among bumiputera and non-bumiputera electorate respectively. The bumiputera perceive DAP as a threat to their privileges, while PAS Islamic ideology is not popular with non-bumiputera. The impact of both these perceptions works to the political advantage of BN particularly in mixed constituencies where no particular ethnic group has an overwhelming majority of the electorate. Realising their strategic role the total number of mixed seats has recorded an increase (twenty per cent in 2004).

Critics suggest a "more democratic" (free speech, greater media real time, among others) political system would have strengthened opposition representation in parliament. It is difficult to evaluate such contentions. By adopting ethnic categorisations non-BN parties exposed themselves to police and censorship reprisals. The strategy of authorities is to remind political parties of 13 May 1969 when race riots broke out in Kuala Lumpur as a result of BN's failure to win two thirds of the parliamentary seats and the opposition winning substantial seats in 1969 elections. Ironically, though all parties mobilise ethnicity it is non-BN which have had to be watchful in mobilising ethnicity as vote getter. Thus although authority bias has had a role in BN's consistent victory at the polls the waxing and wanning of opposition's fortunes indicate something more fundamental is operating, and which affects BN as well. Note for example how increases in number of Malay seats had not automatically strengthened BN. The split in Malay votes between UMNO, PAS and Keadilan has ensured that not all Malay representatives are from UMNO (as can be seen in the 1999 general elections).²⁰ Furthermore, fortunes of DAP candidates have fluctuated. Lim Kit Siang (former secretary general of DAP) and Karpal

Singh (current DAP secretary general) lost their parliamentary seats in the 1999 general elections but able to regain them in the 2004 elections.²¹

However, as a party representing and championing Malay interests UMNO has been concerned with intra-ethnic splits engendered by non-BN parties, particularly by PAS. The method adopted to reverse this has been to consolidate party loyalty. To this end, opposition towards the party leadership arising from either disagreement with party strategy or career interests have been checked. To avoid a repeat of the 1989 challenge against Mahathir Mohammad as leader of UMNO, competition for top posts in the party has been banned. However, although this policy which continues to be in place effectively signals the death of meaningful debates and challenges within the party, it did not lead to curtailment of inter-party democratic debates.

Education and language

In considering the ramifications of democratic politics and its transformative potential I will focus on how it is strengthening democracy in the context of greater equality. It would do well to recall the unequal premise of the constitution which underlies Malaysian federalism. A central aspect of the postcolonial nation-building project has been with advancing Malay and bumiputera socio economic interests through political power. The division/split in Malay political support and increased UMNO-led BN's dependence on non-Malays and the middle class in particular, has had ramifications for constitutionalism. That is, in order to secure its wider political support the BN government has had to ensure middle class and non-Malay voters are not alienated. The ramifications of which can be seen in areas such as education, religion and curbing of intra-UMNO political competition among others. These areas are sacrosanct to constitutionalism.

The pivotal role of Malay language in nation-building has overtime been eroded by the rising importance of English and the increasing popularity of Mandarin as well as introduction of indigenous languages in Sabah and Sarawak. Since 1993 the government has highlighted the importance of English and its importance for trade. The process met with opposition from sections of Malay nationalists such as those in the national Centre for Language and Education (*Dewan Bahasa dan Pustaka*) set up specifically to promote Malay language through translation and publication of Malay books. In the event the government through the federal Education Ministry had been able to impose its will and in 1998, it became a national policy that both science and mathematics be taught in English. Non-Malays in particular had tended to find the emphasis on Malay language in education as unduly undermining their opportunities in higher education overseas. Many too were concerned and lamented the limited employment opportunities a Malay-based educational curriculum would have. Students too found the education system trying particularly with most university reference and text books being in English. The increased prominence of English too has permeated the public universities, which lately have adopted a more relaxed, albeit surreptitious, attitude to their usage in undergraduate teaching. It is without doubt English is set to play a greater role in education, and this in itself is working to erode the dominance of Malay language.

Since 1963 Malays and bumiputera have had a distinct advantage in university admissions over the non-bumiputera through the hugely unpopular quota system. Non-Malays not only had to have exceedingly good pre-university grades in contrast to Malay

and bumiputera students but also had to compete among themselves for the limited places available. In 2000, the government introduced the meritocracy system, more specifically in the so-called critical courses of medicine and engineering. The process has made allocation of places in these courses more competitive, and provided increased opportunities for non-Malays with good grades who previously would have been disadvantaged.

1996 also saw the passing of Private Higher Educational Institutions Act (PHEIA) making possible private sector participation in higher education. If handled well, PHEIA could also transform education into a viable business venture and make Malaysia attractive for the large regional market for education.

By the end of 2003, there were three new public universities and a staggering 536 private higher learning institutions comprising 11 universities and 525 colleges. Apart from the public universities which offered their own degrees, private institutes either offered foreign degrees (in collaboration with a foreign university) on a 2+1 basis where the student spends two years in Malaysia and one year overseas or on a 3+0 basis, where the entire degree program is undertaken in Malaysia. About 26 out of 525 private colleges had been allowed to conduct Foreign Bachelor Degree Programmes in the country for overseas universities. Branch campuses of foreign universities on the other hand offer students the opportunity to undertake their degree programmes in Malaysia. As at end 2003 these private higher education institutes had recorded a staggering 314,344 students from Malaysia and 39,577 foreign students.

Enrolment in private institutions was boosted by the Asian Financial Crisis; devaluation of the Malaysian currency made going to the United States or Britain for education prohibitively expensive, providing a market for private colleges principally with the aim of imparting Information Technology and business-related knowledge and skills. Indeed, a glance at the **Study in Malaysia Handbook International 4th Edition** shows the main thrust of private institutes are technology related courses. New local private universities and local branches of foreign universities such as Monash University, Nottingham University, Curtin University of Technology, Swinburne University of Technology and FTMS-De Montfort only cater for engineering, computer science and business-related courses. The inability of private higher education institutes to secure government permits to conduct liberal arts courses - deemed irrelevant by the approving authorities in the Department of Private Education for national economic development - may explain the overwhelming tilt towards technology related courses.

Estimates using 1999 data indicate 95 per cent of enrolment in private institutions are non-*bumiputera*, and after taking into consideration the 150,000 and 100,000 students in public universities and private institutions respectively calculated 87,000 (34.8 per cent) *bumiputera* students received tertiary education locally while non-*bumiputera* accounted for 135,000 (65.2 per cent).²² This high concentration of non-*bumiputera* in private institutions too would mean majority in professions related to IT, information systems, engineering and business sectors and accountancy are non-*bumiputera*. Private higher education institutes are almost exclusively mono-ethnic, comprising mostly middle class Chinese in contrast with public universities that are predominantly *bumiputera*, leading invariably to an ossification of the occupational structure along ethnic lines; which ostensibly, the NEP (New Economic Policy, introduced in 1970

following the race riots of May 13, 1969 which imploded in Kuala Lumpur and its immediate vicinity following the 1969 general elections, in which the UMNO-led Alliance coalition received a major trashing, causing it to lose its two-thirds majority in parliament) was intended to redefine. To be sure 'the expansion of PHEIS . . . will help to shape the future of Malaysia' as envisioned by the Department of Private Education, Ministry of Education Malaysia.²³

Strengthening of identity consciousness in society has manifested in larger enrolment of Chinese and Indians in Mandarin and Tamil schools respectively.²⁴ However, although there is a tendency among Malays to study Arabic-based curriculum, many are also enrolling in Chinese schools; the growing importance of the China market mainly informing their decision. The point remains greater prominence and usage of English in private and public higher education as well as wider usage of non-Malay languages signal a shift away from the goal of the original constitutionalism that emphasises the dominant role of the Malay language; this shift is seen as more democratic by the non-Malays mainly.

Religion

Constitutionalism makes Islam the official religion of the federation. The process of securing its pride of place however has not been unchallenged although religion has been deemed sensitive along with Malay special privileges. Arguing UMNO is not advancing the Islam cause, PAS religious leaders have been able to win support for its more fundamentalist representation from sections of Malay polity. The principal factor attributing to PAS' success is the uneven nature of Malaysia's economic growth which is overwhelmingly concentrated in the western Malay States (Selangor, Malacca, Negri Sembilan, Penang, Johore). These States too are ethnically and culturally more diverse in contrast with Northern Malay States (Kelantan, Perlis, Kedah and Trengganu with large Malay population are economically underdeveloped). To deal with economic discontentment the UMNO elites in Kuala Lumpur have aligned themselves with modernists such as middle class Muslim women as well as the moderates. Thus, it (the federal authorities) have taken the side of Muslim liberals to 'argue and question their (women) position in relation to men, not because of westernization or indigenous feminism but rather by the increasing masculinisation of public life which has brought on a realisation that their status is indeed relational and relative to men, that they are not quite as singular and composite as they assumed they were'.²⁵ The aim is to realize a culture of tolerance towards gender rights.

The attempt to out-manoeuvre each other (traditionalist vs liberalist) has led to a raking of scriptural texts for references and messages to support each other's position. To polarise the Muslim community, particularly in view of the fact that the fight for gender parity is undertaken in areas pertaining to divorce, marriage, property, children and career or professional advancement where the confluence of religion and *adat* serve to subjugate women. The Muslim feminist campaign is however, paradigmatically bound by realisation that Islam does not advocate complete sexual equality, emphasising complementarity instead.

The Federal Government has come out strongly on the side of the liberal Muslim movement and defended its appointment of women to greater public prominence as

ministers, judges, legislators and councillors. It has also generously funded activities and projects related to advancement of women's rights. A symbiotic relationship thus, has emerged between women rights activists, their proponents and the federal political elite, to see the Federal Government increasingly aligning itself with reformist movements such as Sisters in Islam (SIS), Women's Centre for Change (WCC), Muslim Women Lawyers, National Council of Women's Organisation (NCWO), feminist academics and journalists. Thereby placing it in contrast with the more puritan view held by public religious leaders who view this phenomenon as contrary to nature and encouraging inter-sexual competition.

The Prime Minister had recently announced that matters related to religious conversation (particularly relating to Islamic conversion) needed to be made clear in the Federal Constitution to prevent "confusion among Malaysians". This statement is comforting to non-Malays as it is seen as fair and just as matters relating to Islam is no longer confined to the Syariah Courts, especially involving non-Malay conversion into Islam, and the civil courts would be playing a greater role in this aspect.²⁶

The constitutional role of Islam is broad, ambiguous and open to interpretation. The adoption of a liberal posture by UMNO has engendered challenges from PAS with its more fundamentalist interpretation. To be sure, this posture and approach of the federal government have provided non-Malays with greater sense of security that religion will not be a polarising force in society. In addition, the articulation of a moderate brand of Islam (Islam *Hadhari*), encouraging the importance of open-mindedness, learning, excellence, being competitive, innovative, creative, polite, modern and contemporary, too are comforting for non-Malays, allaying concerns that in the effort to display its Islamic colours they would not be further discriminated. From the non-Malay perspective therefore, the trend of the state is arguably more democratic.

UMNO politics

Since independence UMNO has been the leading component of the government. Its articulation of Malay ethno-nationalism allowed it to be presented as defender of Malay interests. This fact notwithstanding, the party however has of late highlighted its inability to continue extending favours to Malays. Increasingly, Malays are being told the importance of self-reliance and hard work. This contention of the party elite strikes a chord among non-Malays who likewise want to attribute Malay and bumiputera backwardness to unwillingness for hard work and a penchant for indolence, for who comments by the party elites finds resonance. This view attributes Malay backwardness to sociological and psychological factors rather than to structural factors. The Malay heartland States have poorer infrastructure and shorter history of interaction with the international economy in contrast to Western Malay States, making them less attractive to private and foreign capital investments. Lacking in strategies which would strengthen the food processing sector and agriculture remains lacklustre principally to the relatively small size of landholdings and concerted effort to coordinate policy which will expand farm sizes. Attributing Malay demands for subsidies to "subsidy mentality" in such circumstances is misplaced and has engendered resentment from party rank and file. To contain challenges against party line, UMNO leadership has barred the president and vice president posts from contest following the major leadership challenge in 1986. The president of UMNO is also chairman of BN and selects candidates for State and

parliamentary elections. It is not surprising therefore individuals aligned with the leadership and expect to move ahead would also be uncritical.

The language adopted by party elites and measures adopted to consolidate their positions through curbs on leadership challenge helps contain the virulent ethno-nationalism of the early years. More important it does indicate a moving away, albeit slowly, from the promise of ethno-nationalist campaign which marked the party.

Conclusion

The constitutionalism which underlies federalism defines the role of political authority and through it informs politics. In Malaysia constitutionalism which underpins federalism accords Malays and bumiputera special social and economic privileges. This constitutionalism is reposed on democratic politics, where political parties compete for the right to rule the States and control the federal government. In Malaysia federalism is seen as a means to an end; that is to facilitate Malay ethno-nationalist goals. That goal once achieved through the creation of a strong federal government, saw federalism as a state form receding into the background to become something to be tolerated rather than made a central role of government.

Democratic politics has also worked to erode the country's original constitutional basis as splits in Malay support for the UMNO-led BN has led the party to increasingly rely on non-Malay and middle class electoral support. The process has worked to strengthen democracy in the country, although the structure of the constitution remains unchanged. Malaysia demonstrates, in a polity which is culturally diverse, that democratic politics can work to undermine the unequal constitutionalism which underlies federalism, and make it more democratic.

NOTES

- ¹ Ramesh Dutta Dikshit, *The Political Geography of Federalism, An Inquiry into Origins and Stability* (New Delhi: The Macmillan Company of India, 1975). See also W.S. Livingston, 'A Note on the Nature of Federalism' in *Political Science Quarterly* (Vol. 67, 1952), pg 81-95.
- ² Daniel Elazar, *Exploring Federalism* (Tuscalossa: University of Alabama Press, 1987) pg 67.
- ³ Dutta op.cit., pg 35-36.
- ⁴ James Tully *Strange Multiplicity Constitutionalism in an age of diversity* (Cambridge: Cambridge University Press 1995) pg86.
- ⁵ Claude Lefort, *Democracy and Political Theory* tr. by David Macey (Cambridge: Polity Press 1988) pg 11.
- ⁶ Elazar op cit., pg 4. See also Legal Research Board. *Constitutions of the States of MALAYSIA*, (Kuala Lumpur: International Law Book Services, 1998). Also see Simandjuntak, B *Malayan Federalism 1945-1963. A study of Federal Problems in a Plural Society*. (Kuala Lumpur: Oxford University Press 1969).
- ⁷ See Herman Luping in J.G. and Ongkili, M.J. eds. *Sabah 25 Years Later 1963-1988* (Kota Kinabalu: Institute for Development Studies, 1989).
- ⁸ Shamsul, A.B. "Debating about identity in Malaysia: A discourse analysis", (*Southeast Asian Studies*, 34, (3), 1996) p483.
- ⁹ R. Rhodes and Patrick Weller "Westminster Transplanted and Westminster Implanted: Exploring Political Change" in Haig Patapan, John Wanna and Patrick Weller ed. *Westminster Legacies, Democracy and Responsible Government in Asia Pacific* (Sydney: University of New South Wales Press, 2005) pg 1-12.
- ¹⁰ Deborah Johnson and Anthony Milner "Westminster Implanted: The Malaysian Experience" in Patapan, Wanna, Weller, op. cit., pg 85.
- ¹¹ Claude Lefort, *Democracy and Political Theory*, tr. by David Macey (Cambridge: Polity Press, 1988). See also Claude Lefort, *The Political Forms of Modern Society, Bureaucracy, Democracy, Totalitarianism*, ed. by John B Thompson (Cambridge, Massachusetts: MIT Press, 1986). Also see Jacques Ranciere, *On the Shores of Politics*, tr. by Liz Heron (London, New York: Verso, 1995), chapters 2 and 4.
- ¹² Barbour and Kemple in "Writing the Republic: Politics and Polemics in The German Ideology" (*Telos*, June 2005), pg 9-37.
- ¹³ Lefort, *Democracy and Political Theory*, op. cit., pg 11-12.
- ¹⁴ Ibid., pg 12.
- ¹⁵ BN which has been in power at the federal level since 1971 is a coalition of 11 essentially ethnic based political parties.
- ¹⁶ Article 89 (1) of the Federal Constitution states 'Any land in a State which immediately before Merdeka Day was a Malay reservation in accordance with the existing law may continue as a Malay reservation. . .'. Article 89 (6) states ' "Malay reservation" means land reserved for alienation to Malays or to natives of the State in which it lies; and "Malay" includes any person who, under the law of the State in which he is resident, is treated as a Malay for the purpose of the reservation of land.' The State Enactments pertaining to landownership criteria in Malay reserves has remained unchanged. See Sheridan, L.A. and Groves, H.E., *The Constitution of Malaysia*, 4th edition (Malayan Law Journal Ltd: Singapore, 1987). See also Abdullah, A.N., *Melayu dan Tanah: Tumpuan Khusus kepada Tanah Simpanan Melayu*, (Media Intelek Sdn. Bhd: Kuala Lumpur, 1985).
- ¹⁷ Hashim, 1971, op. cit., pg 247.
- ¹⁸ See Ibrahim, A., 'The Position of Islam in the Constitution of Malaysia' in Suffian, M., Lee, H.P., Trindade, F.A., *The Constitution of Malaysia: Its Development 1957-1977*, (Oxford University Press: Kuala Lumpur, 1978), pg 41-68.
- ¹⁹ See Khusairie, T. *PBS: Keluar membela maruah* (Kuala Lumpur: Goldana Corporation, 1991); see also Khusairie, T. *Kontroversie 20 Perkara: Sabahan vs Sabahan* (Kota Kinabalu: Goldana Corporation, 1993); also see Shafruddin, B.H *The Federal Factor in the Government and Politics of Peninsula Malaysia* (Singapore: Oxford University Press 1987).
- ²⁰ For a study of the elections and the swing in BNs fortunes comparing the 1999 and 2004 general elections see Vejai Balasubramaniam "The Politics of Locality and Temporality in the 2004 Malaysian

General Elections" (*Contemporary Southeast Asia* Vol. 27 (1) 2005) pg 44-63. For a more partisan i.e.e pro Keadilan study but which nevertheless contains useful data see Loh, K.W and Saravanamuttu J eds. *New Politics in Malaysia* (Singapore: Institute of Southeast Asian Studies 2002).

²¹ See Balasubramaniam Ibid

²² See Yaakub, N.F and Ayob, A.M 'Privatization of Higher Education in Malaysia and Its Implications for Industrialization', A paper presented at the Sixth Tun Abdul Razak Conference, Ohio University (1997); also see their 'Higher Education and Socioeconomic Development in Malaysia: A Human Resource Development Perspective', A paper presented at ASAIHL Seminar on Liberal Arts Education and Socio-economic Development in the Next Century, Lingnan College, Hong Kong, 1999 and 'Business of Higher Education in Malaysia: Development and Prospects in the New Millennium', A paper presented at the University of Auckland, New Zealand in the same year.

²³ See pg.2 of International Students: The Education System of Malaysia at http://www.studymalaysia.com/is/smh4_qualityjps.shtml consulted on 30 December 2004.

²⁴ Vejai Balasubramaniam "Strengthening Ethnic Identity Consciousness and the Role of Tactical Voting in Multi-racial Malaysia" (*Asian Ethnicity* 7:1 February 2006)

²⁵ Wazir, Jahan Karim *Sexuality and Domination* (Penang: Women's Development Research Centre, Universiti Sains Malaysia 2002) pg 88.

²⁶ See STAR, 15th January 2006, pg 8