

**Digital Democracy in Malaysia: Towards
Enhancing Citizen Participation**

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Abstract

Digital Democracy in Malaysia: Towards Enhancing Citizen Participation

This thesis investigates the relevance of digital democracy in enhancing citizen participation in policy making within the Malaysian civil service. A qualitative research method is applied through an empirical, in-depth interview based, data collection exercise of a sample of civil servants and commentators on government and technology in Malaysia. It assesses, from a broad perspective, the possible contribution of Information Communications Technology (ICT) in strengthening citizen participation in the democratic processes of government. In these contexts it offers a perspective on how the legal, political and social interpenetrates. The literature reviewed covers: the concept of democracy and assumed influences of ICT on democratic processes; Malaysia's history with a focus on nation building, the civil service and also its government's ICT agendas; and, laws structuring citizen participation in government in Malaysia, framed within autopoietic theory. This, as a metaphor, offers a flexible perspective of law's affect on its environment and vice versa, and, further illustrates and emphasises the importance of context. The findings suggest that civil servants agree that there are numerous opportunities for policy making to benefit from digital democracy practices based on ICT. However there is a gap between their appreciation of this potential as a concept and their confidence in its implementation in policy making within the civil service. Civil servants are not ready to hand over the role of defining the process and content of policy making to citizens. Civil servants are generally uncertain about the actual value or weight they are willing to afford to inputs from digital democracy practices and what its influence on policy making will be. The thesis is significant because it describes, from viewpoints within the civil service, the role of ICT in enhancing citizen participation in democratic processes within a context of issues, benefits, enablers and barriers to citizen participation in policy making. This description is placed against a background of the history, culture and law which situates Malaysian civil servants' understanding of the concept of digital democracy and how they frame its relevance to policy making. The research informs the formulation of policy for the use of digital democracy practices in Malaysia. More generally, it contributes to the debate over the factors, including historic democratic practices, which affect the capacity for ICT to enhance participatory democracy. Through this focus on a South East Asian state and its civil service, the study explores new dimensions and offers a significant contribution to the emerging field of digital democracy.

Student Declaration

“I, Nor Mazny Abdul Majid, declare that the PhD thesis entitled Digital Democracy in Malaysia: Towards Enhancing Citizen Participation is no more than 100,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography, references and footnotes. This thesis contains no material that has been submitted previously, in whole or in part, for the award of any other degree or diploma. Except where otherwise indicated, this thesis is my own work.”

Signature:

Date:

Acknowledgement

I thank God for it is only with His blessings that this PhD journey has reached a rewarding destination.

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Preface

This thesis records a qualitative research project which aims to assess the role of ICT in enhancing citizen participation in democratic processes. It addresses the following primary and subsidiary research questions:

- Primary question: How relevant is digital democracy towards enhancing citizen participation in policy making within the Malaysian civil service?
- Subsidiary question 1: Will the potential of technology in disseminating information, facilitating interaction and conducting political transactions through digital democracy practices be used to increase the transparency, efficiency, flexibility, cost-effectiveness, and inclusiveness of policy making in the Malaysian civil service?
- Subsidiary question 2: To what extent will digital democracy practices be integrated in the practices of Malaysian civil service institutions and how will they affect actual policy making processes?
- Subsidiary question 3: Will the potential of digital democracy be used optimally in integrating the basic elements of the entire policy making process in the Malaysian civil service?
- Subsidiary question 4: Will digital democracy practices for policy making in the Malaysian civil service be such that people involved may influence issues of interest?

Points of Departure

This thesis emerged from my personal experience as a civil servant with a background in legal studies, and a growing personal interest in the field of information and communication technologies (ICT). Informed by fifteen years of experience in the management and diplomatic scheme, within the Malaysian civil service, I am aware that civil servants have a predominant voice in policy making. I also appreciate that first and foremost, civil servants are individuals with outlooks or attitudes based on their personal experience and dispositions. This has led me to question how their

views on ICT processes and new policy styles, as well as their views on citizen participation in policy making, will influence the inclusion or exclusion of digital democracy practices in policy making within the civil service. Being both an insider (by virtue of being a civil servant), and a researcher, makes me a “familiar stranger”.¹ I feel that my proximity to the environment that I am researching increases my ability to better evaluate opinions and information, and to interpret them. In essence, this thesis, which is exploratory in nature, is written from the point of view of a civil servant, with the purpose of making sense of, and offering insights into the complexities of the Malaysian civil service.

Moving beyond the personal, to begin with, there is growing interests in the assumed influences of ICT particularly of the internet on democratic processes. The potential ICT holds for distribution of and access to information, as well as reinforcing interactivity between citizens and governments, has led to it being hailed as a changer of political lives. In the wake of this development, lies the concept of digital democracy, defined by Hacker and Dijk as “... *a collection of attempts to practise democracy without the limits of time, space and other physical conditions, using ICT or CMC [Computer Mediated Communication] instead, as an addition, not a replacement for traditional ‘analogue’ political practices ...*.”²

The qualifications in this definition, that the concept is “a collection of attempts” and “an addition, not a replacement”, suggest some holding back by the authors. A review of the literature revealed that among scholars, some view the social and political identities of a society and its existential base in relation to citizen participation as being formed in specific cultural and institutional contexts. Such views posit that states have their own conceptions and variants of democracy and continue to be differently democratic, and that ICT does, and will, not necessarily enhance democracy by increasing citizen participation or citizen power. These views, which express hesitations and restraints, suggested the importance of taking a step back to

¹ A concept first introduced by Stanley Milgram, to depict an individual who is recognised from regular activities, but with whom one does not interact.

² Hacker and Dijk, What is Digital Democracy, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 1, emphasis in original.

analyse and understand the context of citizen participation in Malaysia, in order to assess digital democracy's relevance for policy making within its civil service.

Among the important elements which emerge from the review of literature as I attempted to define and structure this research were; that there is no comprehensive universal model of democracy and that the ideals of democracy do not automatically link to human development; that it is the specific forces of law, culture and the technological architecture which work jointly to regulate speech and structure online deliberation; that the pursuit of applying ICT's capacity to enhance democratic processes will be affected by pre-existing democratic practices, pre-existing governance practices and the general political environment of a country; and, that civil servants have expertise and influence in policy making and play a vital role in including or excluding democratic practices in the administrative processes of policy development. A discussion of these premises in considering the added value of ICT in enhancing citizen participation in democratic processes, suggested a critical basis for the research, namely: that further development of the digital democracy concept is dependant on how citizens and governments struggle with the fundamental question of what social values are important to them, and how they decide to live.

In many ways, this thesis looks into how the legal, the political and the social interpenetrate each other. It has a broad ranging literature review which covers the concept of democracy and assumed influences of ICT on democratic processes (chapter 1), Malaysia's history, nation building, its civil service and also its ICT agendas (chapter 2), and laws forming the context of citizen participation in Malaysia framed within the theory of legal autopoiesis (chapter 3). As a metaphor, autopoiesis offers a flexible outlook on law's effect on its environment and vice versa, which further illustrates and emphasises the importance of context.

This thesis is significant because it describes the added value of ICT in enhancing citizen participation in democratic processes within a context of actual issues, benefits, enablers and barriers to citizen participation for policy making within the Malaysian civil service. A discussion of history, culture and law forms a background

to the analysis of how Malaysian civil servants understand the concept of digital democracy and how they frame its relevance to policy making. The research informs the formulation of policy for digital democracy practices in Malaysia and generally contributes to the debate that ICT's capacity to promote participatory democracy does not emerge in a vacuum.

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List of Abbreviations

BERNAMA	Malaysian National News Agency
CMA	Communications and Multimedia Act
CMCF	Communications and Multimedia Content Forum of Malaysia
DAI	Digital Access Index
EPU	Economic Planning Unit
ICT	Information and Communication Technology
IAP	International Advisory Panel
ITU	International Telecommunication Union
ISA	Internal Security Act
KMM	Kesatuan Melayu Muda
MAS	Malay Administrative Service
MPAJA	Malayan People's Anti Japanese Army
MIC	Malayan Indian Congress
MCS	Malayan Civil Service
MCA	Malayan Chinese Association
MCP	Malayan Communist Party
MAMPU	Malaysian Administrative Modernization and Manpower Planning Unit
MCMC	Malaysian Communications and Multimedia Commission
MyCert	Malaysian Computer Emergency Response Team
MIMOS	Malaysian Institute of Microelectronic Systems
MEWC	Ministry of Energy, Water and Communication
MHLG	Ministry of Housing and Local Government
MOI	Ministry of Information
METP	Ministry of Energy, Telecommunications and Post
MOSTI	Ministry of Science, Technology and Innovation
MDeC	Multimedia Development Corporation Malaysia
NEP	New Economic Policy
NITC	National Information Technology Council

NITA	National Information Technology Agenda
NGO	Non Government Organisation
NTP	National Telecommunications Policy
OECD	Organisation for Economic Co-operation and Development
OIC	Organisation of the Islamic Conference
PKMM	Partai Kebangsaan Melayu Raya
PAS	Pan-Malayan Islamic Party
PPPA	Printing Presses and Publications Act 1984
PTD	Perkhidmatan Tadbir dan Diplomatik
PCB	Public Complaints Bureau
PCPC	Permanent Committee on Public Complaints
PSB	Public Service Broadcasting
PSTN	Public Switch Telephony Network
RTM	Radio Televisyen Malaysia
UMNO	United Malays National Organisation
UN	United Nations
UDHR	Universal Declaration of Human Rights
USP	Universal Service Provision
WSIS	World Summit on the Information Society

CHAPTER 1

DEMOCRACY AND ICT

This chapter deals with underlying theories, concepts and themes related to digital democracy which emerge in the literature and inform the research questions. The chapter begins with an overview of the diverse conceptions of democracy. An emphasis is placed on those concepts of democracy which relate to the provision of equal and effective opportunities for citizens to participate in processes of collective policy making or, more precisely, for policy making by government. It considers the role of information and communication technology (ICT) mediated communications which entail citizen inclusion in formal policy making processes by civil servants. However, the literature reviewed also includes direct attempts to influence policy making, such as citizen activism, and the use of the media to form opinions. Another focal point is the literature that insists on a more contextual approach to the understanding of digital democracy.

While the literature reviewed on digital democracy is informed by different perspectives, it serves to shape an understanding of the concept of digital democracy and provides a basis for defining and structuring this research. In examining the underlying arguments in the literature on digital democracy, the chapter is organised around three related premises:

- that digital democracy should be considered in the context of the root concepts of democracy;
- that there is a need to analyse the assumed influences of the internet on democratic processes; and
- that digital democracy is multifaceted and highly contextualised.

The chapter concludes in describing the development of the design and methodology of the research which also includes a discussion of key stages of the project, namely, the selection of interviewees, data collection and interviews, as well as their analysis.

CONCEPTIONS OF DEMOCRACY

Non Existence of a Comprehensive Universal Model of Democracy

The concept of democracy defies a single universal definition. One variant of its meaning refers to a method of group decision making characterised by a kind of equality of input among participants.³ Another holds that democracy refers to the opportunity that is given to people to accept or reject those who rule them.⁴ Blaug likens attempts at defining democracy to reaching into a black plastic bag to touch an object with an extremely complex shape. Jutting out in one direction, he says, is a decision-making method identified by a set of political institutions embodying varying degrees of basic principles. Going in another direction is the resurgence of the notion of ethical ideals on what is good for all.⁵ In the endless discussions of its meaning, however, attempts at defining democracy cannot stray too far from its basic Athenian construction, namely that it is a form of government involving rule by the people.⁶

In spite of the extensive debate on the meaning of democracy, what remains important is the consensus that the legitimacy of the basic idea remains unchallenged. Democracy, identified by deliberation and consensus based on political equity, is still justified as the desirable form of government even though it may not be the best form of government.⁷ Bishop concluded:

³ Christiano, Neil and Paul, Democracy: Normative Theory, *International Encyclopedia of the Social & Behavioral Sciences*, (Oxford 2001) 3413.

⁴ Coleman, Blogs and the New Politics of Listening, *The Political Quarterly*, vol. 76, (2005) 272-280.

⁵ Blaug, Engineering Democracy, *Political Studies Association*, vol. 50, (2002) 104.

⁶ For discussions on the theory of democracy, refer Dahl, Neil and Paul, Democracy, *International Encyclopedia of the Social & Behavioral Sciences*, (Oxford 2001) 3405-3408, Christiano, Neil and Paul, Democracy: Normative Theory, *International Encyclopedia of the Social & Behavioral Sciences*, (Oxford 2001) 3413-3419, Coleman, Blogs and the New Politics of Listening, *The Political Quarterly*, vol. 76, (2005) 273-280 and Fishkin, Neil and Paul, Democratic Theory, *International Encyclopedia of the Social & Behavioral Sciences*, (Oxford 2001) 3422-3425.

⁷ Korac-Kakabadse and Korac-Kakabadse, Information Technology's Impact on the Quality of Democracy Reinventing the Democratic Vessel, In Heeks (ed.), *Reinventing Government In The Information Age International Practice In IT-enabled Public Sector Reform*, (London and New York 1999) 211-228.

I see it as an invention that by its very nature, seems more in tune with equivocal support-not claiming to be the best, but offering a reasonable track record at keeping the worst at bay.⁸

Deliberative Democracy Theory

In the discussions of democracy, it is accepted that the ideals of democracy do not automatically support the equal opportunity of all citizens to participate. When small elite groups dominate a country's economy and politics, the association between democracy and what it offers in terms of equality and equity can be broken. However, even in this situation, the concept can still be salvaged and be based on the rational choice of citizens. Theorists from Rousseau⁹ to Dewey have pointed out that:

to be legitimately democratic, political decisions must be based upon consent [which is] not merely the aggregate of personal preferences, but the result of reasoned public discussion of political questions.¹⁰

This emphasis on reasoned debate links directly to discussions of the theory of deliberative democracy, which is one of three major schools into which democracy is divided, the other two being liberal individualism and communitarianism.¹¹

The deliberative theory of democracy is distinguished by the view that democracy does not only require equality of votes, but effective opportunity to participate in processes of collective decision making. It deals with the ideal that the distribution of power by democratic institutions is not purely represented through the casting of votes. The theory

⁸ Bishop, Papers on Parliament No. 39-December 2002-Democratic Equivocations: Who Wants What, When and How?, (2002), accessed online at <http://www.aph.gov.au/SEnate/pubs/pops/pop39/c03.pdf> on 8 October 2008.

⁹ According to Dijk, "Rousseau's notion of the will of the people is not based upon the measurement of the views of individual citizens. Its purpose is the *development* of citizenship by means of collective discussion and education. Educating citizens as active members of the community is the primary aim of this model For Rousseau, the people's will was not a sum of individual wills but some kind of totality revealing the sovereignty of the people as a collective A necessary condition of this model of democracy is the presence of informed citizens." In Dijk, Models of Democracy and Concept of Communication, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 43-44, emphasis in original.

¹⁰ Noveck, Designing Deliberative Democracy in Cyberspace: The Role of the Cyber-Lawyer, *Journal of Science and Technology Law*, vol. 9, (2003) 7.

¹¹ Rawls state that, "For liberal individualism, a democratic model gains legitimacy when it provides for the expression of individual interests, for communitarian, a democratic model is legitimated by enhancement of communal spirit and values" In Rawls, The Idea of Public Reason Revisited, *The University of Chicago Law Review*, vol. 64, (1997) 765-807.

distributes equal importance between the power to make decisions and equal participation in decision making. It stresses that the definitive idea of deliberative democracy is the act of deliberation itself which can involve elements such as communicating, arguing, challenging, demonstrating and bargaining.¹²

Rawls's¹³ idea of public reason takes constitutional democracy to also mean deliberative democracy. He defines three essential elements in deliberative democracy:

- the idea of public reason;
- a framework of constitutional and democratic institutions that specifies the settings for deliberative legislative bodies; and
- the knowledge and desire on the part of citizens generally to observe public reason and to realise its ideals in their political conduct.

Rawls maintains that when citizens deliberate on public political questions, they exchange views and debate their supporting justifications. During these deliberations, they understand that their opinions may be revised by discussions with other citizens, in which the idea of public reason is important. This idea recognises that crucial political and social decisions can only result from having citizens educated in the basic aspects of constitutional democratic government. It also would not achieve its ideals if citizens were misinformed on the issues at hand.

From the standpoint of legal theory, Habermas reflects that “the central element of the democratic process resides in the procedure of deliberative politics”¹⁴ and that:

the democratic procedure is institutionalized in discourses and bargaining processes by employing forms of communication that promise that all outcomes reached in conformity with the procedure are reasonable.¹⁵

¹² Dahlberg, Democracy via Cyberspace, *New Media and Society*, vol. 3, (2001)157 and Warren, Deliberative Democracy, In Carter and Stokes (eds.), *Democratic Theory Today*, (2002) 173-202.

¹³ Rawls, The Idea of Public Reason Revisited, *The University of Chicago Law Review*, vol. 64, (1997) 765-807.

¹⁴ Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, (Cambridge 1996) 296.

¹⁵ *Ibid.*(304).

Habermas places his discourse theory in between the liberal and republican conceptions of the state. In the liberal concept, democratic processes are achieved only when there is a compromise among interests which is justifiable in terms of upholding basic liberal rights. The republican concept relies on substantive support in an established background of consensus by the citizenry upon which the republic is founded. The discourse theory, in its intermediate position, integrates elements from both these concepts into one of an ideal procedure for deliberation and decision making. Instead of viewing “the citizenry as a collective actor, that reflects the whole and acts for it,”¹⁶ discourse theory argues that:

[i]ndividual actors function as dependent variables in power processes - processes that operate blindly because beyond individual choice there can be at most aggregated, but not consciously formed and executed, collective decisions.¹⁷

Habermas’s discourse theory maintains civil society as the social basis of autonomous public spheres. From the theory’s standpoint, solidarity through widely diversified and autonomous public spheres, as well as procedures for the formation of democratic opinion and actions institutionalised within a constitutional framework, is able to hold its own against two other mechanisms of social integration, namely, money and administrative power.¹⁸

Drawing on various theoretical works on deliberative democracy, including that of Habermas’s, Bottomley¹⁹ uses the concept of deliberative decision making to highlight the process of deliberation as a necessary prelude to decision making in a corporate context. Deliberative decision making requires that in considering an issue, there should as far as possible be a prior process which is open and genuine to be able to result in a decision which represents a collective judgement. He places emphasis on process as much as outcome and reason rather than authority and stresses that the legitimacy of a decision is determined from the preceding deliberation, making it more important than personal preferences. He maintains that by way of exposing individual interests to competing perspectives and debates, a decision becomes a collective judgment, even in instances

¹⁶ Ibid.(299).

¹⁷ Ibid.(299).

¹⁸ Ibid.(299).

¹⁹ Bottomley, *The Constitutional Corporation: Rethinking Corporate Governance*, (Hampshire 2007) 111-141.

where there are no significant differences to begin with. An important point which emerges from his discussion of the deliberative theory of democracy is that, presenting citizens with opportunities to present their arguments will make them feel that they have been listened to and that they have had a hand in the decision. This he argues is likely to increase their acceptance of the decision, even if it goes against them.

The theoretical writings of Rousseau, Dewey and Rawls, as well as Habermas, from which Bottomley draws, highlight deliberation as an essential process leading to collective decision making. They point towards the importance of the theory of deliberative democracy, the central idea around the theory being the facilitation of rational-critical discourse and the development of public opinion.²⁰ However, being realistic about deliberation, Bottomley, albeit in the context of corporate decision making, cautions that:

[c]learly there are practical limits to the number and range of inputs that a decision-making process can sustain, and deliberative structures and processes must allow for this. There are also limitations imposed by the constitutional framework within which deliberation occurs. Not just anything can go onto the agenda of a general meeting or a board meeting, and not just anything can be decided about the agenda items.²¹

Where such limits are drawn in political decision making may lead citizens to accept or reject the legitimacy of the process. Related to this are issues about balance in deliberative decision making or the extent to which citizens can actively contribute to governance as well as passively benefit from government systems and processes. The idea of participation generates contrasting values and expectations between those who control deliberative activities and those who respond to them.

Participation, according to Blaug,²² is the key to understanding how conceptions of democracy are divided into “incumbent” and “critical”:

²⁰ Rawls, The Idea of Public Reason Revisited, *The University of Chicago Law Review*, vol. 64, (1997) 765-807. Other works on deliberative democracy theory include Baum and Neil, Citizen Participation, *International Encyclopedia of the Social & Behavioral Sciences*, (Oxford 2001) 1840-1846 and Carson, Building Sustainable Democracies, *NewMatilda.com*, (2005) accessed 12 October 2007.

²¹ Bottomley, The Constitutional Corporation: Rethinking Corporate Governance, (Hampshire 2007) 120.

²² Blaug, Engineering Democracy, *Political Studies Association*, vol. 50, (2002) 113 and Fagan, Newman, McCusker and Murray, E-consultation: Evaluating Appropriate Technologies and Processes for Citizens Participation in Public Policy, (2006) 37-45.

Incumbent democracy is primarily motivated to preserve existing institutions by maximizing and managing orderly participation. Critical democracy seeks, instead, to resist such management and to empower excluded voices in such a way as to directly challenge existing institutions. Incumbent democrats assume that effectiveness is only achieved through institutions, and that participation requires institutionalization in order to be compatible with the central representative structures of the democratic state. Critical democracy upholds a rather different assumption: that effectiveness can arise out of a collective adherence to common concerns. Here, the institutionalization of participation is seen as an attempt to tame radical energy.²³

Blaug maintains that, it is around participation that the apparent consensus on democratic values breaks down. The struggle he says, has always been over “*location* in the structure of power”.²⁴ To those who hold power and those who do not, participation results in entirely different experiences. These contrasting values and expectations lead to conflict in determining what makes for good deliberation. In light of these conflicts, the challenge, is the task of finding the answer to the question of what can and should be done to deepen democracy so that it:

works for people, links citizens to public decision-making concerning policies and public programmes, fosters and sustains transparency and accountability; and produces outcomes that are equitable²⁵

Concept of Citizen Participation

In 1969, Sherry Arnstein defined citizen participation as:

a categorical term for citizen power. It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future.²⁶

Arnstein introduced a typology of eight levels of participation represented by eight rungs of a ladder. Participation in the ladder is framed in terms of citizen power. The bottom rung of the ladder is manipulation, where the purpose of a participation process is for those in power to remain in power by eliciting public support through distributing information and advertising approaches. Further up the ladder are levels which represent various degrees of

²³ Blaug, *Engineering Democracy*, *Political Studies Association*, vol. 50, (2002) 107.

²⁴ *Ibid.*(108), emphasis in original.

²⁵ United Nations, *People Matter: Civic Engagement in Public Governance*, World Public Sector Report 2008, (New York 2008) 41-42.

²⁶ Arnstein, *A Ladder of Citizen Participation*, *Journal of the American Planning Association*, vol. Vol. 35 No. 4 July, (1969) 216.

consultation. At the higher levels are partnerships between citizens and state. The highest is the “possibly impractical utopia of complete citizen control over all issues”.²⁷ Rungs are also grouped into three subsections, representing different degrees of participation including: nonparticipation; tokenism; and, citizen power.²⁸ Arnstein’s concept seems unusual as it emphasises a transformative participation rather than participation as a static concept.

Arnstein considered the extent to which ideas such as consultation and participation are mainly about allowing those in power to claim that all points of view were considered while acting in ways that only benefited a few. In many citizen participation processes, she maintains, a group of the public which she terms “have nots” are lied to during the whole process. The progression up Arnstein’s ladder of citizen participation is by how much control the citizens are allowed. It describes the “transferral of political power from traditional power-holders having power over citizens, to citizens having the power to achieve their own requirements”.²⁹ It begs the question of which rung of the ladder marks the optimal balance of power between citizens’ control and delegated leaders’ control?

Although it is a simplification, Arnstein’s ladder allows us to see that participation and consultation are considerably varied in their scope and effect. Consultations may not always end in agreements but the reciprocity embedded in them require, as a minimum, that justifications and explanations are offered for taking decisions that do not accord with the views of those consulted. Beyond this minimum, a properly deliberative decision making has to share:

a commitment to fairness and inclusion that characterises a properly democratic approach where the process of decision-making is given priority over the pursuit of any particular outcome from that process. This deliberative democracy perspective is concerned about the

²⁷ Fagan, Newman, McCusker and Murray, E-consultation: Evaluating Appropriate Technologies and Processes for Citizens Participation in Public Policy, (2006) 37.

²⁸ Schlossberg and Shuford, Delineating "Public" and "Participation" in PPGIS, *URISA Journal*, vol. Vol. 16 No.2, (2005) 17.

²⁹ Carver, Participation and Geographical Information: A Position Paper, *ESF-NSF Workshop on Access to Geographical Information and Participatory Approaches Using Geographic Information*, (Spoleto 2001) 2.

ongoing relationships between citizens, civil society and the state rather than the efficiency of a single consultation.³⁰

The examples discussed by Arnstein involve citizen participants with similar objectives, such as urban redevelopment. This raises the question of the extent to which the different rungs of the ladder are useful for understanding situations that involve consultations and deliberations on issues where participants have more contrasting objectives. However, the typology of the ladder is very relevant to the need for a government to be mindful of where on the ladder it wishes to place itself and how it wishes to respond to citizens' demands for a more inclusive democracy. The rungs shift in different contexts and different administrative cultures. A government may privilege participation in some debates, but not in others. The discussion of ICT's impact on Malaysian civil society and its civil servant's orientation towards participative policy making in chapter 4, will further illuminate this issue in the Malaysian context.

ASSUMED INFLUENCES OF THE INTERNET ON DEMOCRATIC PROCESS

ICT Facilitating Better Access to Information and Communication

New ICT tools provide a formidable potential for distributing and accessing information. They open up opportunities for accelerating connectivity, leading to the emergence of network information societies. This development changes not only social and economic life but also opens up greater possibilities towards changes in political life. By the nature of its rapid pace of innovation and its ability to undermine geographic borders, ICT poses a challenge to governments. ICT's capacities subject state authority and control and national legal policies and laws to new uncertainties. State power has always, to a certain extent, depended on control of access to information and communication. However, as much as ICT is said to be the technology of freedom, individual empowerment may not lead to objective results or outcomes. The power to know is not the same as the power to act. The power remains latent unless armed by purposeful authority and an institutional setting. It is

³⁰ Fagan, Newman, McCusker and Murray, E-consultation: Evaluating Appropriate Technologies and Processes for Citizens Participation in Public Policy, (2006) 41.

not technology but policy that potentially threatens contemporary personal jurisdiction theory,³¹ which is said to rest on the twin pillars of state sovereignty and legal processes.³² That this technology acts to structure our choices and preferences, but not in a wholly determinist way, is stressed by Street's proclamation:

[T]here are three mistaken claims about technology; that it is neutral, that it is autonomous and that it can be selected freely.³³

Policies and Laws as Forces which Structure Online Deliberations

Langdon Winner likens the internet to a Hollywood film in that they both mirror and inform the fantasies of their audience. The internet, he maintains, is contributing to a culture which, although widely shared, is full of highly commercialised symbols and meanings. Significantly, Winner also points out that social science studies suggest that in using the internet, people tend to customise the sources of information according to their interests. This contrasts he says, with the fact that one element that contributes to a truly democratic setting is the diversity of participants engaged in different arguments. This prompts questions of whether the mobilisation of people's attention and activity is effective when it comes to matters of power and policy, and, whether the internet can actually improve the quantity and quality of citizen participation. In Winner's view, the internet into which hierarchies have supposedly vanished, cannot be seen in isolation. At the end of the day, it still occupies the same political space of what used to be and remains the focus of power, namely, statecraft and political parties.³⁴

³¹ Modern personal jurisdiction theory states that, "[a] nonresident's "minimum contacts" with a forum state are treated as the equivalent of her territorial presence in the state and hence justify a state's exercise of sovereignty over her. At the same time, the nonresident's "purposeful availment" of opportunities within the state is seen as implying her agreement to that state's jurisdiction in exchange for the protection of its laws. This theory presumes that a non resident directs voice communications to known places by dialling a telephone number's area code". This theory is now challenged by the advent of Voice over Internet Protocol (VoIP) and its applications, which make area codes no longer correspond to known locations. In Citron, Minimum Contacts in a Borderless World: Voice over Internet Protocol and the Coming Implosion of Personal Jurisdiction Theory, *University of California Davis Law Review* vol. 39, (2006) 481.

³² For discussions related to ICT and citizen empowerment refer Ibid.(1481-1453), Breton, On the Meaning of Empowerment and Empowerment-Oriented Social Work Practice, *Social Work with Groups*, vol. 17, (1994) 23-37 and Hartford, Who Owns Informationization?, vol. 2007, (Boston) available online at <http://web.mit.edu/chinapolicy/www/conference1/hartford.pdf> , accessed 5 October 2007.

³³ Street, Remote Control? Politics, Technology and 'Electronic Democracy', *European Journal of Communication*, vol. 12, (1997) 27.

³⁴ Winner, Technological Euphoria and Contemporary Citizenship, *Techné: Research in Philosophy and Technology*, vol. 9, (2005) 124-133. For related discussion on the internet's ability to disempower, see

In line with Winner's arguments, Darin Barney argues that in most cases, new technologies strengthen priorities which are already in place. In an interview, while discussing access and the digital divide he says:

Contemporary technological discourse traps us with the assumption that access, or even access with skill, necessarily constitutes empowerment and liberation. I think this is a dubious proposition given the history of technological systems, almost all of which have served to reinforce, rather than democratize existing distributions of political and economic power. Still, our public culture confirms this equation, and so we will continue to press for equal access to technology when what democracy really requires is equal access to political and economic power. Equal access to a technology of disempowerment, or a technology configured to disempower, can undermine democracy instead of contributing to it.³⁵

Conceptual frameworks of policies and laws play very significant roles in the architecture of rights and capabilities in cyberspace. An important point to be made here is that, amidst the overwhelming capacity of ICT, governments still possess the ability to privilege different types of value choices. It is these choices made by governments and expressed through policies and laws that will determine whether, and how, ICT will lead to greater citizen participation. The regulation of electronic communication, according to Winner, is not entailed in its technology but is a reaction to it. He maintains that social relations, with or without ICT, are more impacted by policies and legal rules than technologies because of their power of enforcement.³⁶

Bringing aspects of this discussion closer to the realms of digital democracy is Noveck's³⁷ argument that the flourishing of human communication brought about by a technical revolution, such as ICT, does not guarantee a concomitant growth in democracy. Online activities such as web chatting, or what she terms as "unregulated talkativeness", does not

Macintosh, Davenport, Malina and Whyte, Technology to Support Participatory Democracy, In Gronlund (ed.), *Electronic Government: Design, Applications and Management*, (London 2002) 226-248.

³⁵ Jay, Technology, Democracy and Liberation: An Interview with Darin Barney, *Monkeyfist.com*, vol. 2008, (2003) <<http://monkeyfist.com/articles/837>>, accessed 13 March 2008.

³⁶ Winner, Technological Euphoria and Contemporary Citizenship, *Techne: Research in Philosophy and Technology*, vol. 9, (2005) 124-133. For a philosophical approach to technology, see also Winner, *The Whale and the Reactor: A Search for Limits in an Age of High Technology*, (1986).

³⁷ Noveck, Designing Deliberative Democracy in Cyberspace: The Role of the Cyber-Lawyer, *Journal of Science and Technology Law*, vol. 9, (2003) 472-491, Noveck, Transparent Space: Law, Technology and Deliberative Democracy in the Information Society, *Cultural Values*, vol. 3, (1999) and Noveck, Paradoxical Partners: Electronic Communication and Electronic Democracy, *Democratization*, vol. 7, (2000) 18-35.

necessarily foster democratic participation. Although Noveck looks at the issue from a legal perspective, her arguments align with those of Winner and Barney as she points out that it is the specific forces of law, culture and technological architecture which work jointly to regulate speech and structure online deliberation. For ICT to function in democratic ways requires, Noveck argues, that there be construction of online public spaces to allow for communications which are subject to rules of what she terms “conversational transparency”. She connects the metaphor of transparency, in the sense of legal accountability, to the role of communication regulation in the development of democratic political culture or legal transparency. Noveck stresses that if, in the previous era, lawyers had only to be concerned with enacting appropriate laws to preserve democracy, now they also have to know how to bring the values of democracy into the world of technology.

The promise that the internet holds for democracy lies within a framework of values and ideals imposed by existing legal and institutional structures. Technology may, for example, promote either of Blaug’s “incumbent” or “critical” conceptions of democracy, depending on their pertinence in the context of a particular state, or further emphasise the state’s location on any of Arnstein’s ladder of participation. Noveck maintains that left on its own, technology may not foster a participatory democratic culture as envisioned by the theory of deliberative democracy. She argues, in the tradition of the deliberative democracy theory, that taking advantage of the communications potential of ICT must involve activities and processes which have been designed or purpose-built for it. This view stresses the necessity to customise ICT design for deliberative democracy, so that it does not merely enhance the status quo of existing democratic or non-democratic systems. It points to the concern that, differences in political cultures and systems require special care in the construction of digital democracy for a particular polity.

IMPACT OF ICT ON DEMOCRATIC PRACTICES: THE IMPORTANCE OF NATIONAL CONTEXT

Implementation of Digital Democracy within National Contexts

Meanings of democracy vary across cultures, states and economic boundaries. While functional relationships between ICT, specifically the internet and increased information access, have become more or less self evident, what is less revealed is the extent of its effect on national democratic processes. States have their own conceptions and variants of democracy and continue to be differently democratic. The pursuit of the application of ICT's capacities to enhance democratic processes will only correspond with pre-existing democratic practices, pre-existing governance practices and the general political environment of a country. These factors indicate another aspect of the discussion of democracy that needs to be considered, that it embraces culture as well as the history and specific circumstances of a country. The definition of digital democracy by Hacker and Dijk reflects this. They define it as:

*a collection of attempts to practise democracy without the limits of time, space and other physical conditions, using ICT or CMC [Computer Mediated Communication] instead, as an addition, not a replacement for traditional 'analogue' political practices.*³⁸

Dijk further qualifies the definition by emphasising digital democracy as:

*an attempt to change traditional age-old ways of operation and habits in politic. It is a matter of exploration and experiment.*³⁹

Proponents of digital democracy aim to deploy ICT to improve the effectiveness and efficiency of democracy. Perhaps the technology's strongest appeal lies in its potential to reinforce interactivity between citizens and governments. However, as previously discussed, institutional and cultural differences in each political system shape the forms and extent of the political uses of computer technology. The fact remains that ICT does not change political institutions and processes by virtue of its mere existence. Rather, it may amplify existing tendencies by virtue of its development being controlled by specific

³⁸ Hacker and Dijk, What is Digital Democracy, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 1, emphasis in original.

³⁹ Dijk, Models of Democracy and Concept of Communication, Ibid.(30).

dominant interests. Because of this, the opportunities and risks attributed to digital democracy are related to existing models of democracy and communication. This helps to explain the particular preferences in applying ICT in a political system.⁴⁰ As calls for civic engagements derive their successes and shortcomings from:

historical factors and specific cultural and institutional contexts, transplanting or adopting models [of digital democracy] across cultures is often difficult, if not impossible.⁴¹

While the internet's democratic capacity may be maximised in some states which fulfil certain conditions, other states may find that it poses challenges to existing practices, albeit to varying degrees. Understanding the role of the internet in democratic processes requires understanding how states have been governing themselves without the internet.⁴² In the words of Watson and Mundy,⁴³ "whether in its traditional or digital form, democracy should be customised and implemented in context." A major study by Heeks and Bhatnagar, of attempts to introduce new ICT while ignoring the realities of the governmental context concludes, "failure predominates".⁴⁴

Crouch⁴⁵ argues that in a society sharply divided on ethnic lines, each major group will be compelled to establish its own predominance. When in power, a group will authoritatively consolidate its position. On the other hand, the presence of several major ethnic

⁴⁰ Watson and Mundy, A Strategic Perspective of Electronic Democracy, *Association for Computing Machinery. Communications of the ACM*, vol. 44 (2001) 27-30, Hagen, Digital Democracy and Political Systems, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 54-63 and Dijk, Models of Democracy and Concept of Communication, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 30-53.

⁴¹ United Nations, People Matter: Civic Engagement in Public Governance, World Public Sector Report 2008, (New York 2008) 72.

⁴² For related discussions refer Inoguchi, Newman and Keane, Introduction: The Changing Nature of Democracy, In Inoguchi, Newman and Keane (eds.), *The Changing Nature of Democracy*, (Tokyo, New York 1998) 1-19, Rose, Governance and the Internet, *Communications of the ACM*, vol. 46, (2003) 338-364, Rose, A Global Diffusion Model of e-Governance, *Journal of Public Policy*, vol. 25, (2005) 5-27, Loo, e-Democracy in Malaysia: Chasing the Winds of Change, In Banerjee (ed.), *Rhetoric and Reality: The Internet Challenge for Democracy in Asia*, (Singapore 2003) 179, Catinet and Vedel, Public Policies for Digital Democracy, In Hacker and Dijk (eds.), *Digital Democracy: Issues of Theory and Practice*, (London, Thousand Oaks, New Delhi 2000) 184-208 and United Nations, Human Development Report 2002: Deepening Democracy in a Fragmented World, (2002).

⁴³ Watson and Mundy, A Strategic Perspective of Electronic Democracy, *Association for Computing Machinery. Communications of the ACM*, vol. 44 (2001) 27-30.

⁴⁴ Heeks and Bhatnagar, Understanding Success and Failure in Information Age Reform, In Heeks (ed.), *Reinventing Government In The Information age*, (London and New York 1999) 49.

⁴⁵ Crouch, *Government and Society in Malaysia*, (St Leonards 1996) 150.

communities may contribute to a balance of power, promoting responsiveness by the government to inter group bargaining and negotiation. Both arguments may apply to Malaysia. One ethnic group has established its predominance while simultaneously, the presence of other distinct ethnic communities, necessitates the juggling of continuing threats of ethnic conflict through representative measures of control. In turn, this has encouraged bargaining and the development of government responsiveness. This issue will be discussed further in chapter 2.

Lijphart maintains that, the “difficulty to achieve and maintain stable democratic government in a plural society⁴⁶ is a well established proposition”.⁴⁷ In the case of Malaysia, ethnic diversity has had definite impacts upon nationalism and democratisation. It has continuously played a significant role in the shaping of the country’s contemporary societies and politics.⁴⁸ Lijphart cites Malaysia as an example of a successful consociational democracy.⁴⁹ However, there are others who view it as having antidemocratic laws and politics, with continuing restrictions on freedom of association and of communication where these may have adverse impact on the governing party. These views will also be discussed further in chapter 2.

Loo⁵⁰ argues that, despite initial positive signs of the Malaysian government’s willingness to tolerate a free internet, obstacles to change may remain embedded in hierarchical government bureaucracy, academia and social settings inclined to limit information sharing and knowledge generation. He feels that among civil servants, apprehension still prevails

⁴⁶ Segmental cleavages in a plural society according to Lijphart, may be of a religious, ideological, linguistic, regional, cultural, racial or ethnic nature. See Neher, Asian Style Democracy, *Asian Survey*, vol. 34, (1994) 946-961.

⁴⁷ Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, (New Haven and London 1977) 1.

⁴⁸ From Ghia Nodia’s review of Jack Snyder’s work entitled *From Voting to Violence*, on democratization and nationalist conflict, cited in Nodia, *Nurturing Nationalism*, *Journal of Democracy*, vol. 11, (2000) 171.

⁴⁹ According to Lustick, “In a consociational democracy, the centrifugal tendencies inherent in a plural society are counteracted by the cooperative attitudes and behaviour of the leaders of the different segments of the population. Elite cooperation is the primary distinguishing feature of consociational democracy”. In Lustick, Lijphart, Lakatos, and Consociationalism, *Journal of World Politics*, vol. 50.0 (1997), (1997) 88-117.

⁵⁰ Loo, *e-Democracy in Malaysia: Chasing the Winds of Change*, In Banerjee (ed.), *Rhetoric and Reality: The Internet Challenge for Democracy in Asia*, (Singapore 2003) 190, Pepinsky, *Malaysia: Turnover without Change* *Journal of Democracy* vol. 18, (2007) 113-127, Hussin, *Islam and Ethnicity in Malay Politics*, *South-East Asian Social Science Monographs*, (Singapore, New York 1990) 211 and Korff, *Globalisation and Communal Identities in the Plural Society Of Malaysia*, *Singapore Journal of Tropical Geography*, vol. 22 (2001) 270-283.

over the engagement of policy discussions in the public sphere. Factors such as the convention of uncritical deference to authority, group conformity, the Malaysian family system, social and work environments, schools and government are said to place constraints on advocating the application of ICT's capacity to enhance democratic processes in Malaysia. Lim also argues that, although modernisation has opened new possibilities and increased agency in Malaysia, adjustments of the practices of everyday life using new technology must still be subject to social control. For example, the application of ICT's capacity to create new forums for political discussions may still require the use of the old controls over political discussions in the mass media if Malaysia were to benefit from it. However, the deeper level of transparency that ICT creates, may, on the other hand, necessitate redefining democratic processes, as well as roles including those of civil servants.

Civil Servants' Role in Determining the Extent of Democratic Practices in Policy Making

ICT already contributes to the decentralisation or spread of politics. While the political government remains dominant in theory, in practice the use of ICT has strengthened the civil service in relationship to the government that it is serving. The fact that civil servants have expertise and influence in policy making, which has a political impact, is sometimes ignored in current literature on democracy theory. Their role as professionals immersed in a specific sectoral context puts them in a vital representative position to include or exclude democratic practices in the development of policy. Their preference for ICT processes and new policy styles will help determine the potential aggregation of interests in digital democracy through their encouragement of ICT's use to enhance citizen debates and participation in policy making. The democratic quality of online practices will largely depend on how ICT is applied, and consequently, on how public authorities are able to frame their usage.⁵¹ In the words of Castells, "[t]he public sector is at present the decisive actor to develop and shape network society."⁵²

⁵¹ Snellen, ICTs, Bureaucracies, and the Future of Democracy *Association for Computing Machinery. Communications of the ACM*, vol. 44, (2001) 47-48, Thomas, Public Participations in Public Decisions, (San Francisco 1995) Gronlund, Emerging Electronic Infrastructures: Exploring Democratic Components, *Social*

Drawing on institutional economics, Pierson⁵³ in his discussion of path dependence in politics, argues that it is the increasing returns for policy and institutional players that keep them bound to an initial path. He argues that policymakers involved at the time of an initial policy proposal will have already had a committed or sunk investment in the policy path. They have learnt to deal with the system in a certain way. They may find co-ordination to be easier as the behaviour of others becomes predictable under the previously agreed policy or institutional processes. However, factors apart from increasing returns are often at play in policy and institutional processes, leading to learning and adaptation. Sometimes reforms are accepted, even if their advantages are not clear cut. Small changes can build up and may, at a certain “tipping point”, provide the force driving further change.

However, amidst all the changes which have taken place in the last century, it remains strongly evident that the state bureaucracy is still based on the Weberian legacy of a:

clear hierarchical order, concentration of power among senior officials, formal structures with strict rules and regulations, limited channels of communication, confined openness to innovation and change, and non compliance with the option of being replaceable.⁵⁴

These values are sharply opposed to those we associate with democracy, such as equality and participation. They may limit the active involvement of citizens in policy making processes, especially when they are perceived as interfering with administrative work or the need of administrators to govern. Moves towards new procedures and processes, such as introducing a transformation to the traditional method of policy making into a public organisation, will need consideration of a change in existing cultures and values within public organisations.⁵⁵ As stated by Sanford and Rose, it may require “reorganization of

Science Computer Review, vol. 21, (2003) 55-72 and Catinet and Vedel, Public Policies for Digital Democracy, In Hacker and Dijk (eds.), *Digital Democracy: Issues of Theory and Practice*, (London, Thousand Oaks, New Delhi 2000) 184-208.

⁵² Castells, *The Network Society: From Knowledge to Policy*, In Castells and Cardoso (eds.), *The Network Society: From Knowledge to Policy*, (2006) 17.

⁵³ Pierson, Increasing Returns, Path Dependence, and the Study of Politics, *The American Political Science Review*, vol. 94, (2000) 251-267.

⁵⁴ Vigoda, From Responsiveness to Collaboration: Governance, Citizens, and the Next Generation of Public Administration, *Public Administration Review*, vol. 62, (2002) 529.

⁵⁵ King, Democracy in the Information Age, *Australian Journal of Public Administration*, vol. 65, (2005) 16-32, Sanford and Rose, Characterizing eParticipation, *International Journal of Information Management*, vol.

government – perhaps into flatter hierarchies of more creative and cooperative”⁵⁶ civil servants.

Democracy implies a limitation on state powers. It invokes a more bottom up process in which actions may be initiated by individuals or be determined by popular demand. However, as literature suggests, changes brought about by technology are ambivalent towards democratic values. The marketplace or individuals may not always be the best mechanism to ensure basic values associated with the notion of digital democracy. For example, a change brought about by ICT to the ways in which information is relayed necessitates the adaptation of media and communications policies. These policies impact on freedom of information and freedom of communication. Public policies regarding the development of ICT’s hard and soft infrastructure are also important as they condition the possible uses of ICT and their impact on political systems. The interplay of social forces, including businesses and politics, cannot be ruled out. Left alone, the determination of the range of desirable democratic ICT applications may, for example, be based solely on profitability, on an individual’s personal wealth and education or developed only to suit particular political interests.⁵⁷

Malaysia’s quest for strategic and competitive advantages through its development of ICT and its consciousness of adhering to international standards and values⁵⁸ may come to drive

27, (2007) 406, Vigoda, From Responsiveness to Collaboration: Governance, Citizens, and the Next Generation of Public Administration, *Public Administration Review*, vol. 62, (2002) 527-540 and Fountain, Central Issues in the Political Development of a Virtual State, In Castells and Cardoso (eds.), *The Network Society: From Knowledge to Policy*, (2006) 150.

⁵⁶ Sanford and Rose, Characterizing eParticipation, *International Journal of Information Management*, vol. 27, (2007) 406.

⁵⁷ Catinet and Vedel, Public Policies for Digital Democracy, In Hacker and Dijk (eds.), *Digital Democracy: Issues of Theory and Practice*, (London, Thousand Oaks, New Delhi 2000) 185-207.

⁵⁸ International forums and organisations such as the World Summit on the Information Society (WSIS) and the United Nations (UN) provide platforms for mutual goals and commitments to the application of ICT and more specifically, play the role of advocator of digital democracy in Malaysia. During WSIS in Geneva (December 2003) member countries declared their commitment to utilize ICT and build “a people-centred, inclusive and development-oriented information society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life ...”. World Summit on the Information Society, Declaration of Principles-Building the Information Society: A Global Challenge in the New Millennium, vol. 2007, (2003), World Summit on the Information Society, Tunis Commitment, vol. 2007, (2005). In 2000 world leaders at the United Nations voiced their concerns over ensuring that globalisation become a positive force to all the worlds’ people in what has come to be known as the

the implementation of digital democracy in policy making. However as the literature reveals, the determination of how ICT will impact state-citizen relationships should not be solely driven by technology. Conceptual frameworks of policies and laws play significant roles in the architecture of rights and capabilities in cyberspace that privilege different types of “value choices”.⁵⁹ In the case of Malaysia, whether or not digital democracy will enhance democratic participation, will depend upon these “value choices”. This necessitates consideration of the prevailing characteristics of state-citizen relationships, policies and laws as determined by contextual challenges of history, ethnicity and politics. These factors, which relate closely to the development of the Malaysian civil service, its role in the process of nation building as well as the adoption of ICT, will be discussed further in chapters 2 and 3.

RESEARCH DESIGN

Research Questions

The review of the literature demonstrates that digital democracy research has been dominated by the ideological discourses of a mixture of advocates and sceptics drawing on underlying ideas on democracy and the internet. Although in general the debate over how and how much ICT will shape democratic practices is likely to continue, for this particular study, the literature serves to provide an overview of theories and key concepts related to digital democracy. This was used to identify the critical basis of this research, namely that further development of the digital democracy concept will be greatly dependant on how citizens and governments struggle with more fundamental questions of what social values are important to them and how they should live. This examination of actors and their roles in the practice of Malaysian digital democracy, in the context of the literature, led to the emergence of the primary research question (PRQ):

Millenium Declaration. The declaration lists six fundamental values as essential to international relations in the 21st century. The first is freedom which text spells out as follows: “Men and women have the right to live and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights.”, United Nations, General Assembly Resolution 55/2, (2000) , available online at <http://www.undemocracy.com/A-RES-55-2.pdf> accessed 14 November 2008.

⁵⁹ Lessig, *Code and Other Laws of Cyberspace*, (New York 1999).

- PRQ: How relevant is digital democracy towards enhancing citizen participation in policy making within the Malaysian civil service?

Characterising Online Participation in Policy Making: A Contextual Approach

Anttiroiko⁶⁰ maintains that technology must be incorporated in both voluntary and institutionalised activities within a democratic system to ensure sustainable benefits for citizens who wish to influence public affairs:

However elegant our institutional designs are, they miss the very heart of democracy if they are not built by the people and for the people. ... Yet, instead of the idyllic and more or less closed and community-based idea of citizenship, new democracy needs to be anchored in emerging postmodern identities with inherent connections to the dialectics of local and global, and of real and virtual. Fine-tuning new democratic practices requires an understanding of people's preferences and orientations as political actors.⁶¹

To stress the importance of application to context, he goes on to say that however elegant institutional and technical designs are, “only modest democratic gains can be achieved through electronic means unless a radical redesign of institutions is carried out and ICT are connected to these reorganized processes”.⁶² Anttiroiko identifies four questions, which he terms as the “Four Is”, which are important in assessing the relevance of technology:

Institutions. To what extent are the ICT-based citizen-centered solutions and applications integrated in the practices of existing political institutions and how do they affect actual decision-making processes?

Influence. Are the e-democracy experiments or practices such that people involved may truly influence the issue of interest?

Integration. Is the potential of technology used optimally in integrating the basic elements of the entire e-democratic process, including agenda-setting, planning, preparation, decision-making, implementation, evaluation, and control?

⁶⁰ Anttiroiko, Building Strong E-Democracy: The Role of Technology in Developing Democracy for the Information Age, *Communications Of The ACM*, vol. 46, (2003) 121-127.

⁶¹ Ibid.(126).

⁶² Ibid.(126).

Interaction. Is the potential of technology in disseminating information, facilitating interaction, and conducting political transactions used so as to increase the transparency, efficiency, flexibility, cost-effectiveness, and inclusiveness of a democratic system?⁶³

Anttiroiko's "Four Is" questions clearly resonate with the previous literature. While these questions are abstract generalisations, they permit the richness of the surveyed literature to be captured and explored in their analysis. "Institution" resonates with Dijk's⁶⁴ observation that technology challenges traditional model of operation and habits. "Influence" for example, refers to the concept in Arnstein's⁶⁵ ladder of participation and also Barney's⁶⁶ observation that technology strengthens priorities already in place. "Integration" is particularly significant because of the influence of civil servants in determining when to use, or not to use, ICT in policy formulation. Here, Pierson's⁶⁷ views on path dependence and sunk costs put flesh on Anttiroiko's abstraction. "Interaction" is latent with Noveck's⁶⁸ ideas of the need to construct space to allow for communications without which democratic interactivity may not occur. Dijk⁶⁹ also indicates that optimal interaction may be affected by different institutional factors between states. These include the ethnic divides referred to by Crouch.⁷⁰

Anttiroiko's questions have been adopted to form the four secondary research questions which involve placing the concept of digital democracy and its practices within the complex and contextual setting of the Malaysian civil service and the civil servants' ways of thinking and acting. These secondary questions (SQ), which will be explored in chapters 5, 6 and 7, are to gauge the perceptions of those civil servants on how technology in digital democracy will affect democratic objectives and gains:

⁶³ Ibid.(125-126).

⁶⁴ See note 39. Dijk, Models of Democracy and Concept of Communication, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 30.

⁶⁵ See note 26. Arnstein, A Ladder of Citizen Participation, *Journal of the American Planning Association*, vol. Vol. 35 No. 4 July, (1969) 216.

⁶⁶ See note 35. Jay, Technology, Democracy and Liberation: An Interview with Darin Barney, *Monkeyfist.com*, vol. 2008, (2003) <<http://monkeyfist.com/articles/837>>, accessed 13 March 2008.

⁶⁷ See note 53. Pierson, Increasing Returns, Path Dependence, and the Study of Politics, *The American Political Science Review*, vol. 94, (2000) 251-267.

⁶⁸ See note 37. Noveck, Designing Deliberative Democracy in Cyberspace: The Role of the Cyber-Lawyer, *Journal of Science and Technology Law*, vol. 9, (2003) 472-491.

⁶⁹ See note 9. Dijk, Models of Democracy and Concept of Communication, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 43-44.

⁷⁰ See note 45. Crouch, *Government and Society in Malaysia*, (St Leonards 1996) 150.

- SQ1: Will the potential of technology in disseminating information, facilitating interaction and conducting political transactions through digital democracy practices be used to increase the transparency, efficiency, flexibility, cost-effectiveness, and inclusiveness of policy making in the Malaysian civil service?
- SQ2: To what extent will digital democracy practices be integrated in the practices of Malaysian civil service institutions and how will they affect actual policy making processes?
- SQ3: Will the potential of digital democracy be used optimally in integrating the basic elements of the entire policy making process in the Malaysian civil service?
- SQ4: Will digital democracy practices for policy making in the Malaysian civil service be such that people involved may truly influence issues of interest?

Research Framework

Barzun and Graff, explain that at the beginning of a research project, an idea may be represented by a single term. Usually the term applies to a large and vague collection of facts. In the course of the research, a researcher's tendency is to pick up every fact and matter which clings to the idea. This process of accumulation eventually leads to a growth in judgment about what belongs and what does not. As these authors state, you begin to see your "subject",⁷¹ which they define as:

that group of associated facts and ideas which, when clearly presented in a prescribed amount of space, leave no questions unanswered within the presentation, even though many questions could be asked outside it.⁷²

Finding a theory to fit with the questions which this research intends to answer proved evasive. Rather, the literature review brought about a realisation that the line of enquiry is located within diverse fields including history, sociology, law and politics, and technology, demanding a design which is both holistic and integrative. Not fully comprehending how theoretical frameworks work for a qualitative research, the researcher found assistance in accounts by Denzin and Lincoln. They explain that the researcher:

⁷¹ Barzun and Graff, *The Modern Researcher*, 6th ed., (Belmont 2004) 15-16.

⁷² *Ibid.*(17).

approaches the world with a set of ideas, a framework (theory, ontology) that specifies a set of questions (epistemology) that he or she then examines in specific ways (methodology, analysis). It is a task for the researcher to take pieces of representation (paradigms and methods) to fit the situation.⁷³

Schram gives another explanation of the role of theories in a research project. He saw theory as expanding “from formal explanatory axiom[s] ... to tentative hunch[es] ... to any general set of ideas that guide action”.⁷⁴ To Schram, the researcher’s “premises about the world and how it can be understood and studied ... play a pervasive but subtle role”⁷⁵ in directing the study.

Fowler’s⁷⁶ account of a research framework brought further realisation, and appreciation, that a new set of data does not necessarily have to fit an existing model or theory, but might even contribute to their refinement and further development. Fowler explains that no single researcher can apply a given theory to every conceivable case and that it is through thoughtful critique and refinement that a theory develops. This is the process which lays a solid foundation for the growth of a field of knowledge. In defining theoretical frameworks, Anfara and Mertz assert that:

any framework or theory allows the researcher to “see” and understand certain aspects of the phenomenon while concealing other aspects. [However], no theory, or the theoretical framework, provides a perfect explanation of what is being studied.⁷⁷

Harris⁷⁸ also does not view theory as “deterministically predictive”. He believes that theory only acts to provide order, clarification, and direction to a study. As the construction of reality a researcher brings to the research experience interacts with other constructions, the central task, is to negotiate through the layers of meaning, and not to pigeonhole phenomena into particular constructions and categories of any particular framework.

⁷³ Denzin and Lincoln, *The Landscape of Qualitative Research*, 2nd ed., (Thousand Oaks 2003) 30.

⁷⁴ Schram, *Conceptualizing Qualitative Inquiry*, (Columbus 2003) 42.

⁷⁵ *Ibid.*(29).

⁷⁶ Fowler, *Struggling With Theory: A Beginning Scholar's Experience with Mazzoni's Arena Models*, *Theoretical Frameworks in Qualitative Research*, (Thousand Oaks 2006) 56-57.

⁷⁷ Anfara and Mertz, *Theoretical Frameworks in Qualitative Research*, (Thousand Oaks 2006) xxviii.

⁷⁸ Harris, Mary Douglas's Typology of Grid and Group, In Anfara and Mertz (eds.), *Theoretical Frameworks in Qualitative Research*, (Thousand Oaks 2006) 142.

Sanford and Rose,⁷⁹ in their review of digital democracy, identified seven disciplines that contribute in significant ways to their literature samples on digital democracy or what they term eParticipation. These are in the areas of communications, computer science, information systems, social and political philosophy, political science, public administration and sociology.⁸⁰ Their review led them to conclude that, as in the case of any emerging research area, when researchers come from different reference disciplines, there is little commonality to be found in the choice of theory or method. However, in considering theoretical approaches which might be applied to digital democracy, Sanford and Rose argue that two distinctive approaches are found. One concentrates on the efficiency and effectiveness of a particular activity. Another starts with the needs of citizens and concentrates on the long term relationship between citizens and government. There are variations in both values and supporting empirical evidence between these two approaches.

Two competing frameworks developed by Ann Macintosh⁸¹ and Ari-Veikko Anttiroiko⁸² were used to design this research. They represent each of these two distinctive approaches in studies of digital democracy observed by Sanford and Rose. Their frameworks differ as they are based on a variation in concerns and in objectives. Macintosh's work concentrates on the efficiency and effectiveness of a particular digital democracy activity. Her work has the objective of better understanding the digital democracy pilot studies that have taken place, or are being developed at the time of the research, with the view of providing an analytical framework for electronic participation. Anttiroiko's approach falls into Sanford's and Rose's second category, which starts in the needs of the citizens and concentrates on the long term relationship between citizens and governments.

The research project investigates the initial understanding and framing of the concept of digital democracy by Malaysian civil servants, who do not necessarily have experience or

⁷⁹ Sanford and Rose, Characterizing eParticipation, *International Journal of Information Management*, vol. 27, (2007) 406-421.

⁸⁰ Sanford and Rose omit law as a distinct discipline. The researcher also found that law was not as significant as first thought.

⁸¹ Macintosh, Characterizing E-Participation in Policy-Making, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 1-10.

⁸² Anttiroiko, Building Strong E-Democracy: The Role of Technology in Developing Democracy for the Information Age, *Communications Of The ACM*, vol. 46, (2003) 121-128.

knowledge of particular operational digital democracy activities. Consequently it is a study which, investigates its possible implementation in relation to long term citizen-state relationships in Malaysia rather than concentrating on a particular digital democracy activity. Although this would tend to be closer to the approach adopted by Anttiroiko, both Macintosh's and Anttiroiko's frameworks contribute towards it by helping to determine and understand some key dimensions forming the architecture of the implementation of digital democracy.

Anttiroiko: Framework for Assessing Contextual Role of ICT as Part of Digital Democratic Practices

Anttiroiko stresses that the huge potential of the internet should not induce us to assume that there is something inherently democratic about the technology. His fundamental argument is that direct democracy is a multifaceted problem. Anttiroiko observes that many arguments about technological intermediation in the context of direct or representative democracy, are too one dimensional for complex societies with increasing interdependencies. This conclusion also results from his observation that a representative system is usually characterised as being too elitist, remote or even untrustworthy.⁸³ Direct

⁸³ A German thinker and one of Hitler's apologist, Carl Schmitt, rejected the idea of pure, absolute democracy. He argued that popular constituent power can never be represented, it can only be delegated. One of Schmitt's criticism of pluralistic models of democracy is based on what he asserts to be "the problem of legitimation deficit that a pluralistic model implies, especially when applied to the founding moment of constitutional creation, because pluralism equates the process of constitutional making either with a pragmatic balance of particular interests or with an unattainable rational consensus among all involved in the form of a constitutional pact". Kalvyas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt and Hannah Arendt*, (Cambridge and New York 2008) 123. In relation to this, in his writings discrediting formalistic models of judicial action, Schmitt traces their ills to the phenomenon of "pure power" and eventually underlines a conceptual link between his support of dictatorship in times of crises and the mysteries of "legal indeterminacy". According to Schmitt, evident in every modern liberal democracy, is the ongoing proliferation of what he states as vague and open-ended legal standards ("in good faith", public order" "in the public interest"), which he terms as the anachronistic character of liberal conceptions of the rule of law. Schmitt view legal demands to clarify and codify law as inherently flawed because no system of legal norms can hope to guarantee even a minimal degree of regularity and determinacy within legal decision making. To Schmitt, not only is legal decision making inherently discretionary, but discretion itself consist of perfect "wilfulness" and expression of "pure power" unrestrained by the sphere of legal norms. See Scheurman, *Carl Schmitt: the End of Law*, (Oxford 1999) 1-27. Schmitt's view is contentious and legal theorists with liberal values such as HLA Hart and Lon Fuller see no problem with democratic law being legitimate and legitimised by the processes in which it was made. Hart pointed out that the law itself was a source of law and legitimacy as well as reason, rather than just a coercive instrument of political power. Legal rules, he observed, are stated as if it were moral to obey them. See Hart, *Essays on Bentham*, (Oxford: Clarendon Press (1982) 263-267. Fuller argued much more strongly that for law to be law, it must also be

democracy, which is distinguished by direct citizen participation in decision making, raises the questions of the quality of decisions, the decision making process, as well as the decisional burdens it places on citizens. Anttiroiko, questions whether direct democracy necessarily requires that all citizens have the right to vote on every political issue.

In principle Anttiroiko sympathises with Aki Orr's⁸⁴ conclusion that at the core of direct democracy is the idea that all citizens should be able to vote on every political issue. He is more in agreement with Lyn Carson⁸⁵ in her contention that deliberation is the essential and practical social element that needs to be given a high value. Anttiroiko relates the concept of deliberation in deliberative democracy theory, which has been examined above in the ideas of Rawls and Habermas, to the quality of decisions and decision making processes. An awareness of the importance of deliberation, Anttiroiko argues, points towards the importance of expanding the "rule by the people" in the information society. This, he maintains, challenges democratic theory to provide the analytical tools for understanding these new demands resulting from the emergence of an information society. His response to the need for an analytical tool to assess the contextual role of ICT in a broader dimension is presented through a framework made up of five dimensions:⁸⁶

- contextual pressures and challenges to democracy;
- institutional mediation mechanisms of a democratic system;
- technological mediation tools;
- varieties and level of political issues;⁸⁷ and

moral. He postulated eight principles which law needed to comply with to be moral and, therefore valid. See Fuller, *The Morality of Law*, New Haven : Yale University Press, (1964), 33 and following.

⁸⁴ Orr, *Direct Democracy Manifesto: Politics for the 21st Century*, (2008) available online at <http://www.kulanu-nahlit.org/English.htm#top>, accessed 12 November 2008.

⁸⁵ Carson, *Building Deliberative Capacity*, vol. 2, (2000) 1-2.

⁸⁶ Anttiroiko, *Building Strong E-Democracy: The Role of Technology in Developing Democracy for the Information Age*, *Communications Of The ACM*, vol. 46, (2003) 122.

⁸⁷ The following is Anttiroiko's tentative classification of types of political issues which shows the nature of the issues to be dealt with in a political community which directly affects the appropriate choice of mechanism of citizen influence: (i) Unique strategic decisions: Major historical take-it-or-leave-it issues with long-term impacts: merging of municipalities, membership in supranational communities etc; (ii) General policy decisions: Interdependent policy and allocation issues: budget decisions, taxation, recruitment of top management etc; (iii) Civic rights and control: Direct and indirect citizen control based on constitutional and political rights and institutionalized control mechanisms; (iv) Citizens economic rights and interests: Interests and issues concerning livelihood, employment, work, and working conditions; (v) Basic public services: Public service provision bringing direct benefits to service users: social welfare, health care, education etc; (vi) Services related to environment and living conditions: Housing, land use, environment, infrastructure, and

- different phases of a democratic process.

Macintosh: Analytical Framework for Electronic Participation

Macintosh⁸⁸ offers an analytical framework for electronic participation in what she terms e-democracy.⁸⁹ The framework is intended to better identify types of citizen participation and the appropriate technology to support them. While she acknowledges that governments and research centres are undertaking surveys of citizen online participation activities, Macintosh observes that there is no standard way to describe these approaches. Consequently these projects are usually left with no structure on which to base the analysis of information collected. The studies she has examined have sought details of activities under general typical categories⁹⁰ which, while helping to describe a particular project, do not provide a basis for comparison or for discovering best practices.⁹¹ Macintosh has identified ten key dimensions of electronic participation activities in her proposed analytical framework:

1. Level of participation: what level of detail, or how far to engage citizens;
2. Stage in decision-making: when to engage;
3. Actors: who should be engaged and by whom;
4. Technologies used: how and with what to engage citizens;
5. Rules of engagement: what personal information will be needed or collected;
6. Duration and sustainability: for what period of time;
7. Accessibility: how many citizens participated and from where;
8. Resources and promotion: how much did it cost and how wide was it advertised;

technology; and (vii) Neighborhoods and residential areas: Neighborhood issues concerning local traffic, parks, bus stops, security issues etc.

⁸⁸ Macintosh, Characterizing E-Participation in Policy-Making, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 1-10.

⁸⁹ The author defines e-democracy as the use of ICT to support the democratic decision making processes.

⁹⁰ These categories are namely: reasons for development of the given application; expected results; main functions and features; response of the target audience; results; and lessons learnt.

⁹¹ Macintosh conducted a research on behalf of Organisation for Economic Co-operation and Development (OECD) e-government group in 2003, which resulted in a report entitled Promises And Problems Of E-Democracy; Challenges Of Citizen On-Line Engagement, available at <http://www.oecd.org/dataoecd/9/11/35176238>> accessed 30 March 2007.

9. Evaluation and outcome: methodological approach and results; and
10. Critical factors for success: political, legal, cultural, economic, technological factors.⁹²

These factors address issues in digital democracy pilots to better identify types of citizen participation exercises and the appropriate technology to support them. According to Macintosh, in 2004, twelve case studies in seven European countries have demonstrated the clarity and usefulness of this analytical framework. This indicated that the framework has the potential to demonstrate how ICT contributes to specific democratic processes, as well as describing the conditions under which best practices can emerge.

The analytical framework was more recently utilised by Macintosh in a 2008 case study of eParticipation in four local authorities⁹³ under the UK Local e-Democracy National Project. The evaluation targeted actors such as citizens who have used the e-democracy tools deployed, citizens who have not used the tools and councillors involved in the engagement process. Key dimensions which make up the analytical framework, namely; type of engagement or level of participation; stage in decision-making; actors; technologies used; rules of engagement; and, duration and sustainability, were used to appreciate how each of the actors should be involved in the project and to plan appropriate questions to be asked.⁹⁴ It formed part of a bigger framework for the case study, which was aimed at evaluating eParticipation applications in terms of their impact on local democracy, their planning of public engagement and quality of the tools provided for public engagement. It was regarded as a fair basis of an eParticipation project evaluation exercise.⁹⁵

⁹² Macintosh, Characterizing E-Participation in Policy-Making, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 6.

⁹³ ePanel by Bristol City Council, ePetitioning by The Royal Borough of Kingston, Micro Democracy by Swindon Borough Council, Democratising Cross-Cutting Issues and Partnerships by Wolverhampton City Council. See Macintosh and Whyte, Towards an Evaluation Framework for eParticipation, *Transforming Government: People, Process & Policy*, vol. 2, (2008) 26.

⁹⁴ For example, under the key dimension 'actors', these questions were developed: Who are the relevant actors (politicians, officials, technologists, citizens as individuals and groups), and why are they involved?, i.e. who does the work, who controls it, who are the actual or potential beneficiaries, who may be adversely affected, who is otherwise involved? What important differences, if any, are there between the roles of the moderator (or facilitator) in online engagement compared with other approaches used? See Ibid.(26).

⁹⁵ Ibid.(16-30).

As a whole, a synthesis of Macintosh's and Anttiroiko's frameworks assists in anticipating some significant dimensions of digital democracy in other states and settings, particularly in addressing the secondary research questions. Some important dimensions are discussed in the following section.

1. Level of participation

This dimension considers the issue of to what level, or how far, citizens are engaged. This dimension is refined by terms which further clarify it. These are:

- (i) 'information': a situation which involves a one-way relationship in which government merely produces and delivers information for use by citizens;
- (ii) 'consultation': a two way relationship in which there is provision for feedback by citizens; and
- (iii) 'active participation': a relationship in which citizens actively engage in defining the process and content of policy making.⁹⁶

A factor which may be determined from the use of this dimension, for example, is how and to what degree citizens influence and control collective decisions.⁹⁷ It may also indicate

⁹⁶ Macintosh, Characterizing E-Participation in Policy-Making, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 2. Also related to this is the Dijk's illustration of applications of ICT in politics and democracy using the four information traffic patterns; namely allocution, consultation, registration and conversation:

“ALLOCUTION

computerized election campaigns
 computerized information campaigns
 computerized civic service and information centres

CONSULTATION

mass public information systems
 advanced public information systems (the Internet, etc)

REGISTRATION

registration system for government and public administration
 computer-assisted citizen enquiries

electronic polls
 electronic referenda
 electronic elections

CONVERSATION

bulletin board systems
 discussions lists
 electronic mail and teleconferencing
 electronic town halls
 group decision support systems”.

Dijk, Models of Democracy and Concept of Communication, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 40.

⁹⁷ Anttiroiko, Building Strong E-Democracy: The Role of Technology in Developing Democracy for the Information Age, *Communications Of The ACM*, vol. 46, (2003) 122.

whether digital democracy is framed as a top down or a bottom up exercise which, in turn, gives an indication of the applicable model of democracy, as discussed earlier. A question which will help distinguish between the two is:

[A]re the results of participative action legally binding on government or rather informing the debate on the issue?⁹⁸

2. Stage in decision making

This is a dimension based on a process view of democracy which considers the question of when to engage citizens. In relation to this, the act of decision making is maintained by both Anttiroiko and Macintosh to be a core element of the democratic process. All stages in the process have their roles. The stages of decision making are described as:

Agenda setting: establishing the need for a policy or a change in policy and defining what the problem to be addressed is.

Analysis: defining the challenges and opportunities associated with an agenda item more clearly in order to produce a draft policy document. This can include: gathering evidence and knowledge from a range of sources including citizens and civil society organizations; understanding the context; including the political context for the agenda item; developing a range of options.

Creating the policy: ensuring a good workable policy document. This involves a variety of mechanisms which can include: formal consultation, risk analysis, undertaking pilot studies, and designing the implementation plan.

Implementing the policy: this can involve the development of legislation, regulation, guidance and delivery plan.⁹⁹

3. Critical success factors

As in Macintosh's framework, this dimension is expected to capture factors or issues that may stand out as supports or barriers to implementation of digital democracy. Although it is intended that this dimension be not too restrictive, a review of the literature, identified a non-exhaustive list of factors which may be considered:

- changes to social structures, institutions and mentalities;

⁹⁸ Macintosh, Davenport, Malina and Whyte, Technology to Support Participatory Democracy, In Gronlund (ed.), *Electronic Government: Design, Applications and Management*, (London 2002) 232.

⁹⁹ Macintosh, Characterizing E-Participation in Policy-Making, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 3.

[C]hanges in social structures, institutions, and mentalities must be identified and taken into account when assessing the process and outcomes of the democratic system.¹⁰⁰

- access to infrastructure and to information services;

If some categories of the population are durably excluded, the possibility of building digital democracy is jeopardized.¹⁰¹

- protection of privacy;

Harm of it (privacy) might affect individual's autonomy and acceptance of digital democracy.¹⁰²

- access to public information;

It (access to public information) serves as a test to evaluate the commitment of the state to establish digital democracy. Public authorities process a large amount of information, and often data associated with the exercise of citizenship. If they are unwilling to guarantee a full access to public information, there is little chance that digital democracy occurs.¹⁰³

- Any other political, legal, cultural, economic and technological factors that are significant in making digital democracy a success.¹⁰⁴

These dimensions and factors guided the shaping and structuring of the interview guide. It provided some direction during the initial stages of data analysis, especially during the early process of data slicing or coding with NVivo. How, and to what extent, they eventually contribute towards answering the research questions, will be discussed in chapters 4, 5, 6 and 7.

METHODOLOGY

In recognising that digital democracy is a relatively complex and unfamiliar subject of enquiry which also involves attempts at making sense and interpreting the concept in a

¹⁰⁰ Antiroiko, Building Strong E-Democracy: The Role of Technology in Developing Democracy for the Information Age, *Communications Of The ACM*, vol. 46, (2003) 122.

¹⁰¹ Catinet and Vedel, Public Policies for Digital Democracy, In Hacker and Dijk (eds.), *Digital Democracy: Issues of Theory and Practice*, (London, Thousand Oaks, New Delhi 2000) 187.

¹⁰² Ibid.(187).

¹⁰³ Ibid.(187).

¹⁰⁴ Macintosh, Characterizing E-Participation in Policy-Making, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 6.

Malaysian context, this study uses a qualitative paradigm.¹⁰⁵ The research questions, which require an exploration of digital democracy's relevance in the policy making processes of the Malaysian civil service, which has not been identified, called for a design which remained open to new findings and some degree of unexpectedness.¹⁰⁶ Thus, the choice of qualitative methods which “is a form of social inquiry that focuses on the way people interpret and make sense of their experiences and the world in which they live”¹⁰⁷ is logical. According to Denzin and Lincoln:

Qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or to interpret, phenomena in terms of the meanings people bring to them.¹⁰⁸

Mediated through the researcher's own perceptions, this method of study allowed the researcher to better gauge perspectives and experiences of interviewees. The qualitative approach was applied through an empirical in-depth interview based exercise which involved collection of data from surveys of people. As one of the main sources of data for analysis,¹⁰⁹ the researcher was able to seek elaborations and clarifications from interviewees, in order to generate detailed descriptive findings. A semi structured interview guide was used to uncover views but left interviewees free to frame and structure their responses.¹¹⁰ This technique is well accepted for qualitative research when attempting to make sense of a particular experience such as digital democracy, and the meanings brought to it in particular contexts, in this case civil servants in Malaysia.

Interviewee Selection and Demographics

According to Holloway, sampling for a qualitative research is generally “purposive or purposeful”.¹¹¹ He explains that the sample is selected based on criteria which have been

¹⁰⁵ Denzin and Lincoln, *Handbook of Qualitative Research*, 2 ed., (Thousand Oaks, London, New Delhi 2000) 2-4.

¹⁰⁶ Marshall and Rossman, *Designing Qualitative Research*, (Newbury Park, London, New Delhi 1989) 52-55.

¹⁰⁷ Holloway, *Basic Concepts for Qualitative Research*, (Victoria Australia 1997) 1.

¹⁰⁸ Denzin and Lincoln, *Handbook of Qualitative Research*, 2 ed., (Thousand Oaks, London, New Delhi 2000) 3.

¹⁰⁹ Richardson and Pierre, *Writing: A Method of Inquiry*, In Denzin and Lincoln (eds.), *Collecting and Interpreting Qualitative Materials*, (Thousand Oaks 2008) 474.

¹¹⁰ Marshall and Rossman, *Designing Qualitative Research*, 4th Edition ed., (Thousand Oaks, London, New Delhi 2006) 101.

¹¹¹ Holloway, *Basic Concepts for Qualitative Research*, (Victoria Australia 1997) 142.

set in advance and the “*generalisability* is less important than the collection of rich data and an understanding of the ideas of the people chosen for the sample.”¹¹²

Holloway¹¹³ suggests that the number of participants for qualitative studies can be from four to 40, or may be determined when the interviews conducted have reflected the range of participants and sites which portray the entire population and when the quality of the information has reached informational redundancy or saturation. For this study, interviewees were selected from two categories, namely civil servants and commentators. Table 1 lists the actual number of commentators and civil servants interviewed, totalling 47.

Table 1: Group

Interviewees Grouping	Total Cases
Civil servants	38 (81%)
Commentators	9 (19%)
Total	47 (100%)

Commentators

Those who were interviewed in the commentators’ group may be regarded as elite individuals. According to Marshall and Rossman:

elite individuals are considered to be influential, prominent, and/or well informed in an organisation or community; they are selected for interviews on the basis of their expertise in areas relevant to the research.¹¹⁴

Commentators are individuals identified as having insights into the subject of study such as academics, politicians, journalists, interest groups, experts in ICT and those who hold leadership positions in non-government (or civil society), community and business organisations or interest groups. The initial expectations were that the general observations on the disadvantages of elite interviewing would apply: that they are busy people operating

¹¹² Ibid.(142), emphasis in original.

¹¹³ Ibid.(143).

¹¹⁴ Marshall and Rossman, *Designing Qualitative Research*, 4th Edition ed., (Thousand Oaks, London, New Delhi 2006) 105.

under demanding time constraints and difficult to contact.¹¹⁵ Yet this group of nine individuals proved highly responsive. Communications through email were responded to and appointments were kept. This contrasted with the constant need to reschedule appointments with the civil servants' group.

Each of these commentators is anonymously described below by an identification code, which will be used throughout the thesis:

Y1: An ethnic Malay in the 46-58 age group; an Associate Professor with research interests in community ICT projects.

Y2: An ethnic Malay in the 46-58 age group; a Vice President of a telecommunications company providing broadband services.

Y3: An ethnic Malay in the 46-58 age group; a professor of Social Anthropology; well known for his research interest in inter ethnic relations.

Y4: An ethnic Malay in the 46-58 age group; an Associate Professor and well known political analyst.

Y5: An ethnic Chinese in the 36-45 age group; a well known pioneer of online journalism in Malaysia.

Y6: An ethnic Indian in the 36-45 age group; an architect and Chief Executive Officer of an ICT consultancy firm with experience working on a number of e-government projects.

Y7: An ethnic Malay in the 46-58 age group; Head of the Regulatory Division of a major telecommunications company with experience serving in the Malaysian civil service developing policies relating to ICT.

Y8: An ethnic Malay in the 25-35 age group; a lawyer by profession and holding a key position in a civil society organisation.

Y9: An ethnic Malay above 58 years of age; an ICT consultant and ex Chief Executive Officer of an R&D organisation that functions as an advisor to the Malaysian government on technologies, policies and strategies relating to technology development.

¹¹⁵ Ibid.(105).

Civil Servants

A purposive sampling method was necessarily used to identify potential interviewees in the civil servants group as the domain of civil servants in the Malaysian civil service is vast and complex, involving 84 classifications.¹¹⁶

The Malaysia Government Portals and Websites Assessment 2006¹¹⁷ by Multimedia Development Corporation Malaysia (MDeC), was partly used as a basis for selection. This decision was based on the assumption that having a dominant web presence may signify an organisation's readiness to employ digital democracy. This assessment of 1055 Malaysian government portals and websites at the Federal and State levels, was given star ratings, based on a set of criteria developed by Brown and Waseda Universities namely: citizen interaction; citizen insight generation; citizen services; citizen support; and, content management.¹¹⁸

Initially, civil servants were identified from those involved in policy development and implementation, serving in two types of civil service organisations namely:

- those identified as having a high ranking web presence; and
- those involved in the management of related ICT initiatives and policies.

During the course of the interviews, it became apparent that public complaints play a definitive role in civil servants' understanding of the concept of digital democracy. This led to the addition of the Public Complaints Bureau (PCB) to the list of organisations initially identified under categories (i) and (ii). Table 2 lists the civil service organisations with their

¹¹⁶ Public Service Department of Malaysia, (2008).

¹¹⁷ MSC Malaysia, Malaysia Government Portals and Websites Assessment 2006, (2006).

¹¹⁸ The level of each criteria was measured by the presence of pre-determined portals and websites characteristics as listed: (i) Citizen interaction - phone and fax number, address, emails, comments/forum, email updates/broadcast, search publications/database, video/audio clips, multiple languages, W3C, agency policy, client's charter, auto notification; (ii) Citizen insight generation – remember me, website personalisation, privacy policy, cookies, feedback, FAQs, disclaimer and copyright statement; (iii) Citizen services – online services, advertisement, premium fees, digital signature, e-payment, security policy, link to other sites, about us, broken link, additional technology and RSS; (iv) Citizen support – support link and navigation support; and (v) Content management – “*Laman Web Rasmi*” (Official Web Page), Malaysia crest, updated event/information notification and website counter. See Ibid.(10).

star ratings and number of civil servants interviewed from each organisation. The divisions' names may generally portray the interviewees' responsibilities.

Table 2: Civil Service Organisations Identified

Organisation	Star Rating	No of Interviewees
Ministry of Housing and Local Government (MHLG) Information Technology Division Department of Local Councils Policy Division Department of Town and Country Planning, Peninsula Malaysia	4 stars and top 10 ¹¹⁹	9
Ministry of Energy, Water and Communication (MEWC) Infrastructure and Access Division Regulatory Division Information Technology Division Content and Post Division Water Services Division	2 stars	12
Ministry of Science, Technology and Innovation (MOSTI) ICT Policy Division	3 stars	2
Ministry of Information (MOI) Strategic Information Management Division	3 stars	2
Prime Minister's Department		
Economic Planning Unit (EPU) K-Economy Division	3 stars	2

¹¹⁹ Top 10 of 1055 portals and websites assessed under the Malaysian Government Portals and Websites Assessment 2006 exercise.

Malaysian Administrative Modernization and Manpower Planning Unit (MAMPU) eGovernment Division eKL Division ICT Policy and Planning Division Corporate Division	3 stars	8
Public Complaints Bureau (PCB) Complaints Division Administrative Division	3 stars	3
Total		38

Below is a summary of the attributes of 38 civil servants interviewed.

Table 3: Sample Civil Servants by Ethnic Group

Interviewees' Ethnic Group	Total No / Percentage
Ethnic Malay	31 (82%)
Ethnic Chinese	6 (16%)
Ethnic Indian	1 (3%)
Total	38 (100%)

Table 4: Sample Civil Servants by Gender

Gender	Total No / Percentage
Male	26 (68%)
Female	12 (32%)
Total	38 (100%)

Table 5: Sample Civil Servants by Age Group

Age Range	Total No / Percentage
25-35	11 (29%)
36-45	9 (24%)

46-58	18 (47%)
Total	38 (100%)

Table 6: Sample Civil Servants by Scheme of Service

Scheme	Total No / Percentage
Administrative and Diplomatic	19 (50%)
Information	3 (8%)
Information Technology	14 (37%)
Town Planning	2 (5%)
Total	38 (100%)

Table 7: Sample Civil Servants by Grade

Grade	Total No / Percentage
41 (entry level for graduates/grade 3)	5 (13%)
44 (senior grade 3)	4 (11%)
48 (grade 2)	12 (32%)
52 (senior grade 2)	8 (21%)
54 (grade 1)	5 (13%)
JUSA (Malay acronym for Premier Civil Service Positions) ¹²⁰	4 (11%)
Total	38 (100%)

Table 8: Sample Civil Servants by Years in Service

No of Years	Total No / Percentage
Less than 5	8 (21%)
6-10	4 (11%)
11-15	8 (21%)

¹²⁰ JUSA is above 54(grade 1), and is the most coveted in terms of salary and conditions, which commensurate with heavy responsibilities. Beginning with a number of JUSA C posts, it rises to a limited number of staff appointments in JUSA B and A. These appointments form the uppermost level of the civil service. See, Abdullah Sanusi Ahmad, Norma Mansor and Abdul Kuddus Ahmad, *The Malaysian Bureaucracy: Four Decades of Development*, (Kuala Lumpur 2003) 23.

16-20	3 (8%)
21-25	7 (18%)
More than 26	8 (21%)
Total	38 (100%)

Distribution by ethnicity is skewed towards ethnic Malays with ethnic Chinese and Indians underrepresented. However, this composition is proportionately similar to the actual ethnic composition of the Malaysian civil service. It follows the 50 years old recommendation of the Reid Commission of a quota of four Malay for each non Malay civil servant.¹²¹

The concentration on civil servants from the Administrative and Diplomatic scheme of service and those in middle level management positions (grades 48 and 52), is intentional. It is to capture those with more experience in policy making. However, as a whole, care was taken to ensure that civil servants with differing attributes are sufficiently represented in the sample.

As required by the Ethics Committee of Victoria University, the anonymity of the interviewees must be maintained. This was done by allocating a code to each interviewee. Table 9 and 10 each lists the individual code reference for 9 interviewees in the commentators' group and 38 interviewees in the civil servants' group with the dates of interviews.

Table 9: Participants Interviewees Code-Commentators

Date Of Interview	Interviewees Code	Total
16/05/08	Y1	9
21/05/08	Y2	
23/05/08	Y3	
28/05/08	Y4	

¹²¹ See note 259.

30/05/08	Y5	
11/06/08	Y6	
11/06/08	Y7	
13/06/08	Y8	
20/06/08	Y9	

Table 10: Participants Inventory Code-Civil Servants

Organisation	Date of Interview	Interviewees Code	Total
MEWC	28/05/08	X1A	12
	29/05/08	X2A	
	28/05/08	X3A	
	11/06/08	X4A	
	09/05/08	X5A	
	30/6/08	X6A	
	30/6/08	X7A	
	01/07/08	X8A	
	01/07/08	X9A	
	02/07/08	X10A	
	02/07/08	X11A	
	03/07/08	X12A	
MAMPU, Prime Minister's Department	07/05/08	X13B	8
	09/05/08	X14B	
	12/05/08	X15B	
	15/05/08	X16B	
	15/05/08	X17B	
	26/05/08	X18B	
	09/06/08	X19B	
	21/07/08	X20B	
EPU, Prime Minister's Department	08/05/08	X21C	2

	08/05/08	X22C	
PCB, Prime Minister's Department	23/05/08	X23D	3
	26/05/08	X24D	
	26/05/08	X25D	
MOI	04/06/08	X26D	2
	04/06/08	X27D	
MOSTI	09/06/08	X28F	2
	09/06/08	X29F	
MHLG	12/06/08	X30G	9
	12/06/08	X31G	
	12/06/08	X32G	
	16/06/08	X33G	
	16/06/08	X34G	
	16/06/08	X35G	
	19/06/08	X36G	
	25/06/08	X37G	
	25/06/08	X38G	

The contact details of possible interviewees were obtained from directories found through web pages of organisations to which the individuals belong. They were contacted for appointments by e-mail or telephone. Occasionally, in the civil servants' group, during the course of the interviews, recommendations were made by the interviewees of others who were suitable to participate. Consequently, snowball,¹²² or chain referral sampling also applies to the interviewees.

¹²² Vogt defines snowball sampling as, "A technique for finding research subjects. One subject gives the researcher the name of another subject, who in turn provides the name of a third, and so on." Vogt, Dictionary of Statistics and Methodology: A Nontechnical Guide for the Social Sciences, 3rd Edition ed., (Thousand Oaks, CA 2005).

The Interviews

A total of 47 face-to-face in depth interviews were conducted over a three months period from 1st May to 31st July 2008. The choice of commentators as well as civil servants from six organisations, who were all coincidentally situated in either Kuala Lumpur or Putrajaya, contributed to the ease with which the interviews were arranged and conducted.

Interviewees were left free to select an interview location which suited them. Most chose their work location. This worked well as, except for minor interruptions such as ringing telephones, workplaces provide favourable environments for interviewing as well as recording. Two out of the 47 chose a public café which was more challenging because of the potential of background noise, affecting recording quality. However, the use of digital recording equipment seemed to negate this problem and the quality of recordings and difficulties in transcribing from them, was not an issue. On the other hand, the café location provided some advantage in that the less formal environment appeared to lend itself to more flowing and frank conversations.

Typically, interviews lasted from about 40 minutes to one hour 30 minutes and were conducted in English. Before the start of every interview, interviewees were given a copy of the Explanatory Statement (Appendix 1) that stated the nature of the research project and a copy of Consent Form to be signed prior to the interview (Appendix 2). In some cases, the letter obtained from the Economic Planning Unit in the Prime Minister's Department for permission to conduct research in Malaysia was shown (Appendix 3). Special permission was also sought verbally to use a voice recorder at the interview, to which all 47 interviewees agreed. This allowed the researcher to keep note taking to a minimal and to pay more attention to the conversation. All interviews were transcribed from digital voice recordings which produced transcripts that form the central core of this study.

An interview guide was developed to capture primary data from interviews. The questions were designed to be open ended, in depth and semi structured, permitting a variety of responses from the interviewees. The guide consisted of 15 questions divided into five sections which roughly concerned the interviewees' understanding and views of the

concept of digital democracy, their opinion of citizens’ role in policy making, digital democracy practices in the Malaysian civil service, its actors and rules as well as contextual challenges to its implementation. Table 11 shows the interview guide which was approved by the Victoria University Human Research Ethics Committee.

Table 11: Interview Guide

Section 1: Concepts
<p>1. What do you understand by the term digital democracy?</p> <p>2. Do you see it as being important?</p> <p>Probe: Do you think other civil servants will agree with you?</p> <p>3. Should digital democracy be more officially integrated into the policy making process?</p> <p>Probe: Will it only serve purposes of public relations or window dressing?</p> <p style="padding-left: 40px;">Will it facilitate the process or instead lead to greater conflict?</p>
Section 2: Level of Participation
<p>4. What should be the role of citizens in policy making?</p> <p>Probe: Should citizens be merely informed, consulted or actively participate?</p> <p>5. Should there be any difference of emphasis between inputs from representative bodies and individuals?</p> <p>6. To what extent should digital democracy influence policy outcomes?</p>
Section 3: Types of Issues, Government Levels, Phases of Policy Making Process
<p>7. Will digital democracy benefit policy making on all types of issues?</p> <p>Probe: Are there areas in which the expertise is in the civil service?</p> <p>Note: Examples of types of issues include unique strategic decisions, general policy decisions, civil rights and controls, citizens’ economic rights and interest, basic public services, services related to local environment and living conditions, neighbourhood and residential areas.</p> <p>8. Is digital democracy beneficial to all levels of government; federal, state, and local?</p> <p>9. Policy making can be a complex process with a number of phases to it. Is digital democracy effective at all these phases?</p> <p>Probe: Phases include agenda setting, planning, implementation and evaluation</p>

Section 4: Actors and Rules of Participation
<p>10. Should there be basic rules for participation in digital democracy?</p> <p>Probe:</p> <p>Should participants have to register?</p> <p>Should they have a guarantee of privacy or be allowed to remain anonymous?</p> <p>What government documents should be disclosed to them?</p> <p>Should their participation be acknowledged?</p> <p>Should they be informed of outcomes?</p>
Section 5: Contextual Challenges
<p>11. Is ICT encouraging more open and critical discussions of public issues among Malaysians?</p> <p>12. Do Malaysians aspire to play a more active role in policy making? Will they discuss their opinions in public?</p> <p>13. Will ethnic groups be equally represented in Malaysia's digital democracy?</p> <p>14. Online discussions sometimes border on ethnic sensitivities, should this be controlled?</p> <p>Probe: Will digital democracy affect public administrators' tasks in maintaining law and order?</p> <p>15. Does Malaysia have a suitable policy and legal framework for digital democracy? What would be the ideal framework?</p>

However, the researcher found it frequently necessary to depart from the interview guide in order to probe clichés, or to let the interviewees continue talking about topics that interested them. In the case of commentators, this led to valuable information. They reflected on their personal experience which formed their attitudes and beliefs. By allowing interviewees to delve into issues of particular interest, it brought out richer expressions of their opinions and experiences.

Interviewing is not a value-free tool for data gathering, the mere neutral exchange of asking questions and getting answers. It is an active process which is the result of a collaborative

effort between the actors involved, namely, the researcher and the interviewee.¹²³ During the course of the interviews, the researcher found that Scheurich cannot be more correct in pointing out not to underestimate the “complexity, uniqueness, and indeterminateness of each one-to-one interaction”.¹²⁴ Scheurich observed:

So long as many researchers continue to treat respondents as unimportant faceless individuals whose only contributions are to fill more boxed responses, the answers that researchers will get will be commensurable with the questions they ask and the way in which they ask them.¹²⁵

Being well practiced in public speaking and, in most cases, used to being interviewed by the media, the researcher found interviewees in the commentators’ group to be more sophisticated in managing the interview process. Often the researcher found it necessary to adapt the planned structure of the interview. There were instances when the interview appeared to be in danger of being taken over by the interviewee, leaving the researcher somewhat overwhelmed. Without sufficient background knowledge of the issues being discussed, the researcher would have found it more difficult to establish competence and credibility. Because interviewees in the commentators’ group were identified on the basis of their expertise in various areas relevant to the research, interviews with them demanded that the researcher provided an accurate conceptualisation of problems. A thoughtful line of questioning focusing on their areas of expertise was important to extract the most from their specific perspectives. However, the research benefited from these commentators who responded well to open ended questions which left them free to express their knowledge, experience and imagination.

Positivist approaches to research represent researchers as maintaining a value neutral position who are able to study the world around them without reflecting their own values or opinions on social or political issues.¹²⁶ While recognising the ideal underlying positivist thought, Berg, amongst others, argues that research is seldom undertaken for a neutral reason and the selection of a research topic derives from some opinions or views held by

¹²³ Fontana and Frey, *The Interview: From Neutral Stance to Political Involvement*, In Denzin and Lincoln (eds.), *Collecting and Interpreting Qualitative Materials*, (Thousand Oaks 2008) 116.

¹²⁴ Scheurich, J. (1995). A postmodernist critique of research interviewing. *Qualitative studies in education*, 8, 241, as cited in *Ibid.*(116).

¹²⁵ *Ibid.*(152).

¹²⁶ Berg, *Qualitative Research Methods for the Social Sciences*, 6 ed., (Boston 2007) 179.

the researcher. The researcher's interest in the subject matter, personal experience, the ease in obtaining research grant monies, or convenience, affect the researcher's values and the possibility of value neutrality in research. It has to be accepted that researchers are people who are the product of social groups and the various values, moral attitudes and beliefs which orientate them in particular ways.¹²⁷ As Berg notes:

If a nurse studies cancer patients and explains that his or her selection of this topic resulted after a family member contracted the disease, this does not diminish the quality of the research. It does however offer a keener insight about who is doing the research and why.¹²⁸

In the case of this research, belonging to the Administrative and Diplomatic scheme of service within the Malaysian civil service provides the researcher with an existing insight into the country's civil service and increases the likelihood of understanding the complexities involved.¹²⁹ It increases the researcher's ability to better observe, and evaluate opinions and information imparted through the interviews and to interpret them. All interviewees were aware that the researcher is a civil servant. Apart from some efforts to maintain a friendly conversation, the researcher mostly refrained from stating her personal opinions on the matters discussed.¹³⁰ The colleague factor and the guarantee of confidentiality, increased interaction and candidness with interviewees in the civil servants' group. The researcher found it easier to establish rapport with them. These factors also helped interviewees' confidence in expressing views which appeared to be provided in the spirit of sharing, rather than disclosing information. There was a feeling that a fellow civil servant is in better position to understand, appreciate and share the context and meaning of what they said. This effect could not have been achieved had the researcher been someone from "outside" that interviewees imagined as critical or cynical about civil servants.

Transcribing the interviews

All 47 interviews were transcribed in their entirety by the researcher. This process took three months to complete, which was more than originally scheduled. Although it was

¹²⁷ Ibid.(179-180).

¹²⁸ Ibid.(181).

¹²⁹ Ibid.(181).

¹³⁰ Fontana and Frey, *The Interview: From Neutral Stance to Political Involvement*, In Denzin and Lincoln (eds.), *Collecting and Interpreting Qualitative Materials*, (Thousand Oaks 2008) 139.

fortunate that all 47 interviewees agreed to have their interviews recorded for reasons noted above, on attempting to transcribe, the researcher found that spoken words do not parallel written ones. As pointed out by Marshall and Rossman:

[W]e do not speak in paragraphs nor do we signal punctuation as we speak. The judgements involved in placing something as simple as a period or a semicolon are complex and shape the meaning of the written word and, hence, the interview itself.¹³¹

The criteria set for choosing interviewees, discussed above, predetermined that they were generally able to communicate well in English, eliminating possible problems related to translation. However, the researcher found that it was common among interviewees to start on a topic, and then loop to another, before returning to the first topic. In such cases, sentences were often interrupted and left unfinished which affected the overall clarity of the interview, thus making transcribing all the more difficult.

Verbal language is sometimes made more ambiguous by the use of facial, hand and other bodily expressions. If the transcribing had been undertaken by someone other than the researcher, there would have been a greater risk of failing to capture the construction of meaning as well as the subtlety and accuracy of the spoken words. The decision to personally undertake the task of producing full transcriptions of the interviews proved useful when attempting to rigorously code them. The act of transcribing was itself a form of analysis and permitted the researcher to become more embedded in the data being studied. Although a time consuming effort, it enabled the assessment of the quality of data and ensured that a full range of themes could be identified.

The researcher made notes at the time of the interviews on observations on credibility, experience, confidence and demeanour of interviewees. Starting the transcription process early, while the interviews were still ongoing, helped in recalling more minute observations of body language or other indicators, such as long pauses. Recalling such observations

¹³¹ Marshall and Rossman, *Designing Qualitative Research*, 4th Edition ed., (Thousand Oaks, London, New Delhi 2006) 110.

while transcribing, increased chances that meanings are accurately rendered in the transcribed account of words.¹³²

Data Analysis

The qualitative data resulting from the transcribed interviews was subjected to content analysis. Data had to be sorted, coded and analysed using a combination of QSR NVivo software tools and the more conventional method of mind mapping on paper.¹³³ Data from the interviews were augmented with the use of a wide range of documents, government reports, newspaper sources, online sources and secondary literature, some of which were supplied and suggested by interviewees.

Data Analysis with QSR NVivo

The use of the software NVivo offered better management of data. It provided assurance that data, especially relating to interviews such as transcripts, interviewee attributes, records of note taking and observations as well as queries performed on the data and their results remain intact, relatively complete, organised and accessible:

[T]he computer's capacity for recording, sorting, matching and linking can be harnessed by the researcher to assist in answering their research questions from the data, without losing access to the source data or context from which the data have come.¹³⁴

The use of various tools in NVivo which allow data management, management of ideas, data query, graphical modelling as well as reporting from data to be combined into one operation, helped ensure that findings based on this research match the data. The tools provide for more systematic evaluation:

Using a computer simply ensures that the user is working more methodically, more thoroughly, more attentively ... the use of computer for qualitative analysis can contribute to a more rigorous analysis.¹³⁵

¹³² Ibid.(111) and Fontana and Frey, *The Interview: From Neutral Stance to Political Involvement*, In Denzin and Lincoln (eds.), *Collecting and Interpreting Qualitative Materials*, (Thousand Oaks 2008) 139.

¹³³ Bazeley, *Qualitative Data Analysis with NVivo*, (Los Angeles, London, New Delhi, Singapore 2007) 178.

¹³⁴ Ibid.(2).

¹³⁵ Ibid.(3).

The screen shots below show examples of some ways the NVivo software was utilised to aid and support management of data and analysis. These include the connection of observations made by the researcher during the period when the interviews were made with the contents of the interviews and the selection of issues to be matched using the software.

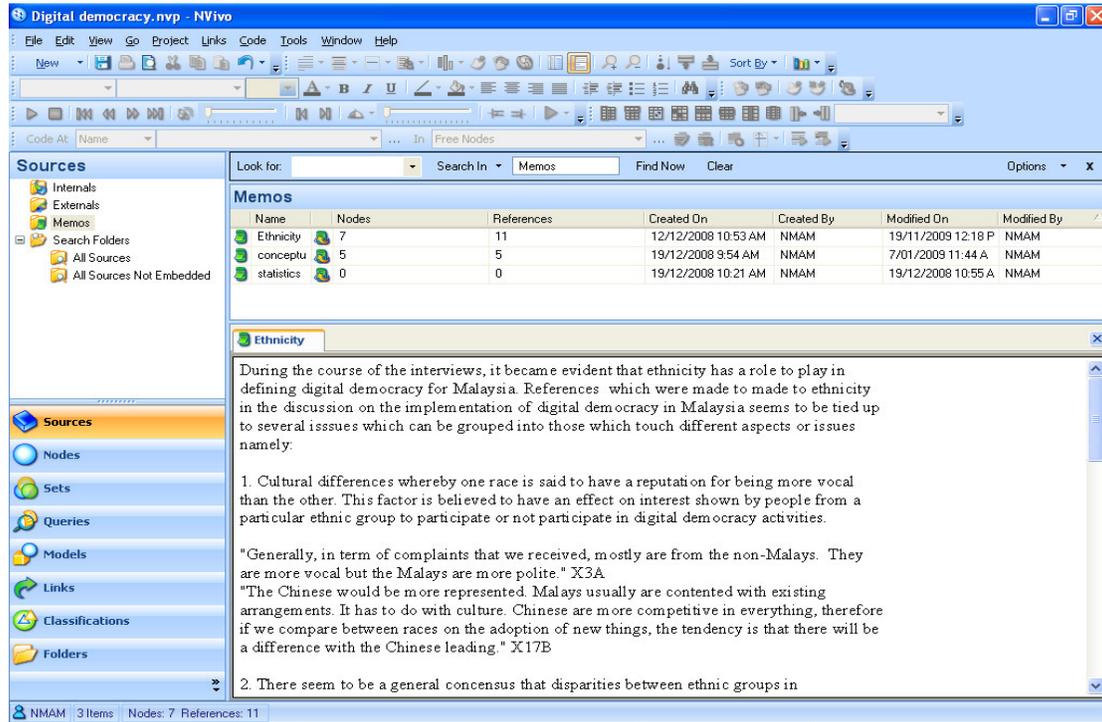


Figure 1: Linking memos to nodes and texts

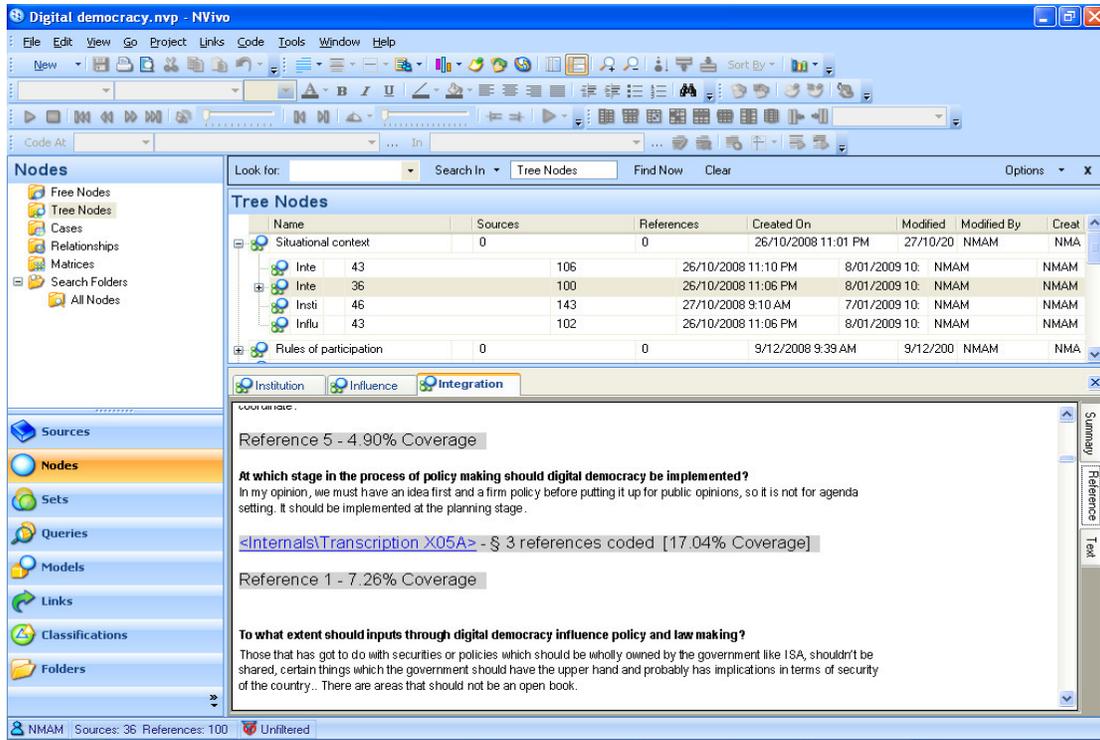


Figure 2: Creating nodes with links to texts

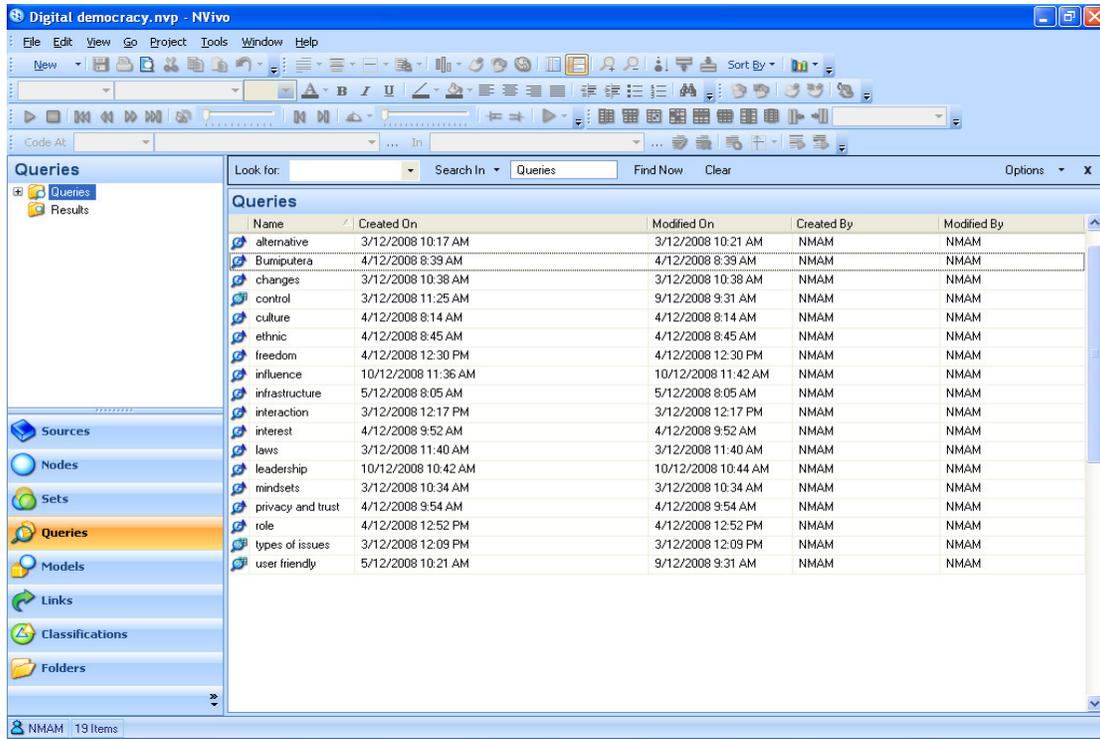


Figure 3: Running text search queries

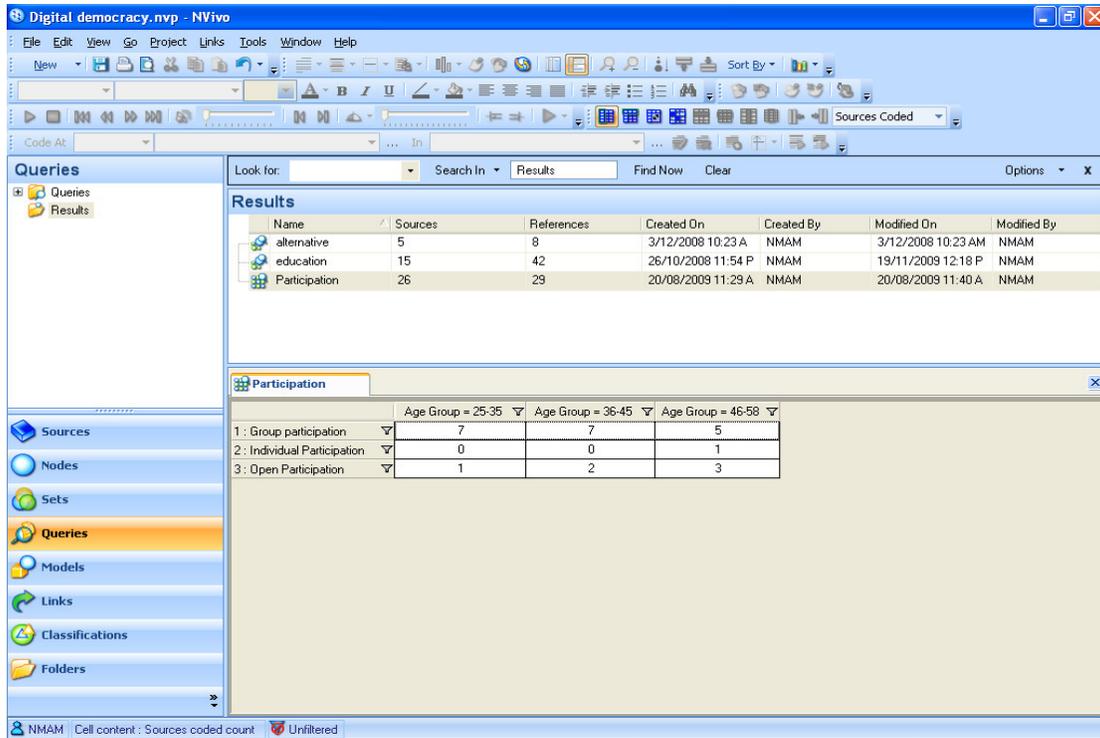


Figure 4: Storing result of queries

According to Bazeley, coding by NVivo uses the general concept of a classification system. It helps us to see what we have and to understand the structure of whatever it is we are working with in order that we can identify new items and locate existing ones. It is not dissimilar to the classification of books in libraries according to their subject matter and the hierarchy of folders in a computer filing system. Each layer in the hierarchy, which in the case of NVivo is represented by nodes, can be structured with categories, sub-categories and any number of sub-sub categories. Just as a computer filing system helps organise files, coding with NVivo allows nodes to be organised into conceptual groups and sub-groups.¹³⁶ The analysis of detail, made possible by coding and other NVivo tools, supported a more complex and iterative data interrogation process:

Not only will all the text (or other content) you have been coding be accessible from the nodes (with each passage carefully identified by NVivo as to where it came from), but any annotations, memos or other files linked to it will be accessible along with the text.

¹³⁶ Ibid.(100-101).

Reviewing the text stored at a node, therefore will allow you to review, as well, *all* the associated ideas linked to that text.¹³⁷

Analysis of data for this research involved each transcript being coded within NVivo and emergent codes compared with other transcripts. Constantly referrals were made to previous transcripts, and where necessary the digital audio of the interview. As new codes emerged, previous transcripts were again cross checked for links and connections. This process of coding first established a base-set of free nodes which, further into the process, developed into node trees.

Bazeley explains the coding process by NVivo as follows:

Typically you will go through three major stages in developing your coding using NVivo. In the first stage, as you work through initial sources, you create free nodes to catch ideas as they happen; this might be quick and spontaneous or slow and deliberate, depending on your approach. In the second stage, you start to sort and connect both existing and new nodes into a branching system of tree nodes that reflects the structure of the data, that is, the kind of things that are being considered. Thirdly, you might construct meta - or more abstract codes to reflect either overarching ideas or higher order concepts, or to identify broader, more complex themes running through the data.¹³⁸

However, Weitzman and Miles observed that software for qualitative data analysis do not have the ability to analyse data or to decide what it all means:

Software will never 'do' theory building for you ..., but it can explicitly support your intellectual efforts, making it easier for you to think coherently about the meaning of your data.¹³⁹

Coding with NVivo was not as straight forward a process as it may sound. Reading and rereading the interview transcripts allowed the researcher to pin down key themes and form a picture of the nodes and coding patterns that may develop from the coding exercise when undertaken. In all it was a recursive and cyclical process which, apart from data slicing with NVivo involved a list of other activities. Performing word searches and queries to test ideas and check associations, writing reflective memos, annotations and preliminary

¹³⁷ Ibid.(93), emphasis in original.

¹³⁸ Ibid.(100).

¹³⁹ Weitzman and Miles, *Computer Programs for Qualitative Data Analysis: A Software Sourcebook*, (Thousand Oaks 1995) 330.

observations, diagramming and mapping, both on computer and on paper, contributed towards reviewing ideas and themes.

In brief, the node trees which were developed at the end of the coding process were the result of a series of restructuring, re-positioning and merging of categories. Although it was a rigorous and time consuming process, as the coding developed so did the researchers' ability to see, understand and draw conclusions from the interview data. The analytic journey supported by NVivo was, as described by Bazeley, an ongoing process throughout the research project. It is a process where you start seeing connections, begin theorising and move from describing to interpreting.¹⁴⁰

According to Richardson, "qualitative work carries its meaning in its entire text [Q]ualitative research has to be read ... [I]ts meaning is in the reading"¹⁴¹. Drafting of the empirical chapters started almost simultaneously with the analysis process. Although it was difficult to write when ideas were not particularly organised or outlined, the researcher agrees with Richardson that writing which involve thinking and analysis, is a "method of inquiry"¹⁴² which contributed to the whole analytic process:

*Thought happened in the writing. As I wrote, I watched word after word appear on the computer screen-ideas, theories, I had not thought before I wrote them. Sometimes I wrote something so marvellous it startled me. I doubt I could have thought such a thought by thinking alone.*¹⁴³

The process was also supported by constant availability of academic supervision. The researcher realised that to a certain extent, the nature of a qualitative research, allows more freedom to return to the data with a fresh approach, a new idea and different lens. Guided by the expectation that at the end of the day the research may offer an answer which may not be the absolute or only answer, the researcher was confident to play around with the data. This led to a richer analysis as a whole.

¹⁴⁰ Bazeley, *Qualitative Data Analysis with NVivo*, (Los Angeles, London, New Delhi, Singapore 2007) 100.

¹⁴¹ Richardson and Pierre, *Writing: A Method of Inquiry*, In Denzin and Lincoln (eds.), *Collecting and Interpreting Qualitative Materials*, (Thousand Oaks 2008) 474.

¹⁴² *Ibid.*(474).

¹⁴³ *Ibid.*(488), emphasis in original.

STRUCTURE OF THESIS

Chapter 1 provides a review of the literature informing the identification and development of the research framework. It focuses on providing a comprehensive consideration of the philosophical framework for the research. The qualitative approach is introduced and an overview of processes involved in data collection and analysis phases is provided to contextualise them in relation to the research design.

Chapters 2 and 3 provide a literature review which looks at history and law as factors which shape the general outlook for citizen participation in Malaysia. Chapter 2 focuses on describing the context of the study which includes the historical dimension of Malaysia's pursuit of nation building, the Malaysian civil service, as well as the country's adoption of ICT. Chapter 3 focuses on law as part of a broad range of factors which influence the extent of technology's role in promoting citizen participation in Malaysia.

Chapters 4, 5, 6 and 7 make up the empirical chapters. They explore in detail emergent themes from the analysis of data and bring together information about the relevance of digital democracy for policy making in the Malaysian civil service. Chapter 4 provides a preamble and an analytical vantage point by exploring values placed by commentators on ICT's impact upon democratic practices in Malaysia, which includes their observations of Malaysian civil servants' reception of and capacity for, digital democracy. The chapter goes on to discuss how the term digital democracy is understood by civil servants within the sample. Chapters 5, 6 and 7 are structured in line with Anttiroiko's suggestion discussed above that, when assessing the relevance of technology, four questions should be asked in relation to; (i) interaction (chapter 5); (ii) institution (chapter 6); and, (iii) integration; and, (iv) influence (chapter 7).

Chapter 8 concludes the thesis and addresses how the research questions have been answered.

CHAPTER 2

THE MALAYSIAN CONTEXT

The Federation of Malaysia consists of thirteen states, made up of the eleven states in Peninsular Malaysia, formerly the Federation of Malaya which gained independence from Britain in 1957, and the two East Malaysia states of Sabah and Sarawak,¹⁴⁴ which became independent from Britain and joined the Federation of Malaysia in 1963.¹⁴⁵ Various ethnic groups making up the country's population of 27 million, are classified as bumiputera¹⁴⁶ and non-bumiputera, as shown in Table 12.

Table 12: Detailed Ethnic Group Classification, Malaysia, 2000¹⁴⁷

Bumiputera
Malays, Negrito, Senoi, Proto Malay, Dusun, Kadazan, Kwijau, Bajau, Itanun, Murut (Sabah), Orang Sungei, Sulu / Suluk, Bisaya (Sabah/Sarawak), Rungus, Sino – native, Kadayan (Sabah / Sarawak), Tidong, Tambanuo, Idahan, Dumpas, Mangkaak, Minokok, Waragang, Paitan, Rumanau, Lotud, Cocos Islander, Other Bumiputera (Sabah), Iban / Dayak Laut, Melanau, Kenyah, Kayan Lun Bawang / Murut (Sarawak) Penan, Kajang, Kelabit, Other Bumiputera Sarawak
Chinese
Hokkien, Khek (Hakka), Cantonese, Teochew, Hainanese, Kwongsai, Foochow /

¹⁴⁴ In 1963, Sabah and Sarawak ceased to be British colonies and became part of Malaysia, based on the Federation of Malaya but also including these two new territories and, from 1963 to 1965, Singapore. Sabah and Sarawak, are both multi-racial societies. Although at the time of the formation of Malaysia Sarawak has only about one-ninth and Sabah about one-fifteenth the population of Malaya, the racial pattern in these states were more complex. Unlike Malaya where 50% of the population can be put under the broad heading of Malays, in Sarawak for example, the population is divided into the following: Malay, 18%; Melanau, 16%; Iban (Sea Dayak), 29%; Land Dayak, 8%; and, Chinese, 33%. Even then, the remainder amounted to about 6%, which included important minorities in the politics of Sarawak, such as the Kenyans and Kayans. There was no single indigenous group which was as homogenous as the Malays in Malaya. See Milne and Ratnam, *Malaysia - New States in a New Nation*, (Letchworth, Hertfordshire 1974) 1-28.

¹⁴⁵ Malaysia has three Federal Territories, namely; Kuala Lumpur, Putrajaya and Labuan. They are governed directly by the Federal Government and are under the jurisdiction of Ministry of the Federal Territories.

¹⁴⁶ The term literally means princes of the soil in the Malay language.

¹⁴⁷ Adapted from Departments of Statistics Malaysia, *Population and Housing Census of Malaysia 2000: Education and Social Characteristics of the Population*, In Department of Statistics Malaysia (ed.), (2002).

Hokchiu, Henghua, Hokchia, Other Chinese
Indians
Indian Tamil, Malayali, Sikh/Punjabi, Telegu, Sri Lankan Tamil, Singalese, Bangladeshi, Pakistani, Other Indian
Others
Indonesian, Thai, Filipino, Myanmar, Japanese, Korean, Other Asian, Eurasian, European Others

As of 2007, Bumiputera consists of ethnic Malays and native groups (61.7%), while non-bumiputera is made up of ethnic Chinese (23.1%) and Indians (6.9%) and others (1.2%).¹⁴⁸ Midyear population estimates by ethnic groups and sex from 2003 to 2007 is given in Appendix 4.

This composition gives Malaysia its modern multiethnic and multicultural character which pervades most of its institutions and the activities and attitudes of the population in almost all spheres of life. Malaysians tend to identify first and foremost as members of one of the three major “conventional ethnic divisions” of “Malay” “Chinese” or “Indian” although there is a fourth division, “other”.¹⁴⁹ They are only secondarily “Malaysians”.¹⁵⁰ Although the bonds of citizenship and the sense of sharing one nation are increasingly evident among ethnic groups in present-day Malaysia, it is undeniable however that, the central configuration of Malaysian society is, its diverse ethnic culture.¹⁵¹

Malaysia has a Westminster form of parliamentary government at both federal and state levels with elections held at least every five years. Political competition continues to be

¹⁴⁸ Department of Statistics Malaysia, Yearbook of Statistics Malaysia 2007, In Department of Statistics (ed.), (2007).

¹⁴⁹ Malay is a person who was born locally, habitually speaks Malay, follows Malay custom, and professes Islam. The Chinese and Indian communities are supposed to consist of the descendants of immigrants from China and the Indian subcontinent and “other” is a catchall category for the small number of Eurasians, Thais, Europeans and other persons who do not fit into the three major categories. See Hirschman, The Meaning and Measurement of Ethnicity in Malaysia: An Analysis of Census Classifications, *The Journal of Asian Studies*, vol. 46, (1987) 555.

¹⁵⁰ Nagata, What Is a Malay? Situational Selection of Ethnic Identity in a Plural Society, *American Ethnologist* vol. 1, (1974) 333.

¹⁵¹ Singh and Narayanan, Changing Dimensions in Malaysian Politics: The Johore Baru by-Election, *Asian Survey*, vol. 29, (1989) 516.

inter-ethnic with the main political parties generally based on ethnic groups. Since independence, the federal government has been controlled by a coalition, formerly known as the Alliance consisting of three ethnic parties. Since 1972 the Alliance has been known as *Barisan Nasional* or the National Front. Presently, membership of the National Front includes about 13 political parties. Although all ethnic groups have parties representing them in the ruling coalition, Malay political control is reflected in the Prime Minister, Deputy Prime Minister and about three quarters of the ministers at the federal level being ethnic Malays. Since the 2008 general elections, the coalition holds power in eight out of the 13 states.

THE HISTORICAL DIMENSION

Malaysian society is characterised as noted, by a mixture of ethnicities and cultures. This has given Malaysians their share of diversity. However, this diversity is distinctively more communal and ethnic related, than functional as found in Western societies. In Malaysia, what functional issues have developed still tend to be confined within communal compartments:¹⁵²

There are competing “imagined states” between the various ethnic communities. For the Malay nationalists, Malaysia should be a “Malay” nation-state. The non Malay communities aspire to some kind of a multi ethnic Malaysia nation or Bangsa Malaysia
 ...¹⁵³

In spite of this tension, Malaysia has maintained since its independence a relatively long period of political stability marred by minimum ethnic conflict.¹⁵⁴ This sense of ethnic calm is sometimes attributed to each group feeling that their interests are not threatened and that any gaps, representing deprivation between ethnic groups, are prevented from being unduly widened.¹⁵⁵ This has produced the concept of Malaysia as “a state in stable tension”, recognising its stability even if ethnic tension is prevalent. It is this aspect which has attracted most recent analysis of Malaysian society and politics. Academic

¹⁵² Means, *Malaysian Politics*, 2 ed., (London 1976) 444.

¹⁵³ Cheah, *The Making of a Nation*, (Singapore 2002) 233.

¹⁵⁴ Maznah Ahmad, *Ethnicity and Inequality in Malaysia: A Retrospect and a Rethinking*, (2005) 1.

¹⁵⁵ *Ibid.*(5).

discussions never fail to consider Malaysian issues in light of its ethnic, cultural and religious diversity however else they portray the Malaysian context.¹⁵⁶

If discussions of its communal pluralism have been at the centre of academic analysis, the advent of digital communication technology has amplified participatory elements in Malaysian society. They allow more people Malaysians or otherwise, to take part in the dissemination and discussion of ideas. An example is human rights. Human rights discussions have seen a never ending disagreement over whether Malaysia has an anti-democratic political system which has no respect for human rights, or whether the country's political system and human rights practices reflect culturally-specific Asian values. Other examples are closely related debates over constitutional rights, preferential economic and educational policies, and, political democratisation.¹⁵⁷

However, it is hard to disagree with the conclusions of Professor Shamsul Amri Baharudin, a prominent historian, that writings on Malaysia represent one of “two sides of the story”. On one hand are accounts adopting an “alarmist”, “conflict” or “crisis” approach. On the other, are accounts focused on Malaysia's ongoing “process of solidarity making”. While the former never tire of focusing on how ethnic differences engender tensions and divisions, the latter are ever keen to examine the country's success in remaining relatively peaceful through establishing common grounds for consensus.¹⁵⁸ Professing to favour the latter approach, Baharudin writes:

Had the discourse on democracy in Malaysia taken cognizance of [these] analytical concerns, it would have included, as an integral part of it, a detailed discussion on how the present state of the so-called ‘democracy building’ in Malaysia has been inextricably intertwined with problems of security, ethnic bargain and planned change, during the

¹⁵⁶ Shamsul Amri Baharudin, *The Construction and Management of Pluralism: Sharing the Malaysian Experience*, *International Centre for Islam and Pluralism*, vol. 2, (2005) 1-14.

¹⁵⁷ Verma, *Debating Rights in Malaysia: Contradictions and Challenges*, *Journal of Contemporary Asia*, vol. 32, (2002) 108-129.

¹⁵⁸ Shamsul Amri Baharudin, *The Construction and Management of Pluralism: Sharing the Malaysian Experience*, *International Centre for Islam and Pluralism*, vol. 2, (2005) 7.

post-war British colonial rule era, that became the basis and grid within which state and nation formation in Malaysia have been shaped thus far.¹⁵⁹

This reflects his concern that recent general discourse on Malaysia and democracy omits a historical dimension. As profound as the role of ethnic relations is in contemporary political processes in Malaysia, they are also shaped by the country's colonial experience and the first decade of post-war Malaya (1945 to 1955) in which existing institutions, including the constitution and modern electoral politics were established.

Understanding Malaysia as a political, administrative and legal system by revisiting the history of its own making may reveal its contemporary form and meaning. However, Baharudin argued that there is a need to historically contextualise the much discussed undemocratic¹⁶⁰ rules and practices of the present-day state in its effort to bring about economic development as well as to create some form of democratic government. He cautions that such an exercise should not be used to justify these practices. The stress, instead, should be on creating a much-needed space in which a truly democratised analysis and discourse on Malaysia may prevail. This space, according to Baharudin, is at the moment dominated by a kind of “epistemological hegemony.”¹⁶¹

Analysts like Neher,¹⁶² label Malaysia as “semi democratic”.¹⁶³ Through a system of “quasi-separation of powers”, “competitive elections” and “circumscribed civil liberties”,

¹⁵⁹ Shamsul Amri Baharudin, Development and Democracy in Malaysia: A Comment on its Socio-Historical Roots, In Antleov and Ngo (eds.), *The Cultural Construction of Politics in Asia*, (Richmond, Surrey 2000) 103.

¹⁶⁰ Malaysia's *Official Secret Act*, *Internal Securities Act* and *Sedition Act* are said to impose a culture of silence on citizens and prohibit discussions of sensitive issues including special rights and status provided under Article 152 of the *Malaysian Federal Constitution* on supremacy of Bahasa Malaysia as the national language, Article 153 on special rights and privileges of the Bumiputera for example in education and positions in the public service, and Article 181 on the sovereignty of Malay kings. See Neher, *Southeast Asia in the New International Era*, 4th ed., (Boulder, Colo. 2002) 301 and *Constitution of Malaysia 1963*.

¹⁶¹ By “epistemological hegemony”, Baharudin refers to the rather problematic (or double-standard) notion of democracy, human rights and development propagated by the United States of America and its allies. See Shamsul Amri Baharudin, Development and Democracy in Malaysia: A Comment on its Socio-Historical Roots, In Antleov and Ngo (eds.), *The Cultural Construction of Politics in Asia*, (Richmond, Surrey 2000) 103-104.

¹⁶² Neher, *Southeast Asia in the New International Era*, 4th ed., (Boulder, Colo. 2002) 120-139.

¹⁶³ This term refers to nations which have a semblance of citizen involvement in choosing governmental leaders, an executive leader not fully accountable to the legislative branch, a high degree of civil liberties with some exceptions to ensure law and order and autonomous groups representing the interest of the people. See *Ibid.*(131-132).

the government, he claims, has been relatively accountable to its citizens. He observes that ethnic communal tensions lead to an acceptance of some form of control over personal freedoms, to ensure continued stability and consensus. Descriptions, such as that of Neher, point to the long established but daily effort to reproduce and maintain multi-ethnic integration. Maintaining law and order, the ethnic bargain¹⁶⁴ and economic development are important elements which have helped Malaysia succeed in its modernisation drive. It is widely believed that this must continue to be sustained at all costs.¹⁶⁵

Establishing the terms of multiracial cooperation in a postcolonial state has been a consistent issue in setting the development goal for Malaysia's modernisation. As a result, government in Malaysia functions with a high degree of control by the state and the integration of the institutions of the state and civil society. Today, issues such as corruption, the independence of the judiciary, human rights and even changes in political leadership, are being openly discussed. However, it is said that these discussions take place within the arena of "institutionalised repressive tolerance" and a "narrow political space".¹⁶⁶ Many argue that the ground rules determining this space emphatically assert the accommodation of the current federal government. An accommodation has to be found between the recognition of the potential of ICT to enhance democratic participation through their ability to transform how Malaysians receive information and form opinions and the elements which are believed to be crucial to the survival of Malaysia as a state.

It is this underlying idea that is central to this thesis. This thesis does not set out to join the debate on issues stemming from Malaysia's diversity. However, in order to project

¹⁶⁴ Malaysian politics have as a reference point, the ethnic equation. On the road to independence, the three major communities (Malay, Chinese, Indian) struck a "bargain" whereby in return for citizenship status and taking into account non-Malay dominance of the economy, the Chinese and Indian recognised Malay hegemony in the political arena. The bargain is considered a form of "social contract" that brought the country into independence with promises that the Chinese and Indians are to help the Malays economically and the Malays to accept gradual non-Malay political equality. See Singh and Narayanan, *Changing Dimensions in Malaysian Politics: The Johore Baru by-Election*, *Asian Survey*, vol. 29, (1989) 514-529 and Neher, *Southeast Asia in the New International Era*, 4th ed., (Boulder, Colo. 2002) 301.

¹⁶⁵ Shamsul Amri Baharudin, *Development and Democracy in Malaysia: A Comment on its Socio-Historical Roots*, In Antleov and Ngo (eds.), *The Cultural Construction of Politics in Asia*, (Richmond, Surrey 2000) 86-106.

¹⁶⁶ Verma, *Malaysia, State and Civil Society in Transition*, (Colorado 2002) 208-209.

how Malaysian civil servants will frame digital democracy's relevance in policy making from existing state-citizen relationships, it is pertinent that these issues be considered. Some reflection on the continuities between the colonial past and the present, will give depth to the research and its conclusions, and help understand the constraints civil servants are under and their acceptance of the limits within which they will frame policies.

The legitimacy of government amongst the people governed usually depends on the prosperity of the people. Malaysia's dynamic economic growth has placed the ruling party and government in a strong political position. Malaysia's economy is one of the most robust in South East Asia. With a per capita yearly income measured at about US\$5,300 in 2007, Malaysia is now an upper-middle-income country. Agriculture has fallen from above 30 percent of GDP to below 10 percent, and industry and manufacturing has risen from 27 to about 50 percent. Manufactured exports, especially high technology products, are significant in this increase, rising from 5 percent of total exports to above 75 percent.¹⁶⁷ This strong economic environment has enabled a comprehensive communications infrastructure to be developed. The first developing Asia Pacific country to be included in the Digital Access Index¹⁶⁸ (DAI) assessment conducted by International Telecommunication Union (ITU) in 2002, Malaysia was ranked in the Upper Access Category or 46th out of 178 countries. In 2008, the number of people with access to the internet in Malaysia, per 100 inhabitants, stood at 62.6%.¹⁶⁹

The Seventh Malaysia Plan for 1996 to 2000 marked the beginning of a comprehensive ICT development plan. In 1994, the National Information Technology Council (NITC), an advisor to the government on the development of information technology, was established. NITC formulated the National Information Technology Agenda (NITA) which aims to leap frog Malaysia into the information age with information and

¹⁶⁷ Yusuf and Bhattasali, *Economic Growth and Development in Malaysia: Policy Making and Leadership*, (2008). Available online at <http://www.growthcommission.org/storage/cgdev/documents/gcwp027web.pdf>

¹⁶⁸ DAI measures the overall ability of individuals in a country to access and use ICT which, consists of eight variables organized into five categories that is infrastructure, affordability, knowledge, quality and usage.

¹⁶⁹ Worldbank, *World Development Indicators 2009*, (2009) available online at www.world.org/my

knowledge providing for change and value creation. The resulting technological infrastructure makes it feasible and timely to explore the potential of ICT to enhance citizen participation in Malaysian public life.

Colonialism and Post War Malaysia

Malaysia's colonial experience under British rule, its economic and its socio-cultural conditions, are the three factors which play important roles in producing or shaping the country's present political system. The combination of these factors has an important influence over ethnic relations in the country.¹⁷⁰ Post War Malaya, specifically the decade immediately after 1945, was a period "of great political turmoil".¹⁷¹ It saw the British struggling to rebuild Malaya's economy and society into prosperous colonies. In spite of the destruction of World War II and the communist insurgency, Malaya, through its natural resources of rubber and tin, contributed substantively to the coffers of the British government and British companies. These efforts were challenged by "racial strife", "labour unrest", "insurgency and terrorism" and "opposition to a new system of governance", all of which were interconnected in the sense that each was ethnically related.¹⁷² To trace how stability finally emerged from this eventful period, is the key to understanding the unique role played by ethnicity in the creation of Malaysia's present political arrangements, administrative structures, public policy making institutions and legal system.

Federalism and the Significance of Rulers

It should be noted that Malaysia is a two-stage federation. The first stage is the Federation of Malaya, physically located on the Malay Peninsula, which consists of the 11 states that became independent in 1957. The second stage is the Federation of

¹⁷⁰ Ho, Dynamics of Policy-Making in Malaysia: The Formulation of New Economic Policy and the National Development Policy, *Asian Journal of Public Administration*, vol. 14, (1992) 205.

¹⁷¹ Siddique and Suryadinata, Bumiputra and Pribumi: Economic Nationalism (Indiginism) in Malaysia and Indonesia, *Pacific Affairs*, vol. 54, (1981) 668.

¹⁷² Shamsul Amri Baharudin, The Construction and Management of Pluralism: Sharing the Malaysian Experience, *International Centre for Islam and Pluralism*, vol. 2, (2005) 8.

Malaysia, which consists of the Federation of Malaya and the states of Sabah and Sarawak, both located on the island of Borneo, which became independent in 1963.¹⁷³

The Anglo-Dutch Treaty of 1824 placed the states in Malaya¹⁷⁴ in the British sphere of influence.¹⁷⁵ Malacca, Penang and Singapore, were crown colonies in which the British

¹⁷³ Shamsul Amri Baharudin and Sity Daud, Nation, Ethnicity, and Contending Discourse in the Malaysian State, In Boyd and Ngo (eds.), *State Making in Asia*, (London & New York 2006) 151.

¹⁷⁴ States in Malaya were formed at the basin of a group of adjacent rivers as they were the means of communication and trade. Each individual state had its own political hierarchy. Each was headed by a ruler called either Yang di-Pertuan (He who is Lord) or Raja (Hindu Ruler) or Sultan (Arabic Ruler), as determined by their own tradition. Whatever title he may have assumed, the Ruler during the 19th century and even earlier, was the symbol of unity. There were essentially two classes in the system of government (kerajaan): the ruling class (raja and pembesar) and the subjects (rakyat). The Sultan had a hierarchy of greater and lesser officials to assist him in the state's administration. Among the officers of great significance were the Bendahara (Chief Minister), Penghulu Bendahari (Treasurer), Temenggong (Commander of Troops and Police), Menteri (Secretary of State), and Shahbandar (Harbour Master and Collector of Customs). In daily government affairs, the Sultan consulted his advisers who were aristocrats. The Sultan made decisions on the basis of these consultations. They were taken down in writing by assistants known as secretaries, who were generally commoners. The nature of their work meant that they knew matters of great secrecy and importance. The manuscripts that have survived showed them to have been masterfully written and rich in classical Malay court language and protocol. While the Sultan confined himself in the palace, reigning over the state, the real power of administration lay in the hands of district chiefs who were from the ruling class. These chiefs exercised authority over outlying villages through the Penghulu (headman) of each village. The district chief governed the district as well as collected revenues and taxes. *Adat* (custom) went hand in hand with religion to provide the authority for legitimising political decisions. The Portuguese capture of Malacca in 1511 marked the end of the Malacca Sultanate. Although the glory of the Sultanate lasted only a century, (c1400-1511), it had immense influence on the traditional pattern of political organisation. For an analysis of the traditional socio economic order in pre European Malaya, see Tilman, *Bureaucratic Transition in Malaya*, (Durham 1964), at 1-36. See also Gullick, *Indigenous Political System of Western Malaya*, (London 1965).

¹⁷⁵ Over the period of ninety years from 1824 to 1914, the whole of Malaya came by stages under British administration. Throughout this period the dominant element of British power was the Straits Settlements formed in 1826 by the merger of the crown colonies of Singapore, Penang and Malacca to form an overseas dependency of the Government of India. Following the Pangkor Treaty in 1874, a resident was placed in Perak and subsequently in Selangor and Sungai Ujong. The stated intention was to appoint an adviser with functions similar to those of residents in the Indian princely states. The Pangkor treaty provided that the advice of the resident "must be asked and acted upon on all questions other than those touching Malay Religion and Custom." It was further laid down that "the collection and control of all Revenues and the general administration of the country be regulated under the advice of these Residents." The British interpreted their rights broadly and created a largely British directed bureaucracy. The first additions were the assistant residents, and then the police forces, frequently recruited from Sikhs and Gurkhas. These forces were led by British officers and, thereby, the basic instrument of public order was placed under British control. Beginning in 1885, British officials were posted as district officers, responsible for revenue collection, law and order and public welfare throughout the western states. The trend toward centralisation was furthered by bringing together the minor Minangkabau states into a united state known as Negeri Sembilan in 1889. Uniformity further resulted from the Agreement of 1895 whereby Perak, Selangor, Negeri Sembilan and Pahang came together in a federation. The legal fiction that the residents were "advisers" only was now abandoned and it was overtly accepted that the resident general was the chief executive officer at the head of a unified administration of the Federated Malay States. In 1885, Johore undertook to accept a British official as agent "having functions similar to those of a Consular officer". In 1909, Siam concluded a treaty with Britain whereby in return for the abolition of extra-territorial rights,

had sovereignty. They were formed into a single dependency of the government of India, the Straits Settlements, in 1826. The others were protectorates in which British rule was indirect, comprising: the Federated Malay States of Perak, Selangor, Negeri Sembilan and Pahang; and, the Unfederated Malay States of Johore, Kedah, Perlis, Kelantan and Trengganu. It is important to bear in mind that although the British extended their administrative control gradually over Malaya between 1874 and World War II, other than the Straits Settlements, the nine other Malay states were nominally autonomous in their internal affairs. Each had their own civil service although supervised by a resident or advisor. The governments functioned in the name of the respective Malay Sultans. The British achieved control over these areas by progressively assuming many government functions that did not displace the nominal authority of the Sultans, who retained power over *adat* (customary law) and *shari'a* (religious law) as well as the law on Malay land reservations.¹⁷⁶

As late as 1927, the British recognised the importance of the institution of “Kerajaan”.¹⁷⁷

This is reflected in a speech by Sir Hugh Clifford to the Federal Council:

These states were, when the British Government was invited by their Rulers and Chiefs to set their troubled houses in order, Muhammadan monarchies. Such they are today, and such they must continue to be. No mandate has ever been extended to us by Rajas,

railway concessions, and a loan, Siamese rights over Kedah, Trengganu, Kelantan and Perlis were transferred to Britain. The sultan of Kelantan undertook in 1910 to follow the advice of his British adviser, Trengganu accepted an adviser only in 1919 while Kedah followed suit in 1923. Perlis did not formally accept British advice until 1930. In 1931 there were fifty-five administrative districts outside the crown colonies of Penang, Malacca and Singapore. In the Federated Malay States, all district officers were members of the Malayan civil service. In the non-federated states, they were mainly or entirely members of the state civil service. While in the Federated Malay States the head of the state administration was the British resident, functioning with a secretariat staffed by expatriate British officers, in the other states the head of the actual administration was the Menteri Besar (Chief Minister), with the British adviser fulfilling an admonitory role only. Alongside the district and state administrative hierarchy, there was another hierarchy designed to deal with Malaya's plural society. From 1877 there was a Chinese protectorate, headed by the secretary for Chinese affairs, while later the Labour Department fulfilled a similar function for the Indian community. See Tinker, *Structure of the British Imperial Heritage*, In Braibanti (ed.), *Asian Bureaucratic Systems Emergent from the British Imperial Tradition*, (Durham 1966) 23-50 and Tilman, *Bureaucratic Development in Malaysia, Asian Bureaucratic System Emergent from the British Imperial Tradition*, (Durham 1966) 550-552. See also Gullick, *Malaya*, (London 1963) 29-37.

¹⁷⁶ Verma, *Malaysia, State and Civil Society in Transition*, (Colorado 2002) 26-27.

¹⁷⁷ Kerajaan is best defined as “being in the condition of having a Raja” and in dealing with the Kerajaan, the British were dealing with the raja or the monarchs who were the embodiment of the indigenous political culture. See Ariffin Omar, *Bangsa Melayu Malay Concepts of Democracy and Community 1945-1950*, (New York 1993) 4.

Chiefs, or people to vary the system of government which has existed in these territories from time immemorial ...¹⁷⁸

However, by means of the resident system, British rule in the nine Malay protectorate states was extended gradually and indirectly. Under the system, a British appointed Resident, acting as an adviser, directed the Sultan on issues relating to government. The Sultans retained direct authority over religious matters as the head of Islam. The colonial government followed these principles:

(1) the legal position of the Sultans was safeguarded, as laid down in the treaties; (2) the government was preserved as the distinctly Malay government which antedated any of the treaty arrangements made with the British; [and] (3) the Malays were considered the indigenous people, and the government accepted special responsibility for their welfare and the preservation of their rights as the “subject of the Sultan” in each state.¹⁷⁹

Under this system of indirect rule, the British assumed responsibility for administration, but were careful to exercise authority in the name of the Malay rulers. Their concern to use the Malay rulers to legitimise colonial rule made the British residents solicitous of the opinions and interests of Malay royalty. To some extent colonial rule was also presented as a form of trusteeship for the Malay states, of which the ordinary Malay was the ultimate beneficiary. Beneath this rhetoric, one can discern the origin of the idea of Malay special rights.¹⁸⁰ For purposes of the later analysis of the contentious concept of “Malay special rights”, it should be noted that, although the concept had not been explicitly enunciated by the British until late in the colonial era, its present legal basis can be traced to the original treaties providing for British protection of the Malay states.

RACE, RELIGION AND NATION BUILDING

There have been two major waves of Chinese migration to Malaysia. The first wave occurred in the early 16th century when Chinese traders opted to settle in Malacca. This migration was made possible by the good relations between the Ming Dynasty and the Sultanate of Malacca. The second wave of migration took place during the tin mining

¹⁷⁸ Proceedings of the Federal Council of the Federated Malay States (FMS), 16 November 1927, as cited in *Ibid.*(4-5).

¹⁷⁹ Means, *Malaysian Politics*, 2 ed., (London 1976) 43.

¹⁸⁰ Means, 'Special Rights' as a Strategy for Development: The Case of Malaysia, *Comparative Politics*, vol. 5 (1972) 31.

boom that began in the late 19th century. British officials encouraged Chinese people, to work in the mining industry. Today, the ethnic Chinese-Malaysian population is diverse using many different spoken languages from south and east China including Cantonese, Hakka, Hokkien, Teochew, Hainan and Fuchow.

As late as the 1930s, Chinese in Malaya continued to regard China as their home. They were politically involved with events in China including the war with Japan and the civil war between the Nationalists and the Communists. This was also similar for Indians, who were brought in to work on plantations and in the construction of railways and roads. Most considered India as their real home. They were more interested in the progress of the Indian independence and nationalist movements than in the political development in Malaya. This, according to Gordon P Means,¹⁸¹ reflected that Chinese and Indians were not readily assimilated with the Malays or with each other, although both demanded to be included as partners in the post war nation-building processes. According to Means, there is a universal feeling among the Chinese that they are superior in both individual attributes and culture to Malays and Indians. This attitude may have stemmed from their awareness of their great cultural heritage or their increasing sense of Chinese nationalism. Whatever the reason, Means argues that the attitude is significant when political issues arise involving the question of building a “Malayan” citizenry with a “Malayan” outlook and distinctive “Malayan” way of life. This is at the centre of many political issues revolving around problems of citizenship, schools, immigration, national service and voting rights. Means asked: “When a Chinese becomes a “Malayan Chinese” what is changed – his domicile, his political loyalties, his language, his education, or his whole culture?” He concluded that:

The political unrest and instability among the Chinese stems from the fact that they tend to face in two directions at once. On the one hand, they want to remain Chinese, with Chinese culture, language, traditions and loyalty to China (though not necessarily to a particular political regime in China). On the other hand, as a community, they want to be counted as loyal Malaysians with the rights of permanently domiciled citizens. Where these two sets of values conflict, they find themselves either in a quandary of indecision and internal divisions, or pursuing somewhat contradictory objectives.¹⁸²

¹⁸¹ Means, *Malaysian Politics*, 2 ed., (London 1976).

¹⁸² *Ibid.*(33).

In 1907, in order to attract Indian migrants to work in British rubber plantations, an Indian immigration fund was established under which labourers were given free passage to Malaya. In the cities, Indian commercial enterprises became important as they catered to the special demands of the Indian community, as well as the more general needs of all Malaysians. Compared with the Chinese, they were, and are, a smaller minority only a quarter the size of the Chinese population. Indians were educated in English medium schools. As British subjects, they were attracted to lesser posts in the civil service and to teaching in government aided schools. These positions brought limited prestige which was culturally important because of their relationship to caste. Organisations were formed to better the working conditions of Indian labourers including the Central Indian Association of Malaya. They were the forerunners of Indian political movements in Malaya. According to Means:

Demands for full and equal participation in Malayan politics were made but could be safely ignored because they represented a minority of a fragmented Indian community having only inchoate attachments to Malaya.¹⁸³

Before the Second World War, the relationship between Malays and the immigrant population, especially the Chinese, was not marked by racial tensions. However, the Japanese Occupation changed all that. Just after the war ended in 1945, racial strife broke out throughout the country. Clashes and killings were widespread within a week of the Japanese official surrender. Initially, these incidents involved those Malays, who had sided with the Japanese, and those Chinese, who had fought against the Japanese. Later they spread to include others. Chinese in Malaya had been the main victims of Japanese brutality, largely because of their support for Chinese resistance to Japanese aggression in China. Ariffin Omar wrote:

While the Chinese were discriminated against, Japanese treatment of the Malays had been mild. The Malays dominated the government service and served in large numbers in the police force as well as in various local military units set up by the Japanese. This aroused strong resentment among most Chinese against the Malays, especially since the Japanese used the Malay military units against the Chinese Resistance Forces Since the Chinese Resistance Forces were in the main insensitive to Malay culture and

¹⁸³ Ibid.(3737-

considered the Malays as collaborators with the Japanese, their treatment of Malays was often unsympathetic.¹⁸⁴

The defeat of the Japanese, and the delay by the British in sending troops to maintain order in the Malay states, gave opportunities to the Malayan People's Anti Japanese Army (MPAJA) which was almost 100% Chinese to take control. It represented the communist movement in Malaya. It committed atrocities against people of various communities. The rapturous welcome by local Chinese when MPAJA took over towns and villages, and their support for the execution of Malays for being Japanese collaborators, deepened the Malays' hatred of the Chinese and vice versa. These incidents led the Malays to believe that the Chinese planned to take over the Malay states and destroy the Sultanates. As the Malay rulers play a crucial role in Malay identity, religion and culture, a shared belief that this institution was in danger of being destroyed, heightened Malay resentment towards the Chinese. The return of the British faced some opposition by nationalist movements such as Partai Kebangsaan Melayu Raya (PKMM) which was propagating "Melayu Raya"¹⁸⁵ and Melayu as a nationality. The reestablishment of British control was generally welcomed by the Malays. They hoped that law and order would be re-established.¹⁸⁶

The state of racial unrest which the British authorities faced was made worst by labour protests. These reached a peak in 1947, when demonstrations demanding better wages mostly involving Chinese and Indians, who formed the majority of the working class, took place across the country. These demonstrations were backed by a Chinese dominated organisation, the Malayan Communist Party (MCP), which encouraged violence by the strikers. This led to the murder of British estate managers and pro-management workers. Alarmed by these violent acts, the colonial government proclaimed a state of emergency throughout Malaya on 18th June 1948. This state of emergency

¹⁸⁴ Ariffin Omar, *Bangsa Melayu Malay Concepts of Democracy and Community 1945-1950*, (New York 1993) 34-35.

¹⁸⁵ "Melayu Raya" was propagated by Kesatuan Melayu Muda (KMM) which had worked closely with the Japanese during the Occupation. The movement was calling for independence of the *bangsa* and the country and rejecting Malaya being under British protection as a legal fiction. See *Ibid.*(38-39).

¹⁸⁶ *Ibid.*(3838-

continued for the next 12 years until it was finally lifted on 31st July 1960. During its existence, Malaya experienced a war against communist insurgency.¹⁸⁷

The Briggs Plan

In conjunction with martial law, in May 1950, the Briggs Plan was introduced. It created a coordinating structure involving civil administration, the police and the army. It also established a chain of committees from federal to district level called the War Council, or Executive Committees. What is more significant, when considering ethnicity in Malaysia, is the means engaged to ensure that these committees could assert their authority. This involved a massive resettlement programme which moved the entire rural Chinese population into fortified compounds called the “new villages”. It resulted in half a million Chinese being resettled. Although it caused considerable suffering, especially to those uprooted from local economies and social support network, many Chinese realised that resisting the plan would have significant security implications in terms of threats by the MCP. The Briggs Plan also provided an administrative structure which the British needed to politically control the country and to develop it economically. A five year development plan was created. Consequently the future ethnic bargain, discussed below, and planned economic development were linked into the security measures devised in the Briggs Plan.¹⁸⁸

The Malayan Union

In 1945, after the restoration of the British rule, small urbanised and western educated elites of Indians, Eurasians and Chinese, were the most active and dominant force in Malayan politics. The Chinese were mostly left leaning and associated with the Japanese resistance movement. The returning British administrators felt compelled to make substantial concessions to the demands of these early political activists. Consequently,

¹⁸⁷ Shamsul Amri Baharudin, Development and Democracy in Malaysia: A Comment on its Socio-Historical Roots, In Antleov and Ngo (eds.), *The Cultural Construction of Politics in Asia*, (Richmond, Surrey 2000) 90-92 and Singh, Ethnic Conflict in Malaysia Revisited, *Commonwealth & Comparative Politics*, vol. 39, (March 2001) 47.

¹⁸⁸ Shamsul Amri Baharudin, Development and Democracy in Malaysia: A Comment on its Socio-Historical Roots, In Antleov and Ngo (eds.), *The Cultural Construction of Politics in Asia*, (Richmond, Surrey 2000) 95-96.

the proposals for the Malayan Union constitution were based on the implicit assumption that the left-wing Chinese and western-educated non-Malay elites would be the dominant forces in Malayan politics.¹⁸⁹

In January 1946, the British introduced the Malayan Union as a constitutional plan for the Malay Peninsula and drafted a constitution on the principal that “all those who have made the country their homeland should have the opportunity of a due share in the country’s political and cultural institutions”. It made no provisions for the continuation of special rights or of privileged positions for the Malays.¹⁹⁰ Through the Malayan Union, the British wanted to achieve the integration of the Chinese and Indians into a Malayan polity with a sense of “Malayanness”. More significantly, they wished to create a centrally controlled state, doing away with what to them was the cumbersome pre-war administrative structure.¹⁹¹ In the words of Ariffin Omar, “The post-war British policy-makers had grossly miscalculated the significance of the rulers.”¹⁹²

Customarily, Malays do not challenge their leaders. They believe strongly in loyalty to rulers, and that challenging them would invite divine retribution as implied in the concept of *derhaka*.¹⁹³ It would be perceived as an impropriety to question the leadership of the Sultan, around whom the abstraction of the “state” was wound. This tradition of loyalty continues to influence Malay politics.¹⁹⁴ It is embedded in the “Malay way” which involves, among other elements, problem solving and conflict avoidance. The ideal emphasises traditional courtesy and good manners, wide consultation and compromise, avoidance of direct confrontation when possible, and striving for consensus. If possible, critics are wooed rather than repressed and defeated opponents are not reduced to

¹⁸⁹ Means, *Malaysian Politics*, 2 ed., (London 1976) 417.

¹⁹⁰ Means, 'Special Rights' as a Strategy for Development: The Case of Malaysia, *Comparative Politics*, vol. 5 (1972) 29-61.

¹⁹¹ Ariffin Omar, *Bangsa Melayu Malay Concepts of Democracy and Community 1945-1950*, (New York 1993) 45.

¹⁹² *Ibid.*(46).

¹⁹³ The Malay concept of *derhaka*, originates from the Sanskrit *droha* or *drohaka* – which underpins the demand to loyalty, whether the loyalty of wife to husband, or of *rakyat* (citizens) to the *raja* (sultan). See Laffan, *Reflections on the Translation of Arabic Political Concepts into Malay and Indonesian*, (2010) 8, available online at http://mcp.anu.edu.au/papers/laffan_apc.html, accessed 10 March 2010.

¹⁹⁴ Singh and Narayanan, *Changing Dimensions in Malaysian Politics: The Johore Baru by-Election*, *Asian Survey*, vol. 29, (1989) 517.

complete submission, with openings left for reconciliation. While the formal processes of politics, namely elections and parliamentary government, are based on principles of Western democratic majority rule, the informal processes within them have been guided by the “Malay way”.¹⁹⁵

The British had always been aware that both the economic and political agenda of the Malays was based on the notion of “being dispossessed at one’s own home”, “*dirampas segalanya di rumah sendiri*”. The Malay nationalist struggle was one of “repossessing”, “*merampas kembali*”, political and economic dominance from the British administrators and the immigrant population.¹⁹⁶ Malays regarded the proposed Malayan Union as reducing Malays from being a nation to a mere community among other communities in a land that was historically theirs. Their reaction to the Malayan Union is recognised as the “first expression of Malay nationalism”.¹⁹⁷ To the Malays, conferring citizenship on the non-Malays was considered a betrayal of the trust held by the British for the benefit of the Malays. This fear was articulated by Dato’ Onn bin Jaafar in a speech to the Pan-Malayan Malay Congress on 5th March 1946:

The Malays have always been looked upon as a simple and law-abiding people and we propose to live as such, but at the same time, like every other race or every other nation, we hope we can still claim a place in our country.¹⁹⁸

One of the reasons for the heightened consciousness of *bangsa*¹⁹⁹ *Melayu* was the worry that the Malayan Union cut across state boundaries, putting the Malay sultanates in a precarious position. It threatened the foundational and traditional hierarchy of Malay society, “a hierarchy that bound the lowest Malay peasant to the monarch at the very apex”.²⁰⁰ It was in this context that United Malays National Organisation (UMNO) was

¹⁹⁵ Mauzy, Malaysia in 1987 Decline of the "Malay Way", Ibid.vol. 28, (1988) 213.

¹⁹⁶ Shamsul Amri Baharudin, The Economic Dimension of Malay Nationalism: The Socio-Historical Roots of the New Economic Policy and Its Contemporary Implications, *The Developing Economies*, vol. xxxv-3, (1997) 245.

¹⁹⁷ Maznah Ahmad, Ethnicity and Inequality in Malaysia: A Retrospect and a Rethinking, (2005) 8.

¹⁹⁸ Ariffin Omar, Bangsa Melayu Malay Concepts of Democracy and Community 1945-1950, (New York 1993) 55.

¹⁹⁹ The word *bangsa* can mean race, people, community, or even nation, depending on the context.

²⁰⁰ Ariffin Omar, Bangsa Melayu Malay Concepts of Democracy and Community 1945-1950, (New York 1993) 55.

founded to bring together state associations to face the common threat and which had the common interest in the preservation of the *bangsa Melayu* in each of the states.²⁰¹

Although short lived, the Malayan Union proposal had many socio-political consequences which eventually allowed the “ethnic bargain” to be concluded in a peaceful manner. The proposal brought about the establishment of ethnic based political parties. UMNO, the Pan-Malayan Islamic Party (PAS),²⁰² the Malayan Chinese Association (MCA), and the Malayan Indian Congress (MIC) became the four major political parties before, and after, independence in 1957. The introduction of modern electoral politics through local council elections provided an opportunity for political parties, particularly UMNO and MCA, to form a coalition called the Alliance.²⁰³ It quickly eclipsed all of its rivals to dominate the political scene. In 1955 the Alliance captured all but one seat in the first election for the federal Parliament. The formation of the Alliance meant that the parties within it had to find a common platform on which they could agree, including how to deal with their differences. This was, indeed, a process of “ethnic bargaining” and “social contracting”. It began as part of an informal bargain in the 1955 Alliance Election Manifesto and later this was adopted into Malaya’s 1957 *Constitution*. The “ethnic bargain” was institutionalised at an early stage in the new federal structure. It has also meant that the concept of the coalition of political parties, individually based in ethnic communities, remains as the main feature of modern Malaysian electoral politics.²⁰⁴

The Ethnic Bargain, Social Contract and the Constitution

As discussed, the colonial authorities acknowledged a responsibility for the welfare of the Malay rulers and their subjects. There was, however, no clear presumption that the colonial governments operated with a mandate for the social transformation and

²⁰¹ Ibid.(56).

²⁰² PAS retracted from UMNO and the Alliance in 1976.

²⁰³ The Alliance party is now called the National Front and it has expanded to include about 14 other parties.

²⁰⁴ Shamsul Amri Baharudin, Development and Democracy in Malaysia: A Comment on its Socio-Historical Roots, In Antleov and Ngo (eds.), *The Cultural Construction of Politics in Asia*, (Richmond, Surrey 2000) 98-99 and Means, 'Special Rights' as a Strategy for Development: The Case of Malaysia, *Comparative Politics*, vol. 5 (1972) 38.

modernisation of Malay society. Colonial administration actually operated on the opposite premise, that Malay peasants should be encouraged to preserve their traditional ways of life, as they deserved special protection from the disruptive effects of economic development and from the penetration of alien cultures.²⁰⁵ The first laws to enunciate a system of Malay special rights were those involving land ownership. These laws were the product of colonial policies designed to promote economic development. They made land available for that development while protecting the Malays from the economic dislocation that resulted from the influx of European enterprises and of Chinese and Indians immigrants.²⁰⁶

The ethnic compact has been the reference point in Malaysian politics since those special rights came to be recognised in the country's *Constitution*. It is considered by many as a "social contract" between the different ethnic groups.²⁰⁷ This *Constitution* is based on the federal principles which the British had suggested in the Malayan Union. It also reflects the opposition of the Malays to that initial proposal and their insistence on their special position which the British administration was forced to accept. It was through this *Constitution* that the immigrant population, comprising mainly Chinese and Indians, gained immediate citizenship but in turn had to accept the Malay's special position, rights and privileges. As aptly stated by Baharudin:

Malay dominance, or ketuanan Melayu, was written into the Constitution [and this] is accomplished by protecting the three pillars of Malayness (language, religion and royalty).²⁰⁸

Article 153 of the *Constitution* begins:

It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and the legitimate interests of other communities ...²⁰⁹

²⁰⁵ Means, 'Special Rights' as a Strategy for Development: The Case of Malaysia, *Comparative Politics*, vol. 5 (1972) 36.

²⁰⁶ Ibid.(31).

²⁰⁷ Singh and Narayanan, Changing Dimensions in Malaysian Politics: The Johore Baru by-Election, *Asian Survey*, vol. 29, (1989) 516.

²⁰⁸ Shamsul Amri Baharudin, The Economic Dimension of Malay Nationalism: The Socio-Historical Roots of the New Economic Policy and Its Contemporary Implications, *The Developing Economies*, vol. xxxv-3, (1997) 244.

This Article authorises a system “to safeguard the special position of the Malays”. It supports a system of quotas applied to the public service, to scholarships, to “training privileges,” and to licences for any trade or business. Article 89 sanctions the system of Malay Reservations, and permits the state legislatures to add to the land area declared a Malay Reservation.²¹⁰ To ensure that democratic processes would not erode or terminate Malay special rights, the latter were given a unique constitutional status. According to Ariffin Omar:

[T]he failure to evolve a nationality that was acceptable to all was evident in the creation of the *Persekutuan Tanah Melayu* (Federation of Malaya) which gave citizenship rights to the non-Malays but denied them a nationality. For Malays and non-Malays alike, the federation perpetuated a sense of ethnic consciousness as it did not lead to a common identity for all.²¹¹

The symbols of Malay predominance did not in practice greatly affect the daily lives of non-Malays. The King and the Sultans were constitutional monarchs. The establishment of Islam as the state religion was balanced by a guarantee of freedom for other religions. The national language, Malay, was accompanied by English, as an official language to be used until 1967 in administration, the courts, and a large part of the educational system.²¹² Malay or Bumiputera special positions, rights and privileges, would continue to be the subject of contention in inter-ethnic relations in Malaysia. Verma²¹³ indicates a reason for this: “Malaya had no historical political continuity that contributed to a sense of one nationality”. She supports this by pointing out that Malaya was fragmented into states within which there was neither uniform allegiances of their peoples nor union under a single political leader. Loyalties were mostly what she calls “primordial”, where the self is defined by blood, race, language and religion and where political affiliation is founded upon status and rank derived from these.

²⁰⁹ Means, 'Special Rights' as a Strategy for Development: The Case of Malaysia, *Comparative Politics*, vol. 5 (1972) 40.

²¹⁰ Under Article 89, only a Malay may own land or possess an interest in a Malay Reservation area. A Malay Holding includes any registered interest of a Malay and a proprietor or co-proprietor in any alienated land included in a Malay Reservation Area which has been duly declared and gazetted.

²¹¹ Ariffin Omar, *Bangsa Melayu Malay Concepts of Democracy and Community 1945-1950*, (New York 1993) 122.

²¹² Crouch, *Government and Society in Malaysia*, (St Leonards 1996) 158.

²¹³ Verma, *Malaysia, State and Civil Society in Transition*, (Colorado 2002) 21-22.

A special feature of the ethnic bargain was that it was negotiated by the elite of each ethnic group as representatives. This has led to subsequent uncertainties. One is “the extent to which the leadership have continued to remain acceptable to the communities”. Another, more important issue, is “the fact that one side of the bargain (the increment of political power for the Chinese) operated largely by passage of time, while the other (the increment of economic power of the Malays) did not.”²¹⁴ Mahathir Mohamad in his controversial book *The Malay Dilemma*,²¹⁵ states that the Malay claim to being discriminated against in Malaysia, is not based on the country’s laws but on the character and behaviour of the other major racial groups in the country. The Malays, he describes, as spiritually inclined, tolerant and easy going while the non Malays, especially the Chinese, are materialistic, aggressive and have an appetite for work. He argues that for equality to emerge, it is necessary that these contrasting cultures adjust to each other, a task which, for him, cannot be done by law. Legal equality he claims is “meaningless in the face of social and economic ostracism practised by racial groups under conditions which are not within the range of law.”²¹⁶ He stresses that it can only be achieved through understanding, goodwill and time, and only if the meaning of racial equality is understood by all. He stresses that, “[t]he motive behind the preferential treatment is not to put the Malays in a superior position, but to bring them to the level of the non-Malays.”²¹⁷

As ethnic divisions coincide with, and are reinforced by, linguistic, cultural, religious and most importantly, economic divisions, political issues are interwoven with ethnic considerations. Government policies tend to be seen as benefiting one community while disadvantaging another. Communal or ethnic sentiments have remained strong.²¹⁸ While practicing democracy within a framework characterised by a strong system of ethnic representation, government saw it necessary to be provided with powers sufficient to

²¹⁴ Shamsul Amri Baharudin, Development and Democracy in Malaysia: A Comment on its Socio-Historical Roots, In Antleov and Ngo (eds.), *The Cultural Construction of Politics in Asia*, (Richmond, Surrey 2000) 100.

²¹⁵ Mahathir Mohamad, *The Malay Dilemma*, (Singapore 1970).

²¹⁶ *Ibid.*(97).

²¹⁷ *Ibid.*(75).

²¹⁸ For discussion of pluralism and nation building in Malaysia, see Cheah, *The Making of a Nation*, (Singapore 2002) 75-120.

repress Communist and nationalist movements which tended to aggravate communal conflicts. Consequently, the *Constitution* came to contain provisions for emergency powers which had first appeared in the *Emergency Regulations of 1948*. When the twelve year emergency was lifted in 1960, the *Internal Security Act (ISA)*, relying on these constitutional provisions, was enacted providing authorities with wide powers of preventive detention.²¹⁹

Although all basic institutions of the Westminster parliamentary system were transplanted, Malaysia developed a political culture and a party system which has never quite turned competitive. Formed along communal lines, political parties reinforce communal barriers, and so inhibit or prevent the shift of voter allegiance from one party to another. The rigidity of Malaysia's communal social structure has provided little space for the growth of a democratic system in which political power changes on the shifting loyalty of voters. Perhaps the most vexing of the paradoxes of its long transitional politics is that:

democratic nation-building has depended upon a firm and decisive political leadership to integrate and unify a polymorphic society. To the degree that the leadership has succeeded in this task, it has created the political base for its monopoly of power.²²⁰

The Alliance has dominated the political centre on communal issues, for which it has achieved mass support. Opposition parties have been inclined to play on communal passions and sensitivities with the expectation that intensified communalism would split the Alliance. While the Alliance professes to be dedicated to the principles of constitutionalism and democracy, oppositions claim that this is only because it has not faced serious challenge from a constitutional opposition. This allegation was partly substantiated by the events following the 1969 crisis produced by the May 13th riots. Using emergency powers, democracy was suspended for 22 months during which time the federal government was able to regain its political dominance. Its control over radio

²¹⁹ Crouch, *Government and Society in Malaysia*, (St Leonards 1996) 13.

²²⁰ Means, *Malaysian Politics*, 2 ed., (London 1976) 445.

broadcasting and the press, through licensing of publications and importation laws,²²¹ also ensured its persuasiveness.²²²

Following the riots in 1969, the government created a National Consultative Council composed of government appointed representatives. When the Council came into being in January 1970, it comprised 65 members representing federal and state governments, political parties and interest groups. It was charged with the responsibility of finding permanent solutions to racial problems to ensure that the 1969 crisis does not recur. The National Operations Council, the body in which government administrative power was centralised during the Emergency, retained the ultimate power to approve, modify or reject any proposal from the Consultative Council.²²³

The anticipation of the end of emergency rule was announced soon after the May 13 riots. Parliament was reconvened in February 1971. A White Paper was released by the Government proposing a series of constitutional amendments designed to achieve two objectives:

[T]o remove sensitive issues from the realm of public discussions so as to allow the smooth functioning of parliamentary democracy; and to redress the racial imbalance in certain sectors of the nation's life and thereby promote national unity.²²⁴

This first objective was achieved by constitutional amendments permitting the prohibiting of public discussion or criticism of various parts of the *Constitution*, including those relating to the powers and status of the Malay Rulers; citizenship; the special position of the Malays; and the use of Malay as the sole national language. These prohibitions may apply even to the Parliament. The amendment of these constitutional provisions cannot

²²¹ An amendment was made to the Control of Imported Publications Act (1958) in 1972 to empower the Minister of Home Affairs "to ban or censor any imported publication deemed prejudicial to public order, national interest, morality, or security." Means, *Malaysian Politics*, 2 ed., (London 1976)138).

²²² For discussion on social foundations of Malaysian politics, see Means, *Malaysian Politics*, 2 ed., (London 1976)417-454).

²²³ *Ibid.*(400-401).

²²⁴ Means, 'Special Rights' as a Strategy for Development: The Case of Malaysia, *Comparative Politics*, vol. 5 (1972) 57.

be made without the consent of the Conference of Rulers.²²⁵ Consequently, once entrenched in this way, these sections of the *Constitution* are virtually unamendable.²²⁶ Earlier, the government issued an emergency decree amending the *Sedition Ordinance* restricting freedom of speech and press by making it a “seditious tendency” to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provision of Part III of the *Constitution* or Articles 152, 153, and 181 of the *Constitution*.²²⁷

In pursuit of the second objective, that is, the redress of the racial imbalance in certain sectors of national life to promote national unity, the Government proposed to extend and expand the system of Malay special rights. This was to ensure a greater proportion of Malays entering professions in which they were grossly under represented. A proposed amendment to the *Constitution* was passed giving the Yang di-Pertuan Agong power to reserve places for Malays at postsecondary institutions “in those selected courses of study where the members of Malays are disproportionately small.”²²⁸ Although public criticism of these policies was prohibited, criticism of their administration and implementation was not. Critics of the government have been able to refer to inconsistent and contradictory policies or the discrepancies between its promises and its performance. Fundamental policy questions remains prohibited. Means observes of the results:

²²⁵ Article 38(2) of the Federal *Constitution* provides that, “The Conference of Rulers shall exercise its functions of - (a) electing, in accordance with the provisions of the Third Schedule, the Yang di-Pertuan Agong and Timbalan Yang di-Pertuan Agong; (b) agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole; (c) consenting or withholding consent to any law and making or giving advice on any appointment which under this Constitution requires the consent of the Conference or is to be made by or after consultation with the Conference, and may deliberate on questions of national policy (for example changes in immigration policy) and any other matter that it thinks fit.” The Fifth Schedule provides that the Conference of Rulers shall “consist of Their Royal Highnesses the Rulers and the Yang di-Pertua Negeri of states not having a Ruler.”

²²⁶ Means, 'Special Rights' as a Strategy for Development: The Case of Malaysia, *Comparative Politics*, vol. 5 (1972) 58 and 402).

²²⁷ Government of Malaysia, Emergency Ordinance No. 45 of 1970, as cited in *Ibid.* (402).

²²⁸ Means, *Malaysian Politics*, 2 ed., (London 1976) 403. In 1970, enrolment rates at these institutions differed by ethnic groups. The higher the level of education, the greater the preponderance of Chinese and the fewer the Malays. Records show that in 1970, 43% of university students were Malays, half were Chinese and Malays were particularly underrepresented in the Sciences, at 188 Malays versus 1222 Chinese. See Klitgaard and Katz, *Overcoming Ethnic Inequalities: Lessons from Malaysia*, *Journal of Policy Analysis and Management*, vol. 2, (1983) 333-349.

It is easy to be critical of Malaysia's partially paralysed democratic institutions, her limitations on fundamental freedoms and individual liberties, and her reliance upon ascriptive special privileges based on ethnicity. It is much more difficult to devise alternative strategies which will produce a more unified and democratic society. The critic and analyst, unlike the politician, do not have to face the consequence of failure. In assessing the Malaysian experiment in nation-building and social reconstruction, it is important to keep in mind that it is no easy task to forge a dynamic modern and unified nation from a society seriously divided along communal linguistic and cultural lines, as well as stratified by education, class, functional groupings and wealth.²²⁹

THE MALAYSIAN CIVIL SERVICE

Development and Transition

Merdeka (independence) for the Federation of Malaya was both a break with its recent past and the consummation of it. As discussed, the resultant federal structure is a compromise to achieve the ideal of national unity between Malays who bore local loyalties to their own Sultans and states, and the major immigrant Chinese and Indian communities who played significant roles in Malaya's economic development. The period between *Merdeka* and September 16, 1963, when the Federation of Malaya became absorbed into the greater Federation of Malaysia, was a period when the Westminster system of government, introduced in stages during the colonial regime, provided Malaya with one of the most stable political systems in South East Asia. In the span of only six years and 15 days, not only did Malaya experience a successful end to Communist insurgencies but saw dramatic changes in the development of the country. Major expansion and diversification of the economy²³⁰ and educational development²³¹ were at a pace unimaginable during the colonial period. The Malaysian civil service is to be found within this framework of parliamentary government. It is defined by Article 132

²²⁹ Means, *Malaysian Politics*, 2 ed., (London 1976) 454.

²³⁰ Malaysia at that time had the best rate of economic growth in South East Asia. Nonetheless the economy was largely dependent upon natural rubber for foreign exchange earnings and the rising costs of production, coupled with both a downward trend in the world price and the competition of synthetics did not augur well for the future. Consequently, replanting schemes were designed to raise per acre yields and diversification into palm oil and other products were undertaken. See Ness, *Bureaucracy and Rural Development in Malaysia*, (Berkeley 1967) 66-69.

²³¹ Total school enrolment increased by over 400,000 to 1.3 million from 1956 to 1962. The number of pupils in English language schools more than doubled from 199,689 to 406,480 in that same period. See *Malaysia, Buku Rasmi Tahunan, Official Year Book*, 1963 (Kuala Lumpur, Government Press, 1964) at 532, as cited in Scott, *Political Ideology in Malaysia Reality and the Beliefs of an Elite*, (New Haven and London 1968) 4.

of the *Constitution* as covering the general public service of the federation, the public service of each state,²³² the joint public service, the armed forces, the judicial and legal services, the police force and the education service.

The civil service substantially contributed to the Federation's success in developing and executing its ambitious development plans. It has continued to play a major role in the formulation and implementation of major government policies to this day. The values and beliefs of the civil service as a whole, and civil servants in particular, are prominent in charting Malaysia's experience not only in economic development but in the emergence of its democratic traditions. Scott observed in 1968:

It is not really so amazing that the inertia created by bureaucratic plans and programs can often survive changes in political leadership: the West itself is no stranger to this phenomenon. But I would suggest that it is more pronounced in new nations, where the bureaucracy has generally broader responsibilities than in the West, and where new political elites are likely to have vaguer policies and less experience in translating their diffuse notions into concrete programs. The civil service remains, often by default, the major center from which plans for a new society emanate and by which they will be executed. Given this continuing central role for the bureaucracy, the ideology of civil servants remains of crucial importance for the future postcolonial world regardless of political changes. The long-term chances for the creation of an open, participatory society and for economic development depend, in large measure, on the beliefs and ideals they represent.²³³

²³² Each of the five former Unfederated Malay States and the east Malaysia states of Sabah and Sarawak has both a State civil service (except Perlis) and a State Clerical Service. The civil services in Sabah and Sarawak in particular, have been arenas of conflict in federal-state relationships and the process of nation-building. This was made more complex when the formation of Malaysia overlapped with the process of replacing expatriates civil servants in the two states. As in Malaya, the question of which ethnic group would be the chief beneficiaries from the departure of the British arose, but with added complexity as there was no single equivalent of "the Malays". In each territory there were several indigenous ethnic groups corresponding roughly to the Malays, which fell into the two broad sub-groups of Muslims and non-Muslims. There was also the additional possibility that the replacements would come from civil servants from Malaya. Also, at the time, the supply of university graduates was limited. North Borneo (Sabah) had 119 local people who had completed university or technical college, including 115 Chinese; Sarawak had 214, of whom 205 were Chinese. This was among the issues which extended the time taken to complete the replacement program. For further discussion on federalism and nation-building in respect of the civil service of the states of Sabah and Sarawak, see Milne and Ratnam, *Malaysia - New States in a New Nation*, (Letchworth, Hertfordshire 1974) 31-39.

²³³ Scott, *Political Ideology in Malaysia Reality and the Beliefs of an Elite*, (New Haven and London 1968) 18-19.

Malayanisation Program

Independent Malaya inherited its civil service structure from the British colonial administration which had grown around, and within the diverse but interrelated political entities in the archipelago. Its oldest ancestor is the original British East India Company civil service that originated in the Straits Settlements. On the eve of World War II the senior posts in the British colonial bureaucracy were almost exclusively staffed by expatriate Britons. From the post war Malay point of view, the fact that it was expatriate and not indigenous in composition was a feature that required dramatic change. The replacement of British officials by Malaysians, called Malayanisation, was accelerated in the late 1950s into a crash program intended to achieve complete Malayanisation of the various branches of the service by 1965 at the latest.²³⁴ Expatriate officers serving in the Malayan public services were replaced by native officers on payments of variable sums of compensation according to a fixed scale drawn up by the British administration and accepted by the Federation of Malaya.²³⁵

It was decided as a general policy by the Malayanisation Committee at the London Constitutional Conference in 1956 that the Malayanisation program should not proceed faster than the normal occurrence of vacancies and that the exact rate of Malayanisation should be determined primarily by the availability of competent and experienced human resources.²³⁶ In its actual implementation, in many cases, expatriates were only requested to retire when there was a competent understudy. This made for a smoother and less

²³⁴ The process of replacing expatriate officers with natives had started in 1896 when the first suggestion of local recruitment was put forward and intensified after the Malay Administrative Service (MAS) was created in 1910. The purpose of MAS was to provide a group of native administrators to staff the lower echelons of the bureaucracy. In later years, the senior administrative service, the Malayan civil service was opened to Malays through promotion from the MAS. See: Abdullah Sanusi Ahmad, Norma Mansor and Abdul Kuddus Ahmad, *The Malaysian Bureaucracy: Four Decades of Development*, (Kuala Lumpur 2003) 22-42.

²³⁵ The expense of the Malayanisation program to the Federation government was great. With slightly more than 80 per cent of the expatriate officers retired as of January 1, 1962, the cost to the government in the payment of loss-of-career compensation alone has been more than US\$15 million. The total cost of the program by the close of the operative period may have exceeded US\$23 million. See Tilman, *Bureaucratic Development in Malaysia, Asian Bureaucratic System Emergent from the British Imperial Tradition*, (Durham 1966) 589-590.

²³⁶ In 1954, realising that locally recruited officers would necessarily assume increasing responsibilities in the public services, the government initiated a concentrated program whereby Malayan Officers were sent to the University of Malaya and abroad to receive the necessary training to equip them to replace British officers. See *Ibid.*(587).

hostile transition than in other colonies which implemented similar programs. In 1957, expatriate officers constituted 67% of the Malayan Civil Service (MCS).²³⁷ By early 1962 there were about 9.2% expatriates (26 officers) left in the service. In technical and professional fields, the Malayanisation program extended over a much longer period as there were a limited number of local officers to take the place of the expatriates and training programs first had to be expanded.²³⁸ A summary of expatriate officers serving in Malaya over this period illustrates their falling numbers.

Malayanisation of the Senior Bureaucracy²³⁹

Date	Entitled officers remaining
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²³⁷ The MCS is what is presently known in Malay as the *Perkhidmatan Tadbir dan Diplomatik* (PTD). PTD officers occupy virtually all key positions in the federal bureaucracy, including the most senior ones in the ministries and departments. This group makes up the bulk of Division I officers together with various professional services such as doctors, engineers and academics. During the colonial period, the MCS constituted the predominant voice in the day-to-day control of government. The decisions of the MCS officers, particularly those in the field were discretionary. MCS personnel had a hand in policy formulation at the federal level. MCS officers constituted a large and important part of the Federal Legislative Council. In 1937, for example, they accounted for almost one-half of the total membership. These included, among other MCS members, the four Residents, the Federal Secretary, the Legal Adviser, the Financial Adviser, the Adviser on Education, the Commissioner of Customs and Excise, the Controller of Labour, and the Secretary for Chinese Affairs. See Federated Malay States, Proceedings of the Federal Council, 1937 (Kuala Lumpur:Government Press, 1938) as cited in Tilman, *Bureaucratic Transition in Malaya*, (Durham 1964) 102. While other Division I services are confined largely to individual ministries, or at most to several ministries, officers of the MCS are to be found assigned to key positions in every Ministry. In addition to a number of other key posts, senior MCS personnel hold positions as Permanent Secretaries or Secretaries throughout the government. MCS officers staff the State Secretaryships in six of the states of the Federation; and they serve as Commissioners of Land and Mines in eight states. Moreover, in all of their assignments, it is the exception rather than the rule for the senior MCS officer of the ministry to be subordinate in rank and salary to the senior professional officer of the ministry. Not only are MCS officers to be found in policy making positions in the federal capital but, historically, the influence of the Service has always covered the length and breadth of the Peninsula. Administrative officers of the MCS are posted to every state of the Federation, and many of these are located in field positions where they provide major contacts between the government and the governed. A cursory observation of the institutional structure alone is inadequate to demonstrate the dominant position enjoyed by the MCS in the overall bureaucratic structure. The grade structure, the pan-governmental nature of MCS appointments, and the broad geographic distribution of members of the senior administrative service attest to its elevated importance in the Malayan bureaucratic system. For a detail discussion of the position of the MCS in the bureaucratic hierarchy, see: Tilman, *Bureaucratic Transition in Malaya*, (Durham 1964) 102-120.

²³⁸ Abdullah Sanusi Ahmad, Norma Mansor and Abdul Kuddus Ahmad, *The Malaysian Bureaucracy: Four Decades of Development*, (Kuala Lumpur 2003) 22. For a detailed discussion of the Malayanisation scheme, see also Tilman, *Bureaucratic Transition in Malaya*, (Durham 1964) 63-81.

²³⁹ Tilman, *Bureaucratic Development in Malaysia, Asian Bureaucratic System Emergent from the British Imperial Tradition*, (Durham 1966) 590. This table has been tabulated by Tilman from unpublished statistics provided by the Federation Establishment Office.

May, 1956	2,060
July, 1957	1,564
January, 1958	936
January, 1959	736
January, 1960	555
January, 1961	382
July, 1962	200*

*Estimated

The introduction of ministerial government during the early 1950s, made some organisational changes necessary, especially the establishment of statutory commissions to put civil service promotion and recruitment outside the sphere of politics.²⁴⁰ It was also necessary to re-establish the rule that civil servants could not play an active part in political parties as many had done, especially Malays in the UMNO, in the period up to 1954.

The Bureaucratic Elite: Pattern of Beliefs

It is not the primary purpose of this study to trace the evolution of the Malaysian civil service from the colonial period. The civil service is what it is because of the peoples and their characteristics and traditions. However, the contours of responsibility within which

²⁴⁰ The Colonial Office White Paper No. 197 of 1946 introduced a new era in the internal administration of the colonial services. Great Britain, recognising that “the future of each Colony rests ultimately in the hands of its own people,” proposed to establish in each colony conditions that would foster the development of local responsibility. One means of producing conditions conducive to responsible self government was the establishment of local Public Service Commissions. From January 18 to February 6, 1956, British and Malayan representatives met in London to work out a basic scheme to secure “the early establishment of a fully self governing and independent Federation of Malaya within the Commonwealth on the basis of Parliamentary institutions.” Recognising that “an efficient and contented public service ... is of particular importance during times of rapid political change,” and that this can be achieved only when there is “a reasonable security of tenure and absolute freedom from the arbitrary application of disciplinary provisions,” they recommended including in the Federation Agreement a Public Service Commission, a Judicial Service Commission, and a Police Service Commission. Following the recommendations of the London Conference Report, the three commissions (designate) as they were officially known, began functioning on January 1, 1957. See Federation of Malaya, Second Legislative Council (First Session), Minutes and Council Papers (Kuala Lumpur, 1957), Paper No.6 of 1956, “Report of the Federation of Malaya Constitutional Conference Held in London in January and February 1956,” 3-10 cited in Ibid.(569).

the civil service functions are in many ways determined by characteristics of Malaysian political cultures, a progression which cannot ignore the legacy of colonial rule:

Colonial rule was more than a system of government, alien and transient. It was also a powerful agent of change which has left its mark on Malaysia in many places - in its constitutional and administrative structure, in its economic development and its multi-racial communities, in its educational and legal systems ...²⁴¹

James C Scott,²⁴² in his 1968 empirical analysis of the political ideology of a westernizing elite group of civil servants, remarked that the most striking aspect of the political views of the senior civil servants is the almost complete absence of anti colonial or anti British sentiment. In his analysis, Scott found that the civil servants, most of whom had had experience working under direct supervision of expatriate officers, considered themselves to be nationalists and patriots. They were proud of Malaysia's independence. What Scott found to be missing was any trace of bitterness that he had expected to find. This led him to ask the questions: how is it that for these civil servants, being nationalists does not mean being anti British or anti-Western; and, being proud of their independence why did they not vilify colonial rule? The causes of these anomalies he suggested, is the nature of Malaya's colonial experience:

The relative brevity of colonial rule, a measure of indirect rule, the lack of over whelming economic hardship, the absence of a substantial, unattached "shadow" elite, and the early loss of colonial *raison d'être* all conspired to make Malaya's colonial experience comparatively untraumatic.²⁴³

Scott describes the transfer of power in Malaya as almost purely an administrative transfer. The local political leadership was virtually identical in education, outlook, and social background with the local bureaucratic elite. He illustrates that one could say of Malaya as has been said of Sri Lanka that:

The 1947 transfer of sovereignty consisted of the replacement of conservative, moderate, aloof British civil servants by conservative, moderate, aloof British educated Ceylonese notables who, to more nativistic eyes at least "resembled the former colonial rulers in everything but the color of their skin".²⁴⁴

²⁴¹ Gullick, *Malaysia: Economic Expansion and National Unity*, (London 1981) 19.

²⁴² Scott, *Political Ideology in Malaysia Reality and the Beliefs of an Elite*, (New Haven and London 1968).

²⁴³ *Ibid.*(9).

²⁴⁴ Clifford Geertz, "The Integrative revolution," in Geertz, ed., *Old Societies and New States* (New York, The Free Press, 1963), 121 as cited in *Ibid.*(10).

Politics in Malaysia, during that period, is seen by Scott almost as three different political systems, each corresponding to a racial group, conducting what he calls “international relations” at arms length within the Federation. What collaboration occurred he describes as for the most part among:

that thin upper stratum of Western-educated Chinese, Indians, and Malays, many of whom are civil servants. Working with each other at some short-term sacrifice and under great handicaps, they have managed thus to keep the fabric of the nation tenuously whole.²⁴⁵

In spite of the Malayan Emergency from 1948 to 1960 and the undeclared war over Borneo in the Konfrontasi with Indonesia from 1962 to 1966, Malaysia has never encountered any social upheaval of the proportions of the French Revolution or the fight for independence by Indonesia. Social changes have sometimes come suddenly to Malaysia, but they come in digestible amounts and usually without sufficient social disorganisation to destroy continuity. Scott, however, observed that even among these small elites of senior civil servants, fear played its role. Never absent from their thoughts was the fragility of their nation, the awareness that the future was uncertain and that all could be lost tomorrow or the day after, and a general apprehension that “cool heads, may not in the end, prevail”. To Scott, their fear had an ample basis in the realities of the Malaysian experience. He noted that what is peculiar and important to Malaysia is that its particular colonial experience had tended to make politics milder and less explosive, while communal feelings had had the opposite effect. In 1968, according to Scott, an important factor to be decided on was the contest between two social processes, “acculturation of the masses by westernised leaders, and the mobilisation of these masses as a political force.”²⁴⁶ If the latter were to surpass the former, the apprehension was that the elites with western beliefs and ideals would be replaced by those with a significantly different vision of the country’s future. Today, Malaysia continues to be the scene of this contest and the questions asked by Scott remain valid, albeit in a context which is now much less directly influenced by the colonial experience:

[W]hat are the values the elite hopes to diffuse? Are they Western? If so, in what ways and with what selective emphasis? If these values are not entirely western, then what

²⁴⁵ Ibid.(14).

²⁴⁶ Ibid.(17).

other values and beliefs do the new elite represent? The outcome of the contest depends, for the elite, upon its numerical strength, the power it exercises, and, most fundamentally, on the values and beliefs it stands for - that is, its ideology.²⁴⁷

In the course of his study, Scott asked Inche Hussain, a civil servant, of what the word freedom made him think. He replied: "Your mind is free - you can do what you like - your independence is not threatened. Freedom of speech, that is important." However, later in the same session when Inche Hussain was pondering whether freedom of speech can "go too far", a new value appeared that seemed to Scott to suppress free speech.

Inche Hussain answered:

Because if there is too much [freedom of speech] then there would be a tendency to abuse these freedoms and therefore it would be difficult to administer. There would be less respect for government - for the ruling government.

To the same question another respondent, Inche Ismail, answered:

If freedom is given to a man who is confident, well studied, who has grasped the important things in life, then its okay, but it's not if it's given to one who needs guidance and hasn't grasped the meaning of life in its fullness. If there is too much freedom in politics, every Tom, Dick, and Harry will start mixing in. This would be disastrous to the administrative side and all those sections that deal with the enforcement of the law.²⁴⁸

Scott's work is important in that it analyses the pattern of beliefs of senior civil servants at a time when the Malaysian bureaucracy was emerging from the upheaval of the independence and replacement of the expatriate officers. The views he found were those of people who, apart from being civil servants nurtured in the ideals of British bureaucratic traditions,²⁴⁹ had had first hand experience of living their adult lives in a situation of political crisis. Their views illustrated the significant impact of Malaya's

²⁴⁷ Ibid.(17).

²⁴⁸ Ibid.(183-184).

²⁴⁹ Postcolonial experience has enhanced the attractiveness of strong, paternalistic rule. Paternalistic elite rule is quite consonant with the pattern of both colonial and traditional regimes. Each limits popular participation and rejects demands while accepting popular entreaties: each is guided by an elite that believes it rules by virtue of its superior qualifications; and each considers the populace subjects rather than citizens-what the people want is less central than what the elite knows is best for them. The colonial bureaucracies built by Europeans generally strengthened the traditional tendency to see power as the hierarchical ranking of people. The fact that in time it provided career opportunities to locals, coincided with the local instinct to think of power arrangements as mirroring social status. The match of old and new ideas about power was made even better because the end objective of colonial rule was essentially to preserve law and order, and, thus, the purpose of government remained that of upholding the social and cosmic orders. See Ibid.(251) and Pye, *Asian Power and Politics: the Cultural Dimensions of Authority*, (Cambridge, Massachusetts and London 1985) 52.

colonial experience and recent independence on political beliefs formed during that period. Scott observed that time and again during conversations that reflected beliefs sincerely held, that the “democratic beliefs of these men tended to crumble when besieged by beliefs that seemed more firmly rooted.”²⁵⁰

Malaysia as an “Asian Democracy”,²⁵¹ has a civil service which has a relatively high prestige and morale in that bureaucrats see themselves as protectors of the people.²⁵² This was the sentiment held by Inche Hussain and Inche Ismail, who represented Malaysian civil servants in Scott’s 1968 study. Today, when the relationship between governors and the governed are being impacted by the globalisation of markets and information technology as well as pressures to adopt international standards and values, the question of how much of such sentiment remains will affect how Malaysian civil servants frame the relevance of digital democracy to policy making.

The Institutional and Administrative Legacy

Changes in the Malaysian civil service have taken place within the framework of the evolutionary development of the country, from the maintenance of law and order stage at the time of *Merdeka* to the globalisation era of the 2000s. Siddiquee²⁵³ divides administrative reform in Malaysia into three major phases: (i) development

²⁵⁰ Scott states that: “The most important basis for strong, elitist rule is the realisation that full popular rule might tear the nation apart. In Malaysia, should the primordial loyalties and traditional preferences of the masses become politicised in advance of any strong identification with the national community, there is every reason to believe that the national unity would perish.” Scott, *Political Ideology in Malaysia Reality and the Beliefs of an Elite*, (New Haven and London 1968) 252.

²⁵¹ This refers to nations in East Asia, South East Asia and South Asia where characteristics of liberal democracy are found such as generally free and fair elections with universal franchise, the private lives of citizens are generally free from governmental interference or surveillance, there is access to a diverse, only partly censored media, and, interest groups formed to lobby policy makers. However, because of the overwhelming problems each nation has faced in state and nation building, including economic development, national security, and internal insurgency, authoritarian components also exist that, when combined with the democratic elements, produce Asian-style democracy which still stresses elements of hierarchy, status, gratitude and personalism. Here, the notion of democracy is accepted but Western “liberal” elements, referring to open competition, maximum participation by the citizenry and the setting of limits to governance over society and over individual, are qualified. See Neher, *Asian Style Democracy*, *Asian Survey*, vol. 34, (1994) 949-961.

²⁵² Inoguchi, *Asian-Style Democracy?*, In Inoguchi, Newman and Keane (eds.), *The Changing Nature of Democracy*, (Tokyo 1998) 173-183.

²⁵³ Siddiquee, *Administrative Reforms and Innovations in Malaysia: An Historical Overview*, *The International Conference for the 50th Anniversary of KAPA*, (Seoul, South Korea 2006).

administration and institution-building (1957-1980); (ii) towards an efficient and effective administration (1981-1990); and, (iii) excellence in service provision, ethical and accountable administration (1990 onwards).

The first major policy which tested and shaped the civil service was in the context of rural development and its Red Book system²⁵⁴ in the early 1960s against the background of the formation of Malaysia and the Emergency. The second was the New Economic Policy (NEP) in the 1970s in which the public sector was the main vehicle for its implementation. It was the decade in which many public enterprises were established to fulfil the NEP's aim to reduce poverty and economic inequality in society. The 1980s marked the industrialisation of the country which increased the role of the private sector and began the privatisation policy. When NEP ended in 1990, two major documents were introduced as guides to national development in the following two decades, namely, the National Development Policy (1991-2000), and Vision 2020 (1991-2020). Both documents are complementary in nature. They envisage industrialization and the private sector as the base of development and highlight the importance of public-private cooperation to maintain Malaysia's competitive edge in an era of a global market place. The 1990s also marked a rapid growth in communication and information technology.²⁵⁵

Changes in circumstances and in the policies and priorities of the government have caused reform agendas for the public service to vary over time. Although the nature, scope and directions of the reforms currently underway may be very different from those in the past, innovation in governance had always been present. In more recent years, for example, knowledge management has become increasingly critical in the Malaysian public service. It requires civil servants to share information and to use information and knowledge contributed by others. More recently, the role of the "third sector" which comprises professionals, citizen and community-based organisations, has taken a much

²⁵⁴ It is known as the Red Book system after the colour of its cover. The system attempted to effectively mobilise human and other organisational resources (district, *mukim* and village) in order to produce and translate ideas into project proposals for higher-level approval and subsequent implementation. It enabled the administrative system to respond quickly and efficiently to increasing demands of rural development. See Abdullah Sanusi Ahmad, Norma Mansor and Abdul Kuddus Ahmad, *The Malaysian Bureaucracy: Four Decades of Development*, (Kuala Lumpur 2003) 221.

²⁵⁵ *Ibid.*(1-3).

higher profile. The civil service has come to recognise the benefits of cooperation with such groups, especially in areas where it lacks adequate resources, knowledge and expertise.²⁵⁶

From the emphasis on rural restructuring during the time of former Prime Minister, Tun Abdul Razak, to the ascendancy of Tun Dr Mahathir Mohamad, who steered Malaysia's economic development towards industrialisation, major developments on the national and global fronts had a profound impact on governmental policies and programmes. The policies also partly depended on improving civil service management. Mahathir's policies, stressed the expanding role of private sector involvement in national development. In this area, there is evidence of cooperation among government ministries, departments and agencies, and the private sector. It is common practice to form committees, task forces and teams with a wide representation to cooperate in capturing the best inputs on the issues to be resolved. However, this is not uniform across all sectors. It is apparent in economic sectors, but less so in others. Two notable areas where it is absent are those where communal claims have been divergent, education and home affairs. The tensions preventing such approaches being used are between balancing national dictates of standardisation with communal demands for accommodation.²⁵⁷

Representativeness of the Civil Service

The representativeness of the civil service has always been an important and sensitive issue. It is important in considering how ethnic representation may affect the responsiveness of civil servants towards different social groups in Malaysia and these groups' perception of the legitimacy of the state.²⁵⁸

²⁵⁶ Abdul Halim Ali, *Serving in the Knowledge Age: Realigning the Public Service for Knowledge Advantage*, *International Review of Administrative Sciences*, vol. 67, (2001) 273-285.

²⁵⁷ For a discussion of the Malaysian Public Service reforms see Siddiquee, *Public Service Innovations, Policy Transfer and Governance in the Asia-Pacific Region: The Malaysia Experience*, JOAAG, vol. 2, (2007) 81-91 and Siddiquee, *Administrative Reform in Malaysia: Recent Trends and Developments* *Asian Journal of Political Science*, vol. 10, (2002) 105-130.

²⁵⁸ Lim, *Ethnic Representation in the Malaysian Bureaucracy: The Development and Effects of Malay Domination*, *International Journal of Public Administration*, vol. 30, (2007) 1503-1504.

Before independence, the Malay community sought to retain power and control over the machinery of policy making and public administration. One of their major demands was that the British administration reserved for them the majority of civil service positions, a cause to which that administration was generally sympathetic. Thus, the report of the Constitutional Commission [the Reid Commission] contained a recommendation of four Malay civil servants for each non-Malay.²⁵⁹ In 1957, the year of independence, there were 220 British expatriates, 128 Malays and 12 non Malays within the MCS. In actual fact, Malays continued to greatly outnumber the non Malays as the 4:1 quota introduced in 1953, applied only to fresh appointments.²⁶⁰ Malay control of the bureaucracy, especially the MCS or PTD as it came to be known, armed with its important decision-making authority, is crucial and forms part and parcel of the system of UMNO-led Malay political dominance. As Crouch²⁶¹ points out, this includes the domination of the institutional pillars of the state; the bureaucracy, the armed forces and the police, the judiciary, and at the symbolic peak, the monarchy.

At *Merdeka*, Malaysia inherited a civil service which was largely geared towards regulatory functions of colonial administration. Modernisation of the civil service including Malayisation, as discussed, and institutional expansion was necessary “in order to enable it to tackle challenges of nationhood and steer the process of economic development”.²⁶² The civil service was not only an administrative machine to deliver essential services but also became a promoter of nation-building by planning and implementing programmes of socio-economic development. This enabled an orderly

²⁵⁹ According to Tillman, “It was not until 1953 that any non-Malay Asians was admitted to the MCS. It was at that time that the high commissioner, Sir Gerald Templar, with the consent of the Malay rulers and the advice of the Executive Council, proposed the admission of non-Malays. However, according to the high commissioner, in view of the necessity “that the special position of the Malays should be retained in the civil service and improved in the whole economic field” it was intended that recruitment of non-Malays should “be limited to one for every four Malays admitted . . . in government at the time of independence. Thus, while the total bureaucracy of the Federation has achieved a cosmopolitan quality, the administrative services have remained almost a Malay preserve, and it is the MCS that predominates in the bureaucracy and plays a vital role in the conduct of government.” Tillman, *Bureaucratic Development in Malaysia, Asian Bureaucratic System Emergent from the British Imperial Tradition*, (Durham 1966) 598. See also Crouch, *Government and Society in Malaysia*, (St Leonards 1996).

²⁶⁰ Lim, *Ethnic Representation in the Malaysian Bureaucracy: The Development and Effects of Malay Domination*, *International Journal of Public Administration*, vol. 30, (2007) 1509-1510.

²⁶¹ Crouch, *Government and Society in Malaysia*, (St Leonards 1996) 147.

²⁶² Siddiquee, *Administrative Reform in Malaysia: Recent Trends and Developments* *Asian Journal of Political Science*, vol. 10, (2002) 106.

transition from the British colonial rule after independence and also the survival of the Alliance government. More importantly it ensured communal peace. Greater political responsiveness through a Malay controlled bureaucracy constitutes UMNO's main strategy for winning Malay political support.²⁶³

The clash between local politicians and colonial administrators is a general feature of most processes of decolonisation. British policy made a general effort to provide a bridge between foreign "absolute rule" and "national popular rule" by a partial transfer of authority.²⁶⁴ Esman, the architect of the blueprint for administrative reform adopted in 1966, recommended that political leaders and senior administrators had to:

be cohesive, maintain mutually supportive interrelations, and together, symbolise authoritative government in the country... . [T]he burden of the state for resolving communal conflict falls upon the governing elite, because the political institutions of participation and representation cannot foster intercommunal cooperation in the country.²⁶⁵

In line with the recommendations of the Montgomery-Esman Report, administrative reforms were given priority over more difficult and sensitive political ones. Thus, the underlying force for modernisation of the Malaysian civil service is deeply rooted in the twin objectives of ensuring equitable economic development and managing communal conflict. A study of economic development in 41 countries and their history spanning a period of 130 years concluded that:

the single most important explanatory variable [of government] is political organization and the administrative competence of government.²⁶⁶

Lim²⁶⁷ points out that as government is based on the Westminster model, Malaysia's civil service is placed under the direct control of ministers, who collectively constitute the

²⁶³ Lim, The Representativeness of the Bureaucracy in Malaysia: The Problems of Administration in a Plural Society, *SEDAR/INSAP Seminar on Civil Service Diversity*, (2002)24-27.

²⁶⁴ Tinker, Structure of the British Imperial Heritage, In Braibanti (ed.), *Asian Bureaucratic Systems Emergent from the British Imperial Tradition*, (Durham 1966) 80.

²⁶⁵ Milton Esman, cited in Tharan, Prospects for Administrative Reform in Malaysia, *Building Institutional Capacity in Asia Conference*, (Jakarta, Indonesia 2001) 63-77.

²⁶⁶ Reynolds, The Spread of Economic Growth to the Third World: 1850-1980, *Journal of Economic Literature*, vol. 21, (1983) 941-980.

²⁶⁷ Lim, Public Administration the Effects of Executive Dominance, In Wah and Teik (eds.), *Democracy in Malaysia Discourses and Practices*, (Richmond, Surrey 2002).

political executive. Civil servants are supposed to be politically neutral servants of their respective ministers. Their actions are deemed to be actions of their minister. Through the principle of ministerial responsibility, parliament holds ministers collectively accountable for their overall conduct of government and also individually accountable for their own actions and the actions of the civil servants in their respective departments:

The primary means of making public administration serve the ends of democratic government is to subject it to popular political controlTo be useful, public administration must also develop the capacity to attain goals. But political control is primary, for it determines for what purposes, for whom and how well whatever available capacity is used.²⁶⁸

This confirms the important partnership between politicians, in their capacity as ministers, and civil servants, in the administration of the country. This relationship affects the autonomy of civil service and this has consequences for the country's policy making processes.

In Malaysia, the civil service and the political elites have always maintained close ties which has resulted in a high degree of trust in each other. Fostered by the close cooperation focussed on achieving independence, this bond was also nurtured by the facts that they were also of the same ethnic Malay and upper class, or aristocratic, background and often had been educated in Britain. These factors have faded with time and economic development. The common ethnic background of politicians and senior civil servants remains an important factor constituting shared values, and hence increased trust in, and power for, civil servants.²⁶⁹

²⁶⁸ Ibid.(165).

²⁶⁹ In 1964, R.O. Tilman wrote: "Statistics suggest that most of the political, bureaucratic, royal and perhaps military elite have come through approximately the same process of socialisation; they all speak the same political language (in form as well as in meaning); they have all accepted the same political game; they are willing to abide by roughly the same rules of the game. There are of course dissenters, but these are presently outside, not inside the government. Recruitment procedures at the present time assure the continuance of a bureaucracy drawn from this socialisation process, and political realities seem to indicate that the general character of the political, military, and royal elite is not likely to change in the foreseeable future. Thus, it is only within this general elite consensus that one can speak of the neutrality of Malayan bureaucracy. This may not constitute a genuine neutrality; it simply means that this neutrality has not yet been tested." Tilman, *Bureaucratic Transition in Malaya*, (Durham 1964) 603.

Lim²⁷⁰ argues that although generally civil servants resent partisan or biased political interference which may lead to objectionable incidents such as, the augmentation of business interests with state patronage or cronyism, they see ministers as powerful and ministerial control as legitimate. As ministers are leaders of the entrenched ruling coalition, the executive is dominant. It is rare that ministers' orders are resisted, much less successfully, by civil servants. This according to Lim, is also supported by the continuous rule by the same coalition since independence in 1957 which permits planned ministerial preparation in experience and expertise in specialised policy areas and departmental management. Apart from ministerial capacity, there is also an increasing use of sources of advice and information other than the civil service by ministers. These factors point towards an increased ministerial search for policy control. Whether in Malaysia ministers are policy selectors or initiators is an important question to consider in determining the role of civil servants in policy making.²⁷¹

Comparing patterns and outcomes of administrative reform in Malaysia, Singapore, Taiwan, and Thailand, Painter²⁷² assumed that bureaucrats, upon whom implementation of reforms depend, have a strong interest in controlling the process. However, making a distinction between two types of bureaucratic systems – autonomous and instrumental, - Painter observed that the Malaysian and Singapore bureaucracies are “instrumental”. This is based on Knill's, concept. He defines it as a bureaucratic system where:

strong political executives do not face multiple veto points; administrative norms and procedures are the subject of executive discretion rather than fixed by law or the constitution; and there is a tradition of bureaucratic subservience to the political executive.²⁷³

Albeit in respect of administrative reform, Painter concludes:

²⁷⁰ Lim, Public Administration the Effects of Executive Dominance, In Wah and Teik (eds.), *Democracy in Malaysia Discourses and Practices*, (Richmond, Surrey 2002).

²⁷¹ This has given rise to an administrative structure which generally has given priority to “effective” over “good governance”. As instituted over the NEP period, “effective governance” was feasible. For a more detailed discussion on Malaysian public service autonomy, see Ibid.(165-197).

²⁷² Painter, The Politics of Administration Reform in East and Southeast Asia: From Gridlock to Continuous Self-Improvement, *Governance: An International Journal of Policy, Administration, and Institutions*, vol. 17, (2004) 361-386.

²⁷³ Knill, Christoph. 1999. Explaining Cross-National Variance in Administrative Reform: Autonomous versus Instrumental Bureaucracies. *Journal of Public Policy* 19:113-139, as cited in Ibid.(384).

The result is an administrative system that is on the surface “reform minded” within a clearly defined set of political parameters and policy settings that reflect a strong element of bureaucratic interests, in addition to political priorities.²⁷⁴

Aligned with the above discussion, although political leaders in Malaysia may outline general directions and preferences for the determination of public policies, it is the civil service which undertakes the tasks of exploring and analysing them. In general, it is the civil service which, apart from its premier role in providing administrative services, serves as the principle tool in planning as well as implementing public policies.²⁷⁵

Malaysia, at the time of this research in 2008, has existed for 51 years. That is not a very long time in the lifespan of nations as independent states. The subsequent changing political and economic contexts both locally and globally have placed new demands for better and enhanced services by the civil service. These changes led to comprehensive reforms and innovations which have modified not only the structure of the service but also its relationship with Malaysian society at large.

Fundamentally, digital democracy commences when governments begin to interface with citizens proactively. It stems from the provision of information services for the allocation of a public space for dialogue and debate, and evolves further only if citizens in general have civic attitudes which incline them to engage with the authorities.

As has been discussed in this chapter, the task of creating a national identity coupled with the onerous task of national development has moulded both the further Malayisation of the civil service and, the limitations on normative democracy. It is not static. Changes are taking place, for example, in the orientation of the civil service towards prospects for democratic administrative reform in the country. The Chief Secretary of Malaysia, the head of the civil service, Tan Sri Mohd Sidek Hassan, in a statement on civil service commitment in 2008 stressed:

²⁷⁴ Ibid.(370).

²⁷⁵ Abdullah Sanusi Ahmad, Norma Mansor and Abdul Kuddus Ahmad, *The Malaysian Bureaucracy: Four Decades of Development*, (Kuala Lumpur 2003) 202.

There is no place in the Malaysian Civil Service for the “benevolent public official.” The “I-know-what’s-good-for-you” attitude must be shed and replaced with a system of listening to the community. The traditional regulator-regulated relationship between the public and private sector is being transformed to an ongoing and effective partnership in moving Malaysia forward ... This year we will see a persistent steer towards a more transparent public service. Creation of transparency requires collaboration from all parties concerned. We seek proactive public participation towards creating a joint culture for participatory decision making where the public are actively engaged in the process. By doing so, there will be greater empathy between the Service and the Public and we are able to optimally act in harmony with the public thinking of the times.²⁷⁶

Such keenness for collaboration may point to an increasing appreciation of the benefits of enhancing citizen participation in decision making processes. However, the real impact largely still depends on the motivation and commitment of individual civil servants. Citizen participation can only enhance policy making if those who manage it feel a passionate responsibility to create and maintain it.

NATIONAL ICT AGENDAS

The technologies of diffusion such as spectrum, networks, telephone wires or cables are pipes through which content travels.²⁷⁷ Considering ICT’s potential for enhancing citizen participation in Malaysia has to include the questions who controls these pipes and how. This involves consideration of digital convergence in, and outside the country. Of particular significance is the Malaysian national ICT agenda.

National Telecommunications Policy (NTP) and the National Information Technology Council (NITC)

Malaysia formulated its National Telecommunications Policy (NTP) for the period 1994-2020 to provide guidelines for the development of the telecommunications sector. Parties with important roles in the NTP include providers, investors and the government, particularly for investment, human resource development, and network and service facilities, absorption of new technology and research and development. The civil service

²⁷⁶ Civil Service Commitment 2008, available online at http://www.penerangan.gov.my/images/document/SPA-services_commitments2008.pdf accessed 10 December 2009.

²⁷⁷ Balkin, Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society, *New York University Law Review*, vol. 79, (2004) 17.

is also present as a developer and implementer of the policy. Inclusive in the micro objectives of the NTP is the provision of modern, sophisticated and quality communications services at a reasonable cost.²⁷⁸ Among other guidelines, the NTP provides guidance for competition, interconnection charges, tariff rates and network development.²⁷⁹

In 1994, the National Information Technology Council of Malaysia (NITC) was established. It functions as the primary advisor and consultant to the government on matters pertaining to ICT in Malaysia's national development. Chaired by the Prime Minister, the Council has a team of leading strategic thinkers from the public, private and community sectors. It symbolises a serious national effort by the government to integrate the then existing federal and state councils to streamline national, as well as state, ICT strategies. In line with its role of providing policy formulation, NITC sets the country's strategic direction for ICT, including decisions on technology adoption and industry promotion.²⁸⁰

National Information Technology Agenda (NITA).

The NITC facilitated the formulation of a National Information Technology Agenda (NITA). NITA revolved around a wider national development agenda dubbed "Vision 2020"²⁸¹ and was launched in 1996. The NITA vision is to use ICT to transform Malaysia, firstly into an information society, then a knowledge society, and, finally, a "values-based" knowledge society in eight strategic areas:

²⁷⁸ Government of Malaysia, *The National Telecommunications Policy of Malaysia (1994-2020)*, (1994).

²⁷⁹ Source: parts of the policy.

²⁸⁰ Government of Malaysia, *National Information Technology Council*, vol. 2007, (2007).

²⁸¹ In February 1991, Tun Dr Mahathir Mohamed, Malaysia's former Prime Minister delivered a speech dubbed the 'Vision 2020' speech at the inaugural meeting of the Malaysian Business Council in Kuala Lumpur. This was the speech which led to the establishment of the Multimedia Super Corridor and various ICT projects in 1996. The speech revealed his firm understanding of the importance of information as a basis of power and prosperity. Malaysia becoming information rich was to him, an ingredient among many others that he saw as necessary prerequisites for sustained growth of the country. For a more detailed examination of the contents of this speech, see Vicziany and Puteh, *Vision 2020, The Multimedia Super Corridor and Malaysian Universities*, *15th Biennial Conference of the Asian Studies Association of Australia*, (Canberra 2004) 3-6.

- i. E-economy, aimed at creating value and wealth through successful participation in the emerging knowledge driven economy;
- ii. E-public services, focused on the provision of people oriented, customer focused electronic services;
- iii. E-community, facilitated interaction and communication among communities to improve the quality of life;
- iv. E-learning, focused on cultivating a life-long learning culture;
- v. E-sovereignty, focused on building a resilient national identity;
- vi. Conferences and expositions to grow a framework and a platform for dialogue and the exchange of national and international experiences on ICT, as well as for raising the awareness of the Malaysian public about information age developments;
- vii. Demonstrator application grants to promote the use of ICT and multimedia for socioeconomic development through developing communities enabled by electronic networks, e.g., NutriWeb, CyberCare, and Neighbourhood Centres; and
- viii. The Multi-media Super Corridor (MSC) to provide a comprehensive world-class ICT environment which also acts as a global test bed for innovative solutions as well as a hub for the development of both local and foreign ICT SMEs.^{282 283}

Since its launch in 1996, NITA's concepts and ideas have been carried forward through policy documents, white papers and working papers such as the Outline Perspective Plan 3 (OPP3), the Eighth as well as the Ninth Malaysia Plan and various sectoral master plans.²⁸⁴

²⁸² See Government of Malaysia, National Information Technology Council, vol. 2007, (2007) <http://www.nitc.gov.my/index.asp>) accessed 2 May 2007.

²⁸³ Five of the eight areas, (i, ii, iii, v and vii), are particularly relevant to digital democracy. E-sovereignty, strategic area (v), is particularly oriented towards the ethnic and communal issues discussed above. See pages 57-79.

²⁸⁴ Public policy may involve short and long term planning. In Malaysia, long term planning for example, can be drawn from the Outline Perspective Plan (OPP) which is a blueprint which highlights development programs in line with various policy statements derived from detailed documentation by ministries. OPP1 covers a period of 20 years (1970-1990); OPP2 (1991-2000); and, OPP3 (2001-2010), each covers a period of 10 years. Each OPP highlights policies that need to be implemented for the period, for example, the New

MSC Malaysia

The Malaysian Multimedia Super Corridor (MSC) was launched in August 1996. The project is aimed at developing collaborations between Malaysian and international companies to provide an environment considered ideal for the development of an information community. In many ways, the project represents Malaysia's recognition of the importance of moving the economy up the value-added chain. Recently rebranded as MSC Malaysia, it covers a 75 square kilometres corridor south of downtown Kuala Lumpur and is supported by a first-rate physical infrastructure and next generation 2.5-10 GB multimedia network. Within it are, the federal administrative capital of Putrajaya, and the ICT or smart city of Cyberjaya.



Figure 5: The MSC Malaysia Vision: From Here to 2020 ²⁸⁵

Implementation of MSC Malaysia is divided into three phases from 1996-2020. The focus of each phase is:

- Phase 1- to establish the MSC itself, attract a core group of companies, launch seven MSC flagship projects, create a framework of cyber laws and establish the cities of Cyberjaya and Putrajaya;

Economic Policy (NEP) in OPP1, the New Development Policy (NDP) in OPP2 and the Vision Development Policy in OPP3. In all stages of OPP, 5 year development programs are enforced, such as, the Eighth Malaysia Plan (2001-2005) and Ninth Malaysia Plan (2006-2010).

²⁸⁵ MSC Malaysia, MSC Malaysia Progress Updates, vol. 2007, (2007) available online at <http://www.msc.com.my/msc/msc.asp> accessed 21February 2008.

- Phase 2- to link the MSC to other cities in Malaysia and the world and to create a web of corridors and establish a second cluster of companies; and
- Phase 3- to get MSC acknowledged as a global test bed for new multimedia and ICT, an ideal platform for various digital based initiatives applications and a leading home for multimedia companies.²⁸⁶

Realising the threats of abuse to computer information such as online fraud, virus attacks, hacking, theft of data, unauthorised modification as well as unauthorised use, the Malaysian Computer Emergency Response Team (MyCert) was established under the Malaysian Institute of Microelectronic Systems (MIMOS) in 1997. MyCert provides a point of reference to deal with computer security incidents and methods of prevention.²⁸⁷ Since 1997, a number of cyber laws have been passed to address various concerns and issues relating to the development and implementation of ICT initiatives such as: the integrity and status of information; legal status of online transactions; privacy and confidentiality of information; and, intellectual property rights. These laws provide a comprehensive framework of social and commercial enabling laws. Cyber laws, and amendments to statutes which have been passed to date, include, the *Communications and Multimedia Act 1998*, *Malaysian Communications and Multimedia Commissions Act 1998*, *Digital Signature Act 1997*, *Computer Crimes Act 1997*, *Telemedicine Act 1997*, *Optical Discs Act 2000*, *Copyright (Amendment) Act 1997*, *Communications and Multimedia (Amendment) Act 2004*, the *Communications and Multimedia Commission (Amendment) Act 2004* and *Electronic Government Activities Act 2007*. Statutes which are being proposed include a *Personal Data Protection Act* and *Electronic Transactions Act*.²⁸⁸

²⁸⁶ See Abdul Karim Muhammad Rais and Nazariah Mohd Khalid, E-Government in Malaysia, (Kuala Lumpur 2003) 25 and MSC Malaysia, MSC Malaysia, vol. 2009, (2009).
<http://www.msc.com.my/msc/msc.asp> accessed 21 February 2008.

²⁸⁷ See <http://www.mycert.org.my/en/index.html> accessed 6 January 2010.

²⁸⁸ See Abdul Karim Muhammad Rais and Nazariah Mohd Khalid, E-Government in Malaysia, (Kuala Lumpur 2003) 163-182, Lee, Malaysian Cyber Laws: Issues and Recent Developments, *Asia Pacific Management Conference*, (Kuala Lumpur 2001) and Ida Madieha Azmi, Personal Data Protection Law: The Malaysian Experience, *Information and Communication Technology Law*, vol. 16, (2007).

By March 2007 a total of 1,733 companies had been awarded MSC status,²⁸⁹ of which more than 50% are focused on software development for general enterprise solutions and data warehousing as well as high end specialised applications and e-commerce. By 2005 more than 50 offshore shared services and outsourcing (SSO) companies were established providing 12,000 high skill jobs.²⁹⁰ MSC Malaysia-status companies enjoy a set of incentives and benefits from the Malaysian Government backed by the ten point Bill of Guarantees.²⁹¹ One key guarantee important to this thesis is, the promise to refrain from censoring the internet.²⁹²

Some examples of applications which have been developed in MSC Malaysia include those focused on the development of “smart schools”, “telehealth”, “e-Business”, “smart card technology”, “electronic government”, “technopreneurship” and a new initiative of building a “creative multimedia cluster” in Malaysia. The implementation of these projects, known as flagship applications, is overseen by a governing network including NITC, the Multimedia Development Corporation (MDC), and the Prime Minister’s Department which houses many of the Government’s Central Agencies including the Economic Planning Unit (EPU), the Malaysian Administration Modernisation and Management Planning Unit (MAMPU) as well as relevant ministries. This governance

²⁸⁹ There are in 2010 more than 2000 MSC registered companies. A complete list can be obtained from the MSC Malaysia website at <http://www.msomalaysia.my>.

²⁹⁰ Abdul Karim Muhammad Rais and Nazariah Mohd Khalid, E-Government in Malaysia, (Kuala Lumpur 2003) 21-40.

²⁹¹ MSC Malaysia, MSC Malaysia, vol. 2009, (2009), Multimedia Development Corporation of Malaysia, The MSC Advantages, vol. 2007, (2007) at <http://www.msomalaysia.my> accessed 22 October 2009. The 10 promises in the Bill of Guarantees are to: provide a world-class physical and information infrastructure; allow unrestricted employment of local and foreign knowledge workers; ensure freedom of ownership by exempting companies with MSC Malaysia Status from local ownership requirements; give the freedom to source capital globally for MSC Malaysia infrastructure, and the right to borrow funds globally; provide competitive financial incentives, including no income tax for up to 10 years or an investment tax allowance, and no duties on import of multimedia equipment; become a regional leader in intellectual property protection and cyber laws; ensure no Internet censorship; provide globally competitive telecommunications tariffs; tender key MSC Malaysia infrastructure contracts to leading companies willing to use the MSC Malaysia as their regional hub; provide an effective one-stop agency. See Multimedia Development Corporation of Malaysia, The MSC Advantages, vol. 2007, (2007) accessed 22 October 2009.

²⁹² For an interesting account concerning the MSC’s or Malaysia’s promise to refrain from censoring the internet, see Likosky, *The Silicon Empire*, (2005) 185-195.

network is in turn, overseen by an International Advisory Panel (IAP)²⁹³ set up in 1997 to provide expert policy advice.²⁹⁴ These bodies are all supported, and advised by divisions of the civil service.

These projects continue to enhance public sector efficiency and service delivery. In addition, various computerisation programs are undertaken at agency level, which include ICT infrastructure development and upgrade and computerisation of business operations. Alongside these are numerous activities to enhance access to government information and services. The government also recognises the importance of creating an enabling environment to support ongoing activities including the need for comprehensive technical infrastructure, policies and guidelines, ICT governance as well as the need for skilled ICT personnel.²⁹⁵

The Malaysian Communications and Multimedia Act 1998 (Act 588)

The convergence of the computer, telecommunications and broadcasting industry plays a very important role in Malaysia's bid to improve governance and capitalise on the new digital technology. In 1998 the *Communications and Multimedia Act, Act 588 (CMA)*, updated the *Malaysian Telecommunications Act 1950* and *Broadcasting Act 1988*. It reflects the digital convergence occurring in broadcasting, telecommunications and IT industry. The CMA is the response to the government's requirement that there be a single body implementing supervisory duties in all three sectors. It will be a body which does not rigidly impose strict rules but rather will strive for self regulation. It is based on the basic principles of transparency and clarity; more competition and less regulation;

²⁹³ Among members of the IAP are Craig Barrett, President and Chief Operating Officer of Intel Corporation, Bob Bishop, Chairman of Silicon Graphics World Trade Corporation; Michael Bloomberg, President and Chief Executive Officer (CEO) of Bloomberg; Sir Peter Bonfield, CEO of British Telecom; Professor Sir Alec Broers, Vice Chancellor of Cambridge University; Larry Ellison, Chairman and CEO of Oracle Corporation; Bill gates, Chairman and CEO of Microsoft; Nobu Yuki Idei, President and CEO of Sun Microsystems; William F. Miller, Professor of Public and Private Management, Computer Science at Stanford University Graduate School of Business; Jun-Ichiro Miyazu, President of NTT Corporation; Dr. Kenichi Ohmae of Ohmae and Associates; and Alvin Toffler, founder of Toffler and Associates. See Ibid.(17-20) and <http://www.mdc.com.my> accessed 21February 2008.

²⁹⁴ For further discussion on MSC Malaysia and the IAP see Ibid.(17-20).

²⁹⁵ Abdul Karim Muhammad Rais and Nazariah Mohd Khalid, E-Government in Malaysia, (Kuala Lumpur 2003) 21-45. See also Government of Malaysia, The Malaysian Public Sector ICT Strategic Plan, In MAMPU (ed.), (2005) available online at <http://www.mampu.gov.my> accessed 6 January 2010.

flexibility; bias towards generic rules; regulatory forbearance; emphasis on process rather than content; administrative and sector transparency; and, industry self-regulation. The Act seeks to provide a generic set of regulatory provisions based on generic definitions of market and service activities and services. The jurisdiction of CMA is restricted to networked services and activities only.²⁹⁶

Part V of the CMA deals with the powers and procedures of the Malaysian Communications and Multimedia Commission (MCMC), a specialised regulatory body established to monitor the communications and multimedia industry. Part VI deals with their economic regulation. Chapter 1 provides for licensing to control and monitor the entry of network service providers (conformity with licence conditions, national policies and conditions on market participation). Chapter 2 deals with general competition regulation and Chapter 3 covers access to service (to ensure sharing of infrastructure, so that operators or service providers have access to the necessary facilities on reasonable terms and conditions and it also prevents duplication of infrastructure and congestion of infrastructure and services).

The CMA also provides for the regulation of consumer and wider social interests, which generally aim to protect the interests of the consumers. Among other matters the provisions stipulate that licence holders must deal reasonably with consumers and address consumer complaints adequately and has provisions on setting rates. Universal service provisions are stipulated under Chapter 5 Part VIII. It is important to note that the CMA sets out in Section 3(2) the ten National Policy Objectives for the communication and multimedia industry.²⁹⁷

²⁹⁶ Safinaz Mohd Hussein, *The Malaysia Communications and Multimedia Act 1998 - Its Implications on the Information Technology (IT) Industry*, *Information & Communications Technology Law*, vol. 9, (2000) 79-88.

²⁹⁷ “Section 3(2) The national policy objectives for the communications and multimedia industry are—
 (a) to establish Malaysia as a major global centre and hub for communications and multimedia information and content services;
 (b) to promote a civil society where information-based services will provide the basis of continuing enhancements to quality of work and life;
 (c) to grow and nurture local information resources and cultural representation that facilitate the national identity and global diversity;
 (d) to regulate for the long-term benefit of the end user;

Malaysian Communications and Multimedia Commission (MCMC)

As indicated, the MCMC is the regulator for the converging communications and multimedia industries. At the time it was created, its key role was the regulation of these industries based on the powers provided for in the *Malaysian Communications and Multimedia Commission Act (1998)* and the CMA. Pursuant to these Acts the role of MCMC is to implement and promote the Government's national policy objectives for the communications and multimedia sectors. MCMC is also charged with overseeing the new regulatory framework for the converging of telecommunications, broadcasting industries, and other on-line activities.

On 1st November 2001, MCMC also took over the regulation of postal services. It was also appointed the certifying agency pursuant to the *Digital Signature Act (1997)*. By virtue of the CMA, MCMC has wide powers to issue specific instruments including directions and determinations, to order inquiries (which must be made public and maintained in relevant public registers), to receive and determine complaints, to gather information relating to its functions and powers, to resolve disputes and to establish an Appeal Tribunal, to review decisions by the Commission on appeal by persons affected.

MCMC's regulatory role aims at promoting transparency; self regulation by requiring industry codes on various matters; and, a new licensing scheme. It stresses the need to achieve and maintain industry standards, both in technical aspects and in consumer satisfaction by maintaining quality of service and preventing anti-competitive activity.

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- (e) to promote a high level of consumer confidence in service delivery from the industry;
 - (f) to ensure an equitable provision of affordable services over ubiquitous national infrastructure;
 - (g) to create a robust applications environment for end users;
 - (h) to facilitate the efficient allocation of resources such as skilled labour, capital, knowledge and national assets;
 - (i) to promote the development of capabilities and skills within Malaysia's convergence industries; and
 - (j) to ensure information security and network reliability and integrity.”

The Communications and Multimedia Content Forum of Malaysia (CMCF)

In spite of the guarantee of no censorship of the internet in the Bill of Guarantees,²⁹⁸ section 211 of the CMA, provides for the prohibition on provision of offensive content:

No content applications service provider or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.

Pursuant to the National Policy Objectives set out in the CMA, the MCMC is entrusted with the responsibility to grow local information resources and cultural representations that facilitate the national identity and global diversity. To that end, the MCMC created the Content Forum in February 2001 to govern content. The CMCF is made up of six “ordinary” member categories, namely: advertisers; audio text hosting service providers; broadcasters; civic groups; content creators/distributors; and, internet access service providers. A self-regulatory body, the CMCF administers the Malaysian Communications and Multimedia Content Code. This “Content Code”, has been officially registered with the MCMC with effect from 1 September 2004.²⁹⁹

Section 202(1) of the CMA states that the relevant Minister may direct the MCMC to determine a system to promote the widespread availability and usage of network services and /or applications services throughout Malaysia by encouraging the installation of network facilities and the provision for network services and/or applications services in underserved areas or for underserved groups. Section 202(2) goes further, to provide that the Minister may make regulations under section 16 for the implementation of subsection (1).

Section 204 (1) of CMA provides for the establishment of a fund to be known as the “Universal Service Provision Fund” (USP) controlled and operated by MCMC. Section 204(2) further states that the Minister may make regulations regarding contribution by licensees under CMA to the USP Fund and any other matters related to or incidental to the establishment and operation of the USP fund. “Underserved areas” are defined as:

²⁹⁸ See note 291.

²⁹⁹ The Communications and Multimedia Content Forum of Malaysia, CMCF Factsheet, vol. 2007, (2007) at <http://www.cmcf.org.my> accessed 21 February 2008.

areas where the penetration rate for Public Switch Telephony Network (PSTN) subscribers is 20% below the national penetration rate or any locality where, in the opinion of the MCMC, applications services are not sufficiently available to the community at large, while underserved groups are groups of people who by similar characteristics do not have access to basic communication services.

Thus far, factors which indicate whether an area is underserved are: the number of households in a district, the current level of telephone subscribers, and, the penetration rate and existing installed capacities of network infrastructure.³⁰⁰

Under the *Communications and Multimedia (Universal Service Provision) Regulations 2002*, the MCMC is required to publish a Notification specifying the universal service targets from time to time. The latest Notification lists 86 areas which have been identified as universal service targets where the provision of universal service will be implemented from 2004 to 2010. The notification document, amongst others things: lists universal service target areas in order of priority; identifies licensees (if any) who have facilities or who provide services in or in the vicinity; the penetration rate of basic telephony services; the demand list in terms of customers and lines required; the type of services required, ie, basic telephony, public payphone or internet access services; and, the time allocated for the installation of the network facilities and/or the provision of network services or application services.³⁰¹

The National Broadband Plan was approved by Cabinet in 2004 with instructions that it be implemented over a ten year period. The objectives of this plan include generating an adequate supply in terms of broadband infrastructure, through available technologies deemed appropriate; stimulate demand to ensure efficient take up of broadband services via suitable content and application services; explore various funding mechanisms to finance project; and, identify gaps in existing regulations and where necessary, introduce new ones to facilitate broadband rollout. The MyICMS 886 Malaysian Information, Communication and Multimedia Services Strategy identifies eight service areas targeted

³⁰⁰ Malaysian Communications and Multimedia Commission, Universal Service Provision, vol. 2010, (2010) at http://www.skmm.gov.my/what_we_do/usp/usp.asp accessed 10 March 2010.

³⁰¹ Malaysian Communications and Multimedia Commission, Universal Service Provision (USP) Notification of Universal Service Targets Year 2003, (2002).

to improve quality of life by delivery of advanced information, communication and multimedia services.³⁰²

For more than a decade, Malaysia has had an established regime for the regulation of merging digital media on the basis of self regulation and industry compliance. Recently the emphasis has turned towards the formation of industry forums for policy inputs. The government continues to encourage widespread use of industry codes developed by the industry. This is intended to ensure that, in keeping with new industry demands and approaches in communications and multimedia policies and regulations, different parties are brought together for effective consultations to produce and implement more effective policy frameworks. To a certain extent, these moves reflect the government's policy in relaxing state regulation and further developing the role of the private sector. Industrial dialogues and participations represent a move from a directive to a more consultative approach in policy making.

These developments, including the policies and laws generated on them, have been guided and shaped by the civil service with its distinctive background and values described earlier in the chapter. These policies and laws are focused more on technological and economic aspects of the internet in Malaysia. In this respect, they relate to the issues of efficiency and effectiveness discussed by Macintosh³⁰³ or an assumption made in respect of every step on Arnstein's³⁰⁴ ladder, that the ladder exists to have steps. They are framed by the legislative and executive branches of government in the context of a wider framework of law and policy which is considered in the next chapter. Like the civil service itself that legal framework was created, in part, in the colonial period and has been affected by the ethnic compact and the political development which stemmed from it.

³⁰² Government of Malaysia, *The National Broadband Plan Enabling High Speed Broadband Under MyICMS 886*, In Ministry of Energy Water and Communications (ed.), 2 ed., (2006).

³⁰³ See note 81. Macintosh, *Characterizing E-Participation in Policy-Making*, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 1-10.

³⁰⁴ See note 26. Arnstein, *A Ladder of Citizen Participation*, *Journal of the American Planning Association*, vol. Vol. 35 No. 4 July, (1969).

CHAPTER 3

FRAMING THE GENERAL OUTLOOK FOR PARTICIPATION: LAW AS A CONTRIBUTING FACTOR

The review of the literature on participatory democracy in chapter 1, introduced Blaug and Arnstein's argument that there has always been a struggle in society about power. To Blaug, deliberation has conflicting values and expectations between those who control deliberative activities and those who participate in them. On Arnstein's ladder of citizen participation, progression up the ladder is based on how much control the citizens are allowed.

Both ideas emphasise that where the limits are drawn, defines the balance between citizen power and delegated leader's control. Although the development of ICT present citizens with more access to information and communication, the literature also reveals that the power to know is not the same as the power to act. It is policies and laws which affect the structure of online deliberation. Although digital democracy activities may complement the many direct traditional processes of deliberative policy making employed by the Malaysian civil service, these opportunities are related to existing models of democracy and communication. Understanding the role ICT can play in the democratic processes of a country requires understanding how countries have been governing themselves without the internet, which includes an appreciation of the historical factors and of specific cultural and institutional contexts.

Building on these ideas, this chapter will further consider how the Malaysian legal system, affects the outlook for citizen participation in policy making processes. It, along with Malaysia's administrative and political structures, is a result of the compact which emerged from the eventful period of the country's formation, as discussed in chapter 2. This discussion will help lay some foundation for considering the question of how relevant digital democracy is in enhancing citizen participation in policy making within the Malaysian civil service.

‘SELF-REFERENTIAL’ SYSTEMS

The literature constantly reveals the connection between political culture and law, and how together, they represent forces which shape citizens’ rights and capabilities.

Although this literature suggests the dominance of politics over law, Priban and Nelken³⁰⁵ maintain that it is the “self-referentiality” of law that ensures that:

it is only law that can change law whatever may be political control of legislation. Such control is only part of the law’s environment, which cannot change its own modes of operation.³⁰⁶

Priban³⁰⁷ argues that the systemic rationality of law and other arguments from legal theories such as those of Max Weber and Carl Schmitt, cannot, serve as the foundation of comprehensible political arguments. Weber describes legitimacy as requiring a belief by those who are to be subjected to political domination, arguing that it cannot be reduced to the metaphor of an “iron cage”,³⁰⁸. Schmitt, on the other hand, sees this as weak, relying too much on the liberal values of an open and free discussion. Schmitt sees legitimacy as the capacity of the controller of the political system to impose their opinions, world views or ideologies. He argues for the closure of the pluralistic world of politics by a state decision and that, behind any legitimacy based on liberal theories of the rule of law, there is a capacity to impose a state decision³⁰⁹ and apply it.³¹⁰ The concepts of belief and state decision are central elements in these arguments over legitimacy. They reflect a belief

³⁰⁵ Priban and Nelken, Introduction, In Priban and Nelken (eds.), *Law's New Boundaries the Consequences of Legal Autopoiesis*, (Dartmouth 2001) 1-17.

³⁰⁶ Ibid.(7).

³⁰⁷ Priban, Legitimation between the Noise of Politics and the Order of Law: A Critique of Autopoietic Rationality, In Priban and Nelken (eds.), *Law's New Boundaries: The Consequences of Legal Autopoiesis*, (Dartmouth 2001) 104-122.

³⁰⁸ Max Weber uses the imagery of the ‘iron cage’ to express his attitude towards individuality and to criticise the effects of bureaucracy on individual freedom within the modern economic order or capitalism. Using this metaphor he describes the problem of maintaining individual autonomy and culture in the midst of ‘an army camp’. This is a persistent theme in his political commentaries on the state, whereby he sees the administrative routinisation, specialisation of tasks and calculation of behaviour required by advanced capitalism as incompatible with freedom and democracy. For further discussion on Weber’s political sociology, see Turner, *Max Weber from History to Modernity*, (London 1993) 184-208.

³⁰⁹ Carl Schmitt criticises Weber’s concept of legality as being too weak and corresponding too much to the liberal values of an open and free discussion. To Schmitt, politics has a polemic nature and is structured and determined by inconsistency and conflict. He regards the state on the other hand as an integrating institution and subjects political enemies by imposing its supreme will on them. See Priban, Legitimation between the Noise of Politics and the Order of Law: A Critique of Autopoietic Rationality, In Priban and Nelken (eds.), *Law's New Boundaries: The Consequences of Legal Autopoiesis*, (Dartmouth 2001) 105.

³¹⁰ Ibid.(105).

that the legal system assumes, and does not interrogate, the position it is assigned. They lead Priban to conclude that the comprehensibility of political arguments is beyond the internal operations of the legal system.³¹¹ Drawing on Niklas Luhmann's autopoietic theory, Priban maintains that social systems, including political and legal systems, are determined exclusively by their inner rules. Their main criterion has become that of function, making comprehensibility subject to functionality as discussed in the theory of law as an autopoietic system.³¹²

Autopoietic law defines what is legal or illegal exclusively within a system of positive legal rules. The capacity for legal processes to embody political ideals and principles, while, at the same time, accepting them purely on the bases of their operative capacity rather than their transcendent value, is significant. This is because the principles of division and limitation of state powers and civil freedom have become social facts and legal systems are obliged to reflect and regulate in only limited ways, those political and cultural facts in constitutional and legal documents.³¹³

Other theories of law legitimate decisions from the outside and require democratic procedures and liberal civil rights, although there are some which also seek legitimacy through internal processes. Fuller's theory of the internal morality of law is an example from jurisprudence. Fuller required laws to be constructed so that they guided behaviour and to achieve that he required them to comply with eight principles, such as, they 'must not be changed frequently that the subject cannot rely on them' or 'must be administered in a manner consistent with their wording'. He wrote, "What I have called the internal morality of law is ... concerned, not with the substantive aims of legal rules, but with the ways in which a system of rules for governing human conduct must be constructed and administered if it is to be efficacious and at the same time remain what it purports to be."³¹⁴ The distinctive criterion of autopoiesis is to define a decision as legitimate when it

³¹¹ Ibid.(108).

³¹² Ibid.(108). Functional differentiation in society has been used in earlier sociological literature and is particularly associated with Talcott Parsons, See Parsons, *The Social System*, London:Routledge & Kegan Paul Ltd, (1970).

³¹³ Ibid.(108).

³¹⁴ Fuller, *The Morality of Law*, New Haven: Yale University Press, (1964), 96-97.

effectively transmits information generated within it, to the addressee and makes it possible for the addressee to adapt to its commands. It dismantles the centralist model of political domination. In place of a one-sided process of communication, in which the decision-making centre dictates its moves to the subjects, in autopoietic theory, legitimacy grows from the process of communication between the decision-maker and the addressee. It dislodges law from being a product of sovereign political power and political power itself becomes an element in the environment of the autopoietic legal system which cannot directly influence its procedures and structure.³¹⁵

The Malaysian legal system is embedded in the practices as well as discursive elements of a developmental state, a corollary of which has been the emergence of a political culture which is best described as “developmentalism”. This is a culture that valorises the individual as a consumer of development rather than as a citizen in a participatory democracy.³¹⁶ To that extent it fits with the concept of “Asian Democracy”.³¹⁷ On one hand, the extent to which the legal system has been associated with various forms of state intervention, raises the question of its effect upon the general outlook for citizen participation or power. On the other hand, it raises the question of the susceptibility of the legal system to pressures from both the state and the citizen in the struggle for power. In spite of strong observations of an existence of state intervention in Malaysia, autopoietic theory, which considers social systems as having flexibility and differentiation as their most decisive character, rather than an organising master centre, offers a more flexible and systemic approach to the consideration of state-citizen relationship in Malaysia in view of framing the general outlook for citizen participation in policy making.

³¹⁵ Ibid.(112).

³¹⁶ See Loh, Developmentalism and the Limits of Democratic Discourses, In Loh and Khoo (eds.), *Democracy in Malaysia: Discourses and Practices*, (Richmond, Surrey 2002) 19-50. Loh presents developmentalism as a new political culture which links consumerism behaviour based on growth as well as reliance upon political stability. He maintains that developmentalism influences the minds of the middle class in believing that political and economic stability is of utmost importance, thus pushing back the upholding of democratic principles regardless of constant criticisms of the country's politics.

³¹⁷ See note 251.

WHAT IS AUTOPOIESIS?

Functionally Differentiated Society

Niklas Luhmann³¹⁸ defines modern society as a society in which functional differentiation has replaced stratification (feudal order) and segmentary differentiation (tribal societies) as a primary mode of societal differentiation. Luhmann's theory of autopoiesis of social systems conceives modern society as being self-referentially engaged in the production of elements, which then sustain it. For social systems, these elements are communications. His theory of "functionally differentiated society" describes society as being a communication process, without a centre and without binding self reference. It constitutes an overall process of differentiation whereby social communication fragments into a series of independent functional sub-systems such as the economy, politics and the legal system. Each sub-system establishes self referentially closed systems within the society and contributes in its specific way to the overall social process. They establish their own independence with respect to their underlying values, performance criteria, programs and priorities. Interactive systems, in this model, constitute a special type of social system that is different from society yet uniquely linked with it, in as much as each is indispensable to the other. Law, for example, is continuously written, re-written, interpreted and applied on the basis of its own legally validated procedures. This internally differentiated system of communication works, according to Luhmann, because the process follows a functional logic from which emerge self-referentially closed, but structurally coupled, function systems. The society that reproduces itself through the co-evolution of these autonomous subsystems builds up new levels of dynamic complexity that effectively exclude the reintegration of society into a single project governed by a single rationality. Legal rationality for example, is neither political nor scientific rationality.³¹⁹ In particular, Luhmann uses Maturana's and Varela's³²⁰ theory of autopoiesis which:

³¹⁸ N. Luhmann, *Die Gesellschaft der Gesellschaft* (1997), Suhrkamp Verlag, Frankfurt am Main as cited in Schumacher, *The Autopoeisis of Architecture, Latent Utopias: Experiments within Contemporary Architecture*, (2002) 2.

³¹⁹ For further discussion on Luhmann's theory of "functionally differentiated society" see Cotterrell, *Law in Social Theory and Social Theory in the Study of Law*, In Sarat (ed.), *The Blackwell Companion to Law and Society*, (2004) 15-29, Schumacher, *The Autopoeisis of Architecture, Latent Utopias: Experiments*

defines biological life-processes as the circular self-reproduction of recursive processes that constitute a unity of interaction (the system) within a domain of interaction (the environment).³²¹

Each system determines what counts as its environment, that is, which differences make a difference.³²² This, is Luhmann's formula of "openness through closure" which involves the task of continuous adaptation of the system to the relevant changes it distinguishes within its environment which, in turn, implies self-referential autonomy for the system with respect to the task of organising its response. Accordingly, in an autopoietic system, the immediate environment does not directly determine processes. The historic environment also plays a significant role in the system in moderating the effects of the present environment. The system:

absorbs environmental impacts into its complex web of processes so that no response can be regarded as immediate one-to-one effect of a singular cause.³²³

Law as an Autopoietic System of Communication

Luhmann conceives of law as a societal autopoietic system, one of the elements which builds modern complex society. It is a system which is differentiated from the systems of politics, morals and the economy in the process of its historical evolution.³²⁴ However, for Luhmann, law presents itself as a special case as it seemingly permeates all layers, spheres or systems of society.³²⁵ A dispute within a legal system over its autonomy may be analysed using Luhmann's theory of autopoiesis:

within Contemporary Architecture, (2002) 1-6 and Zumbansen, Book Review: Law as a Social System, *Social Legal Studies*, vol. 15, (2006) 453-461 and Cotterrell, The Representation of Law's Autonomy in Autopoiesis Theory, In Priban and Nelken (eds.), *Law's New Boundaries: The Consequences of Legal Autopoiesis*, (Dartmouth 2001) 80-183.

³²⁰ Maturana H & F Varela 1980 *Autopoiesis and Cognition: The Realisation Of the Living*, Dordrecht Reidel cited in Graham and McKenna, A Theoretical and Analytical Synthesis of Autopoiesis and Sociolinguistics for the Study of Organisational Communication, *Social Semiotics*, vol. 10, (2000) 41.

³²¹ Schumacher, The Autopoiesis of Architecture, *Latent Utopias: Experiments within Contemporary Architecture*, (2002) 2.

³²² For detailed discussion of the theoretical framework of autopoiesis in Maturana and Varela (1980), see Graham and McKenna, A Theoretical and Analytical Synthesis of Autopoiesis and Sociolinguistics for the Study of Organisational Communication, *Social Semiotics*, vol. 10, (2000) 41-44.

³²³ Schumacher, The Autopoiesis of Architecture, *Latent Utopias: Experiments within Contemporary Architecture*, (2002) 3.

³²⁴ Priban, Legitimation between the Noise of Politics and the Order of Law: A Critique of Autopoietic Rationality, In Priban and Nelken (eds.), *Law's New Boundaries: The Consequences of Legal Autopoiesis*, (Dartmouth 2001) 109.

³²⁵ Zumbansen, Book Review: Law as a Social System, *Social Legal Studies*, vol. 15, (2006) 455.

It conceptualises how law copes with changes in the nature of the social without losing its special identity in the process. It seeks to explain how law retains a distinctive character and stability in complex societies at the same time as it addresses an ever-increasing range of problems thrown up by the fluidity and complexity of the social.³²⁶

In this theory, the “environment” remains a constant source of irritation, and what can or cannot become an irritant depends, firstly, on the historically elaborated structure of the system and, secondly, on its responsive behaviour, which is specified by its peculiar sensitivity and its current momentary or historical state.³²⁷ Law, a historically complex evolving system, uses time and whole series of events to continuously and recurrently produce its adaptive response to these external irritations. This process is called ‘structural coupling’. Law can be selective about its irritability or decide, within its system on the relevancy of irritants. In other words, at its own pace, it addresses from its own point of view, using its own discursive resources.³²⁸ The autopoietic process within law, depends on the system allowing itself to be irritated by its societal environment. At the same time, by becoming a productive irritant itself, the legal system contributes to society. The time-binding quality of law is the basis, at the core of Luhmann’s legal theory:

[L]aw serves primarily to stabilize expectations. It does so by producing rules that preserve the identification of something as ‘legal’ over time and that therefore are available for an assessment at a later point of time.³²⁹

THE LEGAL SYSTEM AND ITS “META-META STORIES”

Johnson’s³³⁰ model which parallels Luhmann’s autopoietic theory, brings the discussion closer to digital democracy. He questions the suitability of national laws for regulating the internet and its netizens. Johnson emphasises that the internet drastically weakens any global definition of the ‘we’ who are supposedly sovereign. He argues that there is a need

³²⁶ Cotterrell, Law in Social Theory and Social Theory in the Study of Law, In Sarat (ed.), *The Blackwell Companion to Law and Society*, (2004) 22.

³²⁷ Schumacher, The Autopoiesis of Architecture, *Latent Utopias: Experiments within Contemporary Architecture*, (2002) 4.

³²⁸ Cotterrell, Law in Social Theory and Social Theory in the Study of Law, In Sarat (ed.), *The Blackwell Companion to Law and Society*, (2004) 23.

³²⁹ Zumbansen, Book Review: Law as a Social System, *Social Legal Studies*, vol. 15, (2006) 456.

³³⁰ Johnson, The Life of the Law Online, *New York Law School Law Review*, vol. Volume 51 2006/2007, (2007) 958-972.

for legal systems which support netizens³³¹ from widely differing populations occupying different places online and with differing values. He reflects the views held by others that the internet is not an isolated or the decisive factor in the process of democratisation. Policies and laws are factors which are significant in structuring online deliberation. The promise that internet holds for democracy, lies within a framework of values and ideals imposed by existing legal and institutional structures. Although Johnson makes no mention of Luhmann's autopoietic theory, he explores the impact of the internet on law using the metaphor that the law is a self-referential living organism. He builds on biologist Robert Rosen's³³² insight that:

the essence of life is a particular structure of causation [whose] introversion and self-reference create complex systems composed of components, whose functions can only be explained with reference to all the other components, and all of the relationships among them. You can take a machine apart and understand how its parts work in isolation. If you take an organism apart, it dies.³³³

This is similar to what Maturana and Varela call autopoiesis. It relates to their claim that the presence of autopoietic organisation or self-producing processes is necessary to classify a system as living. The term autopoiesis, which was adapted by Luhmann, translated from Greek, approximates to 'self-producing' (autos = self, poiein = to make).³³⁴

Johnson argues, firstly, that particular portions of a legal system cannot be analysed in isolation from one another. It is this idea that helps us understand the origins of our complicated regulatory and statutory structures. Secondly, legal institutions cannot be designed in the abstract and should not be restructured by those who are not themselves

³³¹ According to Johnson, as people interact globally over the internet, they create "a new non-local citizenry, a netizenry, occupying many different kinds of online spaces, that both need, and can create, rules of their own." See Ibid.(972).

³³² Robert Rosen, *Life Itself: A Comprehensive Inquiry Into the Nature, Origin and Fabrication of Life* (1991) as quoted in Ibid.(958).

³³³ Ibid.(959).

³³⁴ See Brans, M and Rossbach, S. (1997) 'The Autopoiesis of Administrative Systems; Niklas Luhmann on Public Administration and Public Policy', *Public Administration* 75: 425 and Van Twist, M.J.W. and Schaap, L. (1991) 'Introduction to Autopoiesis Theory and Autopoietic Steering', in R. In't Veld, L.Schaap. C.J.A.M. Termeer and M.J.W. Van Twist (eds) *Autopoiesis and Configuration Theory: New Approaches to Societal Steering* 32 London: Kluwer Academic, as cited in Chettiparamb, Re-Conceptualizing Public Participation in Planning: A View through Autopoiesis, *Planning Theory*, vol. 6, (2007) 263.

embedded in legitimate roles within the legal system in question. This cautions against undemocratic or illegitimate forms of rule-making. Thirdly, legal system as organisms, may die when the 'meta-stories and meta-meta-stories'³³⁵ that repair them and preserve their identity cease to function. This, specifically points to the importance of recognising and suitably reacting to the internet's creation of the concept of netizens.³³⁶ It stresses the need to rethink issues such as "global jurisdictional questions and the relationship between public and private social order".³³⁷ Johnson's ideas supports Priban's argument that legal systems, when considered in Luhmann's autopoietic terms, are determined exclusively by their inner rules. By virtue of being autonomous, circular and self-referential, their main criterion is the criterion of function. They legitimate their decisions from the inside and those decisions are dependent upon how they adapt to commands. These commands cannot directly influence their procedures and structure.

Johnson's work also hints at Luhmann's concept of "structural coupling". The "meta-meta stories" are internal to a legal system, providing it with its historical legitimacy in a particular geographic area. As he points out, the internet is a force which undermines, erodes and contradicts these "meta-meta stories" in a legal system and the system must respond to this. In Luhmann's autopoietic terms, law as part of "functional interactive systems", considers and decides how it will respond to the internet as an "irritant" in its "environment". The criterion the law as a system sets for deciding on its response is based on the system's functionality. Although he asserts a legal system's strong attachment to its "meta-meta stories", Johnson envisages the internet to be a strong and possibly disruptive force. He concludes:

We replicate the law by telling one story, and we don't shorten the story very often because one story doesn't have to compete very hard for our attention and loyalty.

³³⁵ Johnson states: "to live, a complex legal system must repair itself (fill roles that have been vacated, revise rules that have become outmoded), and it must do so with reference to a shared meta-meta-story that people most affected by the resulting legal rules and social organisations agree should be told", Johnson, *The Life of the Law Online*, *New York Law School Law Review*, vol. Volume 51 2006/2007, (2007) 971.

³³⁶ Netizens according to Johnson refers to "non-local citizenry, a netizenry, occupying many different kinds of online spaces that both need, and can create rules of their own". See *Ibid.*(972).

³³⁷ *Ibid.*(963-964).

Fortunately that is about to change. But not without considerable disruption for all the organisms involved.³³⁸

FROM CONFLICT TO PARADOXES

Luhmann's concept of 'structural coupling' and his theory of law as part of 'functional interactive systems', confirms that matters could be different from the way they are. That nothing is preordained, raises the level of complexity. For example, Teubner³³⁹ argues that the differences between conflicts of laws and paradoxes is that:

conflict of laws are contradictions between claims of validity: either A or not A; law or non-law; one norm or the other; one social model or the other; [whereas] paradoxes have a more complicated structure due to self-referentiality or self-justification: A because not-A and not-A because A".³⁴⁰ For paradoxes he says, "It is not the decision of the conflict that they call in question, but the very conflict itself."³⁴¹

According to Teubner, human rights create a paradox when "persons make themselves disruptively noticeable, despite all their socialisation, as non-communicatively constituted individuals/bodies, and agitate for their 'rights'".³⁴² This, he argues, brings about tensions in the relationship between the individual and the society. For example, "the political positivisation of individual fundamental rights [and] the scandalisation of human rights breaches in world society".³⁴³ A specific example of this can be seen in Priban's discussion of the legitimacy of political domination:

To the sociological, political and jurisprudential question: 'Which political domination and order can claim legitimacy in the modern society?' was given the answer: "A political domination is legitimate because it is entirely defined in legal terms'. However, the question of legitimacy is almost immediately turned upside down and becomes the problem of *legitimate legality*. Instead of legality perceived as an instrument for the legitimisation of the legal order, the problem is referred back to the structure of legality itself, to its own normative background and social effectiveness."³⁴⁴

³³⁸ Ibid.(965).

³³⁹ Teubner, *Dealing with Paradoxes of Law: Derida, Luhmann, Wietholter*, In Perez and Teubner (eds.), *Paradoxes and Inconsistencies in the Law*, (Oxford 2006) 41-64.

³⁴⁰ Ibid.(45).

³⁴¹ Ibid.(45).

³⁴² Ibid.(47).

³⁴³ Ibid.(47).

³⁴⁴ Priban, *Legitimation between the Noise of Politics and the Order of Law: A Critique of Autopoietic Rationality*, In Priban and Nelken (eds.), *Law's New Boundaries: The Consequences of Legal Autopoiesis*, (Dartmouth 2001) 104, emphasis is mine.

Autopoietic theory always stresses contingency. Certain ideological constructions are presented by autopoiesis as sociological necessities required functionally to deal with the complexity of modern society.³⁴⁵ Today the law searches for its peculiar criteria for its “contingency formula”,³⁴⁶ namely justice ie:

criteria for treating like cases alike and unlike cases unlike, in its environment, i.e. in different social discourses, in educational, scientific, medical, political, and economic discourse. It validates them after a complicated process of their legal reconstruction.³⁴⁷

In spite of the equality clause in the United States’ Bill of Rights for example, constitutional law legitimises unequal treatment when it is legitimised according to “reasonable” criteria. The quest for a just society, cannot follow one path:

Each different concept of justice is realized in one specific social practice obeys one partial rationality and one partial normativity. These cannot be fused into common principles of justice Different social contexts necessarily produce different principles of justice.”³⁴⁸

Self-observation of law, as in autopoietic theory, Teubner says “should not be confused with a diffuse yearning for justice that shadows the rational legal process and from time to time incites it to produce a better legal rule”.³⁴⁹ It can instead be analysed both theoretically and empirically as an ongoing discursive process within legal practice which not only means organised litigation and legislation but also includes the “whole range of serious communication about law wherever it happens in society, including citizens’ protest against the law”.³⁵⁰ The internet of course, has expanded forms of protests against the law.

³⁴⁵ Cotterrell, *The Representation of Law's Autonomy in Autopoiesis Theory*, Ibid.(87-88).

³⁴⁶ According to Teubner, “Justice as contingency formula is not justice immanent to the law but a justice that transcends the law. Internal consistency plus responsiveness to ecological demands – this is the double requirement of juridical justice.” Teubner, *Self-subversive Justice: Contingency or Transcendence Formula of Law*, *Modern Law Review*, (2009) 9.

³⁴⁷ Ibid.(11).

³⁴⁸ Ibid.(6).

³⁴⁹ Ibid.(14).

³⁵⁰ Ibid.(14.)

WORLD SOCIETY: TAKING CONFLICT TO THE NEXT LEVEL

The ongoing discursive process within policy and law making may be affected by special interest groups. In the Malaysian context, it is significant that many interest groups operate within a communal framework and raise ethnically sensitive issues. Malaysians, particularly the growing middle class, have been viewed as docile in their attitudes to the Barisan Nasional government.³⁵¹ Despite guarantees of fundamental rights under the Federal *Constitution*, it is asserted that there are constitutional limitations on individual rights on the grounds of safeguarding community rights. The authority of the state is described as being underpinned by ideological formulations based on political stability, social order, national security and modernisation. The Barisan Nasional government is depicted as seeking legitimacy based upon economic growth and prosperity and applying constitutional and legislative processes to affect control over political activity and trials of political dissidents. Priority is given to community rights and the supremacy granted to the executive government is claimed to guarantee its control over political institutions and civil society.³⁵²

As Malaysia develops and its citizens become better educated and more exposed to international trends and developments, the demand for civil and political rights is increasing. Although Malaysia has not seen the violent overthrow of governments, unlike many states in the region including Indonesia, The Philippines, Thailand and Myanmar, any attempt at speculating about the future of individual human rights must take new factors into consideration. These include globalisation³⁵³ which is often linked to a

³⁵¹ See Milne and Mauzy, *Politics and Government in Malaysia*, (Vancouver 1978) 169, Ratnam, *Communalism and the Political Process in Malaya*, (Singapore 1965) vii and Barraclough, *Political Participation and Its Regulation in Malaysia: Opposition to the Societies (Amendment) Act 1981*, *Pacific Affairs*, vol. 57, (1984) 450-461.

³⁵² See Verma, *Malaysia, State and Civil Society in Transition*, (Colorado 2002) 171-176, Lopez, *Globalisation, State and G/local Human Rights Actors; Contestation between Institutions and Civil Society*, In Gomez (ed.), *Politics in Malaysia: The Malay Dimension*, (Oxon 2007) 50-74, Abbot, *Democracy@ internet. asia? The Challenges to the Emancipatory Potential of the Net: Lessons from China and Malaysia*, *Third World Quarterly*, vol. 22, (2001) 99-114 and Marzuki Mohamad, *Legal Coercion, Legal Meanings and UMNO's Legitimacy*, In Gomez (ed.), *Politics in Malaysia: The Malay Dimension*, (London and New York 2007) 24-49.

³⁵³ Harvey critically assess this term: "Apart from the tautologous - the global being simply affirmed as global - that whole is not given its own content. Perhaps the most invoked quality is an increasing connection or communication between people and places. This is said to be manifested in a 'time-space

decrease in sovereignty of nation-states through the opening up of national markets, the privatisation of the economy and the growing influence of the internet on democratic politics, human rights and cultural identities. Malaysia, in the contemporary setting, should anticipate the changing ethos that the internet and ICT bring to democratisation through the liberalisation of access to information and communication.

The search for an understanding of the relevance of digital democracy in Malaysia is in the historical, constitutional and legal as well as in the political, economic and social. On the one hand, it involves understanding how the law changes social conditions and impacts on the debates and agendas of politicians, intellectuals and other definers of nationhood and citizenship. On the other hand, it involves understanding how these factors in turn condition legal challenges.³⁵⁴ As ICT opens up global communication and integration, Malaysian society, which consists of various functionally differentiated sub-systems, can itself be considered an independent sub-system of the world society,³⁵⁵ in that it interacts with other sub-systems at both national and international levels. Through Luhmann's concept of structural coupling, Malaysian society may be identified as being part of an interactive system. It picks and chooses its responses to irritants. In terms of human rights, for example, other than interacting in a domestic environment of sub-systems of law, politics and economy, the Malaysian society also deals with irritants from globalisation. These irritants challenge the existing ways in which democracy, rights and sovereignty have been treated. The first irritant is the increasing influential discourse on human rights involving the 'international community' composed by moral principles

compression. (Harvey, 1989:240). Giddens refers to the 'time-space distanciation' which accompanies the 'intensification of world-wide social relations which link distant locations in such a way that local happenings are shaped by events occurring many miles away and vice-versa (Giddens, 1990:14,64)." Fitzpatrick, *Abiding the World: Globalism and the Lex Mercatoria*, In Priban and Nelken (eds.), *Law's New Boundaries the Consequences of Legal Autopoiesis*, (Dartmouth 2001) 255.

³⁵⁴ Priban and Nelken, Introduction, In Priban and Nelken (eds.), *Ibid.*(6).

³⁵⁵ Fitzpatrick's list of items reflecting globalisation include economic, cultural and political. The latter extends to observance of human rights and the rule of law and democratisation. One item, he claims, is frequently mentioned in connection with all the others, "and that is that they are not contained or containable within the sphere of the nation but some assume a cohering being beyond it. That is, attributes of the global are monotonously elevated in their being beyond the range of regulation or of the dominating concern of the nation and its state. This is not merely a matter of the dissolution or the displacement of nation in the direction of the global. Power is seen as inhering more and more in other entities 'besides' the nation state". Fitzpatrick, *Abiding the World: Globalism and the Lex Mercatoria*, In Priban and Nelken (eds.), *Ibid.*(Priban and Nelken, Introduction, In Priban and Nelken (eds.), *Law's New Boundaries the Consequences of Legal Autopoiesis*, (Dartmouth 2001)256).

which enforce legal rules regulating the conduct of governments. The second irritant is the expanding reach of ‘global governance’ institutions such as the United Nations (UN) and World Trade Organisation (WTO) that make policies and rules regulating the actions of states.³⁵⁶

The following discussion commences with an overview of human rights, including freedom of speech, and civil society organisations in Malaysia. It then examines some select constitutional provisions and laws which are relevant to freedom of speech in Malaysia. It provides an autopoietic view of how these laws interact with some aspects of these components³⁵⁷ of political and human rights principles that shape the fundamentals of the citizen-state relationship and how they act as filters and factors which condition political use and impact of media. Forming a background to these discussions are challenges of upholding the underlying Nelken’s ‘meta-meta-stories’ such as political stability, social order, national security and modernisation, the consideration of which, closely relate to Blaug’s and Arnstein’s argument that the struggle in society has always been about power.

THE CONTEXT OF HUMAN RIGHTS AND FREEDOM OF SPEECH IN CONTEMPORARY MALAYSIA

Human Rights

The Universal Declaration of Human Rights (UDHR) in the international human rights system is of great symbolic significance. It lays down the basic principles of human rights and a structure for their better protection. It represents a pledge by the United Nations’ member states to promote universal respect for, and observation of, human

³⁵⁶ Cohen, Rethinking Human Rights, Democracy, and Sovereignty in the Age of Globalization, *Political Theory*, vol. 36, (2008) 578-606.

³⁵⁷ See United Nations, World Public Sector Report 2008: People Matter Civic Engagement in Public Governance, (New York 2008) 28-29, accessible online at <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN028608.pdf> The report conceptualises public governance as two separate but complementary components – the ‘Rights’ components and the ‘Development Management’ component. It demonstrates that the ‘Development Management’ component cannot take place in isolation; from a number of rights, it demonstrates that the rule of law, political participation, judicial arbitration and access to information that guarantee human rights are essential complements of the former.

rights and fundamental freedoms. The Charter of the Organisation of The Islamic Conference (OIC), to which Malaysia belongs, affirms its members' commitment to the UDHR. In 2007, Article 14 of the proposed ASEAN charter which mandates the establishment of an ASEAN human rights body was signed in Singapore.³⁵⁸ Many countries believe in each region formulating its own structures for the protection of human rights based on its own ideologies and cultures.³⁵⁹ The decolonisation which took place in the 1950s and 1960s, for example, saw new states pursuing a new generation of rights, among which included the rights to development, peace, to a healthy and ecologically balanced environment, and, to their own cultural practices. This illustrates that human rights is not a static concept. In 1993, the world conference on human rights in Vienna drew attention to differences between Western and Asian countries on the subject of rights. Many Western nations chose a discourse of democracy and human rights to criticise developing countries and Islamic states for violations of individual liberties. Non-Western nations on the other hand, criticised the universal language of human rights as ethnocentric in its focus on Western European values and claimed the right not to be interfered with by other states. The former Prime Minister of Malaysia, Mahathir, has been one of the most visible and outspoken critics of the Western liberal democratic model and the concepts of democracy, rights and individualism claimed to underlie it.³⁶⁰ Following the 1993 Vienna conference, however, the 26th ASEAN ministerial meeting in Singapore in the same year, reaffirmed its members' commitment to, and respect for, human rights as set out in the Vienna Declaration of 25 June 1993. It included recognition of political, social and economic rights along with the right to development. It added that the promotion of human rights should take notice of the

³⁵⁸ See website of Working Group for an ASEAN Human Rights Mechanism at <http://www.aseanhrmech.org.html> accessed 20 August 2010.

³⁵⁹ An example is the American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force in 1953.

³⁶⁰ Of the 25 major international human rights instruments, Malaysia has ratified five namely; the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on Rights of the Child, the Convention on the Nationality of Married Women, the Convention on the Prevention and Punishment of Crime of Genocide and Supplementary Convention on the Abolishment of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. It is, however, yet to ratify two instruments, namely, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). See Malaysia Human Rights Commission, Annual Report, (2000) 14.

principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of the state.³⁶¹

While states and their institutions in general tend to limit the impulse for change, the fluid complexities of civil society continue to contest the structures, policies and practices of the state. It is in this contest, between state and non-state actors, as well as between the non-state actors, along with pressures applied by external actors, such as international human rights bodies and global governance institutions, as discussed above, that daily life in the Malaysian polity continues to evolve. State discourse about the pace of change in respect of human rights often lags behind the discourse within civil society. Notably, there are also some segments of civil society which perceive the government to be liberalising or westernising too rapidly, thus threatening local practices, traditions and values.³⁶² While the interests, and resulting positions adopted among groups in Malaysian civil society are diverse and complex, a gap exists between those wishing to embrace what Lopez terms “universalist” values and those who prefer to remain “relativist”.³⁶³

States’ assertion of their right to their own interpretation of human rights and the trend towards national and regional protection structures represents, in autopoietic terms, internal and external “irritations” in the “environment” of each state’s “sub-system”. Each national system, in reserving its right to decide and respond, seeks to preserve its autonomy. Whatever it decides depends on its own criteria as determined by its own context and its own process of “internalisation”. In the case of developing states the principles and rhetoric created during independence can be used in creative ways. It is common to re-emphasise the values of independence. In 1997, in his capacity as Finance

³⁶¹ Verma, Debating Rights in Malaysia: Contradictions and Challenges, *Journal of Contemporary Asia*, vol. 32, (2002) 108-130.

³⁶² Lopez, Globalisation, State and G/local Human Rights Actors; Contestation between Institutions and Civil Society, In Gomez (ed.), *Politics in Malaysia: The Malay Dimension*, (Oxon 2007) 50-51.

³⁶³ Universalist is the opposite to the relativist understanding of human rights. The universalist holds that the rights expressed in the global rights instruments are applicable to all individuals and societies, at all times and in all places regardless of race, religion or culture. These rights are argued to inhere in human beings rather than in societies and states, and exist in large measure for protecting individuals against the state. The relativist position, one which Lopez relates to the Malaysian government, on the other hand, is that human rights are subject to interpretation based on local norms, values, religious traditions and national priorities. See *Ibid.*(53).

Minister, Daim Zainuddin, succinctly summarised the official position of the Malaysian government on the issue of the rights of citizens:

For Malaysia, the protection of human rights and fundamental freedoms, consonant with the principles enshrined in the Universal Declaration of Human Rights (UDHR), is guaranteed in the Malaysian Constitution. Malaysia, however, believes that human rights and fundamental freedoms would be meaningless if the country is destabilised by social, political and economic chaos. Malaysia believes also that there is a need to review the various human rights instruments and also standards of human rights that were defined and established almost 50 years ago. Such a review should also take into account the peculiarities of national values, religions, customs, tradition, social and economic systems in a particular country, and attempts should be made to harmonise human rights in a balanced manner ...³⁶⁴

This emphasises what Blaug described as “incumbent democracy” rather than “critical democracy”. “Incumbent democracy” is primarily motivated to preserve existing institutions by maximising and managing orderly participation.³⁶⁵ With respect to the mainstream global human rights narrative, Daim suggested the need for a revision, or an updating, of the UDHR in the following terms:

The passage of time and the emergence of new situations and issues necessitate the formulation of a new declaration or a major overhaul of the present Declaration to make it acceptable to all nations and peoples. Developing countries, particularly from the South, have always been sceptical of the West’s insistence that they conform to the high ideals that the West itself cannot match. I think that such highhanded treatments smacks of arrogance of a bygone era when nations in the North believed they rule the world. That era has gone and will never return again ... Besides the social and cultural milieu, the widely differing state of development of the countries of the South as compared to those of the North makes any attempt to ensure universal compliance by all nations sound hollow. The developing countries believe that development is prerequisite for the promotion and protection of human rights and development may be construed as a deliberate intention to maintain and perpetuate the North-South divide.³⁶⁶

The Malaysian state responded to international pressure over human rights in setting up the National Human Rights Commission (SUHAKAM) in July 1999 to determine complaints of the infringements of rights, as well as to promote awareness of human rights, advance human rights education, and to advise the government in formulating human rights legislation. The Commission’s mandate defines human rights as those

³⁶⁴ Quoted in Aidcom, Asian Institute for Development and Communication, *Human Rights Handbook for ASEAN Journalists*, (Kuala Lumpur 1999) 19.

³⁶⁵ See note 22. Blaug, *Engineering Democracy*, *Political Studies Association*, vol. 50, (2002) 113.

³⁶⁶ Quoted in Aidcom, Asian Institute for Development and Communication, *Human Rights Handbook for ASEAN Journalists*, (Kuala Lumpur 1999) 19-21.

fundamental liberties enshrined in Part II of the *Constitution*.³⁶⁷ The advent of SUHAKAM constituted a change in the structures of national governance. It may serve primarily to lend credibility to the state's own human rights practices. It has been argued that the issues that SUHAKAM chooses to deal with publicly, tend to be those that are not controversial and over which it can adopt a universalist position. These issues include those relating to gender, children and the right to education. Beyond that, however, there are questions of SUHAKAM's ability to help protect people's rights. In particular, there have been no major legislative reforms to indicate a move away from the state's relativist orientation.³⁶⁸ Lim Kit Siang of the DAP goes so far as to regard SUHAKAM as "an alibi institution to legitimise human rights violations in Malaysia".³⁶⁹

Civil Society Organisations

Demands that the state be more receptive to participatory decision-making extend beyond involvement in political parties, elections and the formal political processes. It requires the involvement of civil society organisations and social movements, which in Malaysia come in many forms. Following are examples of civil society movements from three different sectors in Malaysia:

Consumer organisations

Consumer organisations came together in 1970 to form the Federation of Malaysian Consumer Association (FOMCA). In 1974 it pressured the government to establish the National Advisory Council for Consumer Protection, providing consumer associations with the capability to influence government policies. Beyond the traditional remit of consumer organisations, groups like the Consumer Association of Penang (CAP) and

³⁶⁷ NGOs argue that this definition of human rights is inadequate because human rights are guaranteed only to the extent they are consistent with the Federal *Constitution*. This to them is a restrictive definition because fundamental liberties are subject to Parliamentary laws such as the Sedition Act, Internal Security Act, Police Act and the Official Secrets Act. It is argued there is a need to review the definition of human rights by the Commission so that it embodies universal standards. See Verma, *Malaysia, State and Civil Society in Transition*, (Colorado 2002) 172.

³⁶⁸ Lopez, *Globalisation, State and G/local Human Rights Actors; Contestation between Institutions and Civil Society*, In Gomez (ed.), *Politics in Malaysia: The Malay Dimension*, (Oxon 2007) 50-74.

³⁶⁹ Lim Kit Siang (1999), 'Will the Human Rights Commission be Irrelevant?' in S.S. Rachagan and R. Tikamdas (eds), *Human Rights and the National Commission*, Kuala Lumpur: SUHAKAM, as cited in Verma, *Malaysia, State and Civil Society in Transition*, (Colorado 2002) 63.

Education and the Research Association for Consumers (ERA) have also become social movements which use both old and new ways to advocate their shared interests. Some fit with the idealised 'Malay way' better than others. This is represented in their practice of taking numerous public interest litigation cases against companies and the state and their involvement in programs to educate and empower the disadvantaged.³⁷⁰

Human rights organisations

Human rights organisations such as Aliran Kesedaran Negara (ALIRAN) and Suara Rakyat Malaysia (SUARAM)³⁷¹ play important roles in educating the public on human rights and public interests. While some are more activist in nature than others, these organisations represent those at the forefront of demands for democratic reforms and human rights, such as the repeal of laws deemed to be coercive including the *Internal Security Act 1960*, *Official Secrets Act 1971* and the *Universities and University Colleges Act 1971*.³⁷²

Environmental and Heritage Organisations

These organisations campaign extensively on environmental issues such as radioactive and hazardous waste pollution, logging and threats to nature reserves, noise and air pollution, the enforcement of Environmental Impact Assessment (EIA) procedures and other environmental and conservation issues. The Malaysian Nature Society (MNS), for example, works closely with the government and other sectors in promoting sustainable development. It was instrumental in influencing the development of the *Protection of Wild Life Act 1972* and in campaigning to save the Endau-Rompin National Park in 1977.³⁷³

These organisations and their activities demonstrate that, for some citizens, Malaysia is at a juncture where they have decided to make known where they stand on significant

³⁷⁰ Azeem Fazwan Ahmad Farouk, Social Capital, Civil Society and Democracy: The Case of Selected Malaysian Civil Society Organizations, *Kajian Malaysia*, vol. XXII, (2004) 13-15.

³⁷¹ ALIRAN was formed in 1977 and SUARAM in 1987.

³⁷² Azeem Fazwan Ahmad Farouk, Social Capital, Civil Society and Democracy: The Case of Selected Malaysian Civil Society Organizations, *Kajian Malaysia*, vol. XXII, (2004) 15-17.

³⁷³ Ibid.(17-18).

issues. They no longer see nation building as an activity to be left exclusively in the hands of the government but that citizens should be more active stakeholders in the country's future. Despite divergence between the interests of civil society organisations, they converge in their demand for more participatory decision making. Through organising coalitions to participate in discourses over specific political events, legislative measures or developmental projects, these organisations represent major agents for promoting greater political participation and consultation. In a sense, the growth of civil society movements represents a growth of political activity by the middle-class.³⁷⁴ Two of the groups which emerged in the 1998-1999 *Reformasi* movement, the 17 Points Election Appeal and Election Watch are potentially significant in their use of ICT in democratic politicising. Increasingly educated and exposed to global developments and to the use of new technology, they are demanding more from the state than just economic development. Contrasting with the views of Daim Zainuddin quoted above, they represent Blaug's "critical democracy" which empower extended voices to directly challenge existing institutions.³⁷⁵

Freedom of Speech

The activities of these civil society organisations challenge long standing restrictions on freedom of speech, the most significant human right in the context of digital democracy. Freedom of speech forms part of the Federal *Constitution's* declaration of human rights. In constitutional context, the right is better understood in the historic perspective of drafting the constitution, as discussed in chapter 2. Hickling writes:

³⁷⁴ According to Pandian, the involvement of the middle class in the 1998-1999 Reformasi movement (following the dismissal of former Deputy Prime Minister Anwar Ibrahim) became the first phase of their strong and active involvement in politics. They form groups labelled the "new democratic politics" and became activists through organisations such as: the Women's Agenda for Change which demands for changes on laws governing women's rights; the Citizens Health Initiative which opposes corporatisation of hospitals and other services at hospitals; the 17 Points Election Appeal which focuses on judicial and democracy issues; the Election Watch which undertook to oversee election campaigns; the Nature Lovers which protested the resettlement of the aborigines and natives of Sarawak; and the Consumers Organisation campaign to encourage parliamentarians into accepting the Consumers Protection Act. See Pandian, *The Middle Class and Signification of 2008 Malaysia General Elections*, *1st ISA Forum of Sociology*, (Barcelona, Spain 2008).

³⁷⁵ See note 23. Blaug, *Engineering Democracy*, *Political Studies Association*, vol. 50, (2002) 107.

[I]t was remarkable, indeed inspiring, that popular opinion could in 1956 and 1957, in the midst of an armed Communist uprising which all the wealth, force and ingenuity of the British *Raj* failed to suppress, agitate for and secure within the Federal Constitution a declaration of human rights. That these rights are too often qualified is beside the point: they express objectives, they afford ideals to work for; so often that, reviewing that distant Utopia of that welfare state, we can ask ourselves to what extent they have been fully achieved, to what extent lost, and whether the loss has been, on the whole, not unprofitable.³⁷⁶

The Basic Constitutional Framework

The constitutional development of Malaya in the post-war years revolved around the relationship between the majority Malay and minority Chinese and Indian communities.³⁷⁷ The ultimate resulting Malaysian Federal *Constitution* represented the end result of a century of British colonial administration which transformed the country from being a number of separate protectorates and colonies, into a single and independent federation with a modern constitution. According to Professor Shad Saleem Faruqi:

The Federal Constitution which was forged by leaders while battling extremism from within and without respective communities, has reconciled the seemingly irreconcilable conflict of interest between ethnic and religious groups.³⁷⁸

The fundamental features of the Federal *Constitution* as outlined in chapter 2 are its status as the supreme law,³⁷⁹ and the creation of the nation as a federation with the Yang di-Pertuan Agong as the supreme head.³⁸⁰ They include also a parliamentary democracy with a bicameral parliament including the Yang di-Pertuan Agong at the apex of a Westminster system.

Also as noted, the Federal *Constitution* creates the federal and state governments. It also separates power between the branches of government and imposes limits on them. Each of the 14 states in Malaysia has its own constitutions and State Assemblies. Where

³⁷⁶ Hickling, *Essays in Malaysian Law*, (Petaling Jaya 1991) 128.

³⁷⁷ There were at the time 3,000,000 Malays, 2,326,000 Chinese, 730,000 Indians, and 93,000 others; Registrar of Malayan Statistics to Reid Commission, 31 December 1955, Jenning Papers, B/10/5/I as cited in, Parkinson, *Bills of Rights and Decolonization: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories*, (New York 2007) 73.

³⁷⁸ An interview with Professor Shad Saleem Faruqi by Martin Vengadesan in .Vengadesan, *Defending Our Chart and Compass*, *The Star*, (Kuala Lumpur June 29 2008).

³⁷⁹ Federal Constitution Article 34.

³⁸⁰ *Federal Constitution* Articles 1, 32(1) and 40.

conflict arises between state and federal laws, Article 75 of the Federal *Constitution* specifies that federal laws prevail over state laws. Any law passed by Parliament that is inconsistent with the Federal *Constitution* is, to the extent of that inconsistency, void.³⁸¹ While the Federal *Constitution* is the supreme law, certain provisions can be amended by an Act of Parliament passed by a two thirds majority in each House. Provisions governing the prerogatives of the State rulers also require such a two-thirds majority, coupled with the concurrence of the Conference of Rulers.

Traditional Elements of the Malaysian Federal Constitution

Among the factor which distinguishes Malaysia from its neighbours is the enshrining of the ethnic and religious identity of its main ethnic group, the Malays, in the *Constitution*. These are referred to by Tun Haji Mohamed Salleh Abas, a former Lord President, as ‘traditional elements’ of the Federal *Constitution*. He writes:

Take away provisions which deal with the machinery of Government and parliamentary supremacy and the judiciary and those provisions which deal with citizenships, a good number of the remaining Constitutional provisions deal with matters which can be described as “traditional” in the sense that these matters have been in practice long before the British colonial administration itself and have passed through several successive constitutional and political developments and have finally been retained in the present Constitution. It must have been thought of [sic] [by] its framers that these elements are essential for the stability and progress of the country and have important roles to play in the working of the Constitution. These elements are:

The Sultanate or Rulership

Islamic religion

Malay Language

Malay privileges.³⁸²

³⁸¹ Federal Constitution Article 4 (1). It should be noted here that Para 3(i) of the Reid Report states that the establishment of a strong central government was a primary objective. The resulting weak federal structure suppresses the voice of the states which would be a key feature of a participative democracy. For instance the states do not have any significant constitutional rights revenue collected in their territory to be returned as Federal grants. The Federal Government collects a very substantial portion of revenue under its powers in the Federal List at the Ninth Schedule of the Federal *Constitution*. This gives the Federal Government considerable leverage over the States in terms of negotiation on matters involving State’s rights.

³⁸² Mohamed Salleh Abas, Selected Articles and Speeches on Constitution, Law and Judiciary, (Kuala Lumpur 1984) 37.

According to Abas, these elements more or less coincide with the definition of a Malay, who is a person who professes the religion of Islam, habitually speaks the Malay language and conforms to Malay customs. As indicated, the *Constitution* provides that Islam is the religion of the Federation.³⁸³ It is, in fact, the religion of the Malays.³⁸⁴ It provides that the Malay language is to be the national language of the Federation.³⁸⁵ This is also the language of the Malays. The *Constitution* also provides that Malay rulers are to be the head of the federation and the heads of all the Malay states. This institution of Malay rulership, the heart of Malay custom, along with all these other elements, Abas concludes, gives the federation its distinctive characteristics.³⁸⁶ Discussion of these elements is important in informing discussions of freedom of speech in Malaysia, particularly, in understanding the likelihood of attempts to impose possible limitations on it.

The Sultanate or Rulership

Malaysia has an elected King, known as the Yang di-Pertuan Agong, nine hereditary Rulers and four appointed Yang di-Pertua Negeri [formerly known as Governors]. Article 32 of the Federal *Constitution* states that the King, who is a hereditary Ruler in his own state, is to be elected by the hereditary Rulers from amongst themselves. His term of office is five years. He can at any time be removed by the Conference of Rulers³⁸⁷ and cannot exercise the functions of the Yang di-Pertuan Agong if charged with an offence.³⁸⁸

³⁸³ *Federal Constitution* Chapter 4, Part IV and Article 3.

³⁸⁴ This provision shows that Islam is considered an important part of the Malay persona, so much so that questioning of one part is considered an attack on the other, and may lead to heightened sensitivity. Article 10(4) of the Constitution, inserted in 1970, which will be discussed later, proscribes any discussion on the subject matters of citizenship, the national language, special privileges and the sovereignty of the Rulers. See Tan, *Human Rights and the Malaysian Constitution Examined Through the Lens of the Internal Security Act 1960*, vol. 2009, (2001) accessible at <http://abcsprt.net.au>.

³⁸⁵ Federal Constitution Article 152.

³⁸⁶ See Mohamed Salleh Abas, *Selected Articles and Speeches on Constitution, Law and Judiciary*, (Kuala Lumpur 1984) 37-53.

³⁸⁷ Raja Azlan Shah, *The Role of Constitutional Rulers in Malaysia*, In Trindade and H.P.Lee (eds.), *The Constitution of Malaysia: Further Perspectives and Developments, Essays in Honour of Tun Mohamed Suffian*, (Oxford 1986) 76.

³⁸⁸ Federal *Constitution* Article 33A. This Article was inserted by the Constitution (Amendment) Act 1993 with effect from 30 March 1993. Article 33A(1) states : Where the Yang di-Pertuan Agong is charged with an offence under any law in the Special Court established under Part XV he shall cease to exercise the functions of the Yang di-Pertuan Agong.

As a constitutional monarch, the King is formally invested with the executive authority of the Federation, but may only act on the advice of his ministers or a minister authorised by the cabinet.³⁸⁹ He is also formally the Supreme Commander of the armed forces of the Federation.³⁹⁰ He has power to grant pardons, reprieves and respites to persons convicted by courts-martial and of offences committed within the Federal Territory of Kuala Lumpur.³⁹¹ The Yang di-Pertuan Agong is one of the three constituent elements which make up the federal legislature, the Parliament.³⁹² As Supreme Head of the Federation, he has power to make important appointments to positions created not only under the *Constitution* but also under Acts of Parliament, including judges, chairpersons and members of services commissions and some heads of government departments.

To ensure continuance of the institution of the Sultanate, the Ruling Chiefs and other Malay customary dignitaries and titles, Article 71 guarantees the right of a Ruler of a state to succeed, hold, enjoy and to exercise the constitutional rights and privileges of Ruler of that state. This guarantee however does not authorise any federal intervention in a state's affairs, or in the choice of candidates for the Rulership of the state. The constitutional roles conferred upon the Rulers, emphasise a continuance of their traditional roles and their significance in the government. There are several examples of the willingness of political party leaders to give in to Rulers on matters on which the Rulers do not have absolute discretion. This has occurred with the appointment of Menteri Besars [Chief Ministers] of a state. Such is the importance of the role of Rulers that the acceptability to the Ruler of candidates for the post of Menteri Besar is considered essential.³⁹³

³⁸⁹ Federal *Constitution* Articles 39 and 40.

³⁹⁰ Federal *Constitution* Article 41.

³⁹¹ Federal *Constitution* Article 42.

³⁹² Federal *Constitution* Article 44.

³⁹³ Raja Azlan Shah, The Role of Constitutional Rulers in Malaysia, In Trindade and H.P.Lee (eds.), *The Constitution of Malaysia: Further Perspectives and Developments, Essays in Honour of Tun Mohamed Suffian*, (Oxford 1986).

The sultanate can be traced to the Hindu period. However, very little is known about the effect of this origin and of its relevance on the present role of rulers.³⁹⁴ What is more significant however is the role of the Malay Sultans established during the Malacca period, in which Islam became the religion professed by the Malays. Islam lays down that a Ruler has no absolute powers. A Muslim Ruler cannot expect loyalty from his subjects if in carrying out the Ruler's command they are required to violate the values of their religion. For, as Muhammad is reported to have said, "There is no obedience in sin. It is only in virtue."³⁹⁵ Huzir Sulaiman,³⁹⁶ writing on the historic challenges faced by the Rulers, portrays the peculiar relationship between the Malay Sultan and his Prime Minister:

[W]hen the Sultan summons the Bendahara, or royal Prime Minister, to attend a betrothal ceremony, "the Bendahara has a peculiar way of responding to this royal summons. When the messenger approaches him for the first time, he replies, 'Datanglah kita mengadap' (We will come)." Instead of going straight away to the palace, the Bendahara takes a bath. Again a messenger is sent, only to be told by the Bendahara to return to the palace, as the Bendahara is coming. The Bendahara lets people wait for him: he gets dressed, and waits for a third summons before he obeys. "This is to show his position in relation to the King: the Bendahara is chief advisor to the king and is regarded as the power behind the throne. The use of the pluralis majestatis "kita" (the royal "we") must be an assertion of superiority or arrogance.

Islamic Religion

Malaysia is a land of many religions. The Malays however, have only one religion, ie, Islam. It is alien to the Malay mind that a Malay could not be a Muslim, and such a person would be a "murtad" [excluded from the faith]. To be a Malay one must be a Muslim, although not necessarily practising or devout Muslim. This complete identification of religion with race is so fundamental to Malay thought that Islam has become an important and constituent element in the legal and constitutional definition of

³⁹⁴ Abdullah Sanusi Ahmad, Norma Mansor and Abdul Kuddus Ahmad, *The Malaysian Bureaucracy: Four Decades of Development*, (Kuala Lumpur 2003) 9.

³⁹⁵ See Chandra Muzaffar, *Protector? (an Aliran Publication) (1979) Chapter 1*, as cited in Raja Azlan Shah, *The Role of Constitutional Rulers in Malaysia*, In Trindade and H.P.Lee (eds.), *The Constitution of Malaysia: Further Perspectives and Developments, Essays in Honour of Tun Mohamed Suffian*, (Oxford 1986) 77.

³⁹⁶ Huzir Sulaiman, *Ruling the Rulers, The Star*, (Kuala Lumpur 2008), this article describes that the tensions between the Malay ruler and his powerful ministers were already encoded in the culture of Malay Kingship at the time of "its early flowering in the Malacca Sultanate".

Malay under Article 160. Thus Article 3, declaring that “Islam is the religion of the Federation”, represents what the Malays held even before the first British trading contacts. Article 3 provides a balancing clause, providing that “other religions may be practised in peace and harmony in any part of the Federation”.³⁹⁷

The consequence of Islam being accepted as the religion of the federation is that the government, whether federal or state, under Article 12(2), has the power to establish or maintain, Islamic institutions or to provide instruction in Islam and to meet the costs of doing so. Under this constitutional power, the Education Act 1961 requires any school in receipt of government aid, to provide Islamic religious instruction to Muslim pupils, provided that there are fifteen or more enrolled in the school.

Malay Language

The Federation of Malaya Agreement 1948, which created the Federation of Malaya to succeed the dissolved Malayan Union, retained English and Malay as official languages of the Federal Executive Councils. However, it privileged English by providing that anything which was required to be written must be in English. The years after the Second World War saw a progressive erosion of Malay “to give way for the sake of convenience and expediency to the supremacy of the English language”.³⁹⁸ When Malaya gained independence in 1957, the Malay language was recognised as the national language³⁹⁹ of the Federation by Article 152(1) of the *Constitution*. One of the consequence of ascribing a language as a national language under the *Constitution* is that it becomes the language to be used for all official purposes as defined in the *Constitution*. All other languages, may continue to be taught and learnt, and could be used only for purposes “otherwise

³⁹⁷ Mohamed Salleh Abas, *Selected Articles and Speeches on Constitution, Law and Judiciary*, (Kuala Lumpur 1984) 42. See also Hickling, *Essays in Malaysian Law*, (Petaling Jaya 1991) 94-95.

³⁹⁸ Mohamed Salleh Abas, *Selected Articles and Speeches on Constitution, Law and Judiciary*, (Kuala Lumpur 1984) 47.

³⁹⁹ According to Tun Salleh Abas in *Ibid.*(48), “the high hypothesis underlying the enactment of the Malay Language to be the national language instead of official language was intended to fulfil the needs for the unification of the various communities into one single nation by means of a common language This thought is reflected by the National Education Policy which stresses the Malay language as the main medium of instruction and the Education Act 1961 implements that policy and gives expression to its ideal”.

than official purposes.”⁴⁰⁰ Today, English which is imperative in international transactions and communications continues to be widely used in Malaysia. Among Malaysians of the three basic ethnic backgrounds, Malay, Chinese and Indian, “the conversational exchanges in especially semiformal or informal discourse smacks heavily of English interspersed with their mother-tongue”.⁴⁰¹

Malay Privileges

Article 153 imposes a responsibility on the Yang di-Pertuan Agong to safeguard the special position of the Malays and the natives of the States of Sabah and Sarawak and also the legitimate interests of other communities. The provisions of this Article are one of the basic elements on which the *Malaysian Constitution* was built. It straddles sensitive issues between Malays and other races. This is discussed in the account of the proposed Malayan Union in chapter 2.

The Yang di-Pertuan Agong, under Article 153, is given a number of powers, within the constraints of the Constitution and federal law, to safeguard the special position of the Malays and the natives of the States of Sabah and Sarawak. These include making reservations for them for positions in the public service, for scholarships and grants or other educational facilities and for permits and licences required for business and trade. He is empowered to issue necessary directions to appropriate authorities to ensure compliance with this policy, but may not deprive anyone of any public office, any scholarship, privilege, permit or licence held by a person.

Included amongst the Malay privileges are the provisions of Articles 89 and 90 relating to Malay reservation lands, constitutionalising the existing law on the subject which protects Malay reservation lands from being dealt with by non-Malays. Enlistment of Malays in the Malay Regiment to the exclusion of non-Malays is authorised by articles 8(5) (f) and

⁴⁰⁰ Official purpose is defined by Clause (6) of Article 152 of the Constitution to mean “any purpose of the government whether Federal or State and any purpose of a public authority”. For further discussion see *Ibid.*(46-48).

⁴⁰¹ Baskaran, Whose English? Whose/What Standard? The Role of English in Malaysia, *International Conference on English Language and Development for Equity*, (Kuala Lumpur 2002) 3-4.

can also be regarded as part of the Malay privileges. These Malay privileges are not absolute but are balanced against the legitimate interests of other communities. These interests, broadly speaking, consist of rights to acquire Malaysian citizenship according to the citizenship provisions in the Constitution, rights to profess their religions and worship according to them, rights to use their ethnic languages and, above all, rights not to be discriminated against. Like the Malay privileges these rights are also limited by a number of provisions in the *Constitution*.⁴⁰²

Fundamental Rights under the Constitution

The declaration of human rights in the Constitution, which Hickling observed was inserted in the midst of an armed communist uprising,⁴⁰³ is found in Chapter II. It consists of Articles 5 to 13 and specifies certain fundamental liberties, including:

- that no person shall be deprived of his life or personal liberty save in accordance with the law- Article 5;
- the right to be informed as soon as is possible of some of the grounds of arrest and the right to legal representation – Article 5(3);
- the right to be brought before a court without reasonable delay and, in any case, within 24 hours – Article 5(4);
- freedom from slavery and forced labour - Article 6;
- protection against retrospective criminal laws and repeated trials – Article 7;
- equality before the law and equal protection by the law – Article 8;
- freedom of movement and prohibition of banishment – Article 9;
- freedom of speech, expression, peaceful assembly and formation of associations – Article 10(1);
- freedom to profess, practise and propagate religion – Article 11;
- rights in respect of education – Article 12; and
- rights to property – Article 13.

⁴⁰² Hickling, *Essays in Malaysian Law*, (Petaling Jaya 1991), Mohamed Salleh Abas, *Selected Articles and Speeches on Constitution, Law and Judiciary*, (Kuala Lumpur 1984) 50.

⁴⁰³ See note 373. Hickling, *Essays in Malaysian Law*, (Petaling Jaya 1991) 128.

An examination of the constitutional provisions discloses two types of rights, namely absolute rights and qualified rights. Absolute liberties are those without restriction or qualification. Qualified liberties are those which the *Constitution* permits laws to curtail under certain conditions. For instance, freedom from slavery is an absolute right while freedom of speech on the other hand is a qualified right. Article 10(1) (a) of the Federal *Constitution* provides that every Malaysian citizen shall have the rights of free speech and expression. Taken in isolation, it appears to be a guarantee of that right. However, it is not an absolute guarantee as other provisions permit limitations to be placed on its exercise.

Article 10(2) (a)

Parliament may, under Article 10(2)(a) by legislation, restrict the right to freedom of speech and expression provided by Article 10(1), on nine grounds: security of the Federation; friendly relations with other countries; public order; morality; privileges of the Parliament; privileges of a Legislative Assembly; contempt of court; defamation; and, incitement to commit any offence.⁴⁰⁴ It is argued that the restrictions provided under Article 10(2) (a) are utilised by the incumbent Barisan Nasional government to protect state institutions from loss of credibility from freedom of expression and the freedom of the press being used to criticise them.⁴⁰⁵

Article 10(4)

Article 10(4) was inserted in the *Constitution* in 1970. The background to it is the race riots of 13 May, 1969 which have been discussed in chapter 2. The incident led to the declaration of a state of emergency and the promulgation of the national ideology, the *Rukunegara*, on 31 August 1970. The *Rukunegara* contains the five principles of belief in God, loyalty to King and Country, upholding the *Constitution*, the rule of law, and good

⁴⁰⁴ Ibid.(139).

⁴⁰⁵ The government in 1997 supported the 12 weeks imprisonment (reduced on appeal to six weeks) of Murray Hiebert, a Far Eastern Economic Review journalist, for his article entitled "See you in court". The court found that it scandalised the courts and threatened the credibility of judicial institutions. See Hilley, *Mahathirism, Hegemony and the New Opposition*, (London 2001) at 346 as cited in Mohd Azizuddin Mohd Sani, Media Freedom in Malaysia, *Journal of Contemporary Asia*, vol. 35, (2005) 67.

behaviour and morality. In the same year, the legislature amended Article 10 of the *Federal Constitution* by adding Article 10(4). It proscribes any discussion on the subject matters of citizenship, the national language, special privileges and the sovereignty of the rulers, which are among the traditional elements of the *Federal Constitution* as discussed above. Article 10(4) states:

In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause (2) (a), Parliament may pass law prohibiting the question of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part II, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law.

Article 63(4)

The *Federal Constitution* was also amended at the same time Article 10(4) was inserted to include Article 63 (4). It removes Parliamentary privilege and immunity from members who are charged with offences under laws passed pursuant to the amended Article 10 (4) and the *Sedition Act 1948*.

Articles 149 and 150

The fundamental liberties and rights listed in Articles 5 to 13 are also to be read subject to Articles 149 and 150. By virtue of Article 149, Parliament may make laws against subversion, irrespective of whether an emergency is proclaimed.⁴⁰⁶ If such a law were to be passed, it may be inconsistent with some of the liberties mentioned in the Constitutional declaration of rights mentioned above. They reflect that those rights were declared in the midst of the communist insurgency.⁴⁰⁷

Article 149 is the constitutional basis for preventive detention laws such as the *Internal Security Act 1960 (ISA)*, the *Dangerous Drugs (Special Preventive Measures) Act 1985*, and the *Emergency (Public Order and Prevention of Crime) Ordinance 1969*. None of

⁴⁰⁶ Article 149 had a clause stating that such laws would automatically lapse upon the expiration of one year from the date on which they came into operation. However, the sunset provision was removed in the Constitutional Amendment Act 1960 and the position now is that such laws would continue to exist indefinitely, unless and until both Houses of Parliament pass resolutions annulling them.

⁴⁰⁷ See note 375. Hickling, *Essays in Malaysian Law*, (Petaling Jaya 1991) 128.

the other statutes have elicited as much controversy as the *Internal Security Act 1960*.⁴⁰⁸ Originally enacted under British rule to thwart the threat of communism, the ISA confers on the executive a wide discretionary power to detain individuals without trial for a period of up to two years. In general Malaysian courts have taken a conservative stance on applications for habeas corpus. In *Public Prosecutor v Yee Kim Seng*⁴⁰⁹ Ajaib Singh J held that the ISA was a valid law passed by Parliament, consequently:

Article 5(1) ... is not infringed because the accused [under the Act] is not going to be deprived of his life or personal liberty except in accordance with law.⁴¹⁰

The Courts have restricted their review of detention orders to procedural matters and adopted a subjective approach.

In *Noor Ashid bin Sakib v Ketua Polis Negara*⁴¹¹ Jeffrey Tan J held that whenever a person challenges his detention under this Article, it is incumbent upon the authority who

⁴⁰⁸ Section 73 provides for arrest by police for interrogation: "Any police officer may, provided that he or she has reason to believe that a person may be prevented from acting in a manner prejudicial to the security, or the maintenance of essential services, or economic life of Malaysia or any part of the country, carry out an arrest without a warrant. If the arrest is subsequently authorised by an officer with the rank of Deputy Superintendent, and reported to the Inspector General of Police, the person may be detained for 60 days without a detention order being issued by the Minister under section 8". Section 8 provides for a detention order made by the Minister: The Minister for Home Affairs may issue a detention order for a period up to two years. In addition the Minister may direct where the person is detained, and make rules for the discipline and treatment of such persons. The detention order may be renewed indefinitely. In place of such an order under section 8(5), the Minister may order that the person be restricted in terms of: (i) activities, place of residence and employment; (ii) times of personal curfew; (iii) requiring the person to report to authorities; (iv) political activities; and (v) travel either within or outside Malaysia. A bond may be required for compliance with the restrictions. The order may be issued for up to two years and again indefinitely extended for two years at a time. Under Article 151(1) (a) of the Federal *Constitution* and section 11 of the ISA, detainees are allowed some rights. They generally relate to information as to grounds of detention and the alleged facts on which the detention orders are based. One of the initial safeguards to the arbitrary exercise of power was the review of all detention orders by a Special Advisory Board within three months of the order, under Article 151(1) (b) of the Constitution. This power was removed in 1960 and the present provision allows for an indefinite time of detention to elapse before a review by an Advisory Board. Further, the Board now only has the power to make recommendations to the Yang DiPertuan Agong, the head of state, who is constitutionally obliged to act on the advice of the Cabinet. Judicial review of such order is also limited. An 1989 amendment to section 8 (b) (1) reads: "There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of any act done or decision made by the Yang DiPertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision."

⁴⁰⁹ [1983] 1 MLJ 252.

⁴¹⁰ See Vohrah, Koh and Ling, Sheridan & Groves *The Constitution of Malaysia*, 5th Edition ed., (Kuala Lumpur 2004) 62.

⁴¹¹ [2002] 5 MLJ 22.

detained him to show that the detention is in the exercise of a valid legal power and that the power has been exercised strictly in accordance with the provisions of the relevant law. However, he stated, it is not for the court to investigate the sufficiency of the reasons or grounds relied on by the detaining authority. Whether there is reasonable cause to detain is a matter of opinion and policy, which is to be decided by the executive government. The subjective satisfaction of the minister on these issues, is not subject to judicial review. The court is only concerned with the procedural aspect of the exercise of executive discretion. The only issue for judicial determination is whether the detaining authority had complied with all the procedural requirements for each period of detention challenged.⁴¹²

A similar provision to Article 149 exists under Article 150 which states that the Yang di-Pertuan Agong, if satisfied that a grave emergency exists whereby the security, or the economic life, or public order in the Federation or any part thereof is threatened, may issue a proclamation of emergency and make a declaration to that effect. This provision has been invoked on four occasions, the last of which was in 1977.⁴¹³

A Reflection on Contentions

An authority on Malaysian constitutional law, Professor Shad Saleem Faruqi, reflecting on the Constitution in 2008 stated:

Life is larger than law and there will be many situations in which the law provides no guidance. A Constitution is sure to be full of ambiguities and conflict. It seeks to strike a balance between might and right, to permit liberty, while at the same time enforcing responsibility.⁴¹⁴

⁴¹² Vohrah, Koh and Ling, Sheridan & Groves *The Constitution of Malaysia*, 5th Edition ed., (Kuala Lumpur 2004)67-68).

⁴¹³ In 1964, 1966, 1969 and 1977. The 1964 emergency was over the Indonesian confrontation. The 1966 emergency was limited to Sarawak following the dismissal of the Chief Minister. The 1969 emergency was related to racial riots. The 1977 emergency was limited to Kelantan for dealing with a political crisis which resulted in PAS leaving the Barisan Nasional coalition. See Lee, Emergency Powers in Malaysia, In Trindade and Lee (eds.), *The Constitution of Malaysia, Further Perspectives and Developments, Essays in Honour of Tun Mohammed Suffian*, (Singapore 1986) 135-156.

⁴¹⁴ Professor Shad Saleem Faruqi in an interview with Martin Vengadesan. See Vengadesan, Defending Our Chart and Compass, *The Star*, (Kuala Lumpur June 29 2008).

Fifty one years after independence, the Federal *Constitution* has served Malaysia well. It has provided a solid foundation for the country's stability, considerable social harmony and economic affluence. However, with its ideals of the rule of law, the separation of powers, fundamental rights, limited power of parliament,⁴¹⁵ an executive controlled by and accountable to parliament,⁴¹⁶ an independent judiciary and a federal-state division of powers, it has faced a number of challenges.

Although the *Constitution* is fairly well entrenched, the executive government's dominance of Parliament, has meant that amendments to it have been achieved relatively easily. Since it took effect on independence in 1957, it has had more than 600 amendments. This averages 13 changes a year since the first revision in 1963 to include Sabah, Sarawak and Singapore in the extended federation of Malaysia.⁴¹⁷ Of particular significance to any discussion of digital democracy, are amendments which resulted from the 13 May 1969 racial riots, namely Articles 10(2) (a) and 10(4) as noted above.

Amendments to the *Constitution* have become more difficult for the executive government since the Barisan Nasional lost its two thirds majority in the 2008 General Elections. Professor Shad Saleem Faruqi, observes:

The system needs checks and balances, and that is why the current political situation is preferable from the point of view of the Constitutional advocate. It means that the Government can function, pass laws, implement policies, but is not strong enough as to ride roughshod over dissenting opinions.⁴¹⁸

Many discussions of freedom of speech suggest that Articles 10(2)(a), 10(4) and 63(4) of the Federal *Constitution* have outlived their relevance. Arguments are made that along with laws such as the *Sedition Act 1948* and the *Printing Presses Act 1948*, the justification for their creation, namely, threats of communist insurrection under colonial rule, no longer exist.

⁴¹⁵ Parliament subject to a Bill of Rights.

⁴¹⁶ An executive accountable to both Parliament and courts.

⁴¹⁷ Shad Saleem Faruqi, Operating at the Periphery, *The Star*, (Kuala Lumpur November 14 2007).

⁴¹⁸ Professor Shad Saleem Faruqi in an interview with Martin Vengadesan in Vengadesan, *Defending Our Chart and Compass*, Ibid.(June 29 2008).

A case has been made against Article 10(4) in particular. It is argued that: (i) matters concerning citizenship are no longer a political issue between, and amongst, ethnic communities; (ii) globalisation and international trade promote, and require, the use of English instead of Malay language; and, (iii) the 1983 constitutional crisis,⁴¹⁹ involving rulers, and the 1993 constitutional amendment, removing the personal immunity of the rulers, demonstrates an evolving new culture making the discussion of matters involving the rulers acceptable. With respect to the rulers, it is argued that even if clause (4) of Article 10 were to be repealed, their position is still protected by Articles 63(5) and 72(5) of the Federal *Constitution* which prohibit any discussion of the abolition of the constitutional position of the rulers in the Federal Parliament and State Assemblies respectively. Article 63(4) is said to have outlived its purpose as, in a changing culture and society, the right of the legislators to raise matters of importance should not be unnecessarily restricted, especially when issues are of national importance. A robust legislature is argued to be one of the key safeguards against excessive dominance of the executive government. These arguments concentrate on social, economic and political changes which have reduced the threats to national security raised by free speech.⁴²⁰ There are other, more general issues, of contention over some constitutional provisions including:

⁴¹⁹ The crisis of 1983 was an important episode in the political and constitutional development of Malaysia. It represents the first significant conflict within the Malay community since independence. The conflict was between the Rulers who retain support in traditional rural states of the north and east, and, the Prime Minister, who had support from the prosperous western states. What is more significant, however, is that at the end of the crisis the majority of the population had been made aware how controversial this subject can be and how it is now no longer regarded as beyond discussion. The first problem related to the royal assent necessary for federal bills. The Constitution (Amendment) Bill provided for a redrawn Article 66(5) to read: "A Bill shall become law on being assented to by the Yang di-Pertuan Agong. If for any reason whatsoever the Bill is not assented to within fifteen days of the Bill being presented to the Yang di-Pertuan Agong, he shall be deemed to have assented to the Bill and the Bill shall accordingly become law." The second issue concerned Article 150 on the preconditions to the promulgation of a Proclamation of Emergency which under the Article was expressed to be the satisfaction of the Agong, rather than that of the Federal Government. A redrawn Article 150 was to read: "If the Prime Minister is satisfied that a grave emergency exists whereby the security or the economic life or public order in the Federation or any part thereof is threatened, he shall advise the Yang di-Pertuan Agong accordingly, and the Yang di-Pertuan Agong shall then issue a proclamation of Emergency making therein a declaration to that effect." For a detailed discussion on the crisis see Rawlings, *The Malaysian Constitutional Crisis of 1983, International and Comparative Law Quarterly*, vol. 35, (1986) 237-254.

⁴²⁰ For examples of these discussions, see Wu, *Sacrificing Personal Freedom in the Name of National Security, 4th Professor Ahmad Ibrahim Lecture*, (Kuala Lumpur 2003) and Hang, *Let a Hundred Flowers Bloom: Digital Speech in Malaysia, Asian Journal of Comparative Law*, vol. 1, (2006) 1-22.

- *The difficulty of enforcing the Constitution's claim to supremacy* - the Federal *Constitution* states that it is “the supreme law of the Federation”, but this supremacy is also subject to a large number of exceptions in the *Constitution* itself, such as Article 4(2)⁴²¹ and 150(8).⁴²² Other provisions limit judicial review of some types of legislation or decisions, some of which have been discussed above, which make it difficult to sustain or enforce the *Constitution's* claim to supremacy;
- *The extensive potential restrictions on fundamental rights* - the *Constitution* permits Parliament to restrict fundamental rights by ordinary legislation, by special powers passed under Articles 149 and 150 and by constitutional amendments;
- *The absence of limitations on powers of Parliament* - the Bill of Rights imposes restraints on the executive but puts no significant hurdles in the path of Parliament;
- *The absence of limitations on laws relating to subversion* - Article 149 authorises parliament by a simple majority procedure to enact laws to combat subversion. These laws are valid even if they transgress the guarantees of personal liberty (Article 5), freedom of movement (Article 9), freedom of speech, assembly and association (Article 10) and right to property (Article 13);⁴²³ and
- *The absence of limitations on suspension of rights during emergencies* - Article 150 is even more extensive than Article 149. Once a proclamation of emergency has been made by the Yang di-Pertuan Agong, Parliament is authorised to

⁴²¹ Article 4(2) states: (2) The validity of any law shall not be questioned on the ground that - (a) it imposes restrictions on the right mentioned in Article 9(2) but does not relate to matters therein; or (b) it imposes such restrictions as are mentioned in Article 10(2) but those restrictions were not deemed necessary or expedient by Parliament for the purpose mentioned in that Article.

⁴²² Article 150(8) concerning special powers against subversion states: Notwithstanding anything in this Constitution - the satisfaction of the Yang di-Pertuan Agong mentioned in clause (1) and clause (2) (B) shall be final and conclusive and shall not be challenged or called in question in any court on any ground; and no court shall have jurisdiction to entertain or determine any application, question or proceeding, in whatever form, on any ground, regarding the validity of - a Proclamation under Clauses (1) or of a declaration made in such a Proclamation to the effect stated in Clause (1); the continued operation of such Proclamation; any ordinance promulgated under Clause (2B); or the continuance in force of any such ordinance.

⁴²³ Article 149(2) and 150(3) was amended to remove the time limitation and invert the procedure to allow emergency laws to subsist until such time both Houses of parliament repeals them.

suspend any provision of the *Constitution* except subjects which are specified in Article 150(6A).⁴²⁴ This means that it is possible by an ordinary legislative process to limit or abolish fundamental rights and the federal-state divisions of power and to create a parallel legal system created which has superiority over ordinary laws.

Judicial Review of Executive Actions

Despite the pronouncement in Article 4(1) that, “this Constitution is the supreme law of the federation”, Malaysian courts have shown extreme reluctance to invalidate legislation made by Parliament or enactments of State Legislative Assemblies on constitutional grounds. In the 50 years since independence, in 17 cases, legislation has been found to have been invalid following review for constitutionality. Six of these rulings were reversed on appeal. So only on nine occasions in 50 years has legislation been found to be unconstitutional. It is also noteworthy that in this period, not a single piece of legislation restricting freedom of speech has ever been found to be invalid by a court. Large areas of the authority of the executive government remain outside judicial review, such as the Attorney-General’s powers under Article 145, the government’s power to advise the Yang di-Pertuan Agong to issue emergency proclamations, and, the subjective satisfaction of the minister in preventive detention cases because of the absence of objective standards.⁴²⁵

Judicial Reticence

Before 1988, Article 121(1) of the *Constitution* vested “the judicial power of the Federation” in the courts. An amendment that year, deleted the reference to the judicial power. It was rephrased to read that the courts “shall have jurisdiction and powers as may be conferred by or under federal law”. The judiciary, as the third and independent arm of government, created by the *Constitution* appears to have been removed. This also created the perception that the executive government and the Parliament had the right to assert

⁴²⁴ The are provisions relating to Islamic Law, Native law, customs, religion, citizenship, language.

⁴²⁵ Shad Saleem Faruqi, Operating at the Periphery, *The Star*, (Kuala Lumpur November 14 2007).

their superiority over the judicial branch.⁴²⁶ To some judges this amendment represented a humiliation. Other judges accepted that their status as the third branch of the government had ended. Others insisted that this restatement did not change the constitutional status of the courts and that their powers of judicial review for constitutionality remain unchanged.⁴²⁷

The background to this controversial amendment was *Public Prosecutor v Datuk Yap Peng*⁴²⁸ in which the Attorney General's power to transfer cases from one court to another under section 418A of the Criminal Procedure Code (CPC) was challenged. The High Court and the Supreme Court held that section 418A of the CPC infringed Article 121(1) of the *Federal Constitution*. The crux of the argument was that the power to transfer a case, including after the judicial proceedings had begun, amounted to interference in the "judicial power of the Federation". That power was vested by the then unamended Article 121(1) in the two High Courts. The aftermath of the court's ruling was the far reaching constitutional amendment. Among other things, two changes deserve attention:

⁴²⁶ In the colonial period the judiciary appeared to be just another branch of the civil service and some of the laws referred to earlier reflected this.

⁴²⁷ See Shad Saleem Faruqi, Restoring Judicial Power, *The Star*, (Kuala Lumpur April 16 2008), Harding, Law, Government and the Constitution in Malaysia, (Kuala Lumpur 1996) 142-148 and Tan and Ann, Constitutional Law in Malaysia and Singapore, 2nd ed., (Singapore 1997) 394-399.

⁴²⁸ In *Public Prosecutor v Datuk Yap Peng* (1987) 2 Malayan Law Journal 311, the accused was charged with a criminal breach of trust in the Kuala Lumpur Sessions Court on Dec 19, 1986. When the case was mentioned on December 29, the deputy public prosecutor tendered a certificate issued by the public prosecutor under Section 418A of the Criminal Procedure Code (CPC), requiring the case to be transferred to the High Court. When the accused was subsequently charged in the High Court on January 6, 1987, his counsel argued that the transfer was unconstitutional and that Section 418A violated Articles 121(1) and 5(1) of the *Federal Constitution*. In the High Court, the trial judge, Zakaria Yatim, held that Section 418A was unconstitutional because it contravened Article 121(1). He held that the power to transfer cases is an exercise of judicial power. Aggrieved by that decision, the public prosecutor appealed to the Supreme Court. The Supreme Court held by a majority decision of 3:2, Tan Sri Eusoffe Abdoolcader, Tan Sri Lee Hun Hoe and Tan Sri Mohamed Azmi with Tan Sri Hashim Yeop A. Sani and Tun Salleh Abas (Lord President) dissenting, that Section 418A CPC was unconstitutional. This amendment led to what is known as the Judicial Crisis of 1988. Contentions revolved around the judiciary's assertion of the principles of the rule of law in constitutional and administrative law matters and the doctrine of separation of powers. It resulted in the dismissal or suspension of six judges, including the Lord President, Tun Salleh Abas. For further discussion of the case and its relevance to the issue of the jurisdiction of the Malaysian Courts see Tan and Ann, Constitutional Law in Malaysia and Singapore, 2nd ed., (Singapore 1997) 316-328.

- Article 145 was amended to insert a new clause (3A) to permit federal law to confer on the Attorney-General the twin powers to determine the venue of any criminal proceeding and to transfer an existing case to any venue; and
- Article 121(1) was amended to delete the reference to the “judicial power of the Federation” vested in the courts. Courts were to have only such power as was given to them by federal law.

The frequency and relative ease with which constitutional amendments have been accomplished weakens the belief in the supremacy of the *Constitution*. The context in which the changes have been made, and perceived legal coercion⁴²⁹ in politics, preferential economic and educational policies and political democratisation, has contributed to an ongoing debate on human rights in Malaysia. There is an argument that the grounds for restrictions on those rights found in the Federal *Constitution*, have outlived their relevance. There have been calls for the review of the provisions. That the law is not necessarily responding to calls for its review demonstrates Luhmann’s autopoietic concept of openness through closure whereby:

it deals with the autonomy of law as a system and not its autarchy. ... The combination of closure and openness can be considered under two perspectives: (i) A system practices control of its own possibilities for negation while producing its own elements’ (closure), this control depends on the conditions of choice between yes and no (openness); (ii) the control of the possibility of negation (closure) enables a continuous and stable (or at least less unstable) selective relationship of the system to its environment (adequate openness).⁴³⁰

Some see the *Constitution*’s achievement as significant in maintaining democracy in Malaysia for over half a century.⁴³¹ A more common⁴³² approach is to discuss

⁴²⁹ Legal coercion is when law is used by those in authority to exercise social control. It is a process by which their authority legitimises coercion of people to conform to a set of approved behaviour, see Marzuki Mohamad, Legal Coercion, Legal Meanings and UMNO’s Legitimacy, In Gomez (ed.), *Politics in Malaysia: The Malay Dimension*, (London and New York 2007) 24-25.

⁴³⁰ Neves, From the Autopoiesis to the Allopoiesis of Law, *Journal of Law and Society*, vol. 28, (2001) 246.

⁴³¹ Shad Saleem Faruqi for example, is well known for his writings which enlighten ongoing discussions of issues and controversies about the Federal *Constitution*. His writings reveal first and foremost his appreciation for the Federal *Constitution* as a “national treasure which has guided [Malaysia’s] democratic journey for half a century”. See Interview by Martin Vengadesan in Vengadesan, *Defending Our Chart and Compass*, *The Star*, (Kuala Lumpur June 29 2008).

constitutional provisions in the context of claims of legal coercion by the incumbent political party in power, ie Barisan Nasional. There are frequent claims that the basic structures for legal coercion and processes of government are used in the struggle for political power. Guiding the state to a more responsive path, according to Marzuki Mohamad,⁴³³ depends on the extent to which society-generated legal meanings⁴³⁴ will re-proliferate. More importantly, it depends on the extent to which the state manages and legitimises the use of its coercive legal instruments. These continuing dynamics determine an individual's consciousness of what is right and what is wrong. Legislators and administrators must in this respect concern themselves not only with the imposition of social control through law, but also with the sense of legitimacy it generates through its use in society. Laws, such as those listed below, termed by some as "legal arsenals", are seen as instruments of political control directed at political opposition, thus making dissent undesirable as well as dissenters as illegal:

The Government maintains a host of rights infringing laws ... which form the basis of ever expanding executive power These laws provide for detention without trial, (Internal Security Act (ISA) 1960,⁴³⁵ Emergency, (Public Order and Prevention of Crime) Ordinance 1969, Dangerous Drugs Act (Special Preventive Measures) 1985;

⁴³² See Marzuki Mohamad, Legal Coercion, Legal Meanings and UMNO's Legitimacy, In Gomez (ed.), *Politics in Malaysia: The Malay Dimension*, (London and New York 2007) 24-49, Loo, e-Democracy in Malaysia: Chasing the Winds of Change, In Banerjee (ed.), *Rhetoric and Reality: The Internet Challenge for Democracy in Asia*, (Singapore 2003), Mustafa K. Anuar, Politics and the Media in Malaysia, *Kasarinlan: Philippine Journal of Third World Studies*, vol. 20, (2005) 179-218 and Nair, The Limits of Protest and Prospects for Political Reform in Malaysia, *Critical Asian Studies*, vol. 39, (2007) 339-368.

⁴³³ Marzuki Mohamad, Legal Coercion, Legal Meanings and UMNO's Legitimacy, In Gomez (ed.), *Politics in Malaysia: The Malay Dimension*, (London and New York 2007) 24-49.

⁴³⁴ The pluralist conception of the law does not regard the state, through its judicial arm as the sole interpreter of the law. The non state actors which include a wide range of social organisations such as human rights groups, professional associations and religious groups, compete in giving meaning of what is right and wrong to its legal precepts. In Malaysia where most social organisations are divided along class, ethnic, cultural and religious identities, a single authoritative national context is absent. There are bound to be multiple legal meanings at work. The polemic over which law is supreme illustrates the multiplicity of legal meanings on different social groups' understanding of law. Those with a secular understanding would accept the Constitution as the supreme law of the land, while the Islamists are more likely to maintain that, although the Constitution is to be respected for its politico-temporal function, the Shari'ah, or God's law, is supreme over other laws. Against a backdrop of globalisation, secular and international norms also seep into people's conception of legal meanings. The articulation of a shared legal meaning is crucial to social cohesion, which helps determine the states' ability to stay intact. See Ibid.(25).

⁴³⁵ In 1987, the government arrested 106 activists under the ISA in a mass crackdown code named Operasi Lalang. Those arrested included NGO members, unionists, opposition leaders, educationists and church social activists. Many of the detained were held without trial for two or three years. This incident is seen as the desire of the state to contain, re-channel and limit political activity to the realm of formal politics. See Lopez, Globalisation, State and G/local Human Rights Actors; Contestation between Institutions and Civil Society, Ibid.(Oxon) 50-74.

control of dissemination of official information under the guise of government secrets (Official Secrets Act) 1971; prohibition of public discussion of sensitive issues (Sedition Act 1948 (Revised 1969)); control and licensing of publication materials (Printing and Publications Act 1984); limitations on workers right to organise and to bargain (Trade Unions Act 1959 and Industrial Relations Act 1967); restrictions on the right to association (Societies Act 1966); and suppression of student activism (University and University Colleges Act 1971).⁴³⁶

These laws are regarded as a series of restrictions which have been legislated within the authority of the Federal *Constitution*. They are seen as allowing the state to limit the rights and freedoms of citizens, under the pretence of maintaining social order and stability. The laws which allow for detention without trial, for example, are argued to curtail aspects of individual freedom, closely limit the actions and expressions of non government organisations (NGOs) as well as intimidating and crushing political opponents. They have long been criticised as state and political mechanisms to stifle legitimate dissent in civil society. The argument continues that these laws have reduced the judiciary to mere servants of the political executive. Various constitutional amendments seemingly aggrandise the office of the prime minister vis-à-vis other sections of the state and have generated disaffection even with the government. Local human rights activists and international organisations have lobbied persistently for laws such as the ISA, to be repealed. The demand is for political and legal reforms which include restoration of judicial independence, respect for human rights, the elimination of corruption and greater participatory democracy, all of which are seen to potentially limit the power of Barisan Nasional, the ruling coalition party.⁴³⁷

This supports Shamsul Amri Baharudin's conclusion that writings on Malaysia represent one of "two sides of the story", as discussed in chapter 2. These distinct but overlapping arguments on the nature and role of the Malaysian state and its relationship to civil society suggest that the question of political democracy and its associated meanings in Malaysia remain a source of contention and struggle. In conclusion, to consider major

⁴³⁶ Marzuki Mohamad, Legal Coercion, Legal Meanings and UMNO's Legitimacy, Ibid.(London and New York 30.

⁴³⁷ See Lopez, Globalisation, State and G/local Human Rights Actors; Contestation between Institutions and Civil Society, Ibid.(Oxon) and Marzuki Mohamad, Legal Coercion, Legal Meanings and UMNO's Legitimacy, In Gomez (ed.), *Politics in Malaysia: The Malay Dimension*, (London and New York 2007) 24.

achievements and shortcomings of the *Constitution* is a tall order and one which is obviously subjective. As Hickling writes: “My notion of a shortcoming may well be another’s notion of achievement. So bear with me”.⁴³⁸ Discussing the history of the *Official Secrets Act* and how it extinguishes fundamental liberties, what Hickling wrote in 1991, remains, in 2010, an example of continuing contentions:

It is all a question of priority. If one puts, say, economic advance as one’s paramount objective – and this, after all seems to be exactly what the electorate wants other considerations must take second place. The principle of utility of “the greatest good of the greatest possible number”, has informed the action of all governments in Malaysia since independence. The vision of each Prime Minister has varied, and it would be incorrect to suppose that the model state envisaged by Tunku Abdul Rahman is the same as that contemplated by Dr Mahathir: but each of these men has been, and is, true to his vision, and in that vision the economic well-being of all Malaysian citizens has been, I venture to suggest, paramount.⁴³⁹

Media Regulation

Laws regulating the print and electronic media have been central to the debates over human rights and coercive regulation. Those laws are now challenged, not by political debate, but by technology. Balkin⁴⁴⁰ identifies how the internet poses two challenges to the mass media which he terms “routing along” and “glomming on”. The former refers to the internet’s ability to permit citizens to reach an audience directly without going through a gatekeeper or an intermediary. The latter refers to the internet enabling people to appropriate and to utilise news in the mainstream media as a platform for criticism, production and construction. Consistent with Balkin’s argument, online publications such as blogs, which are not considered as newspapers, do not need to obtain licence from the relevant Minister. This allows bloggers to not only “rout around” prohibitive financial restrictions on publishing but also to overcome restrictive licensing and publications laws. Balkin further argues that restricting the right of freedom of assembly is meaningless in cyberspace. Many blogs “glom on” to mainstream newspaper stories and use them as a platform for social commentary. In this way blogging and the internet are a potential force in advancing a more democratic and participatory political culture.

⁴³⁸ Hickling, *Essays in Malaysian Law*, (Petaling Jaya 1991) 225.

⁴³⁹ *Ibid.*(233-234).

⁴⁴⁰ Balkin, *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, *New York University Law Review*, vol. 79, (2004) 9-13.

However, the internet's unique architecture still requires the individual user to actively seek and communicate. It is this uniqueness that places more importance on its active use, rather than the more passive activity involved in the consumption of television or the printed word. Banerjee,⁴⁴¹ maintains that the real impact of the internet depends largely on the motivation and commitment of its users. Before the technology can be used to facilitate participation, the user must first be a willing party in posting and receiving messages. Banerjee argues that if there are "depolutizing agents [at work] then the resulting apathic mindset, along with fear of participation will lead to self censorship".⁴⁴² Where media laws also extend to the internet, Banerjee argues, levels of political participation remain similar to the pre-digital era.⁴⁴³

As previously discussed in chapter 1, the literature reveals that new technologies, particularly the internet, do not emerge in vacuum. This is also true of any other media technology. These technologies are developed and introduced in specific institutional contexts, which have a profound influence on their operation. In the case of Malaysia it is contended that a significant feature of these contexts is that government policy in relation to promoting new media technologies creates, at times, a direct conflict with longstanding policy regulating media speech, which in turn represents shifts in what governments see as necessary to remain economically competitive.⁴⁴⁴ While new media forms are

⁴⁴¹ Banerjee holds that in many Asian countries, the mass media is regarded as a central tool for creating national unity and identity. News he says is seen as a social resource and the media is allied to the government in the development process, promoting the paternalistic intentions of the state. According to Banerjee, many Asian governments control the media through two key mechanisms. Firstly control is exerted through the enforcement of media laws and regulations whereby operations of various media are very much restricted. The state maintains a firm grip on media licensing and wield a veto on content issues. Secondly, the state also becomes major shareholders in the commercial media. For further discussion see Banerjee, *Rhetoric and Reality: The Internet Challenge for Democracy in Asia*, *Communication & Media Studies*, (Singapore 2003) 1-25.

⁴⁴² *Ibid.*(20).

⁴⁴³ *Ibid.*(1-25).

⁴⁴⁴ With content regulations, the Multimedia Super Corridor (MSC) brief provides a ten-point Bill of Guarantees to ensure that the internet will not be censored. However, of the ten points, only one deals with the censorship of the internet. The rest deal with economic incentives for investors.

emerging and are challenging existing media forms, they do not do so in isolation, but operate precisely through their connections with existing media.⁴⁴⁵

Khattab,⁴⁴⁶ writing on television and state culture in Malaysia, observes that since independence in 1957, media, such as radio and television, have been a state privilege. *Radio Televisyen Malaysia* (RTM) has functioned as a state mouthpiece since 1963. Television in particular has always been instrumental in the government's attempt to display and fashion public culture. As a state privilege, Khattab says, television and radio in postcolonial Malaysia has hardly ever been delegated to the citizenry. Those who control the operation and content creation of these media tend to assume that the people must be guided. Television, especially in the context of a rapidly decolonising and modernising society, must protect the nation's public culture. The approach has been that the state knows best.

Despite the introduction of privately owned television in the 1980's, Khattab argues that in Malaysia, "the notion of "high culture" traditionally linked to PSB [Public Service Broadcasting]⁴⁴⁷ does not seem to commensurate with the multiple meanings given to it in controlled and constricted environments where public television really means state television"⁴⁴⁸ A further contention is that negative reporting of national events and people is not a principle of Malaysian journalism. The media seem to privilege definitions of national events by institutionalised official sources, on which they routinely rely. Khattab concluded that "through framing and agenda-setting, issues are played out to guard the "national culture and shoeshine national politics".⁴⁴⁹

⁴⁴⁵ Kenyon and Marjoribanks, *Transforming Media Markets: The Cases of Malaysia and Singapore*, *Australian Journal of Emerging Technologies and Society*, vol. 5, (2007) 114.

⁴⁴⁶ Umi Khattab, *Non Mediated Images, Public Culture and (State) Television in Malaysia*, *Sage Publications*, (2006) 347-361.

⁴⁴⁷ In England BBC television programmes improved considerably as soon as the Independent Television Authority began its broadcasts. See Hickling's discussion on various avenues of public expression in Hickling, *Essays in Malaysian Law*, (Petaling Jaya 1991) 138.

⁴⁴⁸ Umi Khattab, *Non Mediated Images, Public Culture and (State) Television in Malaysia*, *Sage Publications*, (2006) 349.

⁴⁴⁹ *Ibid.*(350).

In respect of the media and freedom of speech what might be called the normal limitations on that freedom exist, such as those imposed by the laws of defamation, sedition, obscenity, and contempt of court. Apart from these general restrictions, there are specific restrictions upon publication of written words. A range of legal measures derived from British colonialism are said to have stifled old media in Malaysia. The colonial administration used legal measures, such as licensing and censorship to control the media.⁴⁵⁰ Some existing measures, such as those seen in the *Official Secrets Act 1972*, *Internal Security Act 1960* and the *Seditious Act 1948*, have their roots in British colonial administration:

- *Official Secrets Act 1972* - this prevents journalists from accessing information in any official document labelled as secret;
- *Internal Security Act 1960* - this allows detention without trial. Section 22 further prohibits the printing, sale and circulation of documents “likely to promote feeling of hostility between different races or classes of the population” or inciting to violence or civil disobedience, or prejudicial to the national interest” which, according to Hickling, removes the “weapons of class warfare and civil disobedience [from] the armoury of the prudent politician”;⁴⁵¹
- *Sedition Act 1948* - it creates an offence of saying or publishing words which have a seditious tendency. The offence is defined widely to include words designed to: (a) bring hatred or contempt or exciting disaffection against any Ruler or government; (b) exciting the alteration other than by lawful means of any matter by law established; (c) bringing into hatred or contempt or excite disaffection against the administration of justice; (d) raise discontent or disaffection among subjects; (e) promote feelings of ill-will and hostility between races or classes of the population; and (f) questioning the right and status of issues specified in the Constitution;⁴⁵²

⁴⁵⁰ Hickling, *Essays in Malaysian Law*, (Petaling Jaya 1991) 136.

⁴⁵¹ *Ibid.*(137).

⁴⁵² Defined as Malay privileges, citizenship, national language and sovereignty of the Rulers as defined by the Malaysian Constitution. These are discussed above at pages 129-134. For further discussion on the Sedition Act 1948 and its effect on digital speech see Hang Wu Tang, *Let a Hundred Flowers Bloom: Digital Speech in Malaysia*, *Asian Journal of Comparative Law*, vol. 1, (2006) 1-22.

- *Penal Code* - this makes it an offence to distribute obscene and defamatory materials;
- *Evidence Act 1993* - this provides for the production as evidence in any criminal or civil proceedings of any statement contained in a computer-generated document, including discs, tapes, e-mails, and websites;
- *Computer Crimes Act 1997* - this gives police wide-ranging powers of search and seizure in investigating offences under the Act, for example, unauthorised access to computers, programs, data and other IT information;
- *Film (Censorship) Act 1976* - this requires that all films must be approved by the Board of Film Censors;
- *Control of Imported Publications Ordinance 1958* - this empowers the appropriate Minister, if he is satisfied that the import of any publication from abroad is “prejudicial to public order, morality or security of the Federation”,⁴⁵³ to prohibit such import;
- *BERNAMA (Berita Nasional) Act 1967* - this Act, amended in 1990, gives Malaysian National News Agency (BERNAMA) exclusive rights to distribute news, photographs, economic and financial data and other materials;
- *Broadcasting Act 1988* - this gives the Minister of Information significant control over television programming and broadcasting licences; and
- *Printing Presses and Publications Act 1984 (PPPA)* - this regulates the use of printing presses, the printing, production, reproduction and distribution of publications and the importation of publications from abroad.

Printing Presses and Publications Act 1984 (PPPA)

The PPPA’s predecessor was the *Printing Presses Ordinance of 1948* which was in force during the Emergency. It was revised in 1971 in the aftermath of the 13th May 1969 racial riots to provide powers to revoke the licences of newspapers that aggravated national sensitivities or were detrimental to national development goals. The Ordinance

⁴⁵³ Section 4(1).

became the PPPA in 1984 and remains the primary piece of legislation that governs the press industry.

It imposes a number of restraints on activities, as mentioned above, and prescribes strong penalties for their breach, including imprisonment. The PPPA stipulates that all newspapers and regular publications must be authorised by a publishing permit issued by the Ministry of Internal Security.⁴⁵⁴ This permit must be renewed annually. The PPPA has also been used to strengthen and tighten laws regarding the monitoring of ownership of printing presses and the production of materials such as books, papers and magazines. Prior to 1984, the law gave the Minister the power to grant a permit for no less than 12 months. After an amendment that year, the minister is empowered to grant a permit for a more limited duration if he or she deems it fit.⁴⁵⁵

The PPPA also empowers the Minister to revoke the permit of a publication should he decide that the publication concerned has acted in a manner “prejudicial to the nation’s security”. The Minister has absolute discretion in awarding and revoking permits. There is no judicial review. This use of the law is said to have had long-term effects on journalistic practices including self censorship.⁴⁵⁶

Section (3) (3) PPPA states:

the Minister may in his absolute discretion grant to any person a licence to keep for use or use a printing press for such a period as may be specified in the licence and he may in his absolute discretion refuse any application for such licence or may at any time revoke or suspend such license for any period he considers desirable.

Under Section 7 of the PPPA the government may, at its discretion, ban the publication, import, and circulation of any manuscript deemed prejudicial to “public order, morality,

⁴⁵⁴ Section 5.

⁴⁵⁵ Section 6(2).

⁴⁵⁶ For further discussion see Mustafa K. Anuar, Politics and the Media in Malaysia, *Kasarinlan: Philippine Journal of Third World Studies*, vol. 20, (2005) 25-47, Kenyon and Marjoribanks, Transforming Media Markets: The Cases of Malaysia and Singapore, *Australian Journal of Emerging Technologies and Society*, vol. 5, (2007) 104-118, Mohd Azizuddin Mohd Sani, Media Freedom in Malaysia, *Journal of Contemporary Asia*, vol. 35, (2005) 341-367 and Mohd Azizuddin Mohd Sani, Freedom of Speech and Democracy in Malaysia, *Asian Journal of Political Science*, vol. 16, (2008).

security, the relationship with any foreign country or government, or which is likely to alarm public opinion, or which is otherwise prejudicial to public interest or national interest”.

The government has used the PPPA to revoke the press licences of several publications. During the infamous *Operasi Lalang*, three newspapers were closed. These were the English medium newspaper, *The Star*, the Chinese medium, *Sin Chew Jit Poh*, and the Malay medium weekly, *Watan*. These newspapers resumed publication in 1988 but the ban and resulting changes in editorial staff is said to have resulted in self censorship by journalists and editors which continued through the 1990s. In 2000, the permits of a number of magazines including *Detik*, *Tamadun*, *Wasilah* and a newspaper, *Eksklusif*, were not renewed because of criticism of the government in their discussion of political rights. The circulation of another magazine, *Harakah*, was reduced from twice a week to twice a month and restricted to PAS party members only.⁴⁵⁷ The continuing extent of control over the content and the operation of media, demonstrates a strong belief of government and the coalition parties in the importance of controlling discussion of sensitive issues. The ideas which prevail are that people must be guided and that the state knows best. As Ooi sums these up in a metaphor:

The floor of a new nation is littered with eggshells, and the only way of avoiding any at all is to stand very, very still.⁴⁵⁸

These ideas, and the armoury of legal machinery to oppress discussion, are inconsistent with many of the tenets of the promoters of digital democracy.

PARADOXES IN THE PARTICIPATION AND POWER EQUATION, IS AUTOPOIETIC LAW REDUCED TO NORMATIVITY?

From the beginning, the internet heralded a new order of interconnection and decentralisation with the potential to avoid control and regulation by national legal systems. As part of digitalisation, it contributes to globalisation which, for many, is

⁴⁵⁷ Mohd Azizuddin Mohd Sani, Media Freedom in Malaysia, *Journal of Contemporary Asia*, vol. 35, (2005) 352.

⁴⁵⁸ Ooi, Lost In Transition Malaysia Under Abdullah, (Petaling Jaya 2008) 110.

associated with the idea of increasingly trans-national and supra-national governance. It reflects a perception that territorial borders may no longer be as significant and promotes discussions of global law beyond the state. Building upon Niklas Luhmann's work on autopoiesis, theorists such as Gunther Teubner⁴⁵⁹ see the state reduced to one law making force among many others in a world society.

Suggesting that the autopoiesis of law can be normative, Neves⁴⁶⁰ argues that the situation for law is disruptive. It is one of law:

being compressed through vertical determinants from its environment, so that, despite all the increases in complexity and corresponding demands for functional differentiation or system autonomy, it lacks self-referential circularity or operative disclosure.

In context of what he terms as “peripheral modernity”, the situation is that:

the destructive effect of the power code over the legal code, or more exactly the superiority of the political over the legal already on the level of constitutional legislation is structurally determined. With symbolic constitutionalization, in the context of which the constitutional text adopts the democratic model of rule of law, the problem of destructive interference of politics in the legal system only appears in the course of the application of the constitution⁴⁶¹

Neves argues it to be a case about “social exclusion” where “the resulting subordination of the legal code to the code of have/not-have and the code power/no-power”⁴⁶² is not oriented by criteria and programmes of differentiated functional systems but rather is conditioned through actual “social exclusion”⁴⁶³ which:

imply hierarchical positions towards the functional systems, positions which are not guided by principles but factually conditioned. In these relations, one is integrated into the social systems ‘from above’ or ‘from below’, with the consequence that their autonomous reproduction is obstructed. The over-integration pole has access to the products and benefits of the social systems, without being simultaneously dependent on their constraints and rules (positive integration), while the under-integrated pole is dependent on the rules and constraints without having access to the products and benefits

⁴⁵⁹ Teubner, Societal Constitutionalism: Alternatives to State-Centred Constitutional Theory?, In Jorges, Sand and Teubner (eds.), *International Studies in the Theory of Private Law transnational Governance and Constitutionalism*, (Oxford 2004) 3-28.

⁴⁶⁰ Neves, From the Autopoiesis to the Allopoiesis of Law, *Journal of Law and Society*, vol. 28, (2001) 242-264.

⁴⁶¹ Ibid.(260).

⁴⁶² Ibid.(263).

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(negative integration), so that at both poles, defective inclusion as well as partial inclusion exists.⁴⁶⁴

Taking law as an autopoietic system which with other self-referentially constituted systemic components make up modern society, offers a more flexible outlook on law's effect on its environment and vice versa. Law and politics as social systems, when seen as structurally coupled subsystems, which have autonomy to decide on their own criteria for responding to each other, enhances the appreciation of historical evolution and specific cultural and institutional context in respect of "meta-meta stories" and the role they play in influencing a system's future responses to "irritations" in its "environment".

Chapters 1, 2 and 3, which largely form the literature review component of this thesis, revealed a range of ideas. These ideas relate to the discussion of assumed influences of ICT on democratic processes. The concept of citizen participation, to some extent, encapsulates the discussion. Focus was also on the importance of context. Luhmann's autopoietic concepts, such as self-referentially closed function systems, structural coupling and openness through closure, emphasise this importance. The autopoietic view, sharpens the point that ICT's assumed influences may substantially match the experience of one context but not of another. The potential breadth of its impact is determined by the balance between, implicit assumptions about the environment supporting assumed influences of ICT on democratic processes, and actual experiences. The view also emphasises that particular systems within the environment cannot be analysed in isolation from one another. From the discussion of Luhmann's legal autopoiesis to Teubner's paradoxes in law and from Priban's question of legitimate legality to Neves's argument that autopoiesis of law can be normative, the focus always returns to struggles about power.

ICT's effect on global society, with its many realities, may vary. It is hoped that one of the merits of this research is to show that ICT's influence on democratic processes is impacted by the realities and context surrounding the evaluation of the level of citizen participation. For Malaysia, from the discussion in chapters 2 and 3 of the history of its

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nation building, its civil service, its information technology agendas and of the laws forming the context of freedom of speech, conclusions which supports the above argument can be drawn. Specific cultural and institutional contexts form the social and political identities of Malaysian society and its existential base in relation to citizen participation.

Based on the above conclusion, this research argues that the values and beliefs of the civil service as a whole, and civil servants in particular, are prominent in charting Malaysia's experience of digital democracy. Outlooks on, or attitudes towards, citizen participation are based on civil servants' individual dispositions. They are learnt from personal experience and formed through various sources which are socially embedded, including social and political identities. The focus on Malaysia's history in the review of the literature, points to some underlying issues which may inform this evaluation; whether the country's historical crises over unity and stability are still compelling among civil servants; whether they are still highly selective of democratic ideas, such as freedom of speech; whether their democratic ideas still tend to crumble when they encounter the existential base of citizen participation and other deeply held values; and, whether these values, reflect shared rules and cultures in the Malaysian civil service.

The review of the literature suggests that ICT has strengthened the weight of the civil service in its relationship to the government. Civil servants have expertise and influence in policy making which has a political impact. It puts them in a crucial representative position in including or excluding democratic practices in policy making. Their preference for ICT processes and new policy styles will help determine the level of interest in digital democracy. To civil servants, citizen participation involves risks and uncertainty. Their willingness to promote citizen participation may be affected by their evaluation of citizens as a whole. It involves consideration of whether they will invest limited resources in digital democracy programs. They may regard these programs as time-consuming, costly, unwieldy, chaotic, and unproductive. Civil servants' assessment of its risks, benefits and costs will affect whether they will consider digital democracy programs worth the effort and proactively promote its relevance in policy making. These

factors provide guidance in analysing the data discussed in the following chapters. The objective is to address the primary research question: How relevant is digital democracy in enhancing citizen participation in policy making within the Malaysian civil service?

CHAPTER 4

ICT'S IMPACT ON CIVIL SOCIETY AND CIVIL SERVANTS' ORIENTATION TOWARDS PARTICIPATIVE POLICY MAKING

This chapter explores the perceptions of commentators of ICT's impact on democratic practices in Malaysia. It includes also, their views of civil servants' reception of and capacity for, digital democratic practices. This discussion is followed by a discussion of how the term digital democracy is understood by civil servants within the sample surveyed. Part of the broad spectrum of responses, which will be discussed in detail in chapter 5, are summarised here to establish that civil servants in the sample sufficiently understand the term to discuss matters relating to the concept in an informed way.

COMMENTATORS: AN ASSESSMENT

The data reveals that the commentators' views strongly reflect influences from the individual's area of interest and expertise (for which each individual has intentionally been selected as commentator). However, there are generalities and impressions which reflect concepts which have been highlighted in the review of the literature. Proximity to the issues under discussion, or perhaps a higher aptitude for self expression which comes with experience, has produced valuable insights and clear assessments.

DIGITAL DEMOCRACY: THE INCLUSION OF A WIDER COMMUNITY

The responses of each and every commentator to the question of what the term digital democracy means, agreed with this statement made by Y1, a senior academic with research interests in community ICT projects:

Digital democracy should represent whatever is held to be the meaning of democracy. Y1
In line with the deliberative theory of democracy which holds that democracy does not only require equality of votes, but effective opportunity to participate in processes of

collective decision making,⁴⁶⁵ as discussed in chapter 1, the principle most highlighted by the commentators is that, in a democracy where there are many groups of people with many diverse interests, they all command attention regardless whether they represent majority or minority voices. To Y3, a professor of social anthropology, it is the minority which gives credibility to democracy and democracy is heightened when every criticism and voice is heard. Democracy, in his opinion, is when the minority, who may have opposing views, and not just the majority are allowed to express their views. Those views of the minority, according to him, also warrant consideration:

The measure of democracy is to listen to minority voices and act upon them and not dismiss them as minority ... it is the minority that gives credibility to the democracy. Y3

Y3 goes on to elaborate that all citizens' views and suggestions deserve consideration by the government. If the views of the minority merit any action, it should be carried out in a way which least damages the interests of the larger majority. True to his expertise in the study of human culture and development, throughout the interview his illustrations of majority and minority constantly relates to the subject of ethnic relations in Malaysia and to contentious issues such as the New Economic Policy:

There is a mainstream view; lets say about NEP [New Economic Policy], of course there are people who are not happy, who say that opportunities should be equal. How do you address that? Eventually, Mahathir [former Prime Minister of Malaysia] said okay, we will let meritocracy be used in higher education but the rest like MARA [Indigenous People's Trust Council] will remain as it is. That is because through his [Mahathir's] survey, he had come to the conclusion that people are mainly concerned over education as it is the ladder to climb social mobility, for the poor to have good jobs and become rich. Parents invest a lot of money on education, so he said, let's not touch what people want to do for their own improvement and let meritocracy be used in education. Therefore, in universities now, if you get 4As you come in no matter whether you're Malay, Chinese or Indian. As a result, the Law Faculty has 80% non Malays. Therefore, put it like this, it is a 100 metres race between a one legged boy and a boy who is being pushed in a trolley which of course the latter would win. Therefore this is a case of the minority voice being heard and action was taken. The Mahathir administration allowed for minority voices to prevail in the case of higher education but not on other issues. Therefore, in this case we have the mainstream idea and unhappiness on the side which is then addressed accordingly to what will be the least damaging. Y3

⁴⁶⁵ Dahlberg, Democracy via Cyberspace, *New Media and Society*, vol. 3, (2001) 157 and Warren, Deliberative Democracy, In Carter and Stokes (eds.), *Democratic Theory Today*, (2002) 173-202.

Mostly the commentators emphasised that digital democracy is about providing access to information and opportunities to voice concerns and opinions. To Y7, a Vice President of a company providing broadband services, these should be “on equal terms”, emphasising his concerns over the digital divide. To Y7, these factors elevate democracy when an awareness of rights is also present and when the opportunity to participate is coupled with a strong belief that contributions which are made through digital democracy impact on decision making.

Y6, who is an architect by profession, is also the Chief Executive Officer of an Information Technology consultancy firm with experience working on a number of e-government projects. He has strong affiliations to a number of civil rights organisations and is a regular contributor to local newspapers and some regional publications. To Y6, the image of digital democracy is one in which the government opens up to citizens playing a stronger role in governance. In his opinion, any level of participation which can be afforded to the citizenry raises their awareness of the idea that they may participate:

I suppose digital democracy as it is understood here would be the ability for citizens and community groups or stakeholder groups to participate through electronic channels in the process of governance or development of a policy that typically would otherwise only be available to the lawmakers or to parliamentarians. So this actually opens up that. So I think digital democracy is the inclusion of a wider community. Y6

ICT as a Medium

Supports development of a stronger civil society

Most commentators see ICT as a medium which enhances the development of a stronger civil society. In Y3's words:

On the part of the social actor, it is an area where participation is open. On the part of the provider, it is a means of creating an audience. Y3

To these commentators, ICT offers information sharing on a scale larger than has ever been known. The possibilities for more interaction with the government may result in a society more aware of its surroundings. The consequence of this “process of change” according to Y7, who is Head of Regulatory Division of a major telecommunications

company, may be the ability to form opinions which are then shared and made known to the government in order to affect changes:

The electronic media or originally the advent of the internet basically has at least, from my observation, democratised the minds of the people. First you go from realisation, you start to think, and then your mind starts to “democratise”, in which you ask questions. Then in that sense we are already part of the process of change. Because of the electronic form, our opinions are affected almost on an hourly basis because of what we read or how we are influenced by the electronic media. Y7

Y5, who is a well known pioneer of online journalism in Malaysia, believes that:

Being able to receive information and make decisions and being able to put pressure on the government for changes is important because of the fact that it is not just a matter of changing the government but also changing policies. In between elections, the government would also need to respond to certain issues. Y5

Support group actions

ICT or the internet in particular, provides the platform for people to join in and discuss issues and to actually take action on matters about which they feel strongly. In the words of Y9:

These movements spread very fast; it is what you call a swarm. When you have a swarm like this, anything can happen. You can organise people through the internet to be a swarm. Y9

Y5 gave an example of bloggers organising an event called the Walk for Press Freedom which was due to be held the week after the interview. The event was initiated, promoted and publicised on blogs. In his opinion, before bloggers came to the scene, it was very hard for people to link up and organise themselves. However with the internet, they have managed to create a community of their own. He thinks that events such as Walk for Press Freedom could not have been organised in such a manner before the internet.

In Y5's opinion, before the internet, people were isolated in the sense that they may have thought that they were the only people to hold a particular opinion. The internet, and blogs in particular, makes them realise that there are others who share their opinions with whom they can communicate, have discussions and at times, take action.

It is something that newspapers, television and radio stations are unable to do. Newspapers used to do that through letters columns but of course it is not done in an interactive manner and a lot of letters are not being published, depending on who owns the paper and all that. I think the internet is a completely different medium because of its ability to actually provide the platform for people to join in and discuss issues and to actually take action on issues which they feel very strongly about. Y5

ICT has resulted in people having an alternative to newspapers and other traditional media such as the radio and television. The impact that the electronic media is having on society is also increased by it having a higher penetration level than mainstream media. Y7 estimates that major newspapers in Malaysia have a readership in the range of 200,000 to 250,000. To him, this number is minute when compared to the one million broadband users.

Now if you look at one million broadband users and see the probability of 50% of broadband users reading some kind of blog from which their mind or opinion is being formulated, you are talking about a higher penetration level than the normal newspaper. Y7

Y8, who holds a key position in the Islamic Youth Movement (ABIM), tells of his experience organising online polling and petitions:

ABIM had an online polling on the issue of murtad (apostasy) whereby we had up to 900,000 hits. We also had an online petition exercise. 200,000 from a total of 700,000 signatures were obtained on myislamnetwork.net. Y8

Facilitates cross discussions

Some commentators observe that, although generally Malaysians aspire to create better policies for government, the framework for developing such policies is constricted. To Y7, the process is more related to race rather than to the nation. He observes that the civil service is predominantly made up of a certain race and culture which makes it all the more important to take initiatives such as soliciting outside ideas in the process of developing policies with a country-wide perspective. If this is not done then, to him, there is no buying-in to the process of the development or implementation of policies.

According to Y5 the internet site Malaysiakini.com, has in the past eight years seen instances where participants have felt free to have heated debates, even on issues which have been considered taboo for a long time, such as religion, race, language and the New

Economic Policy (NEP). He thinks that generally these discussions were well received and handled. To Y5, ICT and particularly the internet have opened up opportunities for discussions between people from different ethnic groups who were previously living in their own cocoons and reading segregated media.

Digital Divide

In Y3's opinion, digital democracy is limited by the preconditions of technology, "it is a narrow channel which provides wide access". In order to participate, there are requirements for access to infrastructure and instruments such as computers. He observes:

You may have a telephone or a computer, but without an internet connection it does not mean that things are happening and it also depends on whether you are literate enough to surf the web. Therefore, there are two or three steps to go through before one can become democratised by online access. Why I said it is very narrow is because not everyone in Malaysia has access to computers and those who do, are generally more interested in games and chatting and sometimes one has to pay for access to websites or journals like Malaysiakini.com. Therefore, despite the big word democracy, when you see it in more practical terms, it is a very narrow approach or channel. Not narrow in terms of ideas but narrow in terms of channel, because it is limited even though it may sound very open. Y3

Y3 observes that with wireless technology and hot spots, telephones can now run internet services. Technology has led to the convergence of telephones and the web and these "e-enable" a wider group of people. However, in his opinion, a study of Malaysian blogs will reveal that these online activities are still urban and not rural based, the main reason being availability of access to infrastructure coupled with higher level of ICT literacy.

Y9 sees the present situation as one where business considerations come before concerns over equal access. There is a tendency for infrastructure projects, such as broadband services, to concentrate on urban areas with a denser and generally more affluent population. Y6 ties the issue to the idea of green fields and brown fields, terms frequently used in areas such as town planning. He recounts a paper written for a consultancy on the difference between a developing country and a developed country relative to the implementation of e-government services:

Take the example of Denmark or the United States. They have had government and they have had governance a long time before the 'e's were added. The channels that existed

for them, for example, the post offices already carried out the services on a decentralized basis. Citizens were comfortable with that, so for them to then do this additional step was not a big deal. So in the developing country which would be our green fields' site, we have a different situation because we don't have that layer out there then the issue becomes more of the barriers that are tied to actual access or accessibility. So then you say that for us to get the whole country wired will take us three years. Then we've got a particular limit on the course that digital democracy must take because we physically have to do that. So the differences are quite stark in terms of these two areas. Y6

Y9 observes that gaps which exist in terms of access to ICT infrastructure create not only a digital divide but, "a divide which multiplies other divides such as development divide, social divide, economic divide, and even ethnic divide". An issue which can arise is gaps in the level of awareness and knowledge. In Y6's opinion, there is often no way of gauging the degree of understanding among those who can participate:

Unless all of the issues can be tabled in a way that everybody could become informed to the extent that when they cast their opinion, it has got meaning, then yes, otherwise, digital democracy doesn't fulfil the purpose which is that you can participate all the time.
Y6

Among commentators, Y1 shows greatest awareness of the digital divide. As an academic whose involvement in researching e-community projects have brought her closer to various rural communities, she feels more able to express and clarify the problems these communities face with ICT. To Y1, the issue of the digital divide in Malaysia, with differing gaps in the width between states, is crucial when implementing digital democracy. To her, digital democracy only promotes democracy "when communities whether marginalised, urban, urban poor or rural are able to access and benefit from it". She illustrates her concerns by reference to the *orang asli* (indigenous people):

I was in a discussion with a group from Universiti Malaysia Terengganu who brought up the issue of the Bateq clan from Kampung Barua. They have electricity and a school, but there seems to be no follow up, so much so that the school is found to be empty of pupils and teachers. Their language might become extinct one day as there are only about 300 of them around. The claim is that RM10 million has been allocated for orang asli development but only RM100, 000 has been used. Therefore, we are thinking of helping them to develop IT literacy to promote their educational status. In Kampung Choh, Perak the Senoi clan has a telecentre which is doing well, which shows that they want to learn and they do have the interest. But that is as far as it goes. There is no material for them in their Senoi language and there is no continuous effort to educate them. So what is the impact of the telecentres, how many of the population can now use ICT as a result of that and to what extent are their knowledge and skill? We don't seem to have the answer to

that. Therefore, what is taken as the positive effect for example in Bario is that tourists get to use facilities in the telecentres rather than the impact being on whether the Kelabits are using it. As it is, Kelabits do not see why they need to use ICT, and they don't need it for their daily lives. So where are we going to put them in digital democracy? Y1

In Y1's opinion, participants in digital democracy practices will generally come from the urban community. More often than not, those who participate will be highly educated, "basically they know where and how to find the portal, they know what to tell and usually have good supporting data to refute or accept a proposition or policy". However, she questions what then happens to those who do not fall under this description, "the public who have minimal literacy, who are with a different academic background, who are just commoners"? In her opinion, "this group of people should also be listened to as policies also affect them". She suggests that exercises should be simplified, such as in polling where "simple questions that require yes and no answers are put up". She also suggests "not [to] limit activities to being portal based but [to] include other more affordable technologies such as interactive television and mobile phones". So, to her, for rural communities and the marginalised, digital democracy should be user friendly and integrate different kinds of media.

Y3 generally agrees that access to infrastructure presents an issue in the implementation of digital democracy and offers a similar perspective by his observation that, "urban is about convergence, and rural is not". In his opinion, at present, the introductions of new technologies such as mobile internet and hot spots increases connectivity but does not necessarily heighten digital democracy in rural communities. He points out that NGOs for example are urban based. He observes urban life as more volatile and this determines why his arguments point to digital democracy being more successful for urban communities:

In cities people don't communicate with the MPs [members of Parliament] for problems regarding services and would go direct to the City Councils. However, this is not the case in rural areas where MPs play a closer role in the lives of the people in the rural community. Therefore, to the city dwellers, they are not beholden to political parties, they pay their rent, they pay their dues, they pay their quit rent and they are fine. They express their opinion about everything including traffic jams and they continuously express minority viewpoints in relation to life in the city, electronically. So looking at the results of the recent elections, it is the case of 'the city has spoken'. The first evidence of digital

democracy comes from the urban area because of the nature of urban life and urban civilisation. Y3

The Critical Factor Is People

When asked if ICT is encouraging people to be more open or more critical of public policies, Y8, a lawyer active in the Islamic Youth (ABIM) movement, responded that the right term to use instead of critical is *sedar* (conscious) or *prihatin* (mindful). In his opinion, society is developing so that people are more conscious of their rights and mindful of their surroundings. This is brought about by increased ability to obtain information through ICT and generally through higher and better quality education. To Y8, these characteristics make up a “balanced society”.

Malaysians, according to Y6, have always been critical. However, as discussed in chapter 1, in relation to deliberative democracy theory, political decisions are not merely the aggregate of personal preferences but the result of reasoned public discussions. What is more significant according to Y6 is the ability to make their views known. This opportunity is offered by ICT which at the same time also makes available more information and diverse perspectives to better inform decisions. Regardless of these opportunities presented by ICT, the decision whether or not to participate remains with the individual. This choice will determine if ICT will bring about a stronger civil society:

I think people just used to be critical at the coffee shop before; now the coffee shop is the blog I think digital democracy has got nothing to do with technology because technology we've got, mechanisms for technology we've got too, we've got biometric identification, we've got digital certification, we've got all of these things which can ensure secure channels, we've got infrastructure. Granted it is not pervasive through the country but it could be if we wanted it to be. Theoretically, every registered voter could participate by one form or another channel that we've looked at if they want to make it happen. I think the issue comes back to, do people want it to happen. Y6

Y3 points out that the democratic processes involve interaction and, as it is, we are not sure to what extents communications like text messaging and e-mails create debates or arguments.

You have to see the magnitude of interactiveness to that process in the end called democratic process There are many channels from rumour mongering to sms. I remember during the time of Anwar Ibrahim in 1998, e-mails were sent, printed,

photocopied and distributed. Therefore, photocopies were the most important and not the e-mails. It was therefore a mixed medium and information though not only 'e' originated can be said to be 'e' related or 'e' derived. Y3

These views confirm that there cannot be any assumption that by having access to the technology, people in Malaysia are interacting outside their private circle to exchange ideas or opinions that are issues related:

Having enablers and tools without people at the receiving end being responsive to the inputs will not make digital democracy effective. This will need a revolution whereby not only are tools in place but also the capacity and mentality of all parties involved. Y2

Unanimously, commentators have identified the chief issue in digital democracy as the people. This is in line with what Rawls identifies as the third element of deliberative democracy, discussed in chapter 1, namely; knowledge and desire on the part of citizens generally to observe public reason and to realise its ideals in their political conduct.⁴⁶⁶

It Is Inevitable, It Is There, Why Not Capitalise On It

Commentators see digital democracy as an inevitable journey to be undertaken by the civil service. There is no denying that ICT are changing democratic processes. To them this reality must be accepted and internalised for the service to remain relevant. It cannot retain old preferences and fail to capitalise on new developments. Without doubt, however, they agree that there are obstacles to be faced:

To me it is inevitable, it is there. From a marketing perspective, if it is already there, why not capitalise on it We are already there whether we admit it or not unless you want to live in the world of denial. I am a person who would like to take it head on, prepare for it and know what we are facing rather than live in fear of not knowing how to handle it then suddenly you reach a breaking point when you don't know how to handle it at all. Y7

They should be using and exploiting it themselves in the positive sense. We want to get development, how do you get development actually? You cannot just give development. Development comes from people, so you have to persuade people from one position to another. Persuasion is through interaction. So the government can use this tool or platform to have more interaction with the public. Y9

⁴⁶⁶ See note 13. Rawls, The Idea of Public Reason Revisited, *The University of Chicago Law Review*, vol. 64, (1997) 765-807.

Y7, who displays and expresses obvious gratitude for the invention of his Blackberry and the ICT capacity for interactiveness in general, observes that the electronic media does not necessarily have to replace whatever policy making processes already in place. ICT's capacity for interactiveness and information sharing, will go a long way in strengthening these processes, ensuring better outcomes in policy decisions. However, he expresses disappointment that current practice dictates that these processes be regarded as time consuming. His tone could not conceal his sarcasm over the urgency and hurry which seems to always apply to policy decisions:

First of all you need to understand the realm of electronic media, what are its strength and weaknesses, but nevertheless you also have the traditional process for policy formulation. In that sense you actually have first, the research, then a process whereby you test your hypothesis, then you look into international best practices and then you narrow the gap to see whether it can be implemented within Malaysia. Then you make recommendations as to what are the relevant strategies to formulate the policies or you come up with the policies itself. Now, in every part of this process, you can use the new media to get information. When I say information, it is not only in terms of research, you can also test out your policies, you can get feedback on your policies, you can even do focus groups on the net to test your policies. So, these are things which I think a lot of people may not really understand yet on how to use this new infrastructure to do what is traditionally a research methodology. If we adhere to certain processes than with ICT these actually can be done faster, and you get fully documented feedback. The only challenge in Malaysia is the question of whether the process is adhered to. There may be breakage in the process, a short circuit due to urgency or hurriedness. Y7

As a researcher who has long been involved in ICT projects involving rural communities, Y1 points out that it is sad that the present Barisan Nasional government is not taking full advantage of ICT. In her opinion, if the government does not use the internet to inform people of its initiatives and planning, there is danger of this information being manipulated for political gains by others. Y1 refers to the Malaysian governing party appearing to have lost support in states where there is good ICT infrastructure and a very narrow digital divide. The issue she emphasises is that not everyone comprehends the magnitude of the internet's capacity for information sharing. She states that the faction that realises this will reap the advantage over another that does not and, at times, this will become destructive. What people know influences them, especially when presentations on the internet are made more convincing by the use of images such as graphics, photographs and videos. The situation is made more serious where there is a high penetration level of the electronic media:

In states where we thought that the digital divide is already narrow, all these states were lost to the opposition [party]. In states like Sabah and Sarawak where the digital divide is very wide, people are still very loyal to the present government and are happy with what they have right now. Therefore, what can we conclude with that? This situation I think is very sad. Is the situation that the more advanced you are or more open for people to get information or spread information the net, the more you begin to lose power? What are we doing about that? I think we should provide more positive information, we should listen more For example, payment of alms or *zakat*, we don't see where the money is going. It would be good to actually tell people how the money collected is being used or distributed Digital democracy should work for us and we shouldn't be doing it just because of trends. Y1

Fear of the Unknown

Virtually all commentators feel strongly that, in the absence of established norms governing digital democracy in Malaysia, civil servants will find it difficult to facilitate digital democracy in meaningful ways. To most commentators, it is a question of their mindset. Y9 puts this plainly when he says:

The mindset is that it's my job, my turf, and I don't have to consult, just write up a policy and they will follow. Y9

Y2 thinks that the civil service has tools which are already "70% to 80% in place". Going back to the critical factor of people, he observes that something which has been made easy by ICT, such as linking parliamentary sessions to web television, is not necessarily achievable:

This is what I mean by the human factor, i.e., will the authorities allow it. Success of any e-project will depend very much upon government officers especially those with higher authority changing their mentality towards being more appreciative of these projects. Perhaps the right mentality represents as much as 50% of the success factor. Y2

To Y9, if the government and the civil service does not champion the cause for digital democracy, and individual human rights activists and bloggers such Raja Petra Kamaruddin and Steven Gan are left to lead the way, the policy making process will not benefit from it. In his opinion, "the gap will widen and create a more dysfunctional society". To him, the government, and the civil service in particular, must accept the inevitability of the technology and start exploiting digital democracy "for its own survival as well as for the good of the people". Y1 speaks from her experience researching e-community and e-learning projects and observes:

When we want to implement an ICT based project, the project has to go through several layers of persuasion and exposure, regardless of whether you are the implementer, the doer or the receiver. Y1

On the issue of changing mindsets, Y6 and Y7 are among those who are not very optimistic about civil servants being open to digital democracy in policy making. They anchor their argument in the possible fear among civil servants that their roles in the administration of the country may be reduced:

I don't think that anybody is going to make a decision for themselves; I think that up to a certain point, people may be fearful of the fact that what does this mean for my role? Y6

I think in Malaysia, there is the common fear of implementing something democratically and you suddenly find that you have no recourse. Because if the system takes over your job, what is your existence? Y7

Y7, who has vast experience in both public and private telecommunications sectors, addresses the question of balancing freedom and control. His view is an inversion of the progression in Arnstein's ladder of citizen participation, about how much control the citizens are allowed, as discussed in chapter 1.⁴⁶⁷ The most important question to be answered he says, is how much control do you want to relinquish, or, what is it that you want to control? He believes that control will be proportional to the ability and capacity of the society:

Where a government is confident that the society is able to act responsibly and in an orderly manner, it will relinquish control. However, if it is felt that the society is very immature and there is possible adverse reaction, it would not want to relinquish control. Y7

To Y7, the government and civil servants may fear the prospect of losing control over policy making. However in his opinion, by implementing digital democracy at least on a trial manner, trust and confidence may be built over time.

To these commentators, this "fear of the unknown" affects the value civil servants place on citizen participation in policy making processes. In Y7's opinion the proliferation of information sharing through online activities such as blogs is at present taking place within the framework of the total political machinery of the state but not in the machinery

⁴⁶⁷ Arnstein, A Ladder of Citizen Participation, *Journal of the American Planning Association*, vol. Vol. 35 No. 4 July, (1969) 216-224.

of government itself. To him, digital democracy will facilitate policy making if civil servants are able to appreciate not only the concept and its potential but also, more importantly, appreciate their own role as strategic thinkers in policy making.

I think public administrators need to see their role as a facilitator or strategic thinker, because what digital democracy would do is actually to have ICT act as tools for you to get feedback. So if you see your role as facilitator, changing skill sets from maybe conducting meetings to facilitating a discourse or getting feedback, then you have a role to play and the electronic devices become a tool. In implementing certain systems, you need to think ahead and you need to plan. If this role is taken up by the public administrator, then the fear to implement such a tool becomes depleted. ... Basically if a tool exists for the community and is not being used by the government, there is a certain shortfall. So the question now is that actually it looks like the general public is ready but whether the government and the decision maker is ready to institute that electronic manner, that is currently not apparent. Y7

To Y1, civil servants should be more appreciative of the role that they will continue to play in policy making. She feels that it is positive for civil servants not to be over sensitive, to allow people to comment on policies and issues, to be willing to listen to grievances and differing views and opinions and then, acting sincerely, take necessary actions. She appreciates that this is not an easy feat because, in the case of government and the civil service, listening does not necessarily mean acting and implementing. In her opinion, the government at times has to be firm and continue to implement agreed on policies. To keep changing policies because there is some dissent is neither good nor effective government. Y1 thinks highly of civil servants' roles in policy making, roles which civil servants should not fear will be any less important with the implementation of digital democracy:

There always has to be a cut off point whereby you know when to listen and when to stop listening, and also know whether you are getting the right information. You need to also have ideas who are those actually coming in to give opinions and whether these commentators are genuine or if they have a different agenda which means that they are not giving the true reflection of the policy that you want to implement. There are groups who will go with you if you are weak and go against you if you are strong. Y1

Y6 observes that civil servants make up a significant part of the electorate, and if they were to be brought into digital democracy, its development will accelerate. A failure to appreciate the value of citizen participation will translate into an inability to respond to, and project an image of, digital democracy in a meaningful way. To Y6, "it is

symptomatic again of the maturity behind the system. So people think okay, let's make it easy for people to complain, so we put the system in, but then what happens?" That question leads to his further question whether civil servants want digital democracy to happen. His response is that he thinks they do not. This he relates to their fear and lack of understanding of the concept:

Public administrators don't understand what it is and what you don't understand you fear. If you fear it, it is not going to come about very soon. Y6

THE QUESTION OF CONTROL AND CONTEXT; WHAT ARE THE PARAMETERS?

As has been discussed above, commentators are unanimous that the central issue in digital democracy is the building of a strong civil society and a government supportive of participative decision making. There are a few among them who contain their admiration for the concept and remain cautious. Y3 for example, constantly refers to the importance of context and culture:

Democracy in Malaysia is a federalist democracy under the umbrella of the modern form of symbolic feudalism. This is a democracy which can only work in this particular landscape, and as embedded into this landscape. Therefore in this sense, the world is not flat. To me the world is undulated biologically, physically or geologically so when you pour the chocolate onto it, it can only be in that form, and anything which comes from outside has to be embedded here. An example is in the case of *wudu'* [ritual cleansing] which can be done either with water or with hard objects but in the Malay language, *wudu'* is known as *air* [water] *sembahyang* [prayers]. The word *air* is used and not stone, as it is already embedded into our linguistic idiom that what comes naturally is for people in a tropical country like Malaysia to use water for *wudu'*. ... Therefore, even Islam has to embrace what local people understand or risk not being understood or accepted by the community. That is why digital democracy is trying to cut through all the undulating landscape to flatten the relationship. That is what its function is. Y3

Appreciation of freedom is expressed in the same breath as reservations about the level of freedom they deem appropriate to what Malaysia, as a country, and Malaysians, as a society, are able to handle. It resonates with Crouch's and Lijphart's contentions that continuing threats of ethnic conflict make it difficult to achieve and maintain stable democratic government in a plural society.⁴⁶⁸ Commentators such as Y8 feel the need to

⁴⁶⁸ See note 45 and 46. Crouch, *Government and Society in Malaysia*, (St Leonards 1996) 150, Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, (New Haven and London 1977) 946-961.

express some prerequisites for digital democracy, such as the need for an educated and responsible society:

Freedom is good but I do not want our government to give freedom such as that given by the Indonesian government which has led to them having problems of unity. The declaration of human right has also mentioned that human rights should be defined in a local context. In Islam, *Adil* does not necessarily mean equality but to put something in its rightful place. However, our laws should provide space for people to have freedom of expression but at the same time, we must ensure they are well educated and the government also has to have an approach whereby opinions are accepted and considered in an objective manner. In other words we must encourage the proliferation of ideas within an educated and responsible society. Y8

Is There any Real Danger of National Disintegration?

To Y3 there has been a struggle in Malaysia which he describes as a “nation of intent”. He observes that “ICT is a vehicle to help fight for that nation, which is used differently by different groups”. His explanation of how the term “nation of intent” came about, gives an understanding of the continued importance of the multiethnic factor in Malaysian politics:

It is about what we don't see but what exists. The struggle between PAS [Malay acronym for Pan-Malaysian Islamic Party] and UMNO [United Malays National Organisation] is the struggle of creating what they want the nation to be. With DAP [Democratic Action Party] what they want is a Malaysian Malaysia. UMNO on the other hand is not clear about what they are fighting for. They are fighting for the Malays but what actually are they fighting for? Is UMNO fighting for a Malay nation or are they giving way for a plural nation where other ethnic groups are allowed to speak out and say whatever they want? This actually negates the Malayness, whereas Chinese and Indians are very clear about wanting a Malaysian Malaysia. Therefore, this is a struggle of a nation of intent. By default of saying that we need a united Malaysian nation, we are agreeing that we have no nation but only states. Therefore the nation of intent in Malaysia continues to be relevant, in order to understand how Malaysian democracy is run. It is not about Islam but ethnicity and a powerful special group in terms of political parties that can push the power. Therefore, I see the practice of democracy according to the landscape. In the general generic term in political science, what we see in Malaysia is not an ethnic struggle only because intra ethnic is a struggle, inter ethnic is a struggle but what is the real struggle? It is about deciding what is this nation, what should we turn this nation into and we continuously struggle for that. So our democracy is overwhelmed by the need to struggle towards that dream of the nation that we want. Y3

Y3 observes that multi ethnicity in Malaysia is not about majority against minority. The main struggle is between the minorities. Along with ethnic Chinese and Indians, who he estimates to represent 25% and 10% of the population respectively, Bumiputeras,

representing about 50% of the population, include ethnic Malays and other indigenous groups. Especially prominent are those from Sabah and Sarawak. Consequently, Malaysians are made up of small ethnic groups of which none actually represents the majority. This is unlike Singapore where an overwhelming 80% of the population are ethnic Chinese:

Ours therefore is not a majority rule but a coalition rule where there is no way that one group will dominate in the end. Malays are divided into UMNO, PAS and PKR (Malay acronym for People's Justice Party) Indians have many parties and so do Chinese. Therefore, the issue now is small majority rather than big majority. In Sabah and Sarawak, non Muslims can become members [of UMNO] because they are Bumiputeras. Therefore, UMNO does not totally represent Malays. If Sabah has got 36 seats, these are not all Malays and there are no Malay parties in Sabah. 199 Divisions send members to the UMNO Convention which makes up 2000 delegates taking part in party elections. Fourteen million Malays and three million UMNO members translate into 2000 who decide on who becomes MT [Malay acronym for Supreme Council] members of which 50% becomes cabinet members. This is the key to understanding the politics of Malaysia.
Y3

Y3's observations contain what he considers the real meaning brought about by multi ethnicity in Malaysian politics and administration. His concept of "nation of intent" informs an understanding of the significance of the ethnic factor and of multiracial cooperation. As has been mentioned in chapter 2, when discussing the context of the study, the discussions of political issues in Malaysia are observed to take place within the arena of "institutionalised repressive tolerance" and a "narrow political space".⁴⁶⁹ Many argue that the ground rules determining this space emphatically accommodate the current Barisan Nasional government, as discussed in chapter 3. The question of balance between the developing interactiveness presented by ICT and the ethnic factor emerged as very relevant throughout the interviews held with the commentators.

Y1, who confesses to growing up in a family always very involved with UMNO, is unwavering in her interpretation of the constitutional prohibition against the questioning of Malay special privileges. When asked if she considers any kind of policy unsuitable for discussions on the internet, her response depicts her adamant belief in the social contract reached during independence as previously discussed in chapter 2:

⁴⁶⁹ Verma, Malaysia, State and Civil Society in Transition, (Colorado 2002) 208-209.

Definitely not policies which are related to the five important issues, such as Malay sovereignty, *kesultanan* [monarchy], Islam as official religion, Malay as official language and Malay rights. These are things which are not debatable and therefore should not be opened for digital democracy. This is our land, you must understand that. Even though we may be more experienced and exposed to ideas of freedom and equality, this is still our land Because too much freedom has been given, and we allow them to talk, as an educationist, the way I see it is that they have crossed the border. Generally I think issues relating to these five [Malay rights] or those which involve the amendments to the Constitution should not be put up for discussion They don't like the word *ketuanan Melayu* [Malay for Malay supremacy or dominance] but they actually don't understand the meaning of the word and how the actual agreement was made when we allowed them here and accepted them as citizens. This to me should be accepted and be understood to be untouchable. Y1

Other Malay commentators are more flexible in their approaches to ethnic sensitivities.

Two, who are non Malays (Y5 and Y6), refuse to touch on the subject in such a direct manner. They all agree that online discussions are open to manipulation. In their opinion, Malaysian bloggers at present are still inclined to be very emotional:

I am always very concerned that bloggers tend to get personal when it comes to attacking people. That becomes something which you would want to discourage. The missing part is the maturing of our society in relation to the democratic space that we have. Y5

There is a perception that more often than not, issues are unjustifiably politicised and accusations are made without an appropriate basis. Postings on blogs are at times defamatory and some discussions of ethnic sensitivities are disquietening. As pointed out by Y9, "social sentiments are very easy to exploit". In his view, regardless of the MSC (Multimedia Super Corridor) Bill of Guarantee that the government will not filter the internet, when discussions involve ethnic sensitivities and raise racial sentiments, they should be controlled:

According to the MSC Bill of Guarantee, the government has no right to filter information which goes on the net. However, I believe that the government can and should be able to control elements which are not suitable especially when it involves sensitivities and has tendency to raise racial sentiments. Existing legal provisions can be applied here. Y9

There is no agreement between them on when it is appropriate to enforce existing laws.

They tend to take a case by case approach. Commentators feel that it is very important to develop a general agreement about how these laws are enforced in online interactions. It

will achieve a sense of balance between freedom and control. The basis of enforcement should be acceptable to all:

There exists a paradox whereby, it is a hard choice between controlling and not controlling. If they are not controlled some individuals or bloggers have tendencies to go overboard but at the same time, to put on control would have reciprocal effects and to be seen as being against freedom of expression. Y8

Although Y4, an academic and a keen political analyst, agrees that some form of control is needed, he also thinks that it should not be too excessive. The government should not project an irrational fear that any online discussion which touches the topic of ethnic sensitivities will necessarily lead to national disharmony.

The situation is that even a slight show of disapproval from the people is taken as seditious and falls under the sedition law. I think Malaysians now are clever and they know how to weigh information and arguments. Y4

Y6 feels strongly that fundamentally all issues which concern the public should be open for discussion. Exceptions to this rule, for example cases involving the defence of the realm and commercially sensitive information which for legal and strategic reasons needs to be released at a specific time, must be based on clear mandates:

But for us to exclude participation just based on "these subjects you don't need to know about" I don't think that is something which exists across the board. You can't make that as a blanket rule; everything is a subject for discussion. It must be discussed in order for it to be taken off the table but the way that it is taken off the table has to have a very clear mandate. Y6

Despite an apparent hesitancy to be more direct in his expressions of ethnic issues, Y6 reveals a disapproval of restricting them as topics for open discussion when he says:

[A]nything which distorts a market for information will eventually die because it's a contrivance. All of the policy that we have had in place that are essential market distortions, affirmative action policies and so forth, serve the purpose for a certain time, there is no question. They have no choice but to disappear whether people want them to or not, they just will because technology doesn't differentiate in that way. Y6

Although it became apparent that Y4 and Y6 do not share the same views on the implementation of ethnic policies, they both agree that discussions of these issues should not be totally prohibited. Y4 takes it a step further saying the government should not be apologetic for policies which have had to be developed because of particular contexts,

including historical situations. What is important is providing information so that people are able to evaluate it from their own opinions:

Why must it be controlled? It is time that we learn to accept the fact that we are a multi ethnic society and those things which are related to this has to be discussed, if it is not seditious or could threaten the social harmony or public security. Y4

Generally more optimistic than the others, Y4 and Y6 form a minority amongst the commentators. Reading through their interview transcripts, however, one wonders if their optimism is borne out of their confidence in Malaysia's civil society or out of their discontent of the government's handling of citizen activism which they may share with Y9:

There must be some form of control but you cannot control dissents. If I disagree with you, you cannot go lock me up, how many people can you lock up then? Y9

A majority of commentators express their lack of confidence in the current level of maturity of Malaysian society to handle the opportunities afforded by ICT:

Although we have quantum leaped in terms of technology, we are still in infancy and the community is not ready for it and will still need to be educated. Y1

The term digital democracy to Y7 implies different standards whereby different countries implement different forms of democracy based on their social values. His view that democracy has its variants, and that the question to ask now is "how we adapt "Malaysia's democratic format into an electronic form", echoes Noveck's idea of "conversational transparency", which argues that communication by ICT does not necessarily lead to democracy. Winner's and Barney's argument that ICT may even strengthen priorities which are already in place,⁴⁷⁰ strengthens Y7's view:

You cannot say this is a democratic way of the US [United States] and then you transplant it to Malaysia and it should work. The social standing, the social values, the societies' upbringing are different. So democracy has its variants. The question now is actually how you adapt Malaysia's democratic format into an electronic form. To me it is an evolution, so you may have certain targets but then you may have jagged movements

⁴⁷⁰ See page 10-12. Noveck, Designing Deliberative Democracy in Cyberspace: The Role of the Cyber-Lawyer, *Journal of Science and Technology Law*, vol. 9, (2003) 472-491, Winner, Technological Euphoria and Contemporary Citizenship, *Techné: Research in Philosophy and Technology*, vol. 9, (2005) 123-133 and Jay, Technology, Democracy and Liberation: An Interview with Darin Barney, *Monkeyfist.com*, vol. 2008, (2003).

because it will be influenced by how you test the model at every stage. So it should be looked at as a journey rather than a destination. So you may say for example, for digital democracy, in terms of let's say the voting process, what is recommended in the US may be might be different here slightly maybe in terms of implementation, so you need to look at the implementation, understand the implementation, before you can see what method of, I would say the openness that you want for that particular society, because at the end of the day it concerns access of information and that is openness. What constitutes openness for that society would be dependant on the variable. Y7

The commentators' apprehension is especially clear in the context of participation in policy making. Their focus is on the need for continuous education on net etiquette as well as building up ability for self censorship. The feeling is that, if the public at large fails to respond sincerely and constructively in that process, digital democracy practices will be a waste of time.

THE CIVIL SERVICE: ITS HIERARCHIES AND ITS LOCATION IN THE POWER STRUCTURE

Among commentators, there are those who believe that the Weberian⁴⁷¹ legacy of a clear hierarchical order and concentration of power among senior officials, as discussed in chapter 1, are still very applicable when describing the Malaysian civil service. To Y4, a well known political scientist, decentralised decision making or delegation of power is still not widely practiced in the civil service resulting in inefficient service delivery and unnecessary delays in decision making:

I have friends at the 54 and JUSA C level that are Directors of Departments but are still afraid of making decisions. At the level of Directors, they are still implementers. Policies are still not made at this level. The question now is the speed of delivery. For example, PEMUDAH,⁴⁷² a committee consisting of prominent leaders in the country, set up to ease processes and ensures that investors are happy to invest in Malaysia, is not showing much impact. This is talking about leaders at the highest level, so what more when you talk about the level of local councils. For example, when applying for renovation of a house, a decision which is supposed to be given in one week is still not forthcoming even in three months. When simple complaints are not resolved, questions arise as to the level of commands or that the complaint does not reach the right person. Y4

⁴⁷¹ Vigoda, From Responsiveness to Collaboration: Governance, Citizens, and the Next Generation of Public Administration, *Public Administration Review*, vol. 62, (2002) 251-267.

⁴⁷² PEMUDAH is a joint public-private sector committee involved in assessing the government implementation machinery and making recommendations on improving the delivery system. Related also is the establishment of a National Implementation Task Force (NITF) in 2006, with the Prime Minister as chairman and members from both the public and private sector, to oversee the implementation of the Ninth Malaysia Plan.

Sanford and Rose, as discussed in chapter 1, view that moves towards new forms of organisation, may require “reorganization of government – perhaps into flatter hierarchies of more creative and cooperative”⁴⁷³ civil servants. However, in Y9’s opinion, the Malaysian civil service is not reacting to the demand for it “to be flattened”:

With the public service or the PTD (Administrative and Diplomatic) service however, there are considerations of a very strong hierarchy where young people cannot really move. The situation is more top down than anything else. Information flattening hierarchies has not happened in the public or PTD service or anywhere in Malaysia, inclusive of the private sector. There is a demand for it to be flattened but it has not. Look at web 2.0 and the example of Wikipedia. Wikipedia is opened to everybody where anything which is put up can be changed or further developed by the next person, a process which is completely democratized. Y9

To Y2, there are current practices which need to be investigated to reduce bureaucratic red tape. His experience has shown that in the private sector, online communications are acceptable, making communications methods faster and eliminating long memos and form filling. To him, there is no question of good communication being limited to something which is physically written and signed. The rules have to recognise these processes and they must be official or legal to be effective. Affecting such changes will pave the way for a change of mentality, especially among those in higher positions, about flattening the hierarchy in the civil service.

Y6 is, perhaps, being overly pessimistic when he says the civil service operates more or less on whims. The point that he tries to make is that flattening hierarchies in the Malaysian civil service is attached to ministerial control and the location of the bureaucracy in the power structure:

You may think that there is a lot of change management, but the civil service in the last 15 years has become used to the administration that operates more or less on whim. Changing something because the minister changes his mind is not an uncommon thing. Before, there used to be a big difference between the political arm and the administrative arm. I don’t think that exist now. It may start again, given the recent events but certainly in the last maybe 20 years, the minister was the de facto head of the civil service in the department and not the secretary general who should have been. So, rather than having them as equals, the Secretary General than became the person who took orders from the Minister and that only recently, when I say recently I mean in the last administration.

⁴⁷³ Sanford and Rose, Characterizing eParticipation, *International Journal of Information Management*, vol. 27, (2007) 406.

Prior to that, if the Minister was doing something without foreseeing the long term implications or was primarily politically motivated, the Secretary General would stand up and say no, this is your political thing, we are the Government and we have to look at the longer term. The politics and the administrative structure are now so closely intertwined that there is no check and balance. Y6

Y4 has some sympathy for Y6's views but sees it as a long standing problem which may improve:

It again boils down to whether the people are still faced with daily issues such as inflation, and the problem of the ability of leadership and command of respect. It is not good that the concept in place right now is of public administrators or Secretary Generals looking after the ministers. Without courage, drive, vision or new ideas, these senior administrators are becoming irrelevant. It is a very conventional old type approach which I hope would be changed when the younger generation of public administrators takes over. Y4

The Bottom Line Is, “Will It Change Anything”?

Commentators agree that maintaining characteristics, such as strong organisational hierarchies and ministerial interventions, will not facilitate information flattening which is an important factor if digital democracy is to bring about significant changes to the policy making process. They are of the opinion that in order for people to truly appreciate digital democracy and participate in it, it must be seen to offer them an added value which comes in the form of a more efficient service delivery or more acceptable policies. If the factors contributing towards decision making remain unchanged, then the probable attitude towards digital democracy will be “why bother”.

Maybe some governments would say that they will listen to a certain extent and would be deaf to a certain extent. So, where is that democracy now? Even in the wake of street demonstrations, governments would sometime still do what they have decided to do. It would be good to highlight these instances when a country actually listens to citizens, or only listens up to a certain percentage, or listens only to whatever they like. It is not unusual even in Malaysia for us to pick, choose and highlight issues, statements or arguments which are in line with our objectives and simply ignore those that are not. Y1

When asked if he thinks that the civil service is willing to have digital democracy more formally integrated into its policy making process, Y6, still in his pessimistic mood, responded that he thinks neither are they willing nor ready. To him, online service provision such as being able to download forms, effect transactions as well as seek information represents only a simplistic level of participation.

I think for it to move to the next stage where we become sort of beyond transactional or even transformational, requires something which the technology can't do which is this shift in the way that the services are orientated for community participation which they are not at the moment. Right now it is still a question of there is a front desk, it is just that it's been made virtual and that front desk still dispenses some things. We are still at web 1.0. For us to go to digital democracy in a meaningful way, you have to go to web 2.0, and what does that mean in Malaysia? We don't have that yet. Y6

In making his point, Y6 says that receiving complaints electronically will not make a difference in most cases. Although he believes that knowing there is a channel for complaints, creates the perception of being able to participate, it is also important that the process is comprehensive and made as meaningful as possible. In his opinion the user's experience will define the user's perception about further participation in the process:

If I look at the work that we were doing in e-submission, the community that I was working with specifically was a professional construction based community. So we appreciated that the end state is that any user experience that they have at this stage would really define their thinking for anything else that they wanted to do. So, we made it as comprehensive and as meaningful a process as possible. Sometimes if I look at some of these e-services that are offered now, it is clear that they are not designed by people who understand the systems, not from an information technology perspective but from a user perspective. If I look at how this may impact digital democracy, it may be fearful to those who say well maybe I will participate in that but the last I tried to submit my tax online, it didn't work, the last time I tried to pay my fine online, it didn't work, the last time I tried to get this information, it didn't work and that would erode confidence in the whole system. Because of the fact that the back end system still relies upon it being read and interpreted and for it to be channelled to whoever that can respond to it and for that response to come back to that person so that people who made the complaint can understand that their issue have been resolved. So that whole back end doesn't exist in a meaningful way with a client charter which says that you make a complaint today, within eight hours you would get a response telling you who is supposed to be doing what, why we can't do it or whatever. Y6

Y5 agrees with Y6 when he says that whether actual actions are being taken reflects on the credibility of the government. If it is positive then further participation will be encouraged. The basic principle of digital democracy to Y4 is to listen and to understand in order to be able to deliver on promises, address complaints and formulate policies which are more in line with the people's wishes. To him, this is a good development. However, the only complaint we keep hearing, he says, which he also thinks will not be resolved in the near future, is of the slow response from the government and its officials:

I just wrote to KSN (Chief Secretary) two days ago, complaining again regarding an application made in April by a person who is asking for a transfer, but have received no

reply. The KSN replied to me immediately and promised that the ministry will respond the latest by 16th May. When the reply did not come I wrote again but have yet to receive a reply. Then again about promises, you keep assuring people about delivering good service using ICT but in terms of implementation it is still very slow. This affects the government and for this reason alone, the government has still got a lot to learn and as result, people rejected the government in the last election because promises are not delivered and complaints are not responded to. Y4

Acculturation

To begin with, commentators, like Y6, are of the opinion that as of now the role given to citizens in policy making is very little. This, he attributes to the strength of the government as a policy making body which “has had such inertia and momentum built up over 23 or 50 years”. In his opinion, the citizenry largely follows. This is a factor which he attributes to the fact that things have always been progressing “up and up”. He pointed out that even the rescue package implemented during the currency crisis in the 1990s came from the government as opposed to being propagated by citizens as in the case of neighbouring countries like the Philippines, Thailand and Indonesia:

I think our social structure is not quite mature enough where people believe that they have the right to participate You've got to have people at the top who are willing to say “okay give me your views” and ... you've got to have people at the bottom who are willing to say “I wish to share my views”. Y6

Approaching the discussion in a more idealistic sense, Y9 relates digital democracy to the concept of wisdom. He observes that if knowledge is defined in relation to wisdom, it cannot deal with just data or information. Wisdom is tacit in the minds, brains and spirit of the people and it is only present when there is evidence of social justice and good governance. Having wisdom is to have rational thinking which includes dealing with sentiments and emotions:

ICT will provide connectivity to create e-society and with ICT the capacity to get information is much magnified. So we have e-society then you informatise this society to get k-society (knowledge society), have continuous learning and you get information which is the use of knowledge to add value, not simply economic value but also social value. This ability to distribute, process and apply knowledge is innovation. Y9

In Y9's opinion, innovations like digital democracy will not flourish when approached solely from a technical point of view. It is not easy to acculturate. It involves unlearning and relearning and the only way to relearn is to take action:

I believe that any information you receive can only be turned into knowledge first because you internalise it, you conceptualise it and reframe it in your mental model. Y9 Y7 stresses that the process of change involves acculturation which differs according to age and generation. In his observation those below the age of 30 have been brought up with ICT and have more access to information. They display very little inhibition and are always questioning things. ICT has changed or democratised their minds. Those in their 30s tend to be very compliant with parents or authorities, where “if authority says you need to tow the line then you tow the line.” However he says, people in their 40s, (the group to which Y7 belongs) although they are thinkers, have a thought process which more often than not involves justifying and rationalising ways to avoid direct conflict. This view signifies that the “Malay way”, discussed in chapter 2, is still widely observed among Malays over the age of 40.

Y1 and Y8 agree with him that “the net generation is mushrooming”. The issue of generational responses may be linked to Y8’s observation that one of Malaysia’s successes in its 50 years of independence is the development of a good education system. Education creates a literate society. In the era of ICT and more access to information, people become more opinionated. Y8 however stresses the importance of education to nurture the “democratised” younger generation into applying the concept of *ilmu* or wisdom, which involves the ability to filter information.

Having vast experience in the development of policies relating to ICT, Y7 feels that both the people at large and the government should be acculturated. If the government were to do this it will accelerate acceptance:

The bottom line for me is efficiency and the other is the ability to react. Modern efficient governments are guided by principles only and the public administrator works within the framework of principles. Principles and frameworks are usually the foundation of it, and once that is firmed up then the government becomes efficient and its ability to react to the external or internal forces is faster. Currently if the government is perceived to be sluggish it is because there are always changes in policies, which means the framework is not fixed, which is why the decision making is slow and uncertain. But if the electronic media can be used to facilitate and get feedback quickly and enable to formulate a new strategy quickly then the framework is established I don’t see why not. Because at the end of the day, from a public perspective, basically they just want something to be done efficiently. Decision process is done efficiently, public services is done efficiently. Look

at it like for example now, you can get your passport within two hours and those with experience having to wait 7 to 14 days before, that is a vast difference. But then, that is in terms of service delivery, but there are other issues at tactical and strategic levels that needs to be assisted by ICT to democratize the realm of power of the decision making process. Y7

All commentators agree however that a precondition to achieving a strong civil society, which ICT have helped to develop, is the ability to receive information and to apply pressure to affect changes. From his experience as an online journalist, Y5 thinks that a lot of people would want to have inputs:

For a very long time there was fear as to what you can say and what you cannot say, but when they have overcome it, I think they will state their opinion. Y5

While in proximity to the blogging community, Y5 admits that some bloggers can be a pain in that they can be completely wrong and unfair. He feels that the “blogsphere” is very new in Malaysia, particularly as people suddenly feel that they are getting the freedom to say what they want. In his opinion, whether civil servants like it or not, Malaysians want to have more freedom to voice opinions. At times, for example, when the economy is not doing very well and people are suffering from the high cost of living, he observes that this demand will surge. However, to Y5, Malaysians in many ways are still not mature enough to handle this freedom and learning to manage it will require processes and time:

This is not the era of thinking that they would somehow go away or have no impact. Y5.

Agreeing with Y5, most commentators have pointed out that it would not pay to ignore bloggers. They feel that blogs and group discussions on the internet are generally good indications of how sections of the community feel. As they may be influential, it would be desirable if the civil service were able to find appropriate ways to respond to them. They feel, at the least, that disagreements should be tolerated but factual mistakes should be corrected, and such actions may help educate the public:

When people put up issues, no one is taking the initiative to provide answers or to refute on the issues, a situation which leads people to believe whatever allegations being made. Y1

At the end of the day, digital democracy, according to Y9, is about achieving good governance. It is a result of being able to bring together all public, private and community interest in conceptual development through learning, unlearning and relearning. Learning, in his opinion, is the backdrop which covers everybody. He says:

It is not just the government that has to learn, the private sector as well as the society has to learn to live in a knowledge society, which is what acculturation is all about. Y9

NO EASY ROUTE TO SUCCESS

During the course of interviews with commentators, it became apparent that each and every one of them in one way or another associates their thoughts on digital democracy with the role ICT played in the then recent March 2008 general elections.⁴⁷⁴ Although the discussions of digital democracy were not anchored to events directly related to the elections, the regularity of reference made to it indicates that it may represent a benchmark informing their views of ICT's impact on the development of a society in which citizens wish to play a stronger role in its governance.

The election is generally referred to as demonstrating the role of the internet and of text messaging in the dissemination of alternative sources of information. To the commentators, these activities led people to think that legal and political reforms would be appropriate. What is significant to them is that the long surviving multiethnic coalition, the Barisan Nasional, was challenged in most electoral districts by an informal multi-ethnic opposition. Results of the elections have led many to either anticipate or resist the beginnings of a two-party system.

The nine individuals interviewed as commentators were very caught up in the mood. The feeling among them is that the ruling coalition party should attempt to win back the

⁴⁷⁴ An outstanding feature of the 2008 elections was the unexpectedly massive swing by the electorate away from Barisan Nasional. The party lost its two-thirds majority in the national Parliament. It now holds 140 of 222 parliamentary seats, giving it 64 percent of the total seats compared to 91 percent in 2004. Barisan Nasional also lost control of the four states of Kedah, Penang, Perak and Selangor and failed to win back Kelantan. In many constituencies where it was successful, its margin of victory was smaller than before. See Norhayati Mohd Salleh, Pilihanraya Umum ke 12 (PRU12): "Tsunami" Politik Melayu, *Malaysian Journal of History, Politics and Strategic Studies*, vol. 35, (2008).

estranged electorate. It became difficult sometimes in the interviews to distinguish between an appreciation of digital democracy in assisting governance processes, particularly for policy making, and a hope that the country's political elites would listen more carefully to the people.

It is not surprising that the principle most highlighted by commentators in expressing their understanding of the term digital democracy is of government taking an interest in and appropriately considering, the diverse views of citizens. Of particular significance is the stress on the importance of promoting a spirit of accommodation. In the context of Malaysia, this almost always falls back to discussions of ethnic diversity. To these commentators, not only does digital democracy represent "the inclusion of a wider community", it also raises awareness among people of the idea that they are being offered a more substantial role to play in policy making process.

Commentators are unanimous that, at the very least, ICT offer opportunities for Malaysians to become more aware of their surroundings. The capacity for information sharing and interaction has brought about a "process of change".⁴⁷⁵ ICT supports group actions and facilitates discussions between groups of people whom traditionally in Malaysia are detached by factors such as race, religion, language and culture. This however, does not translate into a stronger civil society if people avoid making their opinions known or taking actions. Although they acknowledged issues such as the digital divide as being significant, these commentators identified the chief issue in digital democracy to be "people",⁴⁷⁶ whether or not they will participate.

Commentators appreciate that the net community is not a single and amorphous entity. They appreciate that it is many disparate individuals with their own ideas of what is important and what is true. Commentators see those who express their views online as concerned individuals giving their personal take on the issues that affect them or others. Some are insightful, others are biased, some question everything and everyone, some are

⁴⁷⁵ Y7, quoted on page 162.

⁴⁷⁶ See page 167.

balanced and objective and others wear their hearts on their sleeves. Commentators see bloggers for example, as individuals who are opinionated and wish to share their views. They acknowledge that, because of the conscious efforts that goes into maintaining blogs, such as researching issues and weighing opinions, the government and particularly the civil service, can benefit from blogs to get a general idea of citizen's concerns, what they think of government statements and what issues need to be addressed.

It can be concluded from the interviews that commentators generally feel that digital democracy cannot remain unacknowledged by the civil service. To these respondents, digital democracy for policy making in the civil service should be regarded as a process and not a goal in itself. There must be the envisioning, or the formulation, of obtainable goals. Positive attitudes and commitment of civil servants towards achieving these goals are important. Success requires a sustained effort on the part of the civil service over a period of time. They feel that there are new demands and expectations for the civil service and civil servants to keep abreast of changes. There is a need for good planning and execution. Continuing education will ensure that fear of the unknown will not put at risk taking advantage of the opportunities in policy making presented by digital democracy.

Furthermore, commentators generally believe that the felt necessities of the time require fresh thinking and civil servants must be prepared to rethink their roles, articulate alternative approaches and formulate a more holistic understanding of the role of citizens in policy making. Although they expect that civil servants will be faced by issues such as concentration of power and hierarchies, civil servants should first and foremost understand that increasing citizens' role in governance does not necessarily mean an adverse impact to their own roles. On the contrary, commentators believe that by and large, digital democracy will elevate the civil service's expertise, its status and its share of decision making power.

Commentators point out that for digital democracy to flourish, attention has to move from online service provisions to a service which is more oriented towards two way

interactions. They expect the process to offer added values and to be made as meaningful and comprehensive as possible. To them, whether actual actions are being taken on issues raised and discussed impacts on the credibility of the government. They believe that at whatever junction a citizen enters the process, his or her experience will define their willingness to participate further.

It can be concluded from the interviews with the commentators that 51 years after independence, there is a prevalent belief that racial antagonisms might tear the nation apart. There is a perception that the equilibrium that has been achieved remains a tenuous one. A majority of commentators still feel the need to make explicit assumptions about the ethnic related political environment that to them is still congruent with reality. These individuals, who regard themselves as well informed, feel the need to point out that some implicit assumptions underlying liberal democracy do not match these realities. To them, there is an apprehension widely felt among Malaysians of all majority and minority ethnic groups, that the risks of any one ethnic group imposing total dominion is greater than the costs of sharing power. Appreciation of the changes brought about by ICT in strengthening the civil society against a background of ethnic diversity and an appreciation that Malaysia remains a “nation of intent”, has brought these commentators to a crossroads. The majority feel that the existing legal and administrative frameworks relating to the media have served the nation well, pointing to unity and national security. However, within this same group, some now point out that there are now reasons to believe that citizens are more mature and able to handle more freedom of expression.

The issue of censorship is linked to a wider issue of freedom of speech as discussed in chapter 3. However, when expressing their views on censorship and specifically the control of online content related to ethnic sensitivities, the majority of commentators tend to stress their concern over defamation. It remains unclear whether each respondent commentator understands and appreciates that the issue is not whether wrongdoings, such as defamation whether on or offline, should be dealt with.

The researcher feels the need to elaborate on this point. There are adequate laws dealing with wrongdoing, whether an act is unconstitutional or amounts to defamation, sedition, breach of official secrets laws or other wrongs. To claim that websites ought to be blocked because they contain defamatory content or disclose the commission of an offence, for example, shows some confusion over the difference between wrongs for which action can be taken after the event and acts that are so wrong that prior restraint from committing them is required. It should be understood that where a wrongdoing or offence is committed, the existing laws may be vigorously applied. In such cases, the publisher or blogger, for example, takes the risk when the content breaches the law, of being held responsible and of being prosecuted and punished, or held liable in other ways. When this happens the matter is dealt with by the courts which will adjudicate on whether the wrong or the offence has been committed. However, throughout the interviews, the distinction is blurred between commentators over censorship as an act of prior restraint or liability imposed over wrongdoings on the internet.

To conclude, this assessment by commentators does not by any means represent a complete picture of ICT's impact on Malaysian society or of civil servants' orientation towards a more participative policy making process. The interviews were undertaken in the interest of exploring beliefs that are common among these individuals. Occasionally, this analytical perspective might have made them appear two-dimensional. Data collected provides some indication of the beliefs of these individuals, shared with other Malaysians, of the changing role of civil servants as well as their expectations of civil servants in policy making within the new setting and new environment brought about by ICT. These observations of individuals outside the civil service, are reflective of assumed contextual restraints. They form a basis to analyse views of the main subjects of this project, ie civil servants, whether they are similar or markedly different.

DIGITAL DEMOCRACY IS CERTAINLY NOT A DISTANT CONCEPT

At the start of each interview, civil servants were asked, "What do you understand by the term digital democracy?" For the majority, their relative unfamiliarity with the term,

rendered the question an abrupt beginning to the interview. Most responses did not come promptly and in some instances, considerable uncertainty was admitted:

My scope of understanding is probably quite small. X7A

This is the first time I am hearing the term. X8A

Probably just to be fair, I am not very familiar with the term. X14B

Among 38 civil servants interviewed, eleven admit to being uncertain of the term's meaning i.e. (X7A, X8A, X14B, X17B, X20B, X25D, X30G, X31G, X33G, X35G, X37G). Judging from the assortment of ministries these respondents represent, (agency A, B, D and G), it is possible to generalise that expressions of uncertainty and hesitations are because of unfamiliarity with the term rather than the underlying concepts. Perhaps this is due to the absence of the term in current civil service policies and guidelines. However, despite initial hesitation, eight out of the eleven were prepared to contemplate the meaning without further prompting by the researcher.

Generally, attempts made at describing the term demonstrate a level of comprehension which signifies consciousness of digital democracy in its various levels of implementation. It is not surprising that compared to the commentators, civil servants, being in the civil service system, offer a greater richness of contextualised commentary on digital democracy and the civil service. A further influence may be the respondents' position in the organisation's administrative hierarchy, i.e. (grades 41 and 44, grades 48 and 52, Grade 54 and Main Position Public Sector Group Officers (JUSA)). As expected, the higher the rank and the longer their years of service, the better the ability to contextualise and articulate views.

The choice of organisations to which the respondents belong may also have an influence. In organisations where core functions are dependent on the development of ICT, there is a higher possibility of respondents being more exposed to a variety of ICT related issues. This allows them to acquire related knowledge which gives a greater understanding and appreciation of the subject matter.

Influences on the respondents were demonstrated by their differing choices of examples and their placing emphasis on dissimilar concerns. One probable factor in these is the organisation's functions in service delivery and how that impacts on individual job functions (Administrative and Diplomatic, Information, Information Technology, Town Planning). The Ministry of Housing and Local Government (MHLG) for example, have officers who are more attuned to organisational functions more focused on service delivery. Generally, civil servants from MHLG express a higher appreciation for the possibility of interaction with the public in policy making. For some organisational functions such as town planning, instances exist where public consultations are required by laws. The Ministry of Energy, Water and Communication (MEWC) plays the role of a policy formulator and service regulator for the Energy, Water and Communications sectors. The Ministry facilitates and regulates the growth of industries in these sectors. Although the regulatory functions of the Ministry are undertaken through its regulatory bodies, namely, the Energy Commission and the Communications and Multimedia Commission, respondent civil servants in MEWC are familiar with interactive events such as the regular forums with industry players. Respondents from Malaysian Administrative Modernisation and Management Planning Unit (MAMPU), Ministry of Science, Technology and Innovation (MOSTI) and Economic Planning Unit (EPU), on the other hand, are generally more conversant of matters relating to research and development, contributing to everyday workings of the administrative machinery as well as to related fiscal policies.

These factors may explain how the majority of respondent civil servants display, in varying degrees, an ability to contextualise. Although a respondent may seemingly contradict him or her self, each interview as a whole showed responses were not given in a vacuum but based on observations and evaluations of current associations between the civil service and the public. An analysis of responses to the opening question, established that civil servants relate the term digital democracy in various ways to communication activities by ICT. Although a small number take a broader approach associating the term ICT with facilitating the emergence of an online civil society in Malaysia, the majority however continuously describe their thoughts within the realm of the civil service's

management functions. In the absence of clear policies, these civil servants seem to prefer confining any opinion to what they have directly experienced. An analysis of the meaning these civil servants relate to the term digital democracy shows a spectrum of responses:

- ICT facilitating service delivery and automating administrative functions;
- providing equitable access to ICT infrastructure;
- liberalising access to information and providing online avenues to communicate with the government; and
- facilitating participation in policy making.

Indirectly, these responses have allowed an analysis not only of the meaning these respondent civil servants attach to the term digital democracy, but also of their general appreciation of the concept of citizen participation. The spectrum of responses also allow for an analysis contributing to an answer to the first secondary question, discussed in more detail in chapter 5:

- SQ1: Will the potential of technology in disseminating information, facilitating interaction and conducting political transactions through digital democracy practices be used to increase the transparency, efficiency, flexibility, cost-effectiveness, and inclusiveness of policy making in the Malaysian civil service?

The abruptness of the first question in the interviews with respondent civil servants, on their understanding of the term digital democracy, succeeded in revealing the meaning a civil servant associates with the term in the first instance of hearing it. As indicated, some responses were given with a degree of hesitation. The responses, however, reveal their understanding of the connection between ICT and its capability to enhance interaction between the civil service and the people. There may be differing reasons for the hesitations such as the relative lack of use of the term in their daily work within the civil service, consciousness of being unaware of any related written policies, the general apprehension common among civil servants to limit their comments to matters related to

their current job and organisational functions and even intimidation as felt by a junior officer. The responses can be divided into those who express the relationship primarily in terms of people as customers requiring continuous enhancement in service delivery or as citizens in a civil society to be afforded a more significant role in governance.

It is not easy to overstate the understanding and value these civil servants place on digital democracy and to distinguish their orientation as a group, whether they are oriented to the past, present or future. It may only be inferred from what they say. What can be extracted by asking them to consider the relation between the words digital and democracy however, is their perception of ICT's impact on the Malaysian civil society. In turn, their views reveal whether or not they feel that Malaysians merit the benefit of enhanced participation in policy making through ICT. This is an important factor to be determined because, as has been previously discussed in chapter 1, the democratic quality of online democratic practices will largely depend on how ICT are applied, and, consequently, on how public authorities are able to frame their usage.

In the absence of a more familiar use of the term digital democracy, how civil servants compose their understandings and expressions is based upon their own individual exposure to activities relating to the concept. However, it can be concluded that digital democracy, in the sense of ICT facilitating various aspects of interaction between the civil service and Malaysians at large, is not a distant concept for these civil servants.

CHAPTER 5

INTERACTION

This chapter considers whether the potential of technology in disseminating information, facilitating interaction and conducting political transactions through digital democracy practices will be used to increase transparency, efficiency, flexibility, cost-effectiveness, and inclusiveness of policy making in the Malaysian civil service.

THE ADDED VALUE OF TECHNOLOGY

ICT Facilitating Service Delivery and Automating Administrative Functions

(X3A, X7A, X8A, X22C, X31G)

X3A and X22C are both young civil servants. Although they belong to the Administrative and Diplomatic scheme of the civil service, both have qualifications in the technical areas of electronic engineering, majoring in multimedia and computer science. Both tell of experiences in electronic polling processes in university student council elections. To the question what the term digital democracy means they answered:

From my perspective, the term means using ICT for some form of democratic system.
X3A

Basically, I think it is about electronic processes. It is when government automates its administrative functions such as having a voting system. X22C

Now a senior civil servant, X8A admits to hearing the term for the first time. Although electronic polling processes were not introduced during his time as a student, he also contemplates the meaning of the expression in the context of online voting:

Maybe digital democracy is something to do with the software application where public can vote online. X8A

X7A is in charge of the administration of ICT for a ministry. The nature of her work encourages her to contextualise her understanding of the term digital democracy to the

development of systems and automation of processes for better management. A point she singles out is ICT's capacity to promote transparency in existing government administrative processes. The then recent 2008 national election prompts her to provide examples of systems relating to the election process and the Elections Commission:

Digital democracy is usage of ICT and internet for better management. Digital democracy is one of the ways to prove that Malaysia is properly managed, to show the world how sincere and transparent we are. For example, if SPR [the Malay acronym for the Elections Commission] wants to be transparent and show that voters are identified using thumb prints, technically from my experience, a system can be designed for that purpose. X7A

Respondents X3A, X7A, X8A, X22C and X31G are not from the same scheme of service and serve in a variety of organisations. They are also of different age groups. However they each have education backgrounds in areas relating to ICT.

Table 13: Respondents with Similar Education Background in Areas Relating to ICT

Respondents	Scheme of Service	Age Group	Organisation	Education Background
X3A	PTD	25-35	MEWC	Electrical Engineering (Multimedia)
X7A	IT	36-45	MEWC	Computer Science
X8A	PTD	46-58	MEWC	MSc in Management Information Systems
X22C	PTD	25-35	EPU	Computer Science
X31G	IT	25-35	MHLG	Information Technology

This first group of civil servants describe the term digital democracy in relation to facilitation of service delivery and automation of administrative functions. A more intimate knowledge of the workings of technology explains their high appreciation of the technical capabilities and possibilities presented by ICT.

However, it is useful to note that this factor also prompts some to adopt a more technical approach towards expectations of the employment of ICT capabilities. To X7A and X31G, both Information Technology officers, a system is designed based on specified terms of reference and is developed to fulfil the needs and requirements as envisioned by its intended users. It can only do so much. In the case of systems for election processes for example, X7A says:

If somehow multiple registrations are still allowed than a new system will still not be able to resolve the issue of multiple registrations. X7A

Provision of Equitable Access to ICT Infrastructure

(X1A, X9A, X13B, X16B, X17B, X18B, X19B, X30G)

That the term includes the word democracy resulted in these respondents automatically relating it to equitable distribution or equitable access to ICT infrastructure. Again, the tendency for present job functions and experiences to influence responses is apparent in their opinions. X1A, whose work entails a close monitoring of the provision of broadband infrastructure, for example, responded:

Digital democracy to me is about the freedom to choose the types of applications that we can use in our daily life. It can be applications for electronic transactions as well as online communications. X1A

X9A an Administrative and Diplomatic officer in MEWC, in a division responsible, amongst other things, for overseeing content regulation, responded:

Digital democracy is to get as many people as possible to use electronic or online services. Therefore our role as policy makers is to ensure that through digital democracy, as many people as possible are able to use these services. X9A

X30G is an Information Technology officer in charge of ICT administration of a ministry. He restricts his response to the provision of hard and soft ICT infrastructure strictly in terms of his present job functions as administrator of ICT for staff and ministry programs and activities. X30G is a good example of a senior civil servant who still feels the need to confine his opinions to his present official responsibilities.

The 14 Information Technology officers interviewed share a susceptibility to only fulfill the expressed requirements of staff in their organisation. This explains the tendency of a senior officer with 25 years experience to limit his views to the functions of a position presently held. To the question what the term digital democracy means, X30G responded:

Perhaps it is about providing equal access to ICT? In term of infrastructure for example, when staff report for duty, they will be given email accounts and relevant ICT facilities according to their grade. Departments within the ministry are entitled to specific infrastructures and facilities based on their functions. The same goes with applications, all departments have the right to request for applications to support their job functions.
X30G

A similar observation can be made of X17B, also a senior Information Technology officer heading a division in charge of e-government projects, when he says:

I am more comfortable with e-government because that is my work. Digital democracy is a new thing for me. X17B

It took some persuasion to get both these officers to explore digital democracy in a manner not limited to their present job functions.

Access to Information and Communication with the Government

(X2A, X21C, X23D, X24D, X28F, X33G, X36G)

This group represents civil servants who adopt a more holistic approach to their understanding of digital democracy. The central issues to which they refer express revolve around ICT providing opportunities for two way communications, ie, that of providing better access to government information and services as well as gaining response, feedback, criticism or generally being more aware of public discussions and opinions.

In a very tentative way, understandable in an officer with less than three years of service, X2A says:

It has something to do with electronic government, where people can gain information from the internet. For example, information about a ministry or certain projects which government wants to proceed with like the Universal Service Provision and Mini Post

projects at MEWC. Other than that, citizens can also make complaints. MEWC has a link with ASTRO [a pay per view satellite television network station] for people to complain. X2A

X23D and X24D are both senior officers with the PCB who express first hand experience of how ICT has provided citizens with more access to the government, albeit as officers of the PCB, their examples concentrate upon public complaints. To X24D, presenting citizens with opportunities to file complaints through online processes not only assists them to make complaints but to a certain extent represents the government's openness to criticisms:

I think that digital democracy means that citizens are a bit free to voice out their opinions through electronic means. Secondly, with the recent launching of *Warkah Untuk PM* (letters to the Prime Minister), I think citizens are allowed to criticise the government including public agencies and politicians alike. Citizens criticise government policies, reporting abuse of power and corruptions through *Warkah Untuk PM*. Compared to five years back, citizens have more access to information now. X24D

X24D stresses that ability to offer feedback or complaints is made more meaningful with ICT providing better access to government information, a view shared by X21C, a JUSA officer from EPU. X21C tells of her involvement with the review of chapter 5 of the Ninth Malaysia Plan which focuses on five issues in transforming service delivery:

One of it involves public complaints and feedback and what we are trying to do here is to get PCB to centralise the process and maintain a complaints database. X21C

She observes digital democracy as the automation of public services which represents a more democratic way of enabling people to carry out their business with the government. This is not limited to transactions and processes but also involves providing more access to government information, providing for greater deepening and widening of the relationship between government, specifically the civil service, and the general public as its customers:

Digital democracy here means applying a more democratic way of enabling people to carry out their life and work. If we look at it from a traditional point of view, if you want to access a government survey or if you want to make a complaint or something like that, you have to wait for the counter to be opened and if you want to phone in, the person has to be there. With digital democracy you can do it at your own pace, anytime from wherever you are. So that gives you a liberalised feeling of not having to wait for the other person to be at the other end. That to me is what digital democracy is all about. It is the freedom to do it at your own time. X21C

Facilitating Participation in Policy Making

(X4A, X5A, X6A, X10A, X11A, X12A, X14B, X15B, X26E, X27E, X29F, X32G, X34G, X35G, X37G, X38G)

How a civil servant understands digital democracy cannot be evaluated solely on responses to the first question asked in an interview. Their overall responses may be grouped into three broad understandings:

- ICT facilitating service delivery and automating administrative functions;
- the provision of equitable access to ICT infrastructure; and
- the liberalising of access to information and providing online avenues to communicate with the government, demonstrate consciousness of digital democracy, albeit at its various levels of implementation.

The responses of the next group of 16 civil servants indicate an awareness of digital democracy, as a holistic concept, which has the potential to facilitate current policy making processes. These views reflect an appreciation that ICT may bring more participation to policy making, bringing together all three perceptions of digital democracy as mentioned above. In many ways this group supports the theory of deliberative democracy which was discussed in chapter 1. The theory stresses the provision of effective opportunities to participate in processes of collective decision making. Some responses of civil servants who fall in this fourth group are given below:

Digital democracy would involve the process of democracy through the use of internet or electronic means. If the government is trying to implement a project or develop something, the government might want to get public opinion on it. The government could do a survey through conventional means by having a public gathering of some sort but in this age, by voting or by asking the public to go to the internet and give their opinion would probably help a lot and the government will get the result or the public opinion faster than through the conventional way. It will save time, save energy and help to expedite the implementation of the project if it is in line with the public opinion. However, if it is not, probably the government would need to do some adjustments to the initial plan, to be in line with public needs. I think in that way digital democracy would help government to develop the country. X14B

My understanding is that it is a citizen based participation, to improve participation in democracy. 'E' or digital is electronic so it is the use of ICT for online discussion and

information exchange on public issues. Some examples are blogs, and, overseas, some websites are hosted and funded by digital democracy organisations. X11A

Digital democracy is about getting information or inputs from the general public, NGOs and specific bodies in order for us to formulate policies. Digital democracy does not only mean communication through ICT but also other mediums such as mobile phones and television. X12A

When we talk about democracy it is about participation by members of a society or community. The 'e' represents an electronic process. Therefore, digital democracy is a process of online or electronic communication involving parties with vested interests participating in discussing issues which are of importance to all, and contributing towards the process of decision making. X15B

SIGNIFICANCE OF PUBLIC COMPLAINTS

It is significant to note that the most apparent activities cited in relation to digital democracy are those which involve providing avenues for the public to lodge complaints about government service delivery. Among examples provided are:

MEWC has a link with ASTRO for people to make complaints. X2A

As of now, government do not have blogs but each ministry has their own websites and do provide space or channels for feedback or complaints. X13B

I think it means citizens are able to voice out their opinion electronically. For example, when citizens complain, it's all about voicing their dissatisfaction and they are seeking clarification and information about their concerns. X23D

People can get information faster and if they want to complain or when they have issues, they can access the government directly rather than having to make appointments for meetings. X28F

An example would be people making complaints through *e-Aduan*. Normally the complaints are about enforcement at the local council level. X33G

Y3, a respondent commentator, thinks that complaints belong to a different concept.

They have a remedial effect which is not about consultation and which is not democracy in the proper sense:

The political idiom of *aduan* (Malay for complaints) is "I am in power, I am in control, you tell me what you don't like about it," which is not democracy. It is being done in prisons too where prisoners are given the chance to complain, so do we have democracy in prisons? Y3

Complaints are frequently referred to by respondents as playing a role in policy making. X15B pointed out that, although he thinks that digital democracy in terms of policy making has not been implemented, online activities such as complaints lodged by the public do influence policy making processes. Government agencies already offer services online and provide the public with avenues to make complaints and offer ideas. He provides examples of government initiatives such as *Warkah Untuk PM* [letter to the Prime Minister], to which public can send e-mails, and *DAPAT* [The Malaysian Government SMS Gateway], where the government provides a text messaging gateway. It has a back end system for dissemination which allows for fast action by relevant authorities. These activities, have a significant potential to influence decision making. On the same subject, X21C emphasises the importance of providing citizens with avenues to forward complaints on government service delivery:

I do think it is important. It is timely that you ask me this because now we are involved in the review of the 9th Malaysia Plan, which focuses on the five thrusts with regard to transforming the service delivery. One of it involves public complaints and feedback and what we are trying to do here is to get PCB to centralise the process and maintain a complaints database. Now you can write to the KSN directly and he'll attend those comments and take necessary actions. There are also initiatives like *Warkah Untuk PM*. Once you open up such avenues, it is difficult to shut it, you just have to improve. These feedback systems will go into how we manage policy. X21C

X23D from the Public Complaints Bureau (PCB) reiterates the importance of public complaints for policy making, saying that when citizens make complaints it is all about voicing their dissatisfaction and seeking clarification and information about their concerns. A person stuck in traffic, for instance, may want to tell someone and perhaps suggest a solution to solve the traffic problem. The PCB, he explains, has put in place several channels for the public to voice their complaints. Besides traditional walk in counters, the public can also forward complaints through e-mails and the PCB interactive website. Complaints sent to the PCB electronically are increasing at about 50% to 60% each year. There is a plan to develop the PCB further by designing and implementing a web based complaints management system.

Table 14: Sources of Complaints Lodged with the PCB in 2005 and 2006

Mode of Complaints	Total 2006	(%)	Total 2005	(%)
Walk-ins	339	10.0	291	10.8
Letters, Department Counters, Complaints Form and Fax	965	28.4	1,073	39.6
Telephone	597	17.6	423	15.6
E-mail and Website	176	5.2	137	5.1
Pro-active Programmes	1,304	38.4	770	28.4
Others	16	0.4	13	0.5
TOTAL	3,397	100	2,707	100

Source: Public Complaints Bureau, Prime Minister's Department, Annual Report 2006

According to X23D, who holds a top management post in PCB, complaints received by PCB have resulted in innovations in legislation and government processes, particularly where there were a number of complaints about the same issue. For example, new legislation was passed to cover illegal money lending activities. Complaints received had shown that issues related to this had affected a large number of people. The *Housing Developers (Control and Licensing) (Amendment) Act 2007* was passed by Parliament to address the grievances of house-buyers frequently exploited by developers taking advantage of certain loopholes in the *Housing Developers Act 1966*. Parliament also passed legislation on the minimum length of setback between highways and residential houses within urban limits after the issue was brought to the Permanent Committee on Public Complaints (PCPC) for consideration. This also was as a result of public complaints.

RECEPTIVENESS TO THE CONCEPT

Generally, the responses of civil servants when asked: "What do you think should be role of the public in policy making", are with some reluctance, along the lines that "people should participate in decision making". All respondents seem to be in agreement that there are opportunities for policy making in the civil service to benefit from digital

democracy. They agree, in varying degrees, that inputs from outside public organisations will add value to policy development. This shows a certainty on the part of these civil servants that, no matter what their personal preference, a move towards a more participative decision making process is essential and, inevitable with the advance of ICT. X1A, a young civil servant in MEWC says:

The revolution of ICT itself makes it happen. There is no stopping it even if we try to.
X1A

This is also reflected in responses such as that of X5A, a senior Information officer from MEWC:

In years to come the internet or technologies will be a platform to a lot of changes. Whether we like it or not, for the best or for the worst, we have to embrace. I feel that there is always a positive side to the internet. X5A

Generally civil servants place great value in the people being in accord with, and accepting of, their actions. Civil servants also reflect a willingness to be pragmatic or to adopt a means to an end approach to achieve these goals.

An Enhancement rather than a Replacement

The civil servants' susceptibility to adopting digital democracy is partly due to them recognising it as being an enhancement of or an alternative to, rather than a replacement for, the current policy making processes. To most of these civil servants, it is simply a different media in which to carry out the same traditional processes. The new media is adopted simply because it provides an alternative with various potential enhancements. Like Winner⁴⁷⁷ and Street,⁴⁷⁸ who support the view that technology is neither neutral nor autonomous discussed in chapter 1, these civil servants understand that how digital democracy is implemented and to what extent it will contribute to processes of government will still depend on the implementers, ie, civil servants and users, ie, citizens:

⁴⁷⁷ Winner, Technological Euphoria and Contemporary Citizenship, *Techné: Research in Philosophy and Technology*, vol. 9, (2005) 124-133.

⁴⁷⁸ Street, Remote Control? Politics, Technology and 'Electronic Democracy', *European Journal of Communication*, vol. 12, (1997) 27.

Let me put it this way, this is a channel, an alternative media. In the past, we used to have forums like face-to-face meetings, now we change the media to electronic. In a sense it is no different from the traditional way of doing it. People can still have control over what they want to discuss and what not to discuss depending on their interests. Similarly, for the traditional media, say a meeting, those who like that issue will go to that meeting and those who don't like the issue will opt out. This is only an alternative to the traditional media. X6A

Liberalising Access to Information

To most of these civil servants an important reason for the successful implementation of digital democracy is liberalising access to information. Stress was placed on the importance of information sharing. Developing contents on official web pages has become an essential activity, and budgets provide for funds to ensure continuous updates. Consideration is given to ensuring that contents are relevant to citizens of all ages especially younger people. There is a realisation that the government is not effective in getting information to this group and are being surpassed by bloggers and their "false claims":

Currently what the government lacks are people who can engage or counter the bloggers. I like the United States government's website where they hire seven bloggers for each day of the week to write and mediate online discussions. May be we could have something like that in the future. X19B

Facilitating Individual Participation

An important point emphasised by many respondents is that digital democracy facilitates individual participation in the policy making process. It provides an avenue for the silent majority to feel freer to voice their opinions as compared to using traditional methods such as telephone calls or letters. Online forums and blogs generally give people the feeling that there are others who share their opinions and ideas:

A lot of people are not vocal and the silent majority are those who visit such websites and provide their inputs. This gives a more holistic view of things and involves participation by the poor, educated or none educated as opposed to more formal forums which only involve those with ability to speak well in public. X11A

Some respondents also note that faceless communications may increase the chance of exposing and eliminating vice and corrupt practices, such as bribery. This generally increases the potential to improve the integrity of the civil service.

Assist in Development of More Acceptable Policies

Respondents with responsibilities for managing specific projects, such as broadband infrastructure, point out that often policies will not initially benefit target groups as policy makers are not capable of clearly identifying the issues involved. This results in problems in implementation and the need to reconsider options. Due to inexperience and lack of proximity to the issues, the policy makers are not able to empathise with the real needs and conditions of the potential users. Corresponding to Habermas's, discourse theory,⁴⁷⁹ discussed in chapter 1, which stresses the importance of both compromise and consensus in reaching reasonable and legitimate outcomes, some respondents consider that facilitating citizen participation and reflecting on their inputs may assist in coming up with policies which are more effective when implemented. Being given the chance to participate increases the "ownership" of the policies:

Digital democracy will help ensure easy acceptance of the policy by the public. Some policies which are formulated don't benefit its target group initially because it doesn't consider all factors. This issue has been raised by end users at various government forums. Secondly, opinions gathered will provide broader perspectives. I think it's good because sometimes the people who are in charge are not really engaged with the issues. Therefore, these activities will open up his or her mind. X1A

Some respondents are involved in regular public consultation exercises. They believe that applying ICT to citizen participation will enhance the existing process, making it faster and allowing more people to get involved in policy making. X3A, for example, cites opinion polling as one of the ways in which digital democracy can assist in gauging public reactions to changes following the introduction of a new policy. This will enable policy makers to evaluate the policy's suitability in its implementation. In the case of service delivery, such activities may promote more responsiveness towards achieving higher customer satisfaction.

⁴⁷⁹ Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, (Cambridge 1996).

SIGNIFICANCE OF PUBLIC INPUTS

There is generally an appreciation of digital democracy's potential for policy making in the civil service. However, as the list of reasons for its appreciation grows, so does the list of related issues which civil servants feel need to be addressed.

A few respondents are more willing than others to voice particular dissatisfactions with current processes. They feel that public inputs for policy making have not been given appropriate consideration within the civil service. They suggest that public inputs into policy making have been quite insignificant and, have been less than appreciated:

Digital democracy per se, involves everyone, not only the public sector. As to whether it is being practiced here, well, no, definitely not here because, as you see, any policy which is being made here, it is being made by certain parties that have no involvement of citizens per se. When policies are being derived, we do not get inputs from the public.
X5A

So far I have not seen any instances where we have used digital democracy in our policy making processes. Even though there are channels provided for us to give inputs and feedback, generally I have not seen how, or if, these inputs are used for policy making.
X12A

You can see on these forums and blogs, people seem to be more active and are freer to write what they have on their minds, they are freer to express their opinion as compared to using traditional methods such as the telephone or writing letters. They seem to be braver to write what they think because they know that there are other people who share their opinion and ideas. However, this can sometimes irritate the government. Personally I think we should not take that position because we should appreciate what they are writing on the blogs and try to improve our service. X9A

While others are general in their comments, some gave further insights into issues which they think are important in implementing digital democracy, some of which are also pointed out by commentators. These include factors such as the importance of identifying the right target groups and determining suitable types of policies to put up for discussion. They are alert to the fact that inputs are not necessarily all good. There will need to be a process for selection and evaluation which can potentially become a burden to civil servants. The effectiveness of digital democracy in policy making would depend on back end systems being put in place to process inputs:

Things like complaint forms have become basic requirements or basic channels for the government to gauge citizens' needs. However, how effective it is in terms of improving policies would depend on the ministry's internal policies or the internal process flow on every feedback we get. X32G

A point, made by X29F, may have some bearing on the issues brought up by commentators Y4 and Y6, as discussed in chapter 4, that politicians have a tendency to politicise issues and restrict discussions which they deem threatening. His opinion is that people get irritated when things are politicised. This is one factor which has contributed to rising interest in online discussions and blogs:

If citizens voice their views and a political party manipulates the issue and tries to be their champion, it will not represent the genuine interest of the citizens. People are now more aware that political parties can no longer play this game on them; they know that they can do it for themselves and government will open their door and listen to the citizens. I think the citizens are aware of what they can do and how to approach the government without interference from political parties. X29F

X6A points out another factor pushing this development. Traditionally, he says, expressions of public opinion, whether as complaints or suggestions, were usually presented through elected representatives and media. Both these mediums are at liberty to decide if or how the matter will be highlighted. In other words the process involved editing, something which communication by ICT can do away with:

Digital democracy can become a more transparent medium between people and the government. X6A

ETHNICITY AND ITS RELEVANCY TO THE PARTICIPATIVE POLICY MAKING PROCESS: A MEASURE OF CONFIDENCE

Interviewees were asked whether, and how, Malaysia's ethnic diversity will affect digital democracy. Most civil servants refrain from sounding to favour or disfavour any particular ethnic group. They try not to associate any specific ethnic group to weaknesses in their character, personality or temperament. Ethnicity is not in itself presented by them as a factor either for, or against, digital democracy.

Responses to a follow up question, of whether ethnic groups will be equally represented in digital democracy practices, often related the response to culture. They are expressed

in ways which also seek to avoid negative references to any particular group, especially one to which the respondent does not belong. Interviewees chose to emphasise the desirable traits of an ethnic group rather than point out that another ethnic group is perceived to lack them. Statements like these demonstrate the point:

Chinese entrepreneurs are active in associations and they use these associations to forward their views. They are more exposed and have forums to discuss issues before forwarding it to the government It has to do with culture of these ethnic groups. X38G

Malays usually are contented with existing arrangements. It has to do with culture. Chinese are more competitive in everything, therefore if we compare races on the adoption of new things, the tendency is that there will be a difference with the Chinese leading. X17B

It is all depending on whether they would want to participate and I am not sure whether they will be equally represented, culturally, the Malays are softer and tend to reserve their opinions. X31G

Supporting these points, X3A refers to complaints about broadband services:

Generally, in terms of complaints that we receive, mostly are from the non-Malays. They are more vocal but the Malays are more polite. X3A

X12A, an exception, puts the issue in a more direct and blunt way:

In my opinion, looking at the present situation; if we were to introduce digital democracy now, most of the participants I foresee would be Chinese at 90%. I say that from experience in handling broadband issues and my experience in surfing the websites where most participations are from the Chinese. X12A

There is a significant awareness of racial sensitivities shown in this small group of civil servants. It is important for them to portray public welfare as their only consideration and also that they conform to being future oriented and positive in their outlook for ICT in fostering inter ethnic relations in Malaysia.

Discussions are more readily skewed towards issues which are universal in the discussion of ICT and its social impact such as awareness, education and accessibility, ie, the availability of infrastructure as well as economic standards. These are tied up to factors such as urban residents, rural residents, age and education:

We are educating everybody on ICT usage regardless of their race. There should not be any gap, where any particular race would not be represented in digital democracy. They have the knowledge to use ICT. I don't think we segregate in terms of ethnicity in providing ICT infrastructure. However, those in the urban areas would be more facilitated compared to those in the rural areas. Ideally there should be no gap between rural and city folks. X4A

X5A, for example, expresses concern over what she terms as a segmentation of ethnic groups into rural and urban, which brings in the issue of underprivilege in terms of accessibility and awareness. It is noticeable again how this civil servant, from the Information scheme of service, takes particular care to avoid referring to any particular ethnic group:

Actually it goes back to the question whether we are ready for digital democracy in terms of ethnic groups because as you see now, there are segmentations of ethnic groups in certain places and they might not have the facilities. For instance, those who are at the back end who are deprived probably at the moment of the internet. That would also be a segmentation of ethnic groups. As it is now, ethnic groups which are progressing are those in the urban areas. If you were to embark on digital democracy now, I think you would not be getting participation from all ethnic groups because it would definitely be those in the urban areas who are very much aware, as it goes back to awareness, and it goes back also to the facilities being provided where they are. If you are talking about digital democracy, as a nation, there are still underprivileged people who still don't get the facilities. This will affect whether you will be able to embark on a national scale or to narrow it down only to people who have the facilities. X5A

Among this group of civil servants, there are many others (X27E, X35G, X36G) who share X5A's concern over segmentation and the proportion, based on ethnicity, living in parts of the country which still have limited access to ICT. They are concerned that participation in digital democracy may not represent the actual ethnic composition of Malaysia. There will be groups left behind in this unintended pattern of representation. The issue of urban versus rural, as acknowledged by these civil servants, is similar to the point made by commentators as discussed in chapter 4, that modernisation if not evenly spread can create gaps between the values of urban and rural communities. Y3's concern that digital democracy brings with it the "preconditions of technology", bears on this. The views of Y9, on digital divide, also relate to this. He concludes that digital divide multiplies other divides such as the development divide, the economic divide, and even the ethnic divide.

Ethnic Diversity and Control of Information on the Internet

With no exceptions, although in varying degrees, the civil servants agree that ICT brings about positive changes in society. There is much appreciation of the capacity of the internet to facilitate both private and public communications. Generally there is a positive response to ICT's potential to enhance and advance communications and interactivity between the civil service and the public, particularly significant is the sharing of information.

X15B, for example, is a civil servant who, instead of being wary, is looking forward to changes taking place in attitudes to ethnic diversity in Malaysian society. He has a higher estimation than others of the capacity and ability of Malaysians to move from conflicts over how national wealth is to be shared between ethnic groups, to competing as Malaysians in a globalised economy. He sees Malaysians as a society more able to celebrate diversity. X15B feels that the felt need, up to now, to hold back from one another, to be secretive and closed about certain issues, has not been the best way to improve ethnic relations:

We achieved our independence through a process which involved each community concentrating on their own needs and wants, Malays, Chinese and Indians. Once independence is achieved, everybody is then focused on particular ethnic development, for example to improve the ethnic group's income level or economic status. Today however, if we are talking about competitiveness, we cannot still only be concerned over the needs of our own community... There are a lot of sensitivities in a multiracial country like Malaysia. Past experiences have resulted in us segregating ourselves in forms of ethnic communities. We are not yet fully opened to cross cultural understandings or integration between one community and another. I think this is because we still feel the need to be secretive and closed about certain issues. For example, why can't Malays be more open about their sensitivities to pork, or the fact that Malays or Muslims are not only prohibited from eating and touching pork but also from using utensils which have had contact with pork? Therefore, others will understand that *halal* does not only apply to pork but utensils which have come into contact with it. Be open about each others' sensitivities and people will start to understand and be more responsible, just as in the case of understanding digital democracy. X15B

Such viewpoints, reflecting an appreciation of ethnic diversity, raises the issue of the control of information on the internet and how far civil servants think government should intervene.

All respondents are aware of the government's non censorship policy. From the interviews, as a general principle, civil servants appear to agree that actions to censor web contents are futile and contrary to respect for individualism and aspirations for openness and globalisation:

We have said that there will be no censorship of the internet When we provide the infrastructure; we cannot say that you cannot blog on this and that and so on. You can't sustain that for very long. The world is moving, we have to open up and we have to improve. X21C

I don't agree if the government intends to control blogs. It is a web log, which is like a diary, and it should not be controlled. It all depends on those who read it. If we read someone's diary we must filter all information and analyse. How can we control that? After all it's a free application. X31G

How a person perceives the information as authentic or false is an individual's right. It is up to you whether to trust or not to trust. This is difficult to control as usually people would take more interest in negative rather than positive issues. The final decision should lie with them and we should give them the freedom to decide. Of course there must be a limit but there is no use telling people that this is wrong and this is right. Perhaps we can intervene to give our side of the story but in the end we cannot say that just because we are afraid that there are more negative rather than positive discussions or news, they must be stopped. Such actions are not suitable anymore. The world is already flat and with ICT you can get any information you want. X32G

Although responses clearly imply their belief in what digital democracy can achieve for policy making processes, they are not able to mask concerns over what they observe of the handling of this transformation by Malaysians as a civil society. Respondents' evaluation of the civil society's ability to constructively respond to the assurance of no censorship varied.

Most would agree with commentator Y5's view, discussed in chapter 4, that online discussions are open to manipulation. Civil servants consider that bloggers in general are too emotional and inclined to discuss issues prone to raise ethnic issues, for example, the contentious issue of Bumiputera preferential treatment. Like commentators, they feel that the risk of any ethnic group imposing total dominion is greater than the cost of sharing power. If citizens fail to observe rules of behaviour, or are simply oblivious of their effect on others, this remains a recipe for a potential breakdown in ethnic relations:

I think we should go back to the fabric of the Malaysian community; our racially diverse country is very fragile I would say. That should be protected. X10A

Freedom of speech and consequently, the right to express opinion and comment is protected by law. On the other hand, normal limitations on that freedom exist such as those imposed by the laws of defamation, sedition, obscenity and contempt of court. In Malaysia, as highlighted in chapter 3, there is also an extensive regulation of the media. In the face of continuous pressures from a fluid and complex civil society, a thin line exists between freedom of political speech for example, and individuals' rights against reputations being unfairly harmed. How this balance is to be achieved is continuously disputed, especially when the nature of the World Wide Web is that it is, indeed, world wide and also instantaneous.

A point made repeatedly by civil servants, ie, X5A, X6A, X10A, X14B, X15B, X17B, X19B, X20B, X21C, X24D, X31G, X32G, X34G, X35G and X38G, is that to benefit from digital democracy, Malaysians need continuous education on net etiquette. They need to build up their ability for self censorship. The feeling is that, if the public at large fail to be sincere and constructive in the process, digital democracy can be time wasting and sometimes, dangerous:

Everybody can participate but the issue is whether there is awareness among Malaysians of the correct way to use the internet and of channelling views. X6A

A popular view amongst civil servants is that generally Malaysians are still unable to fully appreciate the spirit of information sharing. Their view is that, as in other jurisdictions, there are many online participants who take democracy to simply mean the right to exercise absolute freedom of expression without limits. This conforms to early starry eyed optimism of the internet as a utopia for a truly free society. To X34G, who has had a legal education and describes states and citizens as governed by law, in exercising constitutional rights, such as freedom of expression, people need to be more aware of existing limitations and apply good judgment when participating online:

You have to know what democracy really means because it doesn't simply mean expressing your ideas each and every time but it also means applying ideas coming from others. It is more like sharing. They give you information, you think and you apply. If you are not in favour of the ideas, you do have a choice not to apply it. X34G

The importance of achieving balance is also pointed out by X20B:

It is important that there should be a balance and that is why we see that sites like Malaysiakini.com are still in existence. Site administrators are seen to be given warnings against negative contents but no actual action has been taken against them. Monitoring such sites is important to the government and these sites or blogs perhaps may act as their first source of information. X20B

Citizen participation will be most effective when civil servants themselves consider participation an important component of their policy making. In digital democracy's context, its evolution commences when governments begin to interface with citizens proactively. This interaction between systems may be seen as structural couplings, an autopoietic concept previously discussed in chapter 3, where both sides have to preserve their autonomy. Information has to be sorted to fit within each system and some may be more easily dealt with than other.

As discussed in chapter 2, in the case of Malaysian civil servants, as much as their pattern of beliefs are in many ways determined by factors such as the legacy of colonial rule, and bureaucracy and its elitism, civil service reforms to date have stressed that civil servants should become more mindful of citizens' interests. To some extent these reform efforts influence civil servants' outlook on the control of access to information. To X34G and X20B, changing circumstances call for some degree of tolerance by the government and in particular, by institutions in the civil service. In their view, any issue at all has potential to become race related in a country like Malaysia, and excessive censorship is a knee jerk reaction to a not so straightforward issue.

On the Question of Tolerance: Where Do They Fall?

No civil servant was willing to say that there should be absolutely no control or censorship of information on the internet. On the issue of toleration of discussion, the group of 38 civil servants may be divided into three. The division emerges from their differing appreciation of individualism and personal freedom, as well as differing opinions over the maturity and capacity of Malaysian citizens for constructive interactions. They do not make up distinctive groups. In justifying their views, all that

can be said perhaps is that one group is more willing to express scepticism about their fellow citizens, outside the civil service, than the other two.

While they all share the same concerns, there is a group which is more optimistic about implementing digital democracy than others. They more readily see issues as factors critical to the success of digital democracy activities and do not dismiss the possibilities that, in time, Malaysians will adapt responsibly to the freedom of information and expression afforded to them by ICT. Nine respondents fall in this group which prefers to emphasise self censorship and net etiquette leading to responsible adoption. A larger second group, of 20, lean towards the need for censorship and control. The remaining nine, which make up the third group, were undecided and not as readily identifiable with either of these points of view. Perhaps it is worth noting that an analysis of the composition of the first and second groups found no significant pattern in terms of age, gender, ethnicity, scheme of service or years in service.

Table 15: Group (i)- Self censorship and Net Etiquettes

Cases	Age Group	Gender	Grade	Scheme of Service	Race	Years in service
X5A	46-58	Female	48	Information	Malay	16-20
X6A	36-45	Male	52	A&D	Malay	11-15
X14B	36-45	Male	52	A&D	Malay	11-15
X15B	46-58	Male	54	A&D	Malay	15-20
X19B	46-58	Male	54	IT	Malay	>26
X20B	36-45	Male	52	A&D	Malay	11-15
X31G	25-35	Female	48	IT	Malay	6-10
X32G	25-35	Male	41	IT	Chinese	<5
X38G	46-58	Male	48	Town Planning	Malay	>26

Table 16: Group (ii)- Censorship and Control

Cases	Age	Gender	Grade	Scheme of	Race	Years in
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	Group			Service		service
X1A	25-35	Female	44	A&D	Malay	< 5
X2A	25-35	Female	41	A&D	Malay	< 5
X3A	25-35	Male	44	A&D	Malay	< 5
X4A	25-35	Female	41	IT	Malay	< 5
X8A	46-58	Male	52	A&D	Malay	21-25
X10A	36-45	Male	48	A&D	Chinese	11-15
X13B	36-45	Female	48	A&D	Chinese	11-15
X16B	25-35	Female	44	IT	Malay	6-10
X17B	46-58	Male	54	IT	Malay	>26
X18B	46-58	Male	JUSA	A&D	Malay	21-25
X21C	46-58	Female	JUSA	IT	Malay	>26
X22C	25-35	Male	48	IT	Malay	6-10
X24D	46-58	Male	52	A&D	Malay	>26
X25D	46-58	Male	52	A&D	Malay	>26
X26E	46-58	Male	48	Information	Indian	>26
X33G	25-35	Male	48	A&D	Malay	6-10
X34G	25-35	Female	44	A&D	Malay	<5
X35G	46-58	Male	JUSA	A&D	Chinese	>26
X36G	36-45	Male	48	IT	Malay	11-15
X37G	25-35	Male	41	Town Planning	Malay	<5

RULES OF ENGAGEMENT

The sample civil servants were asked if the rules of engagement for digital democracy practices by the civil service should include registering or requesting personal information of participants. On this point, they may be divided into two, ie: the majority (63%), who see registration as important (X1A, X2A, X3A, X4A, X6A, X7A, X8A, X10A, X11A, X12A, X13B, X14B, X15B, X17B, X18B, X19B, X20B, X22C, X23D, X28F, X30G, X31G, X34G, X36G), and, the few (18%), who are more inclined towards allowing anonymous participation, (X5A, X16B, X21C, X26E, X32G, X33G, X35G).

Requiring Registration for Participation

According to Macintosh, “in reaching a wider audience, there is a trade off between making it as simple as possible for any user to be able to participate and knowing exactly who it is.”⁴⁸⁰ Macintosh’s explanation probably fits the reasoning of the majority of the sample civil servants (group i):

A registration process enables the users to be identified and contacted at a later date, for example with feedback of information on any follow-up initiative. Also, demographic questions could form part of the registration process to support the analysis and evaluation of the exercise.⁴⁸¹

Most in this majority group refer to similar considerations to Macintosh’s when stating a preference that participants register. X11A, X13A and X14B point out that being aware who the complainants are may assist in addressing the issue brought up:

Registration of participants is important and government need to know who is complaining. X11A

Yes, I think they should have to register because it would be best for us to know who are actually taking part. X13B

We should at least know who are participating in the exercise. X14B

X2A, X23D and X37G see policy making as an ongoing process and would prefer there to be continuity in interactions with participants in a digital democracy practice:

They should register so that they can be contacted for further clarification. X2A

I think they should register in order that we can ask for more information or seek further clarification. X23D

They should register because such information can help us in our future studies of issues. X37G

To X15B and X20B, registration will not only address the issue of keeping track of participation but such a process allows a participant/user to be validated:

⁴⁸⁰ Macintosh, Characterizing E-Participation in Policy-Making, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 5.

⁴⁸¹ *Ibid.*(5).

Dealing with the government should be the same as dealing with private entities such as the banks, where everything needs to be registered to ensure transactions are authentic. Registration proves genuineness of your existence. X15B

I think registration is important because it will validate the user. X20B

In a voting exercise, this may also avoid the issue of redundancy:

When you are doing a poll, we need to keep track of who is actually participating because for all you know, it can be the same person voting over and over again and there is need to keep track that there is no redundancy. X12A

Yes, of course because you need the data that's reliable. This type of communication is sometimes being misused; they can give the same inputs so many times and so on. You have to control this otherwise they can buy the votes like in *Akademi Fantasia* [a reality TV show]. X8A

An ICT enthusiast, X20B, indicates that requiring participants to register in a digital democracy practice would not become a cause for concern and is already an accepted practice because from his observations:

Most websites today don't allow anonymous posts and participants should register or at least validate their e-mail. X20B

Over and above the need to validate participants, however, is a particular concern over the sharing of classified data. This is expressed by X30G and X2A:

If participants just want to get information from our website then they don't have to register. But, for other classified activities it must be released according to the classification of data itself, which require valid authentication of participants. X30G

If they are asking for information, there are certain limits to the type of information that we can channel to the citizens, so we need to know who they are. X2A

To X10A and X14B, digital democracy practices by the civil service should be constructive and must always be taken seriously. In taking part in cooperative processes with the civil service and the government, the parties must be able to trust each other:

For the purpose of monitoring, they must register just like the mobile phone prepaid users. As citizens and consumers we should look at this from the positive side of it. If I did nothing wrong, I shouldn't be worried. Trust must be there and I should really cooperate with the government to put up policies which are beneficial for us. X10A

Putting myself as a citizen, if you think that giving opinion is your right then why should you not want to register and make yourself known. So, I would say yes we have to get people to register in order to take part in these activities. X14B

Dwelling on the subject of trust, X23D and X18D insist that trust is an element which has to be earned. X23D relates trust to registration or provision of personal particulars, and the responsibility of the civil service and government to guard participants' privacy:

Contributions should be received without any prejudice and they should be given all due respect of privacy. In terms of the PCB (Public Complaints Bureau), such procedure is evident in our complainant reporting form and in the investigation manual. Officers and staff only have access to files that are handled by them. Only the Deputy Director-General and Director-General have access to all complaints and complainants. All these are clearly spelt out in our Client Charter. X23D

I think government agencies must retain a record of who's involved in the activity. The government needs to know who participated but they don't have to publish it to the public. X18B

The contents of the PCB's clients' charter, as explained by X23D above, which spells out restrictions to access information on complaints and complainants, relate to Macintosh's explanation on the collection of personal information for digital democracy practices:

[T]he amount of personal information requested should be described along with any privacy statement on how it will be used. Also, it is useful to provide an example of any "conditions of use statement" so that the full rules of engagement can be appreciated. It is important to appreciate if and how users are made aware of how the personal information they enter will be used and who will have access to it.⁴⁸²

Many in the sample see registration as a way to control the exercise. Generally they do not see registering as something which should be questioned. This they relate to not only trust, as discussed above, but to other factors including transparency and responsibility. A willingness to register is equated with the seriousness in participating in the discussion and a willingness to take responsibility for ones' opinion. The argument by most is that, if a person believes that his or her input will contribute towards policy making than he or she should be able to feel confident enough to stand by it. This reflects Rawls⁴⁸³ idea of public reason, discussed in chapter 1, that citizens, who should be first and foremost informed, understand that participating in deliberative exercises means that views are exchanged and justifications are debated, resulting in an outcome which is reasonable to all.

⁴⁸² Ibid.(5).

⁴⁸³ See note 13. Rawls, The Idea of Public Reason Revisited, *The University of Chicago Law Review*, vol. 64, (1997) 765-807.

Some, like X15B, point out that in order to nurture peoples' confidence to register and participate, the civil service or the government must also take an open approach. Any input whether or not they are in line with current policies should be considered. In conclusion registration raises the value and reliability of inputs through digital democracy practices for these civil servants:

I think we must get the basic details of the candidate and they cannot submit their opinion anonymously. Sometime people are reluctant to give out their identity but if we want to formulate policies, they must provide their identity because it's a serious matter. X1A

I would prefer them to register because people should not be afraid if they have valid ideas. This is just like *baling batu, sembunyi tangan* [throw stones, hide hands]. X3A

It is better to be registered because sometimes anonymous users tend to be irresponsible. X4A

Let's say it is a formal meeting, we register our name to attend that meeting, so may be we can use that kind of arrangement for blogs and online forums. As I said, the only problem now is people do not take responsibility in their opinions. They are making accusations rather than giving opinions or inputs. It's like "touch-n-go", they give input and they run away. You have to take responsibility for your inputs by introducing your name so that we know who you are. Only then are you obligated to say this is my opinion, it's open for debate and I can accept whether people agree with me or not. Because it's just an opinion, it can be argued and there should not be problem to that. Yes, because this one to show that you are really keen on that issue, you want to participate. Why you want to hide if you say this is a genuine issue? X6A

The important thing is sincerity in providing inputs. If people want the government to be sincere, than they must also be sincere and register, providing important particulars such as their names in order to take part in systems such as the complaints system. The BPA for example, will not respond if particulars are not provided. Registration is just for purposes of validating your participation. X7A

Registration is very important because it represents validity and credibility of the individual or party taking part. Taking part in digital democracy means taking responsibility for whatever ideas and opinions you are offering. Registration will make sure that people are more responsible about what they are writing or proposing as it allows further communication and clarifications. If the person believes that his concerns are genuine and is something which should be looked into then he or she should not be afraid to register. The seriousness shown will elevate cooperation between government and these participants. Therefore, registration is not with an aim to penalize and their privacy for example will be protected. X15B

People who want to take part in online interactive activities should register as registration will make them more responsible towards their inputs. I don't think it is suitable to allow people to remain anonymous. X17B

I think as responsible citizens they should not be afraid to make their identity known. X22C

Yes I think they have to register. We would want to filter out those people with bad intentions. We also need to know their identity to ensure validity of their inputs. For example, we need to know whether they are Malaysians or foreigners, because sometimes foreigners might have hidden agendas. X28F

Yes because they need to be responsible. X31G

To me those who remain anonymous are not serious and therefore there should be less emphasis on their inputs compared to those who provide particulars and can be contacted for further discussions. X34G

Yes, I think they should register to prevent poison letters and such. X36G

Anonymous Participation

Civil servants in the sample who fall within the group which prefers that participants not be asked to register also share similar reasons. The reasons revolve around their belief that registration would put people off participating. Unlike Macintosh,⁴⁸⁴ whose concern about registering or not registering participants involves considering the question of the ease of participation, these civil servants believe that having people register will make a difference to their confidence in participating.

These civil servants have a poor opinion of the civil service's or the government's intentions in respect of citizens who hold views which fall outside the mainstream. The accuracy of these opinions is of less importance than the fact that they are strongly held. For example, X5A defines freedom of speech in terms of individuals having the right to voice opinions whatever they may be. To her, a registration process defeats the purpose of encouraging more people to participate in the practices of digital democracy. Despite being in the civil service, she, like most within this small group, remains sceptical about the capacity of citizens to remain confident of the government's intentions:

For what reason are we going to have [them] registered? Are we going to penalise people who have views which are not in line with us or are we going to give them gratitude or say thank you to them to have come up with things that you want them to come up with? So why register. I think it should be the voice of freedom and you should not register

⁴⁸⁴ Macintosh, Characterizing E-Participation in Policy-Making, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 1-10.

them. If you say that I want you to register then people would not go there and think that “if I give something negative, they will come after me”. But if they do not have this or not bound by anything, I think they would be more open with their remarks. X5A

Referring to bloggers in particular, X26E who is attached to the Strategic Information Management Division of the MOI, volunteered that at present the government is not taking any step to register bloggers:

Anybody can comment on anything under the name of anonymous. It is not an issue for them. As long as one productive opinion is given, the government will take it. X26E

X26E feels that this position (of not requiring registration) should remain to ensure that the results of participation are as objective and as beneficial as possible. Although he feels that many will not be willing to register, and forego participating in digital democracy exercises, there may come a time when registration may be required. X26E gives the registration of prepaid mobile phone users as an example:

As long as anonymous is giving productive end results to the government, to the nation, I think the government will remain as it is now. But in the long run if the government feels that people do not take participation seriously or are not objective, government may come to a conclusion whereby it is okay to start to register. For example, with registration by Celcom [a branch of the national telecommunications company] for example, SMS now can be traced. This is where people are not happy, as when you talk about democracy, government should not do it. I think not many will be willing to register. X26E

DIGITAL DEMOCRACY ENHANCING INTERACTION: BEYOND A DICHOTOMOUS DISCOURSE

The focus of this chapter has been to determine whether the potential of technology in disseminating information, facilitating interaction and conducting political transactions through digital democracy practices will be used to increase the transparency, efficiency, flexibility, cost-effectiveness, and inclusiveness of a democratic system.

Whether these civil servants see digital democracy as the facilitation of service delivery and automation of administrative functions, the provision of equitable access to ICT infrastructure, the liberalising of access to information and provision of online avenues to communicate with the government or the facilitation of participation in decision making, there is a certainty on their part that developments brought about by ICT have made the

move towards a more participative governance inevitable. In varied ways, and with some hesitation, they agree that inputs from outside public organisations may add value to policy making within the civil service. What can be concluded at this point is that this group of civil servants concur that there are opportunities for the civil service and policy making to benefit from digital democracy. They are, in general, optimistic that digital democracy and its offer of access to information and facilitation of participation will assist in developing more acceptable policies.

Frequent references to public complaints indicate this area represents a prominent feature of digital democracy to which these civil servants relate, although, as pointed out by Y3, “the political idiom of *aduan* (complaints) is I am in power, I am in control, you tell me what you don’t like about it”. It may not therefore be the best that can be expected of digital democracy, but it may be as good a place as any to embark on participative governance. It opens up avenues for voicing dissatisfaction, seeking clarifications, suggesting solutions, and, most importantly, it signifies a degree of openness towards criticisms. This reiterates the Chief Secretary’s call for the “I- know-what’s-good-for-you” attitude, discussed in chapter 2, to be replaced with one of listening to the community.

Appreciation for the concept is further tested against contextual challenges, a key characteristic of this research, in the question of whether and how Malaysia’s ethnic diversity will affect digital democracy. Responses represent refrains of labelling ethnic diversity as a factor which influences digital democracy. They relate more to issues which are universal in the discussion of ICT and its social impact. The interviews make apparent the importance these civil servants place on portraying public welfare as their sole consideration and that they conform to the outcomes focused approach and to being future oriented and positive in their outlook on ICT’s role in fostering inter ethnic relations in Malaysia.

There is high awareness of racial sensitivities so that frequently particular care is taken to not refer to any particular ethnic group as upsetting the implementation of projects related

to ICT. A majority of these civil servants are comfortable expressing the idea that ethnic diversity in Malaysia survives because people remain careful about ethnic sensitivities and that this must be maintained whatever the possibilities for access to information and expression of opinions offered by ICT. The same pattern of beliefs seemingly survive as when James C Scott interviewed civil servants for his project on political ideology in Malaysia in 1968, and observed, “democratic beliefs of these men tended to crumble when besieged by beliefs that seemed more firmly rooted.”⁴⁸⁵ Whether these beliefs emerge again in the context of the formal integration of digital democracy into the policy making processes of the civil service, will be discussed in chapter 6.

⁴⁸⁵ Scott, *Political Ideology in Malaysia Reality and the Beliefs of an Elite*, (New Haven and London 1968) 184.

CHAPTER 6

INSTITUTION

While civil servants see that ICT will inevitably lead to greater participation by citizens in policy making, it is not clear whether and to what extent digital democracy practices will be integrated in the practices of civil service institutions and how they will affect actual policy making processes. Civil servants were asked how they feel about a more formal integration of digital democracy into the policy making processes of the civil service. Previous questions on the meaning and importance of, the concept of digital democracy as discussed in chapters 4 and 5, invite only their own personal views. However this next question, which is more open ended and permits a variety of responses, led to their estimation of the responses of other civil servants and of the civil service in general.

CONSTRUCTION OF INCLUSIVENESS

Langdon Winner,⁴⁸⁶ as indicated in chapter 1, questions whether the internet can actually improve the quantity and quality of citizen participation, as it still occupies the same political space as statecraft and political parties. In the case of civil servants interviewed for this project, most were aware of the “I know what’s good for you mentality” of the civil service. They do not foresee this changing in the near future. Their view is that civil servants largely believe that consideration of policy proposals, which are results of collaboration between agencies, leads to the best possible results for Malaysians. Many among the sample also believe that consulting representative organisations and NGOs is now a familiar practice in the policy making process. As far as citizen participation in those processes of the civil service is concerned, they see this arrangement as one which will continue for the near future. Some, however, anticipate that if citizen participation is further extended, civil servants may feel that their accustomed practices have been interrupted and there is intrusion on their role in governance:

⁴⁸⁶ Winner, Technological Euphoria and Contemporary Citizenship, *Techné: Research in Philosophy and Technology*, vol. 9, (2005) 124-133.

I think we still have this notion that when someone gives their point of view or their suggestions, they are interrupting what we have come up with. X5A

Doubting peoples' sincerity in participating, X9A resorts to the belief that civil servants are the guardians of the people, thus proving X5A's point:

Any other point of view may be regarded as irritations. ... Perhaps because some of those ideas are based on individual interests or the interest of certain NGOs or a small group of people, whereas, as government officers, we must think about the benefit to the general public and as much as possible, our decisions must be balanced. X9A

X2A observes that an online forum, introduced to discuss some issues in MEWC's prerogative, is being shut down:

We had an online forum for the last three years but it is being shut down because nobody is managing it. X2A

To X2A, the incident indicates a lack of conviction that may be found among civil servants in managing and implementing digital democracy practices. Her tentative response to the question of integrating digital democracy into the policy making process, indicates her own hesitations:

I don't think it is appropriate right now because policy makers and citizens might have different sets of ideas. It can work if we have a proposal of our own before putting up an issue for public discussions. If we blend it with citizens' views perhaps we may have a crystal clear policy. For me, our government has not reached that extent yet and our citizens are not very open compared to citizens from other parts of the world in order for them to set the agenda for policies. We also may want to consider the different principles we have in implementing government projects, which may lead to certain problems. X2A

Having been with the civil service barely three years, X2A may be less articulate in expressing her views. However, phrases she use such as "different sets of ideas" and "different principles" (as in the quote above), signals her adoption of the "I know what's good for you mentality". Being young, in the 25 to 35 age bracket, X2A through early exposure in school and university has a very high appreciation of ICT. In the absence of any definite policy or guideline for digital democracy practices in the civil service, it is understandable that expressions she uses are sometimes vague. However, her hesitations also gave the impression that she is consciously avoiding overstepping the boundary. The same is more or less true for other civil servants interviewed, especially those within the

same age bracket with less than five years experience in the service (X1A, X3A, X4A, X32G, X34G, X37G).

COPING WITH PRACTICES OF INFORMATION SOCIETY

X5A serves in a policy position at MEWC. Unlike those from the administrative and diplomatic scheme of service, information officers like her are rarely placed in such positions. Not having been too submerged in the accustomed practices and processes of policy making, may explain her easy, matter-of-fact approach to discussing it. Referring particularly to the blogging community, X5A feels that the civil service still finds it difficult to react appropriately to online discussions of public affairs. To her, civil servants see these discussions as annoyances and irritations rather than constructive. She links this general observation to a belief that the civil service “takes bloggers as enemies of the country” and, is not ready to “cross the hurdle of being open to criticism”. She feels that this mindset, which permeates civil servants, if not sufficiently addressed, may mean an unfortunate end to aspirations for digital democracy. However, her whole tone is rather of regret than condemnation when she muses cynically:

Perhaps it would become a burden to the government if they were actually to investigate in depth why these statements [criticisms] are made. X5A

X15B may be considered a high flyer in the civil service. He is in his early 40s and was recently promoted in MAMPU with the main responsibilities for developing the eKL⁴⁸⁷ initiative. He expresses enthusiasm for his new responsibilities and generally is idealistic about citizen participation in policy making. As devoted as he may be, he obviously welcomes a diversion from his normal bureaucratic chores. X15B believes that the civil service “has moved from traditional to online processes, towards intra and inter

⁴⁸⁷ The eKL initiative is to enhance service delivery and is centred on the “One Government, Many Agencies, No Wrong Door” principle to better link the public to the back end services of all government agencies. One of the many applications developed by MAMPU is mySMS which is aimed at standardising the usage of one number, 15888 to access government news and services. MAMPU’s mySMS website lists 86 agencies offering more than 1500 sms services which include among others, status for national service training, status of MyKad (identity card) replacement, university examination results, summonses with the Royal Malaysia Police Department, rates assessments and quit rent payments, income tax payments, zakat (alms) payments, EPF (Employee Provident Fund) account queries, study loan payments, job search, and many more. See Unit Pemodenan Tadbiran dan Perancangan Pengurusan Malaysia, Pelan Strategik eKL, In MAMPU (ed.), (2007) and Kong, Hand-Held Convenience, *The Star*, (Kuala Lumpur 2009).

department cooperation and now must move on to collaborative government”. Of the government’s commitment towards applying ICT he says:

We have had participants from the private sector as well as NGOs attending our workshops. Over the years these workshops have shown that the government is far more advanced at implementing ICT projects and there is a high level of commitment towards developing the use of ICT in the public sector. Malaysia is being recognised as one of the best in this region in terms of ICT development. X15B

Although he believes in the government’s commitment to further developing the use of ICT in the public sector, X15B still considers digital democracy to present a big challenge. In his opinion, while the situation today demands that civil servants be more open and appreciative of the role which the public may play in contributing towards policy making, some are still “tied to past experiences”. This situation conforms to Neher’s⁴⁸⁸ description of Malaysia as an “Asian Democracy”, where bureaucrats see themselves as protectors of the people, discussed in chapter 2. Civil servants like X5A and X15B view the majority of Malaysian civil servants as unprepared to re-evaluate their role and hierarchy in terms of further enhancing citizen participation in policy making.

THE QUESTION OF PARTICIPATION AND DECISIONAL BURDENS

At the beginning of the interview, the researcher perceived X15B to be a civil servant who, unlike most others, feels convinced that the globalisation of the economy also requires a rethinking of policies such as Bumiputera special rights. His view on the subject of preferential policies and inter racial relations seemed that of a particularly liberal Malay civil servant. However, as he delved deeper into the subject, it became apparent that, what he feels strongly about is the importance of providing information. His hope is to see processes as well as policies become more transparent. He feels that the government’s confidence in sharing information should be parallel to what he sees as the citizens’ ability to evaluate and react positively to such information:

⁴⁸⁸ Neher, *Southeast Asia in the New International Era*, 4th ed., (Boulder, Colo. 2002) 120-139.

We have to inform and be open about our policies and regulations. For example if the policy is about a quota, tell them that it is the policy. If the policy is about social contract then tell them what the social contract entails. Let people understand government policies and regulations and be open about everything so that there are no doubts about policies which are in place. Tell them that these are policies which have been agreed to, and that if they have other suggestions and opinions, please forward them for our consideration. It has to be understood that policies go through democratic processes or Parliament and have been discussed by representatives. Therefore, transparency is very important. X15B

X15B feels that the role civil servants play in managing a globalising economy, for example, calls for a change in mentality in encouraging competitiveness. As he sees it, civil servants need to open up and accept different points of view, in order to develop their own knowledge:

We achieved our independence through a process which involved each community concentrating on their own needs and wants, Malays, Chinese and Indians. Once independence was achieved everybody is then focused on particular ethnic development, for example, to improve the ethnic group's income level or economic status. Today however, if we are talking about competitiveness, we cannot still only be concerned over the needs only of our own community. The economy now is globalising. Therefore, for example, practices of bringing in foreign workers in sectors where we need them must be accepted in order for us to further develop. We must accept that people who come to Malaysia, for example, to study here, bring with them skills and knowledge which we need for the country's development. Failing to realise this will result in us being left behind. That is why public administrators must open up, if only to listen to outside opinions and consider them then decide upon them. This practice will also allow public administrators to develop their knowledge. X15B

Newly promoted to middle management positions at MEWC, X6A and X10A express themselves more clearly on the subject of online citizen participation in policy making. They were involved with My Water Voice, an initiative by MEWC to invite online citizen participation, in drafting the *National Water Services Commission Act 2006* and *Water Services Industry Act 2006*.

X6A believes that regardless of methods, whether traditional or online, citizen participation represents the giving and receiving of opinions. Being subjective by nature, opinions invite arguments and differences. Empathising with views of X5A and X15B on the civil service not being sufficiently open to criticism, X6A believes that:

If the civil service is able to take [citizen participation] positively, they become feedback which may serve as guidelines in the formulation as well as implementation of policies.
X6A

X10A agrees with this and feels that civil servants should be more welcoming of opportunities to share information and ideas. However, returning to X5A, she is not confident that the civil servants' resistance to becoming more open, transparent and abandoning the "I know what's good for you mentality", can be reduced:

The success of digital democracy and whether it will have an impact can only be measured after it has been implemented. We have yet to see how transparent we can be even in conducting that open forum. X5A

Persistently, when discussing digital democracy being more formally integrated into policy making processes, lack of appreciation by civil servants of citizen participation in policy making emerged. This indicates that a basic belief in opening up platforms for citizen participation in policy making is lacking. So, even if there were to be a more formal integration of ICT into policy making, digital democracy may become under-utilised. For it to be more fully utilised there needs to be sufficient awareness among civil servants, not only of the benefits of digital democracy, but how it supports rather than reduces their role in policy making:

If they consider it a plus point, they would definitely accept it and actually embrace it but if they see it as something that would take away their authority and control over things then they would not accept it as you want them to. ... Whether we like it or not, we have to embrace it either it would be for the best or for the worst. We feel that there is always a positive side of the internet and I think other countries are also embarking on digital democracy or citizen participation such as Australia. I suppose there will come a time when we definitely have got to open our doors to that, and being the public sector does not mean that you have to be in control of everything, without taking into consideration all. X5A

Reiterating the reality of involvement of representative organisations and NGOs as well as "outsiders", such as consultants, X5A and X15B share the concern of most in the sample that civil servants may consider that digital democracy threatens to reduce the significance of their role in policy making:

Adjustment to changes, will take time. Public administrators are probably afraid that one day they will become less important because of the fact that as time goes by, they have to depend more on outsiders such as consultants and NGOs. Therefore, with implementations of projects or policies such as digital democracy where some traditional functions played by administrators will need adjustments, the roles of public administrators have to be revisited. If we can highlight the role of public administrators in digital democracy, to be more than just processing which will bring down the image of the public service, then it will increase support towards its implementation. Perhaps

digital democracy will have to be redefined in the context of public administration in Malaysia. X15B

FAITH IN PEOPLE

X14B is generally more phlegmatic than his immediate superior X15B, but nonetheless shares his outlook. Serious in his demeanour, his two year stint in a New York posting provided him with the opportunity to observe a different culture. Of the reception for citizen participation in policy making in the Malaysian civil service, he says:

What we have now is not really conducive, but given the chance we can still improve.
X14B

He is of the opinion that the government in general is still not comfortable even with using ICT to disseminate information, something which he considers a prerequisite to digital democracy. However, he recalls that some attempts by civil service institutions to seek citizen participation online, attracted unsatisfactory numbers of participants. Thus, he feels that not only is it the problem of the government not feeling comfortable with such practices but also that people at large are not ready to participate. X14B regrets that people sometimes fail to bring sincerity and constructiveness to the process. This opinion perhaps places him in the larger group within the sample who, despite their belief in the ideals of citizen participation in policy making, are less optimistic than X5A and X15B in their confidence in the public:

I don't think however that the government is solely to be blamed for such a situation because on the part of the Malaysian public, they are also sometimes not sincere about giving constructive opinions. They put personal concerns before national interest, which is why I am very concerned about the need to educate both public administrators and the public towards applying sincerity and constructiveness into the process. X14B

There is a general pessimism and scepticism on the quality of inputs which may be expected in digital democracy exercises. X6A worries about people not taking responsibility for their opinions. Not convinced that people are willing to take part or if they actually want to be consulted, X9A feels that a small number of participants will result in inputs not being representative of the population. X12A raises the question of redundancy and the constant need to keep track of participants, indicating yet again a low level of confidence in the public's ability to take digital democracy practices seriously:

The problem is that people do not take responsibility for their opinions. They are making accusations rather than giving opinions or inputs. It's like touch-n-go, they give input and they run away. X6A

The number of people who are concerned and take part is very small and do not really represent the opinion of the general public. X9A

I don't think Malaysians want to be consulted. ... Our population is diverse and some quarters are living in rural areas, poor and not educated. Some bloggers promote that these people should not even be allowed to vote and it should be left to the educated few to do it. X19B

We need to keep track of who is actually participating because for all you know, it can be the same person voting over and over again and there is need to keep track that there is no redundancy. X12A

There are concerns that more often than not, the costs of sifting, selecting and evaluating will outweigh the benefits that digital democracy practices add to the policy making process of the civil service. Asked if online inputs may lead to greater conflict for civil servants, X19B, a senior civil servant and director of a division in MAMPU, feels that people are generally not ready to participate in ways which may actually improve policy making. When people are only interested to have a say in sensationalised and politicised issues, the way he sees it, the quality of inputs which can be expected do not make the exercise worthwhile:

It's not conflicting but it just means more work. For example, the last time we opened up for the public to provide ideas and suggestions to MAMPU, we found 90 percent of the inputs to be useless. Only ten percent really give their ideas. Another example is *Warkah Untuk PM* [Letter to the Prime Minister]⁴⁸⁹, during the election it received around 50,000 feedback a week but now the number is very much less. X19B

Despite appreciating digital democracy's capacity for citizen participation, X1A and X2A, both young officers at MEWC, feel that the need to select and evaluate online inputs may become too taxing as they expect that very few will be of sufficient quality to actually contribute towards the policy making process:

But on the bad side, I think not all opinions are good, we need to select and evaluate and that could be burdensome to the government. X1A

⁴⁸⁹ *Warkah untuk PM* is a web site dedicated to providing citizens with an opportunity to provide feedback, voice opinions or raise issues to the Prime Minister. The web site can be accessed at <http://www.warkahuntukpm.com.my/>

Due to having too many different ideas being put forward for consideration, the time taken to come up with a policy would certainly be longer than before. X2A

MANAGING WITH THE FLOW OF INFORMATION

Data Culture

Based on his own doctoral research and his position as director of the e-Government Division in MAMPU, X18B, is perhaps more capable of exerting his opinion on the subject of digital democracy in the civil service. Although the interview with him could have been more interesting if he were to be by nature more conversational, he sufficiently expressed his views of ICT becoming a medium for an “open society”. X18B considers this an “interesting scenario” of which the government should take advantage. He observes that some approaches by the government are showing a movement towards the participatory concept:

For example, it is required by law to publish and obtain public inputs for our urban development plan and local plan. The same thing also applies to our Environment Impact Assessment (EIA) procedure, where every report must be published for public opinion and feedback. Even though some feedback are still given through conventional means, I think you can still send them through emails and so on. I think that’s the trend now. So, most likely in government, they will get public feedback on new policies and that could be the way in the future. X18B

However, in the course of his own PhD research, he found the civil service to lack a “data culture”. In his opinion, data, even if available, is not suitably analysed for better policy making. What he sees as missing is the ability to be open and to process information systematically and to appreciate its value in supporting governance:

Firstly, as government servants we should have what I call the information culture and this should also be inculcated in our society. Digital democracy activities will provide us with information. We must adopt an open mind to not neglect information but rather to analyse them. Digital democracy means providing freedom to express opinion and on the part of public administrators, our duty is to listen and consider. Based on my research, I have found that there is no good and systematic data culture in the government. X18B

However, there are indications that some ministries are taking the lead towards introducing more comprehensive management of online information. X30G, an information technology officer who heads a division in MHLG, speaks of the ministry

providing alternative online channels to interact with the public such as e-mails and text messaging. He reveals that MHLG will soon be introducing its Online Clients' Day. X30G explains that the ministry's management has come up with guidelines for managing online interactions. Although at present the focus is only on public complaints, having precise guidelines for dealing with these interactions signals that they are being taken seriously and are of value to the ministry:

We do provide channels for them to interact online as an alternative to having to come here in person. We'll be introducing our Online Clients' Day and beside telephone, emails, and faxes, we also provide for public to send us text messages directly. People are free to voice out their opinions and because our top management has insisted that inputs must not be filtered in any way to preserve its actual meaning and intention, we don't have moderators for our online interactions. Our Public Relation Officer (PRO) records everything into a Centralised Complaints System. Even complaints made through phone calls are supposed to be captured in this system but to get everyone to do it is a challenge. Once it is in the system, responses must be provided within three days. ... Last time, online complaints were not being given enough attention but now the PRO has to report on the status of the complaints in the management meeting, weekly. Reports on the status of these complaints are also forwarded to relevant managers so that they are aware of their staffs' performance. The perception has changed and public administrators will try to solve all complaints the best way possible. Applications have changed our working culture.

Being in MHLG and in proximity to issues from "housing projects not taking off [to] rubbish not collected", X32G feels that digital democracy, such as that practiced in Singapore whereby papers are put up for online discussions, may reduce conflicts and make policies more acceptable. However, as he is X30G's subordinate, he appreciates that although providing avenues for complaints either online or offline have become basic channels to gauge citizens' needs, "how effective they are in terms of improving policies would depend on the ministry's internal policies or the internal process flow on every feedback".

Awareness and Adapting

As an information technology officer and Director of eGovernment Division in MAMPU, X16B feels that the acceptance of new approaches and concepts does not come easily. With new things always comes the necessity to convince people. He hints of the frustration that not all civil servants are appreciative of prospects for further development

within the civil service through ICT. Although his discussion concentrates more on eGovernment projects which focuses on service delivery, his opinion on the need to adapt to technology is perhaps universal:

Denials or refusals usually come from lack of information and awareness or due to them feeling uncomfortable and out of their comfort zone. It does not matter to them that ICT are meant to support and make work easier. Therefore, the question which rises when dealing with these people is whether we introduce anything based on it being beneficial or do we introduce something which is just suited to their needs. What I mean is that when we introduce new technologies, people on the receiving end must accept that things are changing for the better. They must adjust themselves to it. If this mindset cannot be changed than any online initiative will not take off as we hope it would. X17B

As digital democracy involves the use of technology, taking steps to ensure that people are more able to embrace the technology and the concept is an important consideration before anyone can expect to benefit. X10A feels that, for digital democracy practices to be appreciated, management at all levels should first be made aware of the added value which technology brings to the policy making process of the civil service:

I think people are really trying to understand the use of ICT and that development will contribute towards 100 percent use of ICT in years to come. There must be leadership in this. Cabinet members, top management right to divisional and unit levels and the unit levels must be seen to support digital democracy and this must come together with policies and guidelines that will support it. Second thing, is the question of how to prepare people to embrace digital democracy. Training should be given, mindsets must be changed and at the same time these must be supported by the proper hard and soft ICT infrastructure. X10A

With experience working in the Public Service Department, X15B acknowledges that recruitment processes into the civil service from ten to fifteen years back began taking into consideration the importance of an applicant's knowledge and usage of ICT. As those within this group begin to fill middle management positions and develop change management practices, he feels that there is a very good chance that the appreciation of digital democracy practices may improve with time and effort:

They are too bogged down and tied to old processes and ideas. That is why, although digital democracy is good, its implementation will have to be done in stages. This process will involve change management and the need to share ideas and opinions on the concept through workshops. X15B

Pierson,⁴⁹⁰ on path dependence in politics, discussed in chapter 1, argues that policymakers have learnt to deal with the system in a certain way and may find coordination to be easier as the behaviour of others becomes predictable under the previously agreed policy or institutional processes. However, he argues that sometimes reforms are accepted, even if their advantages are not clear cut. Small changes can build up and may, at a certain “tipping point”, provide the force driving further change. Like X15B, many agree that acceptance of digital democracy will develop if conscious efforts are taken by the service to increase awareness. Most of these civil servants feel confident that with awareness eventually comes appreciation. A clear policy for example, will clarify digital democracy’s objectives and more importantly make clear that digital democracy practices will not undermine civil servants’ role in governance. Their outlooks signify what Pierson visualises as more cooperative and creative civil servants who may shape flatter hierarchies:

The administrators must know exactly what digital democracy is all about and they must understand it before they can implement it. X8A

The question now is whether both public administrators and the general public are aware of such activities and the concept itself. However, if the government introduces a policy on it, then I think yes, it can be done. X14B

The fundamental thing is for everybody to know their roles. For example, public administrators when they receive inputs, they have to know what they want to do with it. X6A

Maybe we will be more open if we know that steps like this are meant to help us come up with better policies and will help to expedite certain things because we are getting a lot of help from the people outside. X5A

In general, I think not all people know about digital democracy and as of now, it is not being practiced by all agencies. X1A

We must realise that among public administrators also there are still those who are not very aware even of government e-applications and systems. X2A

I think we need more awareness and government should lead. X3A

⁴⁹⁰ Pierson, Increasing Returns, Path Dependence, and the Study of Politics, *The American Political Science Review*, vol. 94, (2000) 251-267.

Leadership

X7A is an information technology officer. Because of her responsibilities for administration of hard and soft ICT infrastructure for MEWC, she is more inclined to discuss her role in the design of applications. She appreciates that ICT presents opportunities for government processes to be more transparent. Her frustration that her task of designing applications more often than not lacks accurate terms of reference by management and those in policy making positions is apparent. She is also saddened that applications are sometimes designed to make processes less transparent. ICT can only do so much. The undercurrent of her dissatisfaction is strong when she talks of superiors being unreceptive of the idea of opinion sharing:

The government I think is still very cautious. For example in cases such as applications for permits whereby an application signifies intention to be transparent and legal, applications are sometimes not granted. People are seen to be given the avenue to voice opinions but at the same time, are still wary of possible repercussions. This is the same in an organisation whereby individuals are still wary of their superiors and tend to agree with them even though they might personally think differently on an issue. X7A

Leadership was referred to often enough to indicate it as an important factor to these civil servants. A colleague of X7A in MEWC, X12A is also an information technology officer in a middle management position. She frequents websites which discuss broadband issues. She believes that information from these websites, such as complaints and suggestions on development and provision of broadband services in Malaysia, assists her in the performance of her duties. Because they are critical of government policies, these websites offer a different angle from which she views the status and performance of broadband services. They may suggest new requirements for changes and other developments.

X12A does not see her superiors taking up her suggestions to promote the practice of seeking information from internet sources. She wishes that there could be a more positive and visible push towards using ICT in enhancing civil servants' capacity for policy making, if only for improving information gathering. She feels that there is generally a low regard for online inputs which eclipses their possible usefulness, at least in pointing out issues and informing policy proposals. Although there is no serious obstruction to

seeking information through online sources, at the same time, it is not seen to be encouraged. X12A feels frustrated by superiors whose attitude means that such practices remains her personal initiative:

No I don't think so or at least I don't see the culture here. Here it is more like we only get what we see in front of us and we do not go beyond the ways that we are used to in getting information. X12A

Awareness of the top management is the most important in order for it to be implemented. For example, I am in middle level management, therefore, I am only in the position to suggest such things but maybe, my idea or suggestion might not be taken up. X12A

If there is support and orders from the top management, for example, if orders are from the KSN (Chief Secretary), I can see it happening within weeks. X12A

In X10A's opinion, although "office culture encourages openness and open discussion", he and most others in middle management positions, in the sample, feel that leadership and support plays a very important function in shaping civil service mentality. They share X5A's doubts that exercises such as "My Water Voice" will be readily taken up by civil service institutions in general:

Firstly the leadership must be there, that's the most important factor. It is important for leaders to believe that certain changes have to be made and to take actions to monitor and implement it properly. X6A

In the public service, the culture can be developed when there are guidelines and instructions from the top. If our top management is willing to look into this matter and provide guidance to the rest than the culture can be developed within the public administration. As I said if there is a policy from the government, it can be implemented. X14B

However, many observe that the present Chief Secretary's (KSN) promotion of a more participative style of management, lends some encouragement:

With the present KSN we have a different way of approaching things. In yesteryears, we have this notion that policies are made to be accepted as they are, but with this changing of guards who have different views and approach and more technology savvy, probably it would be easier to embark and to accept the changes in the public sector. X5A

Our present KSN has always stressed on the importance of using digital technology to improve our delivery system. X9A

If top-management commitment is there, that can be trickled down to the level of management in the office. It takes time, just like our new KSN, he said that we should use more emails, this is one of the things to promote digital democracy. X10A

Currently our KSN is also really supportive towards using emails to communicate. X16B

We are more open, especially under this new leadership at the moment. X18B

Now with the current KSN, we are more receptive Since we have our new KSN, the use of e-mails in the public sector has gone up tremendously. X24D

The KSN said even before the election that any issues can be e-mailed to him for his personal attention. The KSN is hands on, coming up with ideas to get feedback from the public, trying to carry the banner of government with a positive image.X26E

Our PM and KSN are also inviting people to send e-mails if they have problems and suggestions to improve the government's service delivery. Occasionally, we receive emails from the KSN about complaints about our organisation and we have to take action. So, I think it's already started with these emails. X28F

Last time, people would just wait for their opportunity to voice their concerns over bad responses but now they don't have to especially with KSN's initiative called the 'No Wrong Door' policy. KSN is giving access to everybody through emails, and this gives a sense of somebody is hearing them so they are encouraged to give more feedback The feeling is that there is a two way communication going on between the government and citizens. X29F

Since our KSN is very sensitive towards public feedback, prompt actions must be taken on them. The KSN even welcomes receiving e-mails directly. Therefore, we must take his cue. X31G

The views of X5A, X15B, X14B, X6A, X10A, X7A and X12A underscore that of younger civil servants in middle management positions who are more optimistic than others about implementing digital democracy, but remain unsure how the concept fares with top management.

Cynicism towards Politics

It needs to be noted here that the term top management is used by these civil servants to interchangeably refer to their superiors in the most senior civil service posts or to politicians holding ministerial positions. The interviewees offered extensive opinions on the importance of leadership and political will. They sometimes come across as cynical about the top management's ability and willingness to adapt to digital democracy as well

as of the motives of politicians. A few examples will provide some appreciation of the tones in which these views are expressed:

In a country like Malaysia, we are always very ambitious to develop faster. By having digital democracy, some political leaders may be of the opinion that it will slow down the implementation of projects. X14B

Politicians on the other hand may have certain agendas of their own and they might perceive digital democracy as something which can go against them. However if they take it from the positive side and see digital democracy as promoting integrity and transparency, they should support it. X10A

Actually public administrators will look more into the positive side of digital democracy but politicians will view it negatively. X20B

X26E, an Indian civil servant in MOI, seldom avoids an issue. He points out that politicians are generally fearful of scandals. He observes that the government did not recognise the importance of blogs prior to the 2008 general elections results which demonstrated them to be influential:

Before the March 8th election, the government's approach towards blogs was entirely different. The division drafted a paper whereby we don't recognise blogs and the websites. Before the election that was the view the government had. Our ministers were of the opinion that blogs were rubbish. As blogs were not recognised, newspapers and government officers were told not to pick up from blogs. That was the stand of the government then. This was overturned 360 degrees after the election and the division again put up a paper to suggest that the government immediately recognise blogs. X26E

X26E reveals that even before the 2008 general elections, there were civil servants, particularly from his department, who were assigned to engage with bloggers. However, he says "it was all a secret and we did not tell the public that we were all involved". Similar experiences were also expressed by X20B, a middle manager from MAMPU whom the researcher personally knows to be an ICT enthusiast:

I really think that our policy makers do rely on issues put up on websites. Even though they know that some of these inputs are not true, they are still analysed and considered. However, I think, that these practices or actions are being taken, will not be clearly admitted by public administrators. X20B

It is hard to make any widespread claims about these practices as they were expressed by only two out of the sample group. This may signify that the government and civil servants in the recent past regarded online inputs as "rubbish", as more succinctly pointed

out by X26E. This suggests that, considering online inputs, may have, until recently been regarded as foolish.

The Acceptance of Technology

X16B, a junior information technology officer in MAMPU more succinctly points out the importance of leadership in affecting change. Indirectly, she links leadership on this issue to age, as those in top management positions generally are in their fifties:

My seven years in a government agency shows that every change in public administration must be initiated by a policy. Even with that it's difficult to change some old minds in the public administration. X16B

Those belonging to the youngest group from the sample (25 to 35), never fail to draw attention to the fact that they are more technology savvy. They feel that comparatively, civil servants in their age group have the advantage of being familiar and comfortable with technology or services offered online:

I think the younger generation of public administrators, those born in the 90s has been exposed to ICT, so they'll adapt faster to it compared to the older generation. X3A

In our strategic plan we mentioned that there must be a one to one PC for all public administrators to enable online administrative applications like annual leave and so on. But, some public administrators continue using the manual forms even though they have the PC in front of them. There are instances where these older public administrators do not even know how to operate the keyboard and mouse. X16B

X24D, an exceptionally affable civil servant nearing retirement, feels that civil servants who do not keep up with current changes “will be swept aside”. While working at a district office, he did not see any real need to use ICT. This outlook changed when he was transferred to the PCB about five years ago. He appreciates that leadership played an important role in changing his attitude towards using ICT in his daily tasks:

Public administrators must change from not using ICT to embracing and utilising it to the fullest. I was posted at Kuala Pilah district five years ago where I didn't use much PC and internet, but here I have to use emails everyday otherwise I cannot complete my tasks effectively. Public administrators at the federal level also lack interest in using ICT. At PCB [Public Complaints Bureau], we are fortunate because our DG [Director General] is very much into ICT, so we have to keep up. X24D

X9A, who is in the 46 to 58 age group, does not deny that digital democracy offers a lot in terms of citizen participation in policy making. He, however, particularly stresses his personal inclination to appreciate ICT more for its capacity to automate service delivery. To X9A, conflicting interests and uses between government agencies are the most important factors to be determined before digital democracy can be integrated into the policy making processes of the civil service. As an example he points out that “some government websites provide interactive spaces while others still have that traditional website which only provides information which is a one way communication.” Although the same technology is available to all, the choice whether or not to use it remain with each civil service institution.

If the acceptance of technology is the most significant factor in determining a more successful institutionalisation of digital democracy then the willingness of young civil servants to accept digital democracy practices may lead to its widespread adoption. Although this equates digital democracy with the use of technology, it allows for a modest generalisation. Age and the use of technology are closely related. This at least is a point agreed to by many:

With the younger generation coming up who are open to new approach, I think we will embark on it. ... The new generation realise that we will be able to move to that direction because we understand that in years to come internet will be a platform or technologies would be a platform to a lot of changes. X5A

The younger generation would be more susceptible to it, especially those below 40 years of age, as the internet has somehow become a way of life, something which they cannot live without. Some of the older generation has still not gotten use to things like reading e-mails and the news online and would prefer the newspapers.X7A

That the transition to implementing digital democracy should not be abrupt is especially understood by those from the information technology group, such as X17B and X16B:

In introducing something, there is always the human factor to be considered. Change management would need to take place. Acceptance of new approaches and concepts do not come easily. With new things comes the necessity to convince people. This is a big challenge. Those from the older generation will find it harder to adapt to new things. X17B

In our strategic plan we mentioned that there must be a one to one PC for all public administrators to enable online administrative applications like annual leave and so on.

But, some public administrators still continue using the manual forms even though they have the PC in front of them. There are instances where these older public administrators do not even know how to operate the keyboard and mouse. X16B

Engaging Trust and Value

X8A and X10A expand on the factors relating to this generation gap. They see that the ability to adapt to and embrace the use of ICT, such as online applications, do not only relate to comfort and familiarity. It also concerns issues such as trust and value:

For the young generation may be we can implement it more easily than the older generation. E-filing for income tax took so many years to implement. In Malaysia, we have to have a trial period of up to three years before implementing anything because sometimes people are not aware and they don't trust the system. When people feel that the system is useful and they are comfortable with it, then they will use it. They must feel that it benefits them and provides them with an advantage. X8A

The changes should not be drastic because it involves the use of ICT and you have got to get people to embrace the technology first before they can start to benefit from it. I think people are really trying to understand the use of ICT and that development will contribute towards 100 percent use of ICT in years to come. X10A

X10A points out that the issue may not so much be the use of technology rather than that it represents a change from something that they are accustomed to:

I would say they (older generation) might resist the change (digital democracy practices) and view this as something that is against the norm, a challenging your superior kind of thing. X10A

X24D who is in the higher age group (46 to 58), admits that ICT represents a big change in the performance of his daily tasks, especially in terms of communicating. Although he acknowledges that for him to be comfortable with the changes required time and practise, he does not see it as representing too big a hurdle in implementing digital democracy. He agrees with young civil servants, such as X1A and X3A that the older generation may need a little persuasion and time to adapt. However, a user friendly system will assist in encouraging them. This feeling is shared by X26E who is also in his fifties:

It will bring some positive changes among the government staffs and at the same time, in the long run, it can benefit the government, the public and the country. We are talking about long run because anything we introduce, we need time to adjust to it. This is called the adjustment period. X26E

Strong Hierarchies

X15B appreciates that although rules and procedures are important to maintain standards, they should not be too excessive and impede desirable changes:

However, it has to be realised by all parties that bureaucracies cannot be avoided in the public administration in order to maintain standards between processes. No doubt, red tape are also problematic but they must exist in intelligent ways and no more than necessary. X15B

X26E provides an example of conveying a message to the Prime Minister. To him, this used to involve too many processes for it to be possible for a citizen. Similar difficulties he says are generally found in arranging a meeting with a civil servant, especially one in a senior position. In X26E's opinion, excessive processes and hierarchies "kill democracy".

In terms of communication and relationships within the civil service, X7A points out that hierarchy generally takes precedence over freedom of speech. The tendency is for subordinates to feel more comfortable agreeing rather than arguing:

People are seen to be given the avenue to voice opinions but at the same time are still wary of possible repercussions. This is the same in an organisation whereby individuals are still wary of their superiors and tend to agree with them even though they might personally think differently on an issue. X7A

X22C relates strong hierarchies to a rigid decision making process. Although ICT assist interaction with the public, she feels that as a junior civil servant, she is left with very little space to make decisions. If this matter of delegation of power is not improved, then to X22C it defeats the purpose of using ICT to support citizen and government interaction:

In Malaysia, the constraint is that public administrators are not free to respond to issues raised by the public and as a result there are delays in providing responses. For example, responses for certain issues would need clearance from certain level of managers. We need a mechanism to overcome this. X22C

Inter Agency Coordination

When X17B was asked if he thinks digital democracy should be more officially integrated into the policy making process, the term he chooses to express his first concern is “interfacing”. As he has a technical background in information technology this is understandable. Interfacing refers more directly to a concern about the ability of systems and applications to cross boundaries. His concern from his eGovernment experience is of the need for cooperation, collaboration and coordination of digital democracy practices among various civil service institutions. The core ingredient of this concern is information sharing:

When we talk about officially integrating, I would like to relate to interfacing. Problems arise as each agency has their own ego and are very concerned about their own territories which make them hard to control. X17B

X17B goes further to explain that government ICT projects are under MAMPU’s prerogative and that the states set up their own committees which come up with their own ICT policies. At times initiatives for more collaboration and streamlining are resisted. Civil servants are guarding their own territories.

X1A, who shares the same sentiment as X17B and X12A, is also quick to point out the lack of collaboration amongst civil service institutions. Referring to the information technology industry, she feels that jurisdictional conflicts, if not resolved will risk the implementation of digital democracy. This will result in confusion which will in turn affect the public. If a coordinating agency is appointed, she feels that this is a major issue into which it should look:

In order to make it official, more inter-agency collaboration is needed. At this time we have various agencies having jurisdictions on things which are almost the same. For example, for ICT industry the ministries in charge are MOSTI, MEWC and so on. It will be difficult to make it official in a short time even with MAMPU acting as the central agency. We will need further directives from the Prime Minister or the cabinet to make it work. The current situation is that many ministries have many policies. But, there is a similarity in term of the area, so it will make the procedures more difficult for them. X1A

Information Sharing within the Service

To X12A, another information technology officer, “sharing of inputs across all levels of government is not happening”. She provides another insight into the issue by linking it to civil service institutions portraying an image of things being always good and under control:

Yes, there is a problem because information gets filtered especially from the lower to the higher level; it has something to do with painting a rosy picture. I think our service provision now is not sensitive to problems faced by the public. As a citizen, I would really appreciate digital democracy where I can voice out my opinion on these matters.
X11A

Many expressed concerns over information sharing between civil service institutions, whether online or offline. Experiences of eGovernment projects produced many observations that there is room for improvement among civil service institutions. The issue seemed more pronounced between different levels of government, i.e., local, state, and federal:

It would help if we are not much segregated by levels. It should be shared. But I don't see this happening now. X5A

That would depend on the decision of the institution or agency on the level of access allowed to parties. Some are very secretive and would put tight control over their information. X7A

LUAS [Malay acronym for The Selangor Water Management Board] for example, which was set up under a state enactment in 2000 to regulate the water resources in the state of Selangor has to control 16 different departments. This LUAS enactment cannot be enforced until now because these departments cannot work together and one issue is sharing of information. Each is protective of its own territory. That is why it is critical to share information and what we have here in MEWC, a knowledge sharing bank where you can get everything, is good. We are also promoting e-learning in the ministry which is also one of the way to encourage digital democracy. But in general, it is still not happening in this country I would say. As I said earlier, there is sharing of information but the level of sharing is “you are secretive so I'm going to be secretive as well”. Maybe for digital democracy, the information can be put in a database and shared, then it can really promote digital democracy, but how do we do this? It will take time, investment, and the will. X10A

Not only will lack of communication and coordination lead to issues of duplication and questions about the validity of different data sources, it also means that money is not

spent effectively. These factors are seen to have an impact on the development of digital democracy practices:

In my opinion, the consumption of these inputs is by the intended agency. Maybe, gradually, interdepartmental sharing of information. The arrangement is there, but it's not comprehensive, it's not massive. It still at a very limited usage, so sometimes inputs can be shared by many agencies, but we don't know how to communicate with other agencies, that's the problem. So what happens now is that if they need inputs they just go back to the public, whereas the input is available somewhere within the government. X6A

There must also be sharing of data within and between agencies in any system to avoid duplication of data. I hope that everything will be at our fingertips and data sharing among government agencies is increased. Even though the data sharing part is happening but it's not extensive. These will ensure data validity and save us some money. X36G

Government websites are becoming the avenue for people to gain information and access online facilities provided by the government. However in Malaysia, electronic facilities have not reached the desired level. For example, if a person makes an online application, he is required to supply a lot of information on the application forms so much so that the process becomes very tedious. This process can be simplified, and if you want to apply for something online, it should be sufficient to supply your IC (Identification Card) number. Other information, the department should be able to obtain from a centralised source. Government departments should complement each other. What we can see now is that they each have their own decentralised systems and it is possible that these personal particulars are not regularly and systematically updated. To say that this is a problem, I personally do not have the facts; however issues like this I believe will contribute to imperfectness and ineffectiveness of a system. X32G

BELIEFS ABOUT THE LIMITS OF FREEDOMS

In the course of the interviews, the question of whether civil servants think Malaysia has a suitable policy and legal framework for digital democracy was asked. Although the question did not specifically refer to it, it was rather surprising that there was no mention of any law on the long restrictive list (as discussed in chapter 3), being unsuitable or in need of reform.

In chapter 5 the sample civil servants' orientation towards ethnic diversity and control of information on the internet was referred to. The analysis concluded that no civil servant in this sample was willing to say that there should be no control or no censorship of the internet. Although nine out of the 38 were identified as preferring to emphasise self censorship and net etiquettes, a larger group of 20 leans towards the need to censor and to

control. It is within this group of 20 that there was greater emphasis on the limits of freedom in the use of ICT.

This group is generally appreciative of the idea of increased citizen participation and acknowledges that a suitable condition for this is freedom of speech. The majority in the sample strongly believe that freedom of speech must be limited to save people from themselves. Attesting to this are statements by X35G, a senior Chinese administrative and diplomatic officer, holding a top management position in MHLG:

Democracy means people are given opportunity to voice their opinions and they are allowed to have different opinions. The basic principle of democracy is of course majority rules but you also have to listen to the voices of the minority. Somehow in certain countries or organisations a minority might not want to follow the majority. It is not easy when we talk about the real democratic way and these western ideals. It depends on the stages of maturity of a society. Not all society can practice democratic principles like China and so on. In Malaysia, I think we cannot go for a 100 percent democracy. We still need to be guarded. To me, the first and foremost is the stability of the country. Of course we can talk but it might bring repercussions to the country's stability. X35G

Although they are for the most part committed to the advancement of citizen participation in policy making, rarely was the mention of freedom not coupled with words such as sincere and constructive. This observation is common among the sample, including both young and old. The lasting impression is that too much freedom of expression will not only fail to inspire respect but will be exploited at every opportunity:

We must work within the boundary, within the law. I think we should go back to the fabric of the Malaysian community; our racially diverse country is very fragile I would say. That should be protected. If they go over board there are laws to be imposed on them. Those involved in this [digital democracy], they must have a sense of responsibility, which is the limit I would say I think we should view this digital democracy as an alternative source of information. Even if they want to talk about sensitive issues, we have existing laws and penal codes. If they go over board, we can apply those laws over them. If the discussion is within the boundary without touching racism issues, it can be acceptable and it should be promoted. I would say this is promoting the world class mindset, provide them with information and ask them to take part in decision making. If this thing doesn't harm the government, it should be allowed. X10A

MAMPU has taken the initiative to prepare guidelines for civil servants on online activities and communication. The public, perhaps, still has to refer to the MSC Bill of Guarantees that the government has no right to filter. However they would still be subjected to other controls as prescribed by existing rules and regulations. . . . If we look

at Korea, the country is able to provide its citizens with internet access anywhere in the country. Therefore, we must figure out how we will also be able to do that and actually achieve a borderless world. However, we must also take care of the security factor. X17B

Law and order is about responsibility in giving opinion. If inputs do not violate our laws for example on sedition, it should not be a problem. X6A

If there are no rules, based on my experience here, they will act irresponsibly in giving out ideas and making complaints. ... We are too open now. We are still not taking action on errant bloggers that promote slanders. X24D

A POSITIVE ATTACHMENT TO LAW

There is certainly a positive attachment to law in general as a tool for control. Any of the rare references to “restrictive laws”, such as in the examples provided above, stress that they should apply to all forms of communication and that conforming with them will enhance citizen participation in policy making.

The discussion with X26D, an Indian civil servant, was different from other interviewees. An officer in the Strategic Information Management Division under the MOI, his view on the subject was based on his extensive experience. He unburdens himself and readily shares the realities of the state of affairs concerning online communication and blogs:

What we are doing now in my division is that we are getting all the feedback and we report to the cabinet. In fact, daily we monitor about 220 blogs. So far from the blogs, we have not given any suggestion to the government to adopt any policy yet, but perhaps in the near future, it may come. As an example, we saw that some blogs were not rational, going beyond borders, very sensitive, confrontational, very dangerous and not good for this country. If it had been written in the newspapers, actions would have been taken under the Printing Presses Act and permits would have been suspended. However, if we talk about cyber law, ours is very open. When Mahathir introduced the cyber law, nobody could be charged because this freedom is one way to pull or attract foreigners. So, on that aspect, bloggers are misusing their freedom of writing, they sensationalise sensitive issues and provoke the community. If this is going to happen, we will suggest to the government that a strong law such as the Police Act be used. This is the reason why Raja Petra [a controversial blogger] has been caught, because his writings are seditious and it may harm the unity of this country. Malays, Chinese, Indians and all are living here. If digital democracy or the blogs can bring unity among them, they are most welcome. But if blogs under the name of digital democracy can threaten the unity and harmony, definitely we should recommend to the government the policy of using the Police Act or other acts that should be used against these bloggers. As it is now, the policy is very clear, under the Seditious Act, whoever sensationalises racial issues should be charged. X26D

The nature of his responsibilities in MOI may provide X26D with more experience and authority on the subject. Already in his fifties and approaching retirement, his opinions may be seen as old school but are shared by younger members of the civil service. X32G and X34G are young civil servants from MHLG. X32G is a Chinese belonging to the information technology scheme of service while X34G is a Malay administrative and diplomatic officer with a legal education. Being in MHLG, a ministry which works closely with local governments and representative bodies, both are very familiar with the importance of citizen participation in policy making. Their views are aligned with those generally observed by the members of the sample. They both feel that online communication, if not guided by laws which impose boundaries, may become a threat to the stability of the country. In the case of X32G, as much as he seems to find a lot to say on the subject, he remains undecided whether there is too much or too little freedom of expression:

To me it is simple. If something which is not good for example, something defamatory is written electronically, someone must take action to check on the information's accuracy. Therefore, a third party such as the BPR [Anti Corruption Agency]⁴⁹¹ should go in. If it is incorrect then you should tell people that it is incorrect. Perhaps it can become open but with government monitoring. However way we choose, there must be a clear policy, which everybody is aware of. Limits should not be too excessive. However, we must also accept that to open up to the extent of becoming harmful to the country is also not good. Perhaps in Singapore they are already successful in having clear policies on this. If you are too strict such as in China, it is also not good. China has cyber cops which monitor internet activities. We don't have such things in Malaysia, but in the future, who knows. The government of China controls the access to internet, for example, access to You tube or to contents from outside China. Government intervention such as this will create a lot of issues. However, on the ICT side, no matter how the government blocks contents, technically, you actually can still get access, and it is possible to bypass controls or blocks placed by government. If you compare with Singapore, their policies regarding access to contents are strict and there are punishments in place for accessing contents which are not permissible, of which the citizens are afraid. X32G

X34G also stands out from the sample when she succinctly says that digital democracy for policy making in the civil service is not suitable due to the secrecy of information:

To me it is not suitable, because of the secrecy of information. Like I said, not all information needs to be shared on the net. We don't have a system to block other people from hacking into our system. The experts can get your password and get to your

⁴⁹¹ The Malaysian Anti-Corruption Commission has been formed to replace BPR by virtue of the Malaysian Anti-Corruption Commission Act 2008 which came into operation on 1 January 2009.

personal data. If we are to implement it, we first have to do a thorough research on it, its pros and cons, whether it is applicable here in our country, with our current political system or situation. Therefore, it is best to think it thoroughly before applying it. However, to me it is not practical. It is good for getting information but to implement it for the process of policy making or laws, I don't think it is a good idea. X34G

Asked what her opinion is on the government's non censorship policy, she says that it has its positives and negatives. To her, the capability presented by ICT in terms of sharing information is desirable, but on the other hand, its far reaching effects call for more prudence in deciding on what should and should not be shared. Her lack of confidence in the public's ability to exercise this prudence comes through in her following statement on the negatives of non censorship policy:

The cons to this are when citizens abuse the democracy being given to them. That is where the problem arises, for example, under the Constitution we have the right to information, to gain and to give information to others but at the same time we have to remember that in Malaysia we have Acts such as the Printing Presses Act and the Multimedia Act, whereby there are restrictions to what we do. That is what people should know. They should be aware of the restrictions of law for giving out information. Most government servants themselves don't really know that not all information can be accessed and not all information can be shared. Some would attend meetings and then tend to share on things which have been discussed although decisions are yet to be made. ... To practice digital democracy, you shouldn't go beyond the limits. You need to be aware that there are limitations to everything and we have laws for them. Under the constitution for example, we have the right to express ourselves but in doing so we must realise that there are limitations to the freedom. An example of such limitations is the ISA. The Penal Code also has limitations on expressing one's opinion, for example, if you want to gather more than 4-6 people, you have to get a permit, if not such a gathering is a violation of the Penal Code. Therefore, you have to be aware of such limitations and you need to balance and not get emotional about everything. You have to think before expressing yourself online because there is always the possibility of people from foreign countries reading what you have written and having the impression that Malaysia is a bad country and its people and politicians are all bad. X34G

AN APPRECIATION OF A PROVISIONAL CHARACTER

When the issue of how they feel about a more formal integration of digital democracy into the policy making process of the civil service was raised, the responses of the civil servants indicate that the appreciation they earlier expressed for the digital democracy concept (as discussed in chapter 5), should be seen as provisional. They hint at a gap between their appreciation of digital democracy as a concept and their confidence in its actual inclusion into the civil service policy making processes.

In the absence of policies and guidelines, these civil servants find it difficult to locate a suitable position for digital democracy in those policy making processes. Their indecision may emerge from a relatively low faith in citizens' ability to contribute towards policy making coupled with their strong belief in limits to freedom. Again it can be safely concluded that much remains applicable of Scott's observation of Malaysian civil servants and their understanding of freedom in his 1968 study:

Freedom seems to be what is left over after obeying all the laws and government directives. Freedom is what remains after the legal structure is strong enough to prevent chaos. Like strong government, the important quality of law, for them, is that of a guide to behaviour backed up by the threat to punishment if the guidelines are breached (an acceptance of the law as law). Their attachment to law often overwhelms their attachment to freedom, since a weakness in law or government might mean nothing less than anarchy, while the loss of some freedom is regrettable but less dangerous.⁴⁹²

The ideal policy making portrayed by these civil servants is one which places a high value on citizen participation. Most, if not all within the sample, fall short in expressing optimism about digital democracy's integration into the policy making process of the civil service in the near future. What is said, and sometimes what is left unsaid, indicates a general apprehension against extending the concept in the civil service in general.

Limitations on, rather than factors promoting, a successful implementation of digital democracy emerge more readily from this sample. Concerns are expressed over a general incapacity of citizens to cope with the practices of an information society. The apprehension that traditional roles may be challenged, suggest their irresoluteness about digital democracy adding value to democratic objectives and gains to policy making processes in the Malaysian civil service at present and in the near future. In the absence of policies and guidelines, uncertainties prevail of how digital democracy practices should affect democratic practices and the power of decision making between the civil service and the public. Consistently, reasons are found to hold on to old habits and practices. At this point, findings relating to "Integration" and "Influence" of digital democracy, which will be discussed in chapter 7, show the distinction commentators and

⁴⁹² Scott, *Political Ideology in Malaysia Reality and the Beliefs of an Elite*, (New Haven and London 1968) 77.

civil servants make between being allowed to speak and having one's opinion considered. This raises the consideration of digital democracy's relevance for policy making within the Malaysian civil service to another level.

CHAPTER 7

INTEGRATION AND INFLUENCE

INTEGRATION

Integration is about determining whether digital democracy processes will achieve their potential optimality in integrating the elements of the entire policy making process.

Although the act of decision making is the core element in this process, other elements are also important. According to Anttiroiko:

in the ideal model, all the phases from agenda setting, planning and preparation, decision making, implementation (including service provision), and control and evaluation of collective actions have their roles, none of which should be underestimated when theorizing about new forms of democracy.⁴⁹³

This dimension of integration considers the sample civil servants' opinions on when to engage citizens in policy making. They are analysed according to the stages of decision-making described by Macintosh,⁴⁹⁴ as discussed in chapter 1. The stages are: agenda setting; analysis; creating the policy; and, implementing the policy.

Agenda Setting

When the sample civil servants were asked at which stage in the policy making process they think digital democracy would be most effective, three (X2A, X4A, X12A) were quick to state that, in their opinion, it should not be implemented in agenda setting.

Agenda setting refers to:

establishing the need for a policy or a change in policy and defining what the problem to be addressed is.⁴⁹⁵

Although, these civil servants belong to a larger group who prefers digital democracy to be implemented at the analysis stage, they succinctly state that they do not agree to any

⁴⁹³ Anttiroiko, Building Strong E-Democracy: The Role of Technology in Developing Democracy for the Information Age, *Communications Of The ACM*, vol. 46, (2003) 122.

⁴⁹⁴ Macintosh, Characterizing E-Participation in Policy-Making, *37th Hawaii International Conference on System Sciences*, (Hawaii 2004) 3.

⁴⁹⁵ Ibid.(3).

suggestion of implementing digital democracy for agenda setting. To X12A, citizen participation in policy making should only start when the civil service or the government has done its research and already has a framework for the policy on which they then proceed to solicit public opinions through digital democracy practices. X4A, already cited above, believes that public opinion should only be solicited on a firm policy proposal. X2A use similar terms:

Not agenda setting because that should be with the top management and an agenda is set sometimes based on experience from other countries. During the formulation stage, usually a framework is drawn up based on an example or experience from another country which is then tailored or suited to our own needs and requirements. Therefore, the stage when digital democracy would be most effective would be the planning for implementation stage whereby inputs from the public would be most useful. X12A

In my opinion, we must have an idea first and a firm policy before putting it up for public opinions, so it is not for agenda setting. It should be implemented at the planning stage. X4A

As I mentioned before, maybe it will not be suitable for agenda setting. X2A

On the other hand, three other civil servants, X6A, X34G and X38G, feel that digital democracy is especially good for agenda setting, as it potentially allows citizens and users or those to whom a policy is aimed, to ensure that the proposed framework is sufficiently broad and sufficiently particular to address the issues causing concern. The choice of an appropriate framework may predetermine the policy outcomes. As put by X34G, such practices may alert the government to issues and problems at the grassroots:

Number one, in the beginning, in the agenda setting stage... that's where the raw inputs are gathered, we get the idea from public and how to, then if we can use the input to come up with policy. X6A

We can actually start from the very beginning. For example in education policy, we can publish on the web that the government is inviting for ideas to improve the education system. It is good to get people involved right from the very beginning because that can act as a sort of an alert system, like conducting a survey. X34G

I think if you want to identify issues, it should be done at the early stage. We can get inputs from citizens to identify the issues, and then come out with alternatives to solve the issues. After that we can address the public for their inputs on our alternatives. X38G

Representing opposite opinions to the earlier ones, it is interesting to consider why members of the sample had such different opinions. There seems to be no discernable

pattern except that all those in the former group, X2A, X4A and X12A, are from MEWC, a ministry which plays the role of a policy formulator and service regulator for the energy, water and communications sectors. Although MEWC facilitates and regulates the development of industries in these sectors, civil servants at this ministry mostly communicate with industry. On the other hand, from the latter group, X6A whom, although also from MEWC, has had direct experience handling the My Water Voice exercise. X34G and X38G are both from MHLG and more tuned to organisational functions heavy on service delivery. As previously mentioned in chapter 1, generally, civil servants from MHLG express a higher appreciation for interaction with the public in policy making and, for some organisational functions such as town planning, some public consultations may be required by law.

Analysis

Along with X2A, X4A and X12A, the group first mentioned above, X5A, X9A, X10A, X11A, X13B, X14B, X16B, X19B, X20B, X21C, X28F, X31G and X36G, make up the majority of the sample. Some of their responses, grouped together below, reflect their opinion that digital democracy is best implemented at the analysis stage. Analysis refers to:

defining the challenges and opportunities associated with an agenda item more clearly in order to produce a draft policy document. This can include: gathering evidence and knowledge from a range of sources including citizens and civil society organizations; understanding the context; including the political context for the agenda item; developing a range of options.⁴⁹⁶

This stage to them is the most critical in the policy making cycle. It is important to note that the word generally used by civil servants to denote this stage of decision making is “planning”. Engaging in digital democracy at this stage presents an opportunity to tighten up and to fine tune any existing draft policy or framework. It is an opportunity to capture issues that may arise from a policy so that they may be given due consideration before creating a policy. Inordinately given to clichés, X36G from the Department of Local

⁴⁹⁶ Ibid.(3).

Council, says, “If you fail to plan, you plan to fail”. Some observations of this group follow:

I think at the early stage, at the drawing up or planning. That would be the right stage. That is the point where it is at the very beginning and it would be the right time to engage as many as possible inputs for us to go to the next stage where we would be able to come up with something more concrete. X5A

I think it is most effective at the stage of planning for implementation. For example, when the Ministry of Transport introduced the policy of having people in backseats wear seatbelts, it is important to get information of how people would feel about such a policy before it is implemented whereby there will be costs involved in installing the seatbelts which people do not seem to realise when they first announce the policy. X9A

I would say from the planning stage, because you have to get it right in the beginning to make sure the policy formulated is right for the people. Also during the evaluation stage, whether what is being implemented is really achieving the targets. However, I would say the planning stage is the most important because once you get it right, you don't have to worry about the evaluation. X10A

During planning stage as when you have implemented it would be too late and it would be a waste to take diverting or revamping actions. X11A

The planning stage would probably be the best. X13B

Digital democracy would help government to develop the country. An example is if the government wants to amend an Act or would like to gauge public opinion on the impact a development project would have on a certain area. These are the situations where the government might want to put up issues or proposals on the internet, for the public to give their opinion. If they agree then it would be easy for the projects to take off and if they don't agree it is good if they could provide reasons and suggestions. X14B

I think it should be at the planning stage. X16B

It should be at the initial, planning stage of policy making process. X19B

As it is a cycle, all stages are equally important but for the government, planning is the most important because this is the earlier stage and before we implement we have to make sure we are doing the right thing. X20B

Take the example of e-Tanah which involved some changes to current regulations. I think people were brought on board to see what their difficulties are in dealing with the land office. That means you are bringing them in at an earlier stage. At a later stage it's more for complaints. X21C

I think the planning stage would be more important because with good planning you don't have to worry about the evaluation. X28F

I think it should be at the planning stage because it's the most critical stage. Not during evaluation because *nasi dah jadi bubur* [a Malay proverb which translated literally means, rice has turned to porridge]. X31G

I think the planning stage, because good planning will result in good implementation. X36G

Evaluation

X7A, X8A, X35G, X33G prefer digital democracy practices to be implemented for evaluating the implementation of policies. This goes beyond the four stages of decision making outlined by Macintosh. Among reasons cited are, to gauge citizens' acceptance of policies as well as their effectiveness and to determine issues arising to permit better remedial actions:

To me it would be most effective in evaluation, especially to see if people like or are accepting what you are doing. X7A

The evaluation stage, because you need data to analyse. Maybe the government needs different systems at every stage, so that better direction could be gathered from these systems. X8A

I think the evaluation stage because once you implement it; you will need feedback from the public. X35G

It is good to get feedback on the effectiveness of government programs. X33G

Implementation at Various Stages

Perhaps the vaguest among the sample are X1A, X3A, X18B, X32G, X37G and X22C, who are more ready than others to declare that digital democracy may be useful to policy making in all of its various stages:

Perhaps it should be done at several stages for example; it should be in the beginning to get the general ideas and towards the end during the evaluation stage. X1A

It should be implemented at the initial planning stage where we must collect data from the public. My suggestion is that government should call relevant parties with expertise in the area first, and then these people should also be involved in the evaluation stage. So it should be both planning and evaluation stage. X18B

It's beneficial both before and after implementation. X32G

I think it should be during the formulation of the policy and then after the implementation of the policy. X37G

It can be implemented at all stages. X22C

A PREFERENCE FOR POLICY BASED FORUMS

The different viewpoints of these civil servants divide into three broad categories. They provide general but conflicting viewpoints of when they think citizens should be engaged in policy making. This establishes a framework for discussing where in the process digital democracy practices are the most appropriate.

These responses also lead to another conclusion. The fact that a majority of the sample prefer implementing digital democracy at the analysis stage and in evaluating the implementation of policies, means that digital democracy practices are only likely to start where issues have been defined and the significant questions already established. This majority seems closed to the possibility of implementing digital democracy for agenda setting. They appear to prefer policy based forums which, according to Macintosh, are:

organised around themes/issues that relate directly to a draft policy that is meant to address these, and where discussion threads are intended to solicit responses from those affected. Participants might be encouraged to submit alternative ideas and suggestions but the format implies that what is being sought is an indication of how far the participants agree (or not) with the proposals, and why.⁴⁹⁷

The civil servants' preference for policy based forums may reflect Malaysia as an "incumbent democracy", where its civil servants are primarily motivated to preserve existing institutions by maximising and managing orderly participation. This is in accordance to Blaug's⁴⁹⁸ division of conceptions of democracy into "incumbent" and "critical", as discussed in chapter 1. Their assumptions about the environment surrounding participation in policy making, which relates back to their relatively low faith in the citizens' ability to contribute towards the process, as well as their strong beliefs in limits of freedom, discussed in chapter 6, provide the basis for a belief that the civil service is elitist. Although these civil servants believe in a two-way relationship in

⁴⁹⁷ Ibid.(4).

⁴⁹⁸ Blaug, Engineering Democracy, *Political Studies Association*, vol. 50, (2002) 113.

which citizen participation is important in policy making processes of the civil service and the government, they will not hand over the role of defining the processes and the contents of policy making to citizens. They fail to acknowledge the equal standing of citizens in setting the agenda.

INFLUENCE

The sample civil servants were asked to what extent they think digital democracy should influence policy outcomes. The question enquires into how civil servants weigh the concept of participation and influence, to address the question of whether digital democracy practices for policy making in the civil service will be such that the citizens involved may truly influence issues of interest.

Do Blogs Matter?

As with previous questions, the question of whether blogs matter is also relatively open ended and permits a variety of responses. Although it may not apply to all, most civil servants tend to refer to blogging when considering their initial response. This perhaps is a good place to start the analysis, ie, by observing how these civil servants value inputs from blogs:

Blogs can be a useful source, but we cannot take it as a whole. For example, the recent announcement by government on restrictions from selling fuel to foreigners within 50 km radius of our borders had been argued from different angles in blogs. I think that is good and we can take certain good points from the discussions, but certain points are simply unreasonable. X3A

Even blogs administered by the NGOs or the opposition parties in fact sometimes point out issues which are very relevant and should be taken up or considered. These issues are sometimes taken from government administered websites and even from crawlers⁴⁹⁹ appearing on websites and the television. X34G

They can say anything but you have to think when to take action. You have to evaluate because not all information on blogs are right. X38G

⁴⁹⁹ By crawlers, X34G refers to texts which sometimes appear at the bottom of the television screen, and on websites, usually to provide news updates. The word crawler however, in a more technical sense, refers to a computer program that browses the World Wide Web in a methodical manner.

Sometimes people do tend to respond to what they have read on blogs. You have to be careful with the motives of these people writing on blogs. There are some blogs which are politically motivated and are to serve personal interests. So the government cannot overreact to these things. However, the government to certain extents will be able to gauge what people think, view it from a different angle and use it as a source for taking note. X29F

As for the blogs, although some are from opposition parties, the bottom line is we should look at the issues being raised. We must accept that citizens are consumers directly affected by policies and they know best. X10A

Even though some sites or blogs may seem to be very negative, the government should always take what citizens have to say into consideration. ... They have to investigate whether the info is true or not as the information on blogs are not that reliable but at the same time are substantial. X20B

There is an undertone in these views, of irritation by online discussions hosted by either political parties or NGOs which politicise issues. However, these civil servants are very aware of the Malaysian blogging scene and the different topics of discussions on blogs. They also recall and refer to those which discuss public affairs. Most feel that discussions on blogs frequently include allegations which are not substantiated by facts, evidence or citable sources. They acknowledge that excellent arguments may be made but on non-existent facts. However, they appreciate that bloggers are taking the time and effort to research, form and share their opinion online, showing their interest in public affairs. By virtue of the topics discussed being mostly tapped from issues making headlines in various media, these civil servants are unanimous that blogs are relevant, if only for pointing out concerns and indicating the general grass roots feeling on policies in public affairs. Although they feel that being careful not to overreact to the contents of blogs is in the interests of the government, it is still necessary to give due attention to blogs or at least to not ignore them when making policy decisions.

Validity of Information

Generally, the value these civil servants place on inputs from interactive online discussions of public affairs, whether in blogs or in digital democracy practices implemented by civil service institutions, do not seem to differ. Basically, they agree that any information gained from these practices will assist in better policy making. However,

they also share concerns about their relative inability to validate the information to ascertain its real value for decision making:

From these practices, the government can determine the inclination of citizens on issues and this can be used in formulating policies. However, the accuracy of these inputs cannot be fully determined and finally the decision should still be with the government. X11A

Getting feedback and inputs are important for decision making and although the government should not be tied up to follow the public's opinion, their inputs, and knowing how they feel about an issue, would still be very useful. X7A

It's about getting information and not delegating power. It is just to get information and to use it to formulate policies because that is the role of the government. In my opinion, blogs are not very reliable, but they will serve the purpose of finding out concerns and issues raised by the public. Information cannot be taken per se and would have to be filtered. X12A

Portraying No Conviction

In the absence of any policy of which they are aware to guide the implementation of digital democracy by civil service institutions, most in the sample feel obliged not to offer any explicit answers to the weight to be given to inputs from digital democracy practices in influencing policy decisions. Their responses, therefore, portray no conviction on the issue. They revolve around the theme of their general appreciation of the idea of promoting participatory governance in facilitating the improvement of government services:

Although currently there is no clear approach to implement digital democracy, public administrators should focus toward a more open, participatory concept. To me, digital democracy should represent a two way communication between public and government. This is the time when all government agencies should have mediums for two way communications and work together with citizens. We should have a good system to answer all public questions and show appreciation to those that contribute good ideas and opinions, so that the public will really feel that they are included in the policy development process. X18B

Digital democracy can be done in the smartest way but ultimately the element of decision making remains with the government... . Participation in decision making has not been easy before and people were not interested to write opinions and put them in suggestion boxes as they used to do it. Therefore, the most important element provided by digital democracy is the channel to participate more easily. X15B

Citizens should be provided with opportunities to voice their opinions and it is then the responsibility of the government to consider them and come to decisions that are most suitable. X16B

We should apply participative governance. However, the level of education, the level of understanding, the level of maturity has to be there, because when you formulate a policy it is meant for all. You cannot just satisfy some people with certain inclinations, some emotional reasons. Participation should be with some level of maturity. X21C

There are changes taking place and public administrators are not like what they used to be. We encourage participation and contribution of new ideas to improve service deliveries and processes. We try to implement good ideas positively through public-private partnership, where we try to facilitate private sectors' growth for example. Now, we do not immediately say no, this or that can't be done because of an existing policy and so on. We try to facilitate instead of control. But of course, sometimes there are instances where you have to say no. X33G

Supremacy of Expertise and the Establishment

The responses, as demonstrated by the examples provided above, are general. Some civil servants are like X10A who is more specific in his opinion that inputs gathered through digital democracy should influence policy making, if only to the extent of assisting in pushing policy decisions towards more closely meeting citizens' needs. To him digital democracy may become an "alternative source" of inputs which act as a "second opinion" to provide checks and balances in exploring the suitability of policies as well as deciding and implementing them. To X10A, the main concern is that any information is valuable and should not be ignored:

Policy makers should look into [online public inputs] seriously and try to adapt and adopt whatever is possible and consider them in policy formulation. This is the way to achieve civil society and get people to be more involved in policy decisions, which are ultimately for the people. We shouldn't brush it aside. X10A

X6A, X8A and X36G are some among many in the sample who cannot stress enough the importance of exercising reasonable consideration before deciding on the value and weight of these inputs in decision making: whether they be given significance; be taken into consideration; or ignored:

We consider all the opinions or inputs as good but what we do finally is to analyse them, try to fit them in where possible and also make some changes. For example, we proposed to cut water supply to those who do not pay their bills within seven days and based on public opinion we came up with a compromise and changed the period to 30 days,

although what the public actually suggested was that there should be no cutting of water supply at all because water is a basic human right. X6A

They can use it as an indicator to look further so that you can study in detail about the figure. Maybe 70-30 is quite significant rather than 60-40. Maybe your target group is invalid and you need to analyse further. X8A

I think the inputs will benefit the policy makers and enable them to cover blind spots that they have overlooked. It is sort of a check and balance. I think the correct practice is that the public can give opinions and it's up to the decision makers to evaluate as to whether the inputs have enough credentials and are justifiable based on facts and figures, in order for them to be used in formulating policies. X38G

What remains common in these responses, whether specifically expressed or not, are strong beliefs in the role of the civil service and its civil servants as protectors of the people. Time and again, these civil servants felt the need to reiterate that the civil service or the government are in better position to decide on matters of public interests and ought not to be obliged to follow public opinion:

Gauging public opinion on any issue is important because whatever the public service is doing, the end objective is to serve the public. However, there would be differences in weight placed upon public opinion, depending on the issue being discussed. As public administrators we have the role to consider and decide on what should be the best decision for the public at large. X14B

A government acts for the whole nation and they cannot react only to certain groups. I think the government needs to play a balancing role and they cannot simply jump and do something just because of pressure by a certain group. The government must be sensitive and be able to always read between the lines. X29F

Policy making is not an overnight thing. It is not about listening to one group and making decisions because it will reflect badly if you have to change the policy again and again. X29F

Inputs should be considered but whether they will be accepted is a different thing. X1A

We definitely need to know the opinions of the public, but the weight, I'm not sure. It is very much depending on the logic of the inputs from the public. X4A

The public can give opinions but the government will decide. X13B

X9A's opinion may not be much different from X10A who sees digital democracy inputs as useful for a "second opinion". However, in being more succinct or perhaps a little bit untactful, X9A would not completely agree that the word "window dressing" describes

his opinion. He suggests that digital democracy may sometimes be used to find support for a decision already made:

As I said before, in Malaysia, some opinions of the public irritate the government. Therefore, requests for opinion are sometimes merely formalities and decisions will rest with the government or perhaps they already have a decision before asking for opinions. I cannot say that it is just window dressing. There is some element of interest in the inputs from citizens. However, digital democracy is just a method and the final decision taken would depend upon decisions of politicians and ministers whose decisions are dictated by interests of the government which is suppose to be taking into consideration public interests on the whole. X9A

What Limits Their Value?

Most in the sample feel that digital democracy practices, which do not control or limit participation to people who are knowledgeable or close to issues being discussed, will limit the value they will place on these inputs as influences on their decisions:

If I were to use the inputs, I would first see the pattern of the inputs and do some sampling to validate the information. We cannot just take a 100% of them because public opinions come from people with different backgrounds and different levels of education. We have to filter and further analyse them. X1A

I think digital democracy may be a small part of what the government will take into consideration, because they have to investigate whether the information is true or not as the information on blogs are not that reliable. X20B

I think their role should be evaluating the policy and provide feedback. But, in general I think most citizens are not aware of government policies. X27E

Some of these public opinions are nonsense. We need to study and analyse them, keep the good ones and trash out the bad ones. X3A

As discussed previously, there is generally a very low expectation of inputs from citizen participation. This is because of concerns, including those mentioned above, such as the various levels of education, lack of knowledge of or proximity to, issues, and, the relative unreliability of information provided. Some, like X19B are up front in expressing unflattering disregard of online inputs from the public. He is a senior officer in a top management position as director of a policy and planning division. His views will carry more weight in his department in determining the level of influence which these inputs have:

You cannot listen to everybody to create a policy. May be implementing online surveys to gauge the environment is sufficient. X19B

Even X14B, who is generally very positive about the prospects for digital democracy in the public service, feels the need to caution that its implementation can only be as far as it is considered suitable and is supportive of the roles played by civil servants in policy making. He goes as far as suggesting that, in some instances, participation should be limited only to those able to provide expert opinion:

When we want to introduce a policy, I would agree that generally, getting public opinion on it is good. However, we have to also accept that not everybody has the understanding or capacity to provide opinions on policy making. On certain issues sometimes what is needed more is an expert opinion. Although all opinions are welcomed, we in the government would like to receive opinion from those who are really in the position to provide them. X14B

Groups as Opposed to Individuals

Asked if they would put different emphasis or weight on inputs from individuals and from representative groups, most were much happier to give greater weight to the inputs of representative groups. X1A, for example, understanding of digital democracy activities is based on her hands on involvement and familiarity with activities such as the national online registration portal for broadband users registration and survey and My Water Voice. She feels consulting a group rather than an open consultation with the wider community, may produce inputs which are more useful in the policy making process:

If you have already identified your target groups, it will be easier to look for what you want from them. X1A

Target groups, in the sense meant by X1A, may mean that she prefers to limit participation to both individuals and groups in Macintosh style policy based forums fulfilling set criteria. Further into her interview, X1A along with most others within the sample, sees added advantages in inputs from organised representative groups.

Collective opinion

Many in the sample prefer inputs from organised representative groups. They saw them as providing opinions which are collective and broad based and less prone to personal sentiments and one off experiences:

I would put more emphasis on inputs from representative bodies, because inputs from individual would be from one person's perspective only. Those from representative bodies would be collective inputs. X4A

I think [the emphasis] should be similar [between inputs from individuals and representative bodies] because different people have different views. However, a plus point for organisations is that they provide collective inputs. X3A

Inputs from interest groups are better because individual's inputs are based on their own sentiments whereas interest groups represent the view of many. For example, if a person is angry or has a bad experience about a service, they will say bad things about the government. X20B

There is a difference where individual inputs are biased based on his or her experience, background, reading and so on. So I think inputs from organisations would be better because two heads are better than one. X27E

It should be the same for both. However, sometimes inputs from organisations provide greater impact than individuals because they come with authority. X31G

I think inputs from organisations should carry more weight because these organizations are registered with ROS (Registrar of Societies) and so on. Sometimes individuals can be a bit more emotional in giving their inputs. X37G

I think they will give more emphasis to the organisation because individuals would normally be from the opposition parties and would not be taken seriously. There should be different forums for individuals and for organisations. X22C

The only thing is may be only a small number participate in the activity. Then you must talk to representative groups or the professional groups to get their opinions like for housing issues we talk to the developers and buyers association and so on. Normally, individual inputs are about his or her problems and we need to solve it separately. X35G

I think inputs from organisations are better than from individuals. But, we need inputs from both individual and organisation alike, because sometime inputs from organisations reflect only the view of its leaders and are not a consensus. X36G

More manageable and practical

Inputs from representative groups are expected to ease the burden of sifting through evidence and submission by virtue of their being fewer in number and collective in their

point of view. X35G is concerned that due to limitations imposed by ICT infrastructure access, for example, participation by individuals may not be representative of the population. X33G, X6A and X9A suggest that participation by individuals should be limited to those acknowledged as experts on the issues being discussed:

In general digital democracy would work better if groups or NGOs are involved. X12A

Inputs from individuals can be cumbersome, we must do lots of work to get to the best ideas. X24D

In my opinion if every single citizen were to participate, the system will perhaps be jeopardised. This is because individuals have personal interests and to comply with all of them is just impossible for the government. Therefore, it has to be done through representatives. The representative component can be made up of NGOs, professional bodies and community based organisations. These bodies represent group opinions which can then be forwarded to the government for consideration. Therefore, to me digital democracy does not mean participation of every Malaysian citizen in the policy making process. Malaysia's digital democracy should be one which involves a consolidation of government efforts with individuals, representative groups, community based organizations, NGOs, private sectors and stakeholders. Each of these components will have to be represented in the process or system of digital democracy. This is because these groups represent interests of each component and as a whole they represent interests of the citizens of Malaysia. In the case of individuals, we can be selective in the sense that they are individuals with particular expertise on issues being discussed. X15B

Yes, we give more emphasis to the organisation. I don't think it's practical to go on the net and get everybody's opinion. On top of that you have to respond to everybody. The internet users might not be representative of your target groups as well. Only people with some interest will participate. Ordinary citizens would not be bothered by this. X35G

Groups have stronger stands and are easier to handle rather than individuals, but of course both can be considered. X7A

I think the most appropriate inputs should be from the NGOs and not individuals. However, we can probably select certain individuals with well known expertise in the area of concern, like Professor Khoo Kay Kim and Professor Ungku Aziz. That should be decided based on programs and types of issues being discussed. Every government project has target groups, but we may need to get feedback from the professional groups and NGOs. X33G

It depends on the issue being discussed. If it's about operational issues, inputs from representatives groups are better than those obtained individually. But if it is about economic policy, expert opinion is better than representative because representative tend to control issues based on sentiments of the group. So in this case, expert opinion is like an individual opinion, so it can be better than representative, because it is based more on facts rather than sentiments. X6A

Of course we also appreciate views from individuals, such as the academics and sometimes they are invited during forums to express their opinion before we implement a policy with the general public. X9A

X10A and X17B extend the idea of group inputs being more manageable and practical in terms of establishing and maintaining contact. X10A feels that participation through representative groups, especially when the groups involved are registered⁵⁰⁰ and have been established with clear objectives, may minimise the possibility of exploitation by individuals with more personal agendas. Both X10A and X17B feel that continuity in the interaction is important and is more easily maintained with representative organisations:

We would view that group inputs are much more important than individuals. But again groups are representing individual interests. If we want to entertain all individual inputs, it's going to be a long process. It's good for them to come under one umbrella and share their views with the government. It will be easier to monitor groups, for example, if there are aids to be channelled it can be given to that group rather than individuals. However, we should also be mindful that associations are not exploited by people who are pursuing personal agendas. These associations should be registered, have clear objectives and are able to work with the government. X10A

I don't really agree with individuals taking part because they will be hard to manage. Individuals may have experience but they do not have authority and perhaps they have a lower sense of responsibility, which is why sometimes it is hard to establish continuity with individuals. Sometimes after they have given a proposal and we call them up for meetings to discuss and explore their views, there is a higher tendency that they will fail to turn up. In the case of organisations, they are usually better managed and are always able to find representatives to attend meetings. ... I would prefer representatives such as CUEPACS (Congress of Unions of Employees in the Public and Civil Services), for example, which represent employees in the public sector and also NGOs. To me it makes more sense for people to use representative channels so that it is much more possible to discuss issues on an ongoing basis. I will put more value on inputs from representatives rather than those coming from individuals. Moreover, allowing individual inputs will perhaps make it harder to manage. X17B

As discussed in chapter 2, presently in Malaysia, there is greater emphasis on the role of the private sector in development. Representatives of private associations and commercial groups as well as corporate leaders participate in initiating policy discussions and recommending changes in policies. An example is the Budget Dialogue between the Minister of Finance and corporate leaders. The dialogue is held yearly and at the same time, written contributions from the private sector on their views and recommendations

⁵⁰⁰ Societies as defined under section 2 of the *Societies Act 1966* (Revised 1987), are required to register by virtue of section 6 of the same Act. All matters pertaining to registration are handled by the Registration of Societies Department, Malaysia.

on measures for the budget are actively solicited. The Ministry of International Trade and Industries also holds an annual dialogue with the private sector focusing on industrial policies. Apart from these, there is an extensive list of committees, task forces and working groups led by various ministries, which involve the private sector.⁵⁰¹ Practices such as these, which civil servants are familiar with, promote their preference for participation by representative organisations. In many ways, this form of relationship, where views and recommendations of representative groups are actively sought in policy making processes of the civil service, represents autopoietic structural couplings. These structural coupling between representative groups and the civil service, are a familiar and well accepted arrangement for the civil service. It produces a situation of path dependency on the part of the civil servants. As Pierson⁵⁰² argues, where there is path dependence, the actors have learnt to deal with the system in a certain way. They find co-ordination to be easier as the behaviour of other actors becomes predictable.

Concerns such as expressed by X17B as quoted above, on the importance of maintaining contact and continuity of discussion, especially the specific mention of the need for follow up face to face meetings, may undermine digital democracy. It may represent a continuation of analogue democracy practices. It strengthens Dijk's⁵⁰³ point, discussed in chapter 1, that digital democracy is an attempt to change traditional age-old ways of operation and habits in politics. It is a matter of exploration and experiment.

Preference for Individual Participation

Although the number of civil servants preferring participation by representative groups is large, the sample group however, is not unanimous on this point. X8A seems to prefer participation from individuals by virtue of his concern that representative groups may fail to be representative:

⁵⁰¹ For a summary on sources of policy initiatives in Malaysia, see Yusuf and Bhattasali, *Economic Growth and Development in Malaysia: Policy Making and Leadership*, (2008).

⁵⁰² Pierson, Increasing Returns, Path Dependence, and the Study of Politics, *The American Political Science Review*, vol. 94, (2000) 251-267.

⁵⁰³ Dijk, Models of Democracy and Concept of Communication, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 30.

You can rely on input from individuals rather than representative bodies. Because the representative bodies sometime only represent a few individuals they sometimes do not paint the full picture. X8A

Open to All

Six civil servants from the sample seem more ready to open participation to all, to individuals, who are either experts or non experts, and to representative organisations. They find that both have something to contribute towards the policy making process. They find the pros and cons to be balanced and are unable to justify a preference for one over the other:

Both have got their own values because they are coming from different backgrounds. NGOs have got their own reasons, their own point of views, and their own objectives. Individuals would also have their own strengths to have their views taken into consideration. So it is okay for both to take part, as they have different objectives in bringing up their views and its up to the policy makers to take both and analyse as to which would benefit us. X5A

We do not need to differentiate between individuals and groups. They can participate so long as they have knowledge or expertise in the particular area of concern. However, to ask school children their opinion on an issue not directly related to them, would also not be right. X14B

I think we cannot differentiate between individuals and representative groups. Representative groups may just be relevant for people in a group, but individuals who are not part of a group may also be affected by the policy. So both parties should be given equal opportunities. However, we can expect groups with experts in a particular field to give better inputs than individuals. It all depends on the type of policy being discussed. X18B

Both parties (individuals and representative organisations) can get involved. Let everybody give their opinions. X32G

I think if individuals are willing to come up and participate it is okay, but for NGOs or organisations they will only give opinions on behalf of their members. I think we have to balance this out and we should open up to both individual and organizations. X38G

Of course inputs from people that we have identified would be better because usually they are people from universities with particular expertise or those representing government agencies and bodies whose scope of duties are related to the issue being discussed. However, individuals' opinion must also be looked into because some individuals do have the ability to provide good opinions which are worth considering. X13B

It is to be noted here that the number of civil servants who expressed preference for limiting participation to representative groups, individuals or to open participation to all does not amount to the whole sample. However, the number of those who expressed their preference for participation by representative groups is quite significant, ie, 19 out of 38 against only seven out of 38 specifying preference for participation by individuals or to open up. This, to a certain extent, attests to their general low expectation of citizens' abilities to contribute to policy making and suggests the little weight these civil servants place upon inputs from digital democracy for influencing policy decisions. An NVivo matrix query produced the results in the tables below. There does not seem to be any discernable pattern in their preference, either when analysed by age group or the scheme of service to which they belong.

Table 17: Preference by Age Group

Age Group	25-35	36-45	46-58
1 : Group participation	7	7	5
2 : Individual Participation	0	0	1
3 : Open Participation	1	2	3

Table 18: Preference by Type of Service

Scheme of service	Administrative & Diplomatic	Information	I.T.	Town Planning
1 : Group participation	10	1	7	1
2 : Individual Participation	1	0	0	0
3 : Open Participation	3	1	1	1

A PROMISE TO TAKE NOTE

It is evident that to these civil servants, digital democracy for policy making in the civil service is first and foremost about a willingness to listen to various and differing views

on public affairs. At the same time, it is about developing the civil service's ability to react suitably and to take appropriate action on citizens' opinion.

Although their confidence in the reliability of blogs for example, is very low, they feel that it is necessary for blogs to be given due attention. The least the civil service or the government can do, they suggest, is to not ignore this source of information completely when making decisions. There is not much difference in the confidence they express in blogs and in inputs from digital democracy practises where participation is open to all. Many express preferences to limit participation to representative organisations and experts or specific target groups, citing collective decisions and viewpoints and manageability, as well as practicality.

They are unanimous in stating that listening should not automatically be taken to mean implementing. This includes those who display enthusiasm for and are idealistic about, citizen participation. Each policy has its strategic objectives and impacts differently on stakeholders, be they individuals or representative groups. This is where they feel that civil servants should develop an ability to analyse inputs and play their roles as strategic thinkers in considering their weight in their decision making. In doing so, they stress that factors such as the possibility of participants harbouring harmful agendas, must be taken into account. This process they feel, supports policy making if only as far as indicating the grass root feeling on matters of public affairs.

The progression up Arnstein's⁵⁰⁴ ladder of participation, discussed in chapter 1, is by how much control the citizens are allowed. Most civil servants seem quick to point out that the actual weight of digital democracy inputs in decision making are not as important as the willingness on the part of the civil service to share information and provide another avenue for citizens to voice their opinions. The degree of participation this represents is that which Arnstein describes as tokenism.⁵⁰⁵ Their responses, or statements to this effect,

⁵⁰⁴ Arnstein, A Ladder of Citizen Participation, *Journal of the American Planning Association*, vol. Vol. 35 No. 4 July, (1969).

⁵⁰⁵ Schlossberg and Shuford, Delineating "Public" and "Participation" in PPGIS, *URISA Journal*, vol. Vol. 16 No.2, (2005) 17.

reflect the uncertainties on their part of the actual value or weight of digital democracy inputs in influencing policy. In not being aware of any policy to guide the implementation of digital democracy by civil service institutions, they take the position of not offering explicit answers and of portraying no conviction on the matter. This situation supports Y9's view, that the civil service is not reacting to the demand for it to be flattened, and Y6's view on elitism and the location of the bureaucracy in the power structure, discussed in chapter 4.

The findings suggest that digital democracy's relevance in terms of integration and influence in policy making is limited to a willingness of the civil service to receive comments and to gauge the feeling of the general public on an issue. As such, it may be considered by some, to be an information gathering mechanism, which further concentrates power in government and the bureaucracy. Phrases used to frame digital democracy's integration and influence, such as, "there is some element of interest" (X9A), "second opinion" (X10A) and inputs being regarded as "useful" (X7A), also indicate tokenism, a situation where there is a minimal degree of delegation of power, as could be expected of an elitist bureaucracy.

CHAPTER 8

CONCLUSION

This concluding chapter discusses the research outcomes in the context of the research questions posed for this investigation. The chapter also considers the constraints and limitations of the study. It highlights some priorities for future research opportunities which have become apparent.

REFLECTIONS ON THE STUDY

This research has set out to investigate digital democracy's relevance in enhancing citizen participation in policy making within the Malaysian civil service. The research findings make a contribution to theoretical knowledge as well as a practical contribution to the work of those same policy makers and others. From a broad perspective, it assesses the added value of technology in enhancing citizen participation in the democratic processes of government. It describes the relevance of technology from the perspective of democratic objectives and gains within the context of existing enablers and barriers and issues and benefits to citizen participation for policy making within the Malaysian civil service. In doing so this study explores new dimensions through this focus on a South East Asian state and its civil service and offers a significant contribution to the emerging field of digital democracy.

Through a process of literature review (chapter 1), a number of related and relevant premises to this enquiry have been identified, namely:

- that there is no existing comprehensive universal model of democracy;
- that the adoption of the ideals of democracy do not automatically lead to human and social development;
- that it is the specific forces of law, culture and architecture (activities and processes which have been designed and purpose-built) which work jointly to regulate speech and structure online deliberation;

- that the pursuit of the application of ICT's capacity to enhance democratic processes will be substantially effected by pre-existing democratic practices, pre-existing governance practices and the general political environment of a country;
- that civil servants have expertise and influence in policy making and play a vital role in including or excluding democratic practices in that process; and
- that, as in the definition of digital democracy offered by Hacker and Dijk,⁵⁰⁶ it is an addition to, and not a replacement for, traditional analogue political practices.

A discussion of these premises in the context of digital democracy practices enhancing citizen participation, suggested a critical basis for the research, namely: that further development of the concept of digital democracy is dependant on how citizens and governments struggle to determine fundamental questions of what social values are important to them and how they decide to live. In many ways, this is a study which looks into how the legal and social interpenetrate each other and provides one context for this, the relevance of digital democracy in enhancing citizen participation in policy making within the Malaysian civil service.

Law is a common and yet distinct aspect of everyday life in modern societies. At the same time that law is a social institution, it is also an aspect of popular culture. The internal logic of legal devices relate to economic, political and social processes. As a set of shared representations and aspirations, law represents a practical resource which handles the widest range of unspecified social issues, problems, and conflicts. It is matters of everyday life that become matters of law. Richard Abel, who studies and writes extensively on law in theory and practice, states:

When asked what I study, I usually respond gnomically: everything about law except the rules.⁵⁰⁷

Accordingly, a society's legal consciousness, or the ways in which "legality is experienced and understood by ordinary people as they engage, avoid or resist the law and legal

⁵⁰⁶ Hacker and Dijk, What is Digital Democracy, In Hacker and Dijk (eds.), *Digital Democracy Issues of Theory and Practice*, (London 2000) 1.

⁵⁰⁷ Abel, What We Talk About When We Talk About Law, In Abel (ed.), *The Law and Society Reader*, (New York and London 1995) 1.

meanings”,⁵⁰⁸ forms an essential basis for this research. Thus, the broad range of literature review focusing on Malaysia’s history, nation building, its civil service and also its ICT agendas (chapter 2) and laws forming the context of citizen participation in Malaysia framed within the concept of legal autopoiesis (chapter 3).

In this investigation, time and again, Blaug’s⁵⁰⁹ and Arnstein’s⁵¹⁰ thesis that the struggle in society has always been about power, discussed in chapter 1, comes back into focus. The paradox of “legitimate legality” as pointed out by Priban,⁵¹¹ discussed in chapter 3, also never seems too distant when considering participation and the consequences of differences in economic and political power equations. The concept of “developmentalism”, discussed in chapter 3, is also very relevant, regardless of civil service claims to impartiality and its openness to change in management processes brought about by ICT. The context of human rights in Malaysia, particularly freedom of speech, discussed in chapter 3, has a bearing on its civil servants’ capacity to respond to digital democracy. Specific aspects of the law relating to freedom of speech and contentions which exist about them makes it difficult for civil servants not to frame digital democracy practices to mirror that context as conditioned by a legal system which may still be responsive to political acts and interventions. As Barber writes:

No, what I want to suggest then is whether democracy survives and flourishes is not going to depend on the quality and character of our technology, but on the quality of our political institutions and on the character of our citizens.⁵¹²

Barber underlines a significant issue which this investigation sets out to demonstrate. This was to trace the context of citizen participation in Malaysia. The discussion in chapters 2 and 3 emphasises the historical evolution of, and justifications for constitutional provisions and laws. This is being impacted upon by a rising international tide of human rights

⁵⁰⁸ Ewick and Silby, *The Common Place of Law: Stories from Everyday Life*, (Chicago 1998) 35.

⁵⁰⁹ Blaug, *Engineering Democracy*, *Political Studies Association*, vol. 50, (2002) 107.

⁵¹⁰ Arnstein, A Ladder of Citizen Participation, *Journal of the American Planning Association*, vol. Vol. 35 No. 4 July, (1969) 216-224.

⁵¹¹ Priban, Legitimation between the Noise of Politics and the Order of Law: A Critique of Autopoietic Rationality, In Priban and Nelken (eds.), *Law's New Boundaries: The Consequences of Legal Autopoiesis*, (Dartmouth 2001) 104.

⁵¹² Barber, Which Technology for Which Democracy? Which Democracy for Which Technology?, *International Journal of Communication Law and Policy*, vol. 6, (2000/2001) 8.

discourse in favour of greater free speech and the liberalisation of communication and access to information brought about by factors of globalisation. Of particular significance is the internet which has disturbed older concepts of community, state and citizenship. It has supported the emergence of netizens who make up widely differing populations with differing values, occupying different places online to their actual geographic location.

Grasping an understanding how these components react to each other to define the context of digital democracy and of citizen participation in contemporary Malaysian society is a complex task. In attempting this task, it reveals that a broad range of factors influence the role of ICT. There is the influence of laws regulating speech in Malaysia. They uphold their “meta-meta stories”, of political stability, social order, national security and modernisation, as discussed in chapters 2 and 3. They also influence the possibilities for mediated public debates and media speech, factors closely linked to digital democracy. Consequently, the literature review chapters, (chapters 1, 2, 3) and the empirical chapters (chapters 4, 5, 6, 7), are bound together by the same concept as they seek to describe: that technology’s capacity for participatory democracy does not emerge in a vacuum.

REVISITING THE RESEARCH QUESTIONS

Having situated the study and reflected on the general structure of the thesis, this next section will revisit the research questions defined in chapter 1 and will briefly summarise the outcomes of the research in the context of the primary and each subsidiary research question.

Primary Research Question

How relevant is digital democracy in enhancing citizen participation in policy making within the Malaysian civil service?

The findings suggest:

- that civil servants agree that there are numerous opportunities for policy making to benefit from the added value of technology;

- that there is, however, a gap between their appreciation for digital democracy as a concept and their confidence and faith in its implementation for policy making within the Malaysian civil service;
- that civil servants are not ready to hand over the role of defining the process and content of policy making to citizens; and
- that civil servants are generally uncertain about the actual value or weight they are willing to afford digital democracy inputs and its true influence on policy making.

These findings, are results of considering digital democracy's relevance in policy making within the civil service through factors relating to the broad capability of technology to add value, articulated through commentators' general views (chapter 4), "Interaction", (chapter 5), "Institution" (chapter 6), and "Integration" and "Influence" (chapter 7). They are indicative of the critical point, already made, that technology's capacity for participatory democracy does not emerge in a vacuum. They indicate that digital democracy begins to evolve only when government begins to interface with citizens proactively. It indicates that digital democracy practices will only advance concurrently with citizens' willingness to engage with government. They also indicate that whether or not digital democracy will enhance citizen participation in policy making within the civil service is reflected and determined by the contours of responsibility within which the service functions. That, in many ways, is influenced by civil servants, their characteristics and traditions and their conformity to the general political culture of Malaysia.

As a whole, the findings of this study indicate that digital democracy practices may only be developed and introduced in specific institutional and legal contexts. These factors have a profound influence on their development, and the direction of political and social transformation in Malaysia is determined within this context. That they also define characteristics of Malaysian citizens including the extent of their self censorship, impacts on the relevance of digital democracy in enhancing citizen participation within the civil service.

Subsidiary Question 1

Interaction: Will the potential of technology in disseminating information, facilitating interaction and conducting political transactions through digital democracy practices be used so as to increase the transparency, efficiency, flexibility, cost-effectiveness, and inclusiveness of policy making within the Malaysian civil service?

This research shows that civil servants and commentators see eye to eye on ICT offering opportunities for Malaysian society to have more access to information and communication and thus be more aware of its surroundings. Civil servants' observation of the numerous opportunities for policy making to benefit from the added value of technology in enhancing citizen participation demonstrates a willingness by civil servants to consider its relevance in terms of interaction.

Civil servants also concur that ICT has made it inevitable that the civil service will need to continuously improve participative governance in pursuit of developing public policies which are more acceptable. Their expressed appreciation for the provision of online avenues for lodging public complaints, and testimonies that such practices have resulted in innovations in legislation and government processes for example, suggests that the civil service is opening up to criticisms. It also demonstrates a positive reaction by them of the ways in which policy making potentially stands to benefit from the possibilities of ICT including transparency, efficiency, flexibility, cost effectiveness and inclusiveness.

Hovering over discussions of citizen participation during the interviews is the awareness that racial sensitivities remain high among both commentators and civil servants. They sense that Malaysian society is uneasy about its past and in the present is still divided by race, religion, language and culture. This is not only hinted at, but is constantly referred to in considering ICT's general impact on the society. It was observable even while the civil servants were making efforts to portray public welfare as their sole consideration and that they conform to government policy to be future oriented and be positive in their outlook for ICT's role in fostering inter ethnic relations in Malaysia. A majority of both commentators and civil servants believe that, whatever the possibilities for access to information and

expression offered by ICT, the legal system still conditions the political use and the impact of the media. In their view, ethnic diversity in Malaysia survives because people remain careful about ethnic sensitivities.

However, civil servants appreciate ICT's capacity to enhance citizen participation and, despite a generally observable tendency to confine expressions to matters relating to individual work functions, civil servants resolutely stress the importance of promoting the spirit of accommodation within an ethnically diverse society like Malaysia. For example, they are adamant that the equilibrium which has been achieved through the ethnic compact, discussed in chapter 2, must be maintained. They lag behind some commentators' openness to the possibilities for ICT's capacity for information sharing and interaction. They support facilitating more discussions across the ethnic groups to gradually bring about a process which will reduce the significance of ethnicity in Malaysian society. The position adopted by civil servants on the subject of censorship and registration of participants in digital democracy practices, reveal that they are not comfortable acknowledging citizens' ability to participate sincerely and constructively in policy making practices.

Subsidiary Question 2

Institution: To what extent will digital democracy practices be integrated within the practices of Malaysian civil service institutions and how will they affect actual policy making processes?

What emerges from the responses is an impression that the appreciation civil servants display for citizen participation in policy making is very much of a provisional character and is open to challenge. There is a gap between the civil servants' appreciation for digital democracy as a concept and their confidence in implementing it within the civil service. Perhaps this discrepancy arises from the way the questions were approached within this part of the interview, which focused on the sample civil servants' estimation of other actors within the Malaysian civil service.

They agree that the service may benefit from improving its information culture or ability to analyse and react appropriately to online discussions of public affairs and welcoming opportunities to share information and ideas. On the other hand civil servants find it difficult to suppose that citizens generally have an appropriate aptitude for contributing to policy making. To a certain extent they concur with the commentators. This view is that although ICT promises an enhancement of a society's potential to develop itself, these factors do not translate into a stronger civil society if people do not decide to make their opinions known and take actions. At this point, both commentators and civil servants demonstrate a belief that Malaysian citizens are not sufficiently willing to participate to make digital media democratic.

In the relative absence of official policies and guidelines on digital democracy, the "I know what's good for you" mentality is very applicable to the opinions of these civil servants. They find it difficult to more formally integrate digital democracy within the existing policy making process. This may be attributed to their awareness of the tension between the concept and present institutional practices. Also significant is their general positive attachment to laws limiting freedom of speech to control citizen participation in policy making. The strong belief among civil servants in limits to freedom supports the opinion of commentators that civil servants, as well as the population in general, share a belief that racial antagonisms might tear the nation apart.

With the Weberian legacy,⁵¹³ discussed in chapter 1, clearly evident, many civil servants remain doubtful of their fellow citizens' maturity to handle more freedom. They are apprehensive about extending their individual appreciation for the digital democracy concept (as established when addressing subsidiary question 1), to other civil servants or to the civil service in general. During the interviews with civil servants, factors viewed as limitations on digital democracy emerge more readily than those viewed as promoting it. Their reflections that there is generally within the civil service, a lack of leadership in promoting citizen participation, incapacity to cope with the practices of an information

⁵¹³ Vigoda, From Responsiveness to Collaboration: Governance, Citizens, and the Next Generation of Public Administration, *Public Administration Review*, vol. 62, (2002) 529.

society, and an apprehension that the traditional roles of civil servants may be challenged, indicate their irresoluteness over whether digital democracy will add value to policy making in the Malaysian civil service. They are cautious about implementing it. These findings support the commentators' concerns that civil servants may not be able to appreciate digital democracy's ability to elevate the civil service's expertise, its status or its share of the decision making power.

When the positives and the negatives are considered, however, the contrasting observations made on "Interaction" and "Institution" may reveal some hope for a meaningful implementation of digital democracy in policy making within the civil service. There is observable appreciation by individual civil servants of digital democracy for policy making through its promise of the added value of technology, although they do not readily extend this to the civil service in general. This raises the possibility that in time, with more awareness and exposure, Pierson's⁵¹⁴ "tipping point", as discussed in chapter 1, may be achieved. An individuals' appreciation for the concept may lead to a push for it to be more formally integrated within the policy making process of the civil service. Indications that civil service organisations such as the Ministry of Housing and Local Government and the Public Complaints Bureau are taking the lead in introducing more comprehensive management of online information, presents some promising moves to examine excessive bureaucratic processes as well as hierarchies.

Subsidiary Question 3

Integration: Will the potential of digital democracy be used optimally in integrating the basic elements of the entire policy making process in the Malaysian civil service?

"Integration" considers the question of whether the potential of technology will be used optimally in integrating the basic elements of the entire policy making process. Analysing civil servants' preferences of when citizens should be engaged, revealed that a majority prefers its implementation during the analysis stage and for purposes of evaluating policy

⁵¹⁴ Pierson, Increasing Returns, Path Dependence, and the Study of Politics, *The American Political Science Review*, vol. 94, (2000) 251-267.

after its implementation. This suggests that civil servants are not ready to hand over the role of defining the process and content of policy making to citizens. Favouring policy based forums in which digital democracy practices are organised around issues that relate to an existing draft policy, they fall short of acknowledging an equal standing for citizens in setting the agenda.

Subsidiary Question 4

Influence: Will digital democracy practices for policy making in the Malaysian civil service be such that people involved may influence issues of interest?

In considering the question of “Influence”, civil servants are generally observed to be uncertain about the actual value or weight they are willing to afford digital democracy inputs. There is no conviction on their part that these inputs will influence policies. This stand, or rather absence of stand, is taken at a time when the civil service still lacks policies or guidelines on digital democracy. The position is made understandable by commentators’ observations that the net community is made up of disparate individuals with their own ideas of what is important and what is true. However, civil servants are in agreement with commentators in expecting that, at the very least, inputs from non government initiated digital democracy practices, such as blogs, can be beneficial by revealing people’s concerns, what they think of government policy as stated, and, what issues need to be addressed.

Civil servants certainly concur that listening should not automatically be taken to mean implementing. Thus they are only prepared to go as far as acknowledging that digital democracy practices represent the civil service’s willingness to listen to differing views to develop its ability to react suitably and take appropriate actions on citizens’ inputs. This view however, sufficiently satisfies commentators’ expectations that digital democracy only requires attention to, and consideration of, the views and opinions of people or groups of people. To commentators, what is more important is that digital democracy raises an awareness among citizens that they are being offered a more substantial role to play in the policy making process.

Commentators feel that it would not be appropriate for digital democracy to remain unacknowledged by the civil service. Although gradualism in transformation is acceptable, they expect civil servants to keep abreast of change. In order for digital democracy to flourish, however, commentators feel that its practice within the civil service has to be made as meaningful and comprehensive as possible. Bearing in mind that whether actual actions are being taken on issues may impact on the credibility of the government, commentators believe that at whatever junction a citizen participates in an online process provided by the civil service, (either to obtain services, file complaints or in a consultation activity), his or her experience will influence further participation. They are of the opinion that in order for people to truly appreciate and participate in digital democracy, it must be seen to offer them an added value which comes in the form of a more efficient service delivery or more acceptable policies. Civil servants agree that how the Malaysian civil service passes that test, will depend on them further developing their ability to analyse information and play the role of strategic thinkers in considering digital democracy's influence on policy making.

LIMITATIONS OF THE THESIS AND FUTURE RESEARCH

By creating further awareness of change, it is hoped that the study's findings will inform the formulation of digital democracy practices in Malaysia at the policy level. The Malaysian civil service will be more equipped to recognise that the pursuit of the advantages of technology's capabilities necessarily involves consideration of contextual factors such as specific legal and institutional contexts. It must be conceded, however, that the research findings are confined to the context of policy making within the Malaysian civil service, which as far as this study is concerned, has served the pragmatic purpose of providing a scope or focus fitting the scale of a doctoral research. With the exception of the views of a small group of commentators, particularly chosen for their expertise in fields related to the subject of enquiry, the focus on civil servants has resulted in findings which do not develop the characteristics, interests and potential of actors in digital democracy such as politicians, corporations, industry associations, profession groups, interest groups

and individuals. It also does not deal with particular policy making outside the civil service, particularly in the framing of policy for legislation in the context of parliament.

A focus on Malaysian civil service organisations at the federal level and on civil servants who are in managerial positions means that those interviewed may share similar experiences. This permits some common outlooks and interpretation of events, which may not be shared by their colleagues at the state and local government levels or by civil servants in non managerial positions. Further research would be useful to identify how these variations may affect digital democracy's relevance in enhancing citizen participation in democratic practices.

This study, which specifically involved looking into the initial framing and understanding of the concept of digital democracy by Malaysian civil servants, offers a starting point for further research to identify more closely the roles played by technology, particularly interactive ICT, in informing civil servants' tasks for policy making. As more digital democracy practices emerge, determining the civil servants' norms or actual employment of technology within the resources which are available to them, such as applications, software and systems, may suggest the actual adoption and level of effective use of ICT. This will facilitate an understanding of the effectiveness and efficiency of various types of digital democracy practices as well as any particular digital democracy activity. Once this is achieved, it may pave the way for more comprehensive researches into the general directions digital democracy may take in the future, including the extent to which digital democracy will promote greater public-private partnerships and eventually a redefinition of the nature of the state; the role of technology in creating a more transparent and open state; the role of technology in promoting greater interdependence both within a particular country and beyond its borders ; and the role of technology in promoting flatter and less hierarchical structures.

The study has laid down the broad contours of the Malaysian legal system as a factor which forms the context of citizen participation in policy making. The discussions in this thesis positions law as a force which contributes to structuring online deliberations and focuses on

its development as being anchored in historical factors. Those discussions recognise that technology, particularly the internet, is a complex force to which the law must respond, thus the discussions of autopoiesis of law as part of a functional interactive system. In relation to the issue of variations which may exist between different actors in digital democracy, as well as variations between actors within the Malaysian civil service itself, concepts which relate to the broader area of technology's capacity for information sharing such as the concept of netizens and the Wiki could be more closely examined. This would serve to quantify or qualify parameters for predicting interests, knowledge and capacity for making digital media democratic. How the institutions within the Malaysian legal system, the profession, prosecutors and the judiciary also react to these changes generally, and particularly in the field of online regulation, is also worthy of further exploration.

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Appendices



INFORMATION TO PARTICIPANTS INVOLVED IN RESEARCH

Project Title

You are invited to participate in a research project entitled 'Exploring Contextual Challenges to Digital Democracy in Malaysia: Towards a Supportive Policy and Legal Framework'.

Researchers

This project is being conducted by a student researcher, Ms Nor Mazny Abdul Majid, as part of a PhD study at Victoria University under the supervision of Professor Neil Andrews, and Dr Scott Beattie from the School of Law in the Faculty of Business and Law, Victoria University.

Purpose of research project

The purpose is to try to project how the implementation of digital democracy in Malaysia will be affected by pre-existing state-citizen relationships, policies and laws as determined by its historic, ethnic and political contexts and how public administrators' framing of the use of digital democratic practices will affect the promotion of greater democratic participation in Malaysia.

Your involvement

You are invited to participate in an interview which will take about one hour. The interview is about your opinions on digital democracy, or the use of Information and Communications Technology (ICT) for public participation in policy and law making processes in Malaysia. It is to gauge your understanding of the concept and how you see its implementation in the context of Malaysia. You are, however, not obliged to disclose anything which you are not comfortable with or answer questions which you do not wish to.

Confidentiality

Your response to questions will remain confidential. You will remain anonymous. Your statements or comments may be republished, but not in such a way that you would be identified.

Potential risks and safeguards

Minimum risks have been identified from participating in this research. Throughout the interview, if you feel uncomfortable or require some form of explanation, please feel free to raise the issue with the researcher. As indicated, you are free not to answer any question. However, you will not be identified as the maker or author of any statement. Also, the statement or comment will not be used in a way which will enable you to be identified.

Freedom for consent and withdrawal

Participation in this research is entirely voluntary and you are under no obligation to consent. However, if you decide to participate, you may withdraw at any time without any consequence or influence to your present or future association with Victoria University.

Potential benefits

Your participation will contribute towards framing policies for digital democracy in policy and law making in Malaysia. It also will assist in better understanding potential paths for its development.

Inquiries

Queries in relation to this project are welcome at any time. Please direct them to Professor Neil Andrews or Dr Scott Beattie. If complains or queries are not answered to your satisfaction, you may contact the Secretary, Victoria University Human Research Ethics Committee, Victoria University, PO Box 14428, Melbourne, VIC, 8001 phone (03) 9919 4781.

Acknowledgement

Thank you for taking the time to read this information. We hope that you will find the interview interesting.



CONSENT FORM FOR PARTICIPANTS INVOLVED IN RESEARCH

INFORMATION TO PARTICIPANTS

We would like to invite you to be a part of a study, "Exploring Contextual Challenges To Digital Democracy In Malaysia: Towards A Supportive Policy And Legal Framework", to determine:

- i. How the implementation of digital democracy in Malaysia will be affected by pre-existing state-citizen relationships, policies and laws as determined by its historic, ethnic and political contexts; and
- ii. How public administrators' framing of the use of digital democratic practices will affect the promotion of greater democratic participation in Malaysia.

CERTIFICATION BY SUBJECT

I certify that I am at least 18 years old and that I am voluntarily giving my consent to participate in the study, "Exploring Contextual Challenges To Digital Democracy In Malaysia: Towards A Supportive Policy And Legal Framework", being conducted at Victoria University by Professor Neil Andrews and Dr Scott Beattie.

I certify that the objectives of the study, together with any risks and safeguards associated with the procedures listed hereunder to be carried out in the research, have been fully explained to me by Nor Mazny Abdul Majid, and that I freely consent to my participation in an interview wherein the answers will be recorded by an audio tape or some other form.

I certify that I have had the opportunity to have any question answered and that I understand that I can withdraw from this study at any time and that this withdrawal will not jeopardise me in any way.

I have been informed that the information I provide will be kept confidential.

Name: _____

Signed: _____

Witness other than the researcher: _____

Date: _____

Queries about your participation in this project may be directed to the researcher, Professor Neil Andrews at 61399191828 or e-mail neil.andrews@vu.edu.au. If you have queries or complaints about the way you have been treated, you may contact the Secretary, Victoria University Human Research Ethics Committee, Victoria University, PO Box 14428, Melbourne, VIC, 8001 phone (03) 9919 4781



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Ruj. Tuan:
Your Ref.:

Ruj. Kami: UPE: 40/200/19/2197
Our Ref.:

Tarikh: 28 February 2008
Date:

Nor Mazny Abdul Majid
 18 Jalan Kristal 3
 Taman Kristal
 43800 Dengkil
 Selangor

APPLICATION TO CONDUCT RESEARCH IN MALAYSIA

With reference to your application dated 27 November 2007, I am pleased to inform you that your application to conduct research in Malaysia has been approved by the Research Promotion and Co-Ordination Committee, Economic Planning Unit, Prime Minister's Department. The details of the approval are as follows:

Researcher's name : NOR MAZNY ABDUL MAJID
 Passport No. / I. C No: 700102-02-5338
 Nationality : MALAYSIA
 Title of Research : "EXPLORING CONTEXTUAL CHALLENGES TO DIGITAL DEMOCRACY IN MALAYSIA: TOWARDS A SUPPORTIVE POLICY AND LEGAL FRAMEWORK"

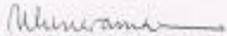
Period of Research Approved: THREE YEARS

2. Please collect your Research Pass in person from the Economic Planning Unit, Prime Minister's Department, Parcel B, Level 4 Block B5, Federal Government Administrative Centre, 62502 Putrajaya and bring along two (2) passport size photographs. You are also required to comply with the rules and regulations stipulated from time to time by the agencies with which you have dealings in the conduct of your research.

3. I would like to draw your attention to the undertaking signed by you that you will submit without cost to the Economic Planning Unit the following documents:

- a) A brief summary of your research findings on completion of your research and before you leave Malaysia; and
 - b) Three (3) copies of your final dissertation/publication.
4. Lastly, please submit a copy of your preliminary and final report directly to the State Government where you carried out your research. Thank you.

Yours sincerely,


(MUNIRAH ABD. MANAN)
For Director General,
Macro Economic Section,
Economic Planning Unit.
E-mail: munirah@epu.jpm.my
Tel: 88882809/2818/2958
Fax: 88883798

ATTENTION

This letter is only to inform you the status of your application and **cannot be used as a research pass**.

C.c:

Ketua Setiausaha
Kementerian Perumahan dan Kerajaan Tempatan
Blok K Paras 5 Utama
Pusat Bandar Damansara
50782 Kuala Lumpur
(u.p: En Liew Swee Liang)

(Ruj. Tuan: (2)d/m, KPKT.BP/19/510)

Ketua Setiausaha
Kementerian Sains, Teknologi dan Inovasi
Aras 6 Blok C5 Parcel C
Pusat Pentadbiran Kerajaan Persekutuan
62502 Putrajaya

Appendix 3

Pengarah
Unit Perancang & Pembangunan Negeri,
Pejabat Setiausaha Kerajaan Negeri Selangor,
Tingkat 16,
Bangunan Sultan Salahuddin Abdul Aziz Shah,
40000 Shah Alam, Selangor.
(u.p: En Awaluddin Zakaria) (Ruj. Tuan: (71)d/m.IPK.Sel.04.05.01/45 Jld 8)

Setiausaha Kerajaan Negeri
Pejabat Setiausaha Kerajaan Negeri Melaka
Jabatan Ketua Menteri Melaka
Seri Negeri, Ayer Keroh
75450 Melaka
(u.p: En. Mohamad Salleh bin Ismail) (Ruj. Tuan: JKKM 226/27 SEM Kit5(15))

Ketua Pengarah
Unit Pemodenan Tadbiran dan Perancangan Pengurusan Malaysia (MAMPU)
Aras 6 Blok B2
Jabatan Perdana Menteri
Pusat Pentadbiran Kerajaan Persekutuan
62502 Putrajaya
(u.p: En. Hairul Rashidan bin Md Rashid) (Ruj.Tuan: UPTM 159/505/1-5 (14))

Prof. Dr. Nik Meriam Nik Sulaiman
Pengarah,
Institut Pengurusan Penyelidikan dan Perundingan
Universiti Malaya,
C 313, Bangunan IPS,
50603 Kuala Lumpur.

MID-YEAR POPULATION ESTIMATES BY ETHNIC GROUP AND SEX

Ethnic Group and Sex	2003 (^{'000})	2004	2005	2006	2007
Total	25,048.3	25,580.9	26,127.7	26,640.2	27,173.6
Malaysian Citizens	23,424.3	23,887.1	24,362.0	24,803.5	25,265.8
Bumiputera	15,351.2	15,701.4	16,080.5	16,406.4	16,768.0
Malay	12,605.1	12,893.4	13,190.2	13,475.1	13,773.1
Other Bumiputera	2,746.1	2,808.0	2,870.3	2,931.4	2,994.9
Chinese	5,997.0	6,074.6	6,154.9	6,219.6	6,267.9
Indian	1,779.3	1,806.8	1,834.8	1,858.5	1,883.9
Others	296.9	304.3	311.8	318.9	326.1
Non-Malaysian Citizens	1,623.9	1,693.8	1,765.7	1,836.7	1,907.8
Male	12,751.9	13,023.3	13,302.8	13,562.6	13,880.0
Malaysian Citizens	11,843.7	12,077.6	12,318.3	12,540.4	12,773.0
Bumiputera	7,738.5	7,916.7	8,099.6	8,275.3	8,458.9
Malay	6,350.9	6,498.4	6,650.6	6,796.2	6,948.4
Other Bumiputera	1,387.6	1,418.3	1,449.0	1,479.1	1,510.6
Chinese	3,065.4	3,104.1	3,144.5	3,176.1	3,209.4
Indian	890.2	903.3	916.8	927.8	939.7
Others	149.6	153.5	157.4	161.2	164.9
Non-Malaysian Citizens	908.2	945.7	984.5	1,022.2	1,060.0
Female	12,296.4	12,557.7	12,824.9	13,077.6	13,340.6
Malaysian Citizens	11,580.7	11,809.5	12,043.7	12,263.1	12,429.8
Bumiputera	7,612.6	7,784.7	7,960.9	8,131.1	8,309.1
Malay	6,254.2	6,395.1	6,539.6	6,678.8	6,824.8
Other Bumiputera	1,358.4	1,389.7	1,421.3	1,452.3	1,484.3
Chinese	2,931.6	2,970.5	3,010.4	3,043.5	3,078.5
Indian	889.1	903.5	918.0	930.7	944.1
Others	147.3	150.8	154.4	157.8	161.1
Non-Malaysian Citizens	715.7	748.1	781.2	814.5	847.8

Note: Adapted from Yearbook of Statistics Malaysia, 2007.