

Electoral Politics in Malaysia: 'Managing' Elections in a Plural Society

Lim Hong Hai

Introduction

Elections are contests for the highest stakes in national politics and the electoral system is a set of predetermined rules for conducting elections and determining their outcome. Thus defined, the electoral system is distinguishable from the actual conduct of elections as well as from the wider conditions surrounding the electoral contest, such as the state of civil liberties, restraints on the opposition and access to the mass media. While all these aspects are of obvious importance to free and fair elections, the main interest of this study is the electoral system.

The electoral system is important because it exerts an essential and independent effect on electoral outcomes, and hence on the balance of advantage among contestants in the struggle for representation and power in the political system. Channelled by and buffeting formal political structures, of which the electoral system is part, this contest for power is inevitably an expression of salient cleavages in society. In Malaysia, political mobilization follows ethnic divisions and the struggle for power is among political parties representing particular ethnic groups. It is therefore essential to begin with some basic information on the country's political system and plural society.

The Federation of Malaysia consists of 11 states in Peninsular Malaysia (i.e. the former Federation of Malaya, which gained independence from the British in 1957) and the East Malaysian states of Sabah and Sarawak, which joined the Federation of Malaya to form the Federation of Malaysia in 1963. Besides being federal, the form of government is constitutional, monarchical and parliamentary at both the state and federal levels. Each of the 13 states and the Federation has a written constitution. The Federal Constitution allocates nearly all important powers as well as the major sources of revenue to the federal government. The Federation's King (*Yang di-Pertuan Agong*) is elected for a term of five years by, and rotated among, the hereditary royal rulers of nine of the 11 states in Peninsular Malaysia. The other four states without royal rulers are each headed by a head of state (*Yang di-Pertua Negeri*) appointed for four years by the *Yang*

di-Pertuan Agong (the Federation's King) after consulting the chief minister of the state. The rulers and the state heads comprise the Conference of Rulers. Each of the 13 states has a unicameral State Legislative Assembly (*Dewan Undangan Negeri*), while the federal parliament has two houses, namely the Senate (*Dewan Negara*) and the House of Representatives (*Dewan Rakyat*). Only the latter is directly elected and is hereafter referred to when the term 'parliament' is used in an electoral context. Unless dissolved sooner, the parliament, or a state legislature, has a term of five years: elections are thus held for parliament and the state legislatures at intervals not exceeding five years. As in all parliamentary systems, the leader of the political party or coalition with a majority of seats in parliament or a state legislative assembly would be appointed by the titular head to form the government.

Over 80 per cent of Malaysia's population of over 23 million is found in Peninsular Malaysia, where the Malays form the largest ethnic group followed by the Chinese and Indians. All these ethnic groups are minorities in Sabah and Sarawak, where native ethnic groups other than the Malays make up about 60 per cent and 50 per cent of the population, respectively. Within Peninsular Malaysia, the Malay share of the population has increased from almost half at independence in 1957 to about 60 per cent at present. They form about 49 per cent of the population of the entire Federation, but when the Malays in Sabah and Sarawak (where they form 9 per cent and 22 per cent of the population, respectively) are added, the Malays form a slight majority, about 53 per cent, in the country. The Chinese and Indian populations in Peninsular Malaysia have decreased from 37 per cent and 11 per cent at independence to the present 28 per cent and 9 per cent, respectively. The Chinese form 15 per cent and 28 per cent of the population in Sabah and Sarawak, respectively, and about 27 per cent, the second largest ethnic group after the Malays, in the whole Federation. Indians form only 8 per cent of the population in the Federation. The various ethnic groups are also politically and officially classified as so-called *bumiputra* (sons of the soil, or indigenes), consisting of the Malays and the natives of Sabah and Sarawak, and non-*bumiputra*, consisting mainly of the Chinese and Indians who continue to be called the immigrant races. *Bumiputra* citizens are accorded a variety of constitutionally enshrined special rights or privileges.

The Basic Rules of the Electoral System

The electoral system is defined by certain fundamental rules. First are the rules that define who can and cannot vote. These franchise rules can directly affect competing groups and their political parties by differentially granting or denying the vote to members of various groups. Second is the method of election. The main choice here is between the first-past-the-post or plurality method of election, and some form of proportional representation. The plurality method

favours big parties at the expense of smaller ones and thus produces a stronger government than proportional representation, which facilitates representation and survival for smaller parties. Third, the manner in which the country or the total electorate is divided into electoral constituencies crucially affects electoral outcomes under plurality election. Constituency delineation has two aspects that can affect electoral outcomes: the distribution of the total electorate among constituencies (apportionment) and the determination of constituency boundaries (districting). Both can be exploited for partisan political advantage and are common and effective forms of 'electoral abuses' (Taylor and Johnston, 1979: ch. 7). Delineating constituencies with unequal electorates (i.e. mal-apportionment) favours parties with more supporters in the smaller constituencies. Even without mal-apportionment, constituency boundaries can be drawn to the advantage of a political party (usually the ruling one), a practice called gerrymandering. Finally, because of the need for impartiality, rules providing for the administration of the above rules and for the conduct of elections also assume considerable importance.

The basic rules of the electoral system were formulated prior to independence for the first federal election in the Federation of Malaya in 1955. These rules, together with important additions and changes, were incorporated into the constitution adopted at independence in 1957. Important amendments were made to the electoral system both before and after the 1963 formation of the expanded Federation of Malaysia. Examination of these various amendments, totalling six in number, provides the best way to understand the basic rules of the present Malaysian electoral system.

The 1953-54 Initial Formulation

Following its impressive victories in local elections in the early 1950s, the Alliance, consisting of the main Malay party, United Malays National Organization (UMNO), and the main Chinese party, MCA (Malayan, later Malaysian, Chinese Association), pressed the British for the early introduction of federal elections. In response, the British colonial administration appointed a 46-member committee of the then appointed Federal Legislative Council to examine the question of federal elections and to make recommendations. The main issues of contention at the time concerned the date of the first federal election and the number of Council members to be elected. The committee's recommendations on these matters were opposed by the Alliance, but differences were resolved through compromise soon after the committee produced its report in 1954. The long-term importance of the committee's report (Federation of Malaya, 1954a) lies in its relatively uncontroversial and subsequently adopted recommendations on virtually all aspects of the electoral system.

The committee rejected compulsory voting and made federal citizenship and registration the main requirements for the franchise. Most non-Malays were then not yet citizens and UMNO was willing to accommodate the MCA's wish

to extend the vote to non-citizen adults (21 years and above) meeting minimum residential requirements for the first federal election. However, the committee held on to the principle of giving the vote only to citizens. To maintain Alliance unity, UMNO assured its partner that the question of citizenship for non-Malays would be satisfactorily resolved before independence. Qualified persons would also have to register themselves as electors in order to be placed on a common electoral roll. The requirement of registration would exclude some otherwise qualified persons, but this was not seen as necessarily bad, as persons who did not take the trouble of registering themselves were believed to have 'less civic consciousness' (*Proceedings of the Federal Legislative Council*, March 1954-January 1955: cols 367-368).

Proportional representation was rejected in favour of the plurality method in single-member constituencies on the grounds of the latter's simplicity and promotion of strong government. This method of election was both familiar to the British and consistent with their goal of handing power to the Malays, who comprised the largest ethnic group. The two main Malay-led parties, namely the UMNO-led Alliance and the Parti Negara (National Party), both supported it. The MCA also agreed, largely because its alliance with UMNO would provide it with access to governmental power, even though its leader, Tan Cheng Lock, had earlier advocated proportional representation. Not surprisingly, neither the Alliance nor Parti Negara were keen on any electoral devices, including the possibility held out by the committee's report of using the so-called 'limited vote' in multi-member constituencies in the main urban centres, for ensuring or facilitating minority (i.e. Indian) representation. When it became clear that no such constituencies would be delineated, Indian political leaders – who until then had strongly espoused a non-ethnic approach to the country's politics – waged an eleventh-hour campaign for a number of reserved seats for Indian candidates (Ampalavanar, 1981: 119-121; Subramaniam, 1973: 283-289). The campaign failed and the main Indian party, the MIC (Malayan, later Malaysian, Indian Congress) promptly joined the Alliance to ensure its political future.

With respect to electoral constituencies, the committee accepted the equal-size principle and provided for constituencies with roughly equal populations. As the restrictive citizenship laws then in force would result in an overwhelmingly Malay electorate, constituencies with the same number of inhabitants would produce more equitable or acceptable results than constituencies with the same number of electors. The committee also laid down other rules of constituency delineation. These rules were generally conventional and unexceptionable, except for 'weightage for area' for rural constituencies (hereafter rural weightage), which qualifies the equal-size principle. In Malaya, rural areas were (and are) largely Malay and non-Malays were (and are) concentrated in the urban areas. Rural weightage would thus increase the value of the rural vote compared to the urban vote, thereby increasing the electoral power of the Malays.

Mal-apportionment in favour of rural areas was not only part of British practice, but was also probably insisted upon by UMNO in order to ensure Malay political superiority and strengthen its own position within the Alliance. In persuading UMNO to agree to the proposed relaxation of citizenship as the condition for the franchise in the first federal election (subsequently rejected by the committee), its leader, Tunku Abdul Rahman, had assured his party that the proposal would not jeopardize the political position of the Malays. He pointed out that MCA leaders had acknowledged the need for Malay political control and that the position of the Malays would be safeguarded in the delineation of constituencies (Abdul Rahman, 1953). Rural weightage subsequently formed part of the Alliance submission to the committee.

The Alliance did not, however, specify the extent of rural weightage. The committee's decision on this matter, together with its justification for rural weightage, is contained in paragraph 65(c) of its report. This provides that 'the numbers of inhabitants within each constituency should be approximately equal except that, having regard to the greater difficulty of contacting voters in the country districts and the other disadvantages facing rural constituencies, a measure of "weightage" for area should be given to the rural constituencies'. It then states that 'the Committee would not regard such weightage as unreasonable if in some instances a rural constituency should contain as little as one-half of the constituents in the more populous areas'. This was included in the terms of reference of the Constituency Delineation Commission (Federation of Malaya, 1954b) to divide the country into 52 constituencies – the number of elected legislative seats finally agreed to by the British and the Alliance. Rural weightage, together with Malay predominance in the electorate, resulted in Malay constituencies in all but two of the constituencies.

The 1957 Malayan Electoral System

The Alliance won 51 of the 52 seats in the first federal election in 1955. During the period of constitutional formulation prior to independence in 1957, there was no dispute over the electoral system and conflict was focused on the more ethnically salient and contentious issues of citizenship, Malay special rights and language. Only the Alliance submitted views on the electoral system to the Reid Constitutional Commission appointed to formulate the constitution of independent Malaya; these briefly indicated Alliance support for the electoral system already in place.

The recommendations of the Reid Commission (Colonial Office, 1957a) retained the main features of the existing electoral system, with certain modifications and additions to ensure an equitable ethnic balance and the proper administration of the electoral system after the British departure. Citizenship conditions were liberalized to enable nearly all non-Malays to become citizens and to be registered as electors. Plurality election and rural weightage were

retained: these would ensure Malay political control even after the enfranchisement of large numbers of non-Malays by the liberalization of citizenship. With respect to electoral constituencies, the Reid Commission sought to keep mal-apportionment within stricter bounds. First, it prescribed a formula for the equitable distribution of constituencies among the 11 states on the basis of both population and electorate. As Malays and non-Malays were concentrated in different states, this would ensure fairness not only among states but also among the major races. More importantly, in the next step of delineating constituencies within each state, the Commission reduced the degree of permissible rural weightage in order to provide a more meaningful political role for non-Malays after independence. The delineation of the 1955 constituencies allowed a maximum weightage of 2 to 1 in terms of population – or a variation of plus or minus one third or 33 per cent from the average constituency population. The Reid Commission limited disparities among constituencies to within 15 per cent above or below the average constituency electorate in each state. With the ratio of electors to population expected to converge under the liberal citizenship provisions, the continuation of the earlier rural weightage of 2 to 1 in terms of population would result in a similar amount of weightage in terms of electorate. In recommending a 15 per cent limit on deviations from the average constituency electorate, the Reid Commission more than halved the amount of rural weightage previously allowed.

The Reid Commission also realized the importance of ensuring impartiality and fairness in electoral administration, especially in the plural Malayan context. To this end, it entrusted the important functions of registering electors and preparing and revising electoral rolls, delineating constituencies and conducting elections to an independent Election Commission of three members. Appointments to the Election Commission were to be made by the King after consulting the Conference of Rulers. Although the King, as a constitutional monarch, would presumably have to act on the advice of the prime minister, the Reid Commission also required that appointments be made to ensure that the Election Commission 'enjoys the confidence of all democratic political parties and of persons of all communities'. Members of the Election Commission would retire at the age of 65 and were accorded the same safeguards to tenure as judges to ensure their independence.

It is evident that the Reid Commission took care to ensure that the electoral system and its administration would be widely seen as fair. Malay dissatisfaction with the Reid constitutional proposals led to their review by a so-called Working Party consisting of British officials and representatives of the rulers and the Alliance (Colonial Office, 1957b). Although mainly concerned with other Reid recommendations, the Working Party also made two changes to the electoral system. It replaced the more specific and stringent Reid requirement that the Election Commission should enjoy the confidence of all political parties and communities with one stating broadly that it should enjoy

'public confidence'. It also added an 8-10 year interval for the review and re-delineation of electoral constituencies. In all other important aspects, the Reid proposals on the electoral system were accepted by the Working Party and became part of the Federal Constitution at independence.

The Reid Commission also delayed the first national election (at both federal and state levels) until 1959 to enable non-Malays who would qualify as citizens under the new citizenship provisions to register themselves as electors. For the 1959 election, the 52 constituencies used in 1955 were each to be split into two, and each of the resulting 104 parliamentary constituencies subdivided into state constituencies – a task duly carried out by the Election Commission in 1958. New constituencies complying with the provisions of the constitution would only be delineated for elections to be held after 1959. A notable effect of these transitional provisions was that the increase in non-Malay (mainly Chinese) voting strength – resulting from the relaxation of citizenship conditions and the reduction of rural weightage – would be realized in two stages or instalments. The first, in 1959, would consist mainly of additions to the electorate; and the second, in the next election in 1964, would be the effect of the reduction in rural weightage.

The 1960 and 1962 Amendments

The 1959 election, fought on the basis of a more representative electorate, has been described as a national referendum on the 1957 constitutional bargain, with the Alliance defending the bargain against attacks from both the Malay and non-Malay communal flanks. The Alliance managed to win power at the federal level and in nine of the 11 states. However, it lost considerable Malay as well as non-Malay support. Parti Islam Se-Malaysia (PAS or Pan-Malayan, later Pan-Malaysian, Islamic Party) established itself as the major Malay opposition party by its impressive performance in the predominantly Malay east coast states of Kelantan and Trengganu, where it also captured the state governments. In the predominantly Chinese urban areas, the majority of voters supported the non-Malay opposition, largely because of dissatisfaction over educational policy and the UMNO-MCA crisis that preceded the federal polls (Smith, 1960). Finding itself squeezed from both sides, the Alliance moved rapidly to secure its position. To counter the appeal of PAS, government posture and policy became more pro-Malay, and a massive and highly publicized rural development programme was launched. This only worsened the problem of non-Malay support. The Alliance therefore resorted to constitutional amendments that would contain or reduce the electoral weight of the non-Malays, or that would allow it to do so.

The initial amendments were part of the Constitution (Amendment) Act of 1960. Procedures for processing citizenship applications were tightened. The requirement of a residence period of at least six months in a constituency before

a person is entitled to vote therein was removed. Apart from the administrative difficulties cited by the government as the reason for its abolition, this requirement probably deprived, or would deprive, more Malays than non-Malays of the right to vote because of rural-urban migration and resettlement in government land schemes. The Act also amended article 114(4) of the constitution to provide for the removal from the Election Commission of any member who 'engages in any paid office or employment outside the duties of his office'. This was seen as an attempt to remove the then chairman of the Election Commission, who was having problems with UMNO because of his highly independent and non-partisan stance in the delineation of new electoral constituencies after the 1959 election. The attempt failed, however, because the chairman was able to shield himself with the unamended article 114(6), which provides that 'the remuneration and other terms of office of a member of the Election Commission shall not be altered to his disadvantage after his appointment' (Smith, 1967: 61-62).

The Alliance followed up with more drastic amendments after the 1960 re-delineation of electoral constituencies by the Election Commission (Election Commission, 1960). The Election Commission's adherence to the provisions of the constitution, including the limits to rural weightage, resulted in a marked reduction in disparities among the new constituencies: the largest parliamentary constituency (Pasir Puteh in Kelantan, with 28,563 electors) would contain only 1.52 times the electors in the smallest (Malacca Tengah in Malacca, with 18,775 electors). The Alliance, particularly UMNO, was alarmed. Following complaints by several UMNO leaders and a spirited defence of the re-delineation by the chairman of the Election Commission in the newspapers, the Alliance invited views from all its state and district branches for the purpose of reviewing and changing the new constituencies (UMNO Files: UMNO/SUA No. 171/1959). It is not difficult to understand UMNO's reaction. The new constituencies would give greater electoral weight or importance in the next election in 1964 to urban non-Malay electors who had deserted the Alliance for the opposition in 1959. That this lost support was unlikely to be recovered, especially with the government's pro-Malay shift in policy, was confirmed by the results of the 1961 local elections: the Alliance scored gratifying victories against PAS in Malay areas, including Kelantan and Trengganu, but its popularity in the major urban centres showed no sign of improvement (Silcock, 1963; Smith, 1961-63). The Alliance responded with the constitution (Amendment) Act of 1962. This Act effected extensive changes to the constitutional provisions on citizenship and the electoral system.

The citizenship amendments cannot be detailed here. Suffice it to say that they exemplify well the trends in post-independence citizenship amendments noted by Sheridan and Groves (1967: 13): '(1) towards making citizenship harder to acquire, (2) towards making citizenship easier to lose and (3) towards enlarging executive discretion in matters of citizenship'. However, the major purpose

behind the 1962 Act was to reduce the weight, rather than to slow down the numbers, of non-Malay electors. This was done through amendments affecting constituency delineation.

The Act annulled the new constituencies delineated by the Election Commission in 1960, thus retaining the 1959 constituencies until they were due for review, and provided new rules or principles for delineating constituencies in future reviews. These principles, contained in a new thirteenth schedule in the constitution, differed in important ways from those they replaced. First, the two-step 'base-line' procedure devised by the Reid Commission was repealed and not incorporated in the thirteenth schedule. Second, section 2(c) of the schedule restored the pre-independence 2 to 1 rural weightage lowered at independence in 1957. These two changes would appear to increase considerably the discretion of the delineating authority, namely the Election Commission. However, a third major change was the transfer of the final say over constituencies from the Election Commission to parliament. The schedule (sections 8-11) provides that the Election Commission would only delineate new constituencies and submit its recommendations to the prime minister, who would then table them 'with or without modifications' for approval by a simple majority of the total members of the Dewan Rakyat (House of Representatives). If not so approved, the prime minister might again make amendments to the recommendations 'after such consultation with the Election Commission as he may consider necessary' in order to secure approval. The sum effect was that the tripartite Alliance – indeed possibly UMNO alone – would be able to ensure that electoral constituencies would be delineated to its satisfaction.

The Constitution (Amendment) Act of 1962 also increased the government's powers of control over the Election Commission by empowering parliament to determine the terms of office of members of the Election Commission other than their remuneration. It also made the 1960 amendments to article 114, relating to members of the Election Commission, retrospective to the date of independence and provided that those amendments would have effect notwithstanding anything in the article. This attempt by the government in 1962 to cure its earlier oversight did not, however, result in the removal of the chairman of the Election Commission, because he had by then disposed of his business interests.

The 1962 amendments to the electoral system drew the following scathing remarks from a leading scholar of the country's constitution:

It is apparent that the new amendments as to elections converted a formerly independent Election Commission, whose decisions became law and whose members enjoyed permanent tenure, into an advisory body of men of no certain tenure whose terms of office, except for remuneration, are subject to the whims of parliament. The vital power of determining the size of constituencies as well as their boundaries is now taken from a Commission,

which the constitution-makers had apparently wished, by tenure and status, to make independent and disinterested, and has been made completely political by giving this power to a transient majority of parliament, whose temptations to gerrymander districts and manipulate the varying numerical possibilities between “rural” and “urban” constituencies for political advantage is manifest (Groves, 1962: 239).

The 1963 Malaysian Electoral System

The Malaysia Act of 1963 made extensive amendments to the Federal Constitution for the inclusion of the new states of Singapore, Sabah and Sarawak, and for giving effect to the negotiated terms of their entry into the Federation of Malaysia. The Malayan system of government, including the electoral system, was thus extended, with adaptations, to the larger Federation. The key to understanding the adaptations to the electoral system was UMNO's desire to overcome the threat to a favourable ethnic-political balance posed by Singapore's 1.7 million largely Chinese inhabitants. Inclusion of the Borneo states of Sabah and Sarawak was crucial for this purpose, and highly favourable terms were granted to entice them to join Malaysia. Both Sabah and Sarawak then had sizeable Chinese minorities but their 'native' majorities were expected to ally themselves politically with the Malays in the Malayan states. Next, the political impact of Singapore was contained by specific electoral arrangements.

These arrangements consisted of two main parts. First was the apportionment of parliamentary seats among the various territories. Seats in the 159-member elected House of Representatives were distributed as follows: 15 to Singapore, 16 to Sabah, 24 to Sarawak and the remaining 104 to the Malayan states. This apportionment was clearly not proportional to population (or electorate). On the basis of population (see Sadka, 1963: 47), Singapore, with 16.9 per cent of the Federation's population, would have received 27 seats; while Sabah and Sarawak, with only 4.6 and 7.5 per cent of the total population, would have received only 7 and 12 seats, respectively. The Malayan states collectively had 71 per cent of the Federation's population and would have received 113 seats. The highly generous treatment of Sabah and Sarawak was mainly at the expense of Singapore. This was ostensibly the price Singapore had to pay for its greater powers over its internal affairs compared to the Malayan states, but the same principle was glaringly not applied to Sabah and Sarawak as well. Second, Singapore citizens, while sharing in a common federal citizenship, were barred from standing and voting in elections in other parts of the Federation. Non-Singaporean Malaysians were reciprocally excluded from similar electoral participation in Singapore. All provisions concerning Singapore ceased to operate with its exit from the Federation in 1965.

Another noteworthy feature of the Malaysian electoral system was that the new member states comprised separate units for the purpose of constituency review, meaning that such reviews, to be conducted every eight to ten years,

could be carried out separately and at different times for the three territories of Peninsular Malaysia, Sabah and Sarawak. A fourth member was also added to the Election Commission for the purpose of appointing someone from the new member states.

The 1973 Amendments

The next important set of changes to the Malaysian electoral system occurred in 1973 (I.S.A., 1974) after the 1969 election (which used the constituencies originally delineated in 1958 because the Election Commission failed to delineate new constituencies in time). Following its worst-ever showing in that election, the Alliance resorted to extensive changes to the political system to safeguard its continued rule and to avert the threat to UMNO in particular. Political debate on certain sensitive issues, including those mainly relied on by the opposition to attack the ruling party, was legally prohibited. This facilitated the co-optation of most political parties by the Alliance, which became a larger coalition called the Barisan Nasional (BN or National Front). Both Malay and UMNO political supremacy were strongly asserted and a New Economic Policy was launched to improve the economic position of the Malays. As part of this re-structuring of the political system, changes were also made to the electoral system by the Constitutional (Amendment) Act (No. 2) of 1973.

The Act removed the power of the Election Commission to apportion parliamentary electoral constituencies among the various states. Both the number of constituencies and their apportionment among states were to be specified in the constitution (article 46) and thus amendable at any time by the ruling coalition with its two-thirds majority in parliament. The ruling coalition would also enjoy absolute discretion in exercising this newly assumed power of apportionment: the requirement of equal average constituency electors among states introduced by Reid to prevent inter-state mal-apportionment had already been repealed in 1962.

Next, the requirement of equal electorates among constituencies within states was further watered down. Section 2(c) of the thirteenth schedule introduced in 1962 allowed constituencies to vary in size 'to an extent that in some cases a rural constituency may contain as little as one half of the electors of any urban constituency'. The 1973 Act replaced this requirement with one stating that 'a measure of weightage ought to be given to such (i.e. rural) constituencies'. The specific constitutional limits to rural weightage, already relaxed in 1962, were thus completely removed in 1973. The new wording, which remains to this day, allows rural weightage without clearly limiting it.

Another change with electoral implications effected by the 1973 Act was the creation of the Federal Territory of Kuala Lumpur. Its largely Chinese population had played a crucial part in the near defeat of the Alliance by the combined

non-Malay opposition in the 1969 Selangor state election. Excising Kuala Lumpur from Selangor would prevent its population from voting in future state elections. This, together with the newly relaxed limits on rural weightage, would place the state securely under the control of the ruling coalition.

The 1984 Amendments

Most recently, the Constitution (Amendment) (No. 2) Act of 1984 that made Labuan Island (up till then part of the state of Sabah) a Federal Territory also contained further amendments to the electoral system, again with respect to electoral constituencies. These amendments further relaxed the conditions and provided the party in power, directly or indirectly, with more discretion and control over constituency delineation.

The Act removed the upper ten-year limit for constituency review. The constitution now provides only for 'an interval of not less than eight years between the completion of one review and the date of commencement of the next review' (article 113(2)(ii)). Constituencies now need not be reviewed even after ten years and the timing of any review after the expiry of eight years is not specified. More importantly, a new clause (3A) was added to article 113 to provide for the review of affected areas whenever parliament or a state legislative assembly changes the number of its seats. Before this amendment, a review involved an entire unit of review and not part thereof, and if parliament or a state assembly changed the number of its seats, that change could not be carried out immediately but had to wait for the next normal review of the unit concerned. By removing these constraints, the amendment enables the party in power 'to effect a change in constituencies at any time and for any portion of the Federation or any state by merely varying the number of House of Representative seats or by varying the number of state assembly seats for that state' (Sothi, 1993: 66). Furthermore, the same clause also absolves all such reviews from strict compliance with the principles of constituency delineation contained in the thirteenth schedule: for these reviews, the principles were made 'subject to such modifications as may be considered necessary by the Election Commission'.

The above survey highlights the main decisions in the development of the basic rules of the Malaysian electoral system. The method of plurality election in single-member constituencies adopted before independence has remained intact. Citizenship, which has seen some changes, age (21 years) and registration remain the main requirements for the franchise. Some changes were also made in the early post-independence years to the rules relating to members of the Election Commission. Extensive and far-reaching changes, however, have been made to the rules concerning electoral constituencies. The ruling party has reduced the constraints and arrogated to itself effective control over the apportionment and delineation of electoral constituencies. It now enjoys absolute discretion in apportioning parliamentary seats among the various

states. Clear limits to rural weightage no longer exist. The prime minister can amend at will the Commission's recommendations before submitting them to approval by a simple majority in parliament. Even the eight-year requirement for the general review of constituencies is significantly mitigated by the provision for specific review upon any change in the number of legislative seats. Showing how these rules have been arrived at conveys their political origins and importance better than would a straightforward description of them.

Electoral Administration

A more complete understanding of the electoral system requires an examination of the application of the basic rules in what may be called electoral administration, for which lower-order rules are inevitably made and other laws of the country also apply. The constitution (article 113) provides that the important functions of preparing and revising electoral rolls, reviewing and delineating electoral constituencies, and the conduct of elections are to be carried out by the Election Commission in accordance with federal law. The main laws in question are the Election Act 1958 and the Election Offences Act 1954. The Election Commission has also exercised its rule-making powers (subject to annulment by parliament) to make regulations for the registration of voters and the conduct of elections.

The Independence of the Election Commission

The membership of the Election Commission was increased from three to four when Malaysia was formed in 1963 and from four to five in 1981. The initial three members were not members of political parties at the time of their appointment and consisted of a Malay chairman, a Chinese member and an Indian member. Although not expressly required by the constitution, this practice (since maintained) of having a member from each of Malaya's three main communities contributes importantly to meeting the constitutional requirement of ensuring 'public confidence' in the Election Commission (article 114(2)).

However, the Commission soon ran into difficulties with the ruling party. As seen earlier, the 1960 re-delineation of electoral constituencies by the Commission was not well received by UMNO and led to a series of actions that could only compromise public belief in the Commission's independence. The minutes of a state-level Alliance Committee meeting, held soon after the release of the 1960 re-delineation, were recorded as follows: 'Dato Shaari (the chairman from UMNO) said that the Election Commission had distributed the report without discussing with members of the Cabinet. It was a major mistake' (UMNO Files: UMNO/SUA No. 171/1959). Thus it appears that as early as 1960, pressure was exerted on the Election Commission to consult the government while carrying out its functions. Relations between the first chairman of the Election

Commission and UMNO became strained and the government attempted to remove him by passing the 1960 and 1962 amendments. Although the attempt failed, the 1962 amendments also allowed the government, through its control of parliament, to determine the terms of office of Commission members other than their remuneration and to take over the Election Commission's power to determine constituencies.

The government continued its 'assault' on the Election Commission by making clearly partisan appointments to the Commission to counterbalance its 'overly' independent chairman before his retirement in 1967. When the Chinese member retired in 1964 and the Indian member a year later, they were replaced by an MCA (Malaysian Chinese Association) member and an MIC (Malaysian Indian Congress) member, respectively. The member appointed from East Malaysia was also a member of the ruling Alliance in Sarawak. These appointments can hardly be said to accord with the constitutional requirement of ensuring public confidence in the Election Commission. It has been noted that by these appointments – two of which were made over the objections of the Commission – the ruling coalition 'sought to penetrate the Commission ... and gradually make it more responsive to Alliance interests' (MacDougall, 1968: 196-198).

Subsequent replacements of Commission members, mainly by retired civil servants, have not been as flagrantly partisan as those just described, nor perceived to be as independent as the first chairman (Sothi, 1993: 32). They have also not attracted much attention or provoked controversy. However, by its previous actions the government has clearly signalled to the Commission its concern, as MacDougall (1968: 196) puts it, 'with its (i.e. the Commission's) tendency to act out in all seriousness its publicly proclaimed roles of impartiality and independence'.

To protect the Commission from external influence, the Election Commission Act 1957 (revised in 1970) imposes penalties on persons trying to influence the Election Commission and also on any Commission member divulging information relating to its functioning. Imposing sanctions on both sides for wrongful actions would appear salutary for safeguarding the independence of the Election Commission. However, the same Act also provides that 'no person shall in any legal proceedings be permitted or compelled to produce or disclose any communication written or oral which has taken place between the Election Commission or any member of the Commission and the Government or Minister or public officer ... unless the Yang di-Pertuan Agong (the Federation's King) shall in writing consent to such production or disclosure'. The effect of this provision is to prevent any attempt by the government to influence the Commission and the Commission's complicity from being successfully prosecuted. This has led Sothi (1993: 35) to observe that 'the Government or any Minister may, with impunity, dictate to the Commission under the cloak of ... total immunity'. While 'dictate to' may be putting the matter too strongly, it

certainly cannot inspire confidence that the government would do nothing to influence the Commission, or that the Commission would not accede to such influence, when a provision shielding both sides from being successfully prosecuted for such behaviour is deliberately inserted into legislation avowedly intended for safeguarding the Commission's independence.

Deficiencies in formal safeguards and insufficiently robust appointments do not necessarily produce deficiencies in actual performance by the Election Commission. However, they do make it more difficult for the Election Commission to withstand the manifest pressures from the government – and hence it is less likely, at least in the public's perception, that it will do so. This imposes an added burden on the Election Commission to act carefully, even prophylactically, if public confidence in its impartiality is to be maintained. This heavy burden is one that the Election Commission does not appear to have successfully discharged. In fact, not long after the amendments and partisan appointments in the sixties, MacDougall (1968: 201) noted the Commission's practice of providing the prime minister with a preliminary report of its proposals, thus giving him 'a privileged opportunity to vet the proposals' before they were made known to the public. Although not expressly prohibited, such a procedure was clearly not envisaged by the constitution. Thus doubts have lingered about the institutional integrity of the Election Commission since the 1960s. These doubts have not been put to rest by the way the Commission has subsequently performed its major functions.

The Electoral Rolls

The major tasks in the preparation of the electoral rolls, including the annual registration of newly qualified electors, the revision of electoral rolls, public inspection of the revised rolls and their certification by the Commission, are governed by the Elections (Registration of Electors) Regulations 1971, of which there are three separate but similar sets for Sabah, Sarawak and Peninsular Malaysia. The Commission's performance of this function has been dogged by criticism because of persistent inaccuracies involving both 'missing' and 'phantom' voters. The former are qualified and registered persons whose names are improperly missing from the electoral rolls, while the latter are non-qualified persons who have nonetheless successfully registered and placed themselves on the electoral rolls. In some years, the numbers involved are quite large. For example, the team of Commonwealth officials who observed the 1990 election considered the problem serious enough to raise it with the Election Commission chairman and secretary, who 'admitted that they were aware of the situation and that the discrepancies affected about 300,000 voters', or close to 4 per cent of the electorate (Commonwealth Secretariat, undated: 8). In response, the Prime Minister's Department clarified that 'there are no deficiencies or flaws in the voter registration system' and that any shortcomings were 'due to human error rather than the weakness of the system' (Jabatan Perdana Menteri [Prime Minister's Department], 1991: 20, cited in Sothi, 1993: 109).

The main source of missing voters appears to be errors in revising or updating the electoral rolls, a process in which the secretary of the Election Commission, as chief registration officer, has the power, *inter alia*, to correct clerical errors and misnomers and to delete names of deceased persons. Persons whose names were wrongly omitted or removed from the electoral rolls would be unable to vote on polling day. The largest number of such cases occurred in the 1974 election in Peninsular Malaysia. Information obtained by Sothi (1980: 266) from the Election Commission shows a steady increase in Peninsular Malaysia's total electorate every year from the 1969 election until 1972/73, when it stood at 3.72 million. However, even after the 1973/74 registration exercise, it dropped to 3.39 million and was marginally higher at 3.41 million at the time of the August 1974 election. Thus more than 300,000 persons were removed as electors after 1972/73 – many of them wrongly, as was discovered during the 1974 election. What is more, those removed were mostly non-Malays, as the proportion of Malay electors increased from 55.7 to 57.9 per cent and that of Chinese electors decreased from 36.3 to 34.5 between the 1969 and 1974 elections, thus providing 'evidence of manipulation of electoral enrolment to the advantage of the Malays' (Crouch, 1996a: 58). Another form of omission arises because the Commission usually takes months to place newly registered voters on certified rolls. In the most recent election in November 1999, 680,000 potential voters who had registered in April/May were thus deprived of the vote. These young voters, amounting to 7.26 per cent of the 9.37 million certified voters, were widely expected to vote opposition; 'had they been mainly potential BN supporters few doubt that their registration would have been expedited' (Funston, 2000: 48).

The problem of phantom voters has gained in prominence in recent elections, especially, but not only, in the state of Sabah, where the main opposition party, Parti Bersatu Sabah (PBS or United Sabah Party), regards it as a major factor working to its disadvantage. This problem is mainly caused by the use of forged identity cards for registration, multiple registration and the registration of non-resident persons using false addresses, as when a political party transfers its supporters to marginal constituencies from safe ones. The Election Commission maintains (quite correctly) that the problem of forged identity cards can only be solved by the National Registration Department. However, it is widely believed (not without reason) that greater diligence by the Commission can help to alleviate this as well as other sources of phantom voters.

In June 2001, an election court annulled the 1999 election in the state constituency of Likas in Sabah because of the presence of phantom voters on its electoral roll. This decision received wide publicity, no doubt also because of the judge's revelation that an attempt was made to influence his handling of the case. The government announced steps to tighten national registration to alleviate the problem. It also agreed to introduce year-round registration (instead of the present one to two months registration period each year). It is not clear

how year-round registration would help solve the phantom problem. However, it would expedite the inclusion of new registrants in the certified electoral rolls.

Constituency Apportionment and Delineation

Electoral constituencies are determined in two steps: first, the apportionment of parliamentary constituencies among the various states; and second, the delineation of both parliamentary and state constituencies in each state. The ruling party controls apportionment among states through amendments to article 46 of the constitution. The Election Commission then delineates the apportioned constituencies.

As delineator in the first instance, the Election Commission possesses and has to exercise considerable discretion – thanks to the relaxation and lack of specification of the rules governing its performance of this function. The Election Commission also decides whether and how much to depart from the provisions of the thirteenth schedule in additional reviews brought about by a change in the number of either parliamentary or state seats in any state. Most importantly, the constitution has always left it to the Election Commission to interpret and apply such important but vague and undefined terms as ‘a measure of weightage’ and ‘rural’ and ‘urban’ while delineating constituencies. Thus the Election Commission can have an important influence on constituencies that are delineated. True, the Election Commission only proposes and the government disposes. However, it would not serve the image of the ruling party for the prime minister to make regular and extensive amendments to the public recommendations of an ostensibly impartial Commission before they were approved by parliament. In fact, the prime minister has used his amending power only sparingly.

With the apportionment of parliamentary seats among states, there are two ways mal-apportionment can arise: apportionment between the states of East Malaysia and Peninsular Malaysia, and apportionment among the eleven states in Peninsular Malaysia. These are examined in turn below.

Not counting the 1960 re-delineation annulled by the Constitution (Amendment) Act of 1962 and also the one completed by the Election Commission that had to be abrogated when the 1973 amendments were made, there have been three general reviews, or re-delineations, of parliamentary (and state) constituencies in Peninsular Malaysia thus far: in 1974, 1984 and 1994. The constituencies drawn up in 1994 were used for the 1995 election and also for the most recent election in 1999. The seats for Peninsular Malaysia were increased prior to each re-delineation. When Malaysia was formed in 1963, the East Malaysia states of Sabah and Sarawak received highly favourable seat allocations, an advantage that was also protected from being reduced without their consent for the first seven years. Subsequently Sabah’s seats were increased

only once from 16 to 20 prior to the 1986 election, while those of Sarawak were increased from 24 to 27 prior to the 1990 election and by a single seat for the 1999 election.

Table 1: Changes in Parliamentary (*Dewan Rakyat*) Seats and Electorate in Sabah, Sarawak and Peninsular Malaysia

	Number of Seats					Electorate ('000)			
	Pre-	1974	1984	1994	1999	1974	1984	1994	1999
	Change					(5.6)	(6.2)	(7.5)	(7.9)
Sabah	16 (11.1)	16 (10.4)	21 (11.9)	21 (10.9)	21 (10.9)	230 (5.6)	434 (6.2)	648 (7.5)	741 (7.9)
Sarawak	24 (16.7)	24 (15.6)	24 (13.6)	27 (14.1)	28 (14.5)	376 (9.1)	610 (8.8)	804 (9.3)	855 (9.1)
East Malaysia	40 (27.8)	40 (26.0)	45 (25.5)	48 (25.0)	49 (25.4)	506 (14.7)	1044 (15.0)	1452 (16.8)	1596 (17.0)
Peninsular Malaysia	104 (72.2)	114 (74.4)	132 (74.5)	144 (75.0)	144 (74.6)	3524 (85.3)	5925 (85.0)	7200 (83.2)	7774 (83.0)
Federation	144 (100)	154 (100)	177 (100)	192 (100)	193 (100)	4130 (100)	6969 (100)	8652 (100)	9370 (100)

Sources: Election Commission, 1974a: 31; Zakry, 1986: 59; A. Rashid, 1994: Appendix I; and *New Straits Times*, 1 December 1999.

Table 1 shows the number of seats and electors, with percentage figures in parentheses, for Sabah, Sarawak and Peninsular Malaysia before re-apportionment and after each of the four re-apportionments in 1974, 1984, 1994 and 1999. For the purpose of the comparison attempted here, the single seat for the island of Labuan is placed under Sabah, of which it formed part before becoming a Federal Territory in 1984. Because electorate figures are not available for 1984, those for 1986 are used instead. Between 1984 and 1986, the electorate would have changed in number but there can be only slight changes, if any, in the relative shares of the electorate among the three territories – which is what we are interested in here. The data on the electorate are compiled from various published sources but ultimately all these sources – as well as the sources relied on in later tables – are based on information released by the Election Commission.

The figures in Table 2 are calculated from those in Table 1. Each figure is the difference between the percentage of seats and the percentage of electorate – and is thus a measure of apportionment advantage/disadvantage – for a given territory at a given time. To illustrate, the 1974 figure for Sabah (i.e. 4.8) in Table 2 is obtained from Table 1 by subtracting Sabah's percentage of the electorate in 1974 (i.e. 5.6) from its percentage of seats in the same year (i.e. 10.4). To show changes in apportionment advantage/disadvantage, such figures are calculated

for the four re-apportionment years – and also for the situation prior to the first re-apportionment in 1974. For this ‘pre-change’ situation, the apportionment advantage/disadvantage for each territory is derived from Table 1 by taking the difference between its ‘pre-change’ percentage of seats and its percentage of electorate in 1974. For example, Sabah’s pre-change apportionment advantage amounted to 5.5 (i.e. 11.1 minus 5.6) per cent. The ‘pre-change’ column in Table 2 thus represents the situation just before the 1974 changes in seats and provides a baseline against which the effects of the 1974 and subsequent changes can be assessed.

Table 2: Apportionment Advantage/Disadvantage among Sabah, Sarawak and Peninsular Malaysia

(%)	Pre-Change	1974	1984	1994	1999
Sabah	5.5	4.8	5.7	3.4	3.0
Sarawak	7.6	6.5	4.8	4.8	5.4
East Malaysia	13.1	11.3	10.5	8.2	8.4
Peninsular Malaysia	-13.1	-11.3	-10.5	-8.2	-8.4

Sources: Same as Table 1.

The most important point shown in Table 2 is the steady decline in the combined apportionment advantage enjoyed by Sabah and Sarawak from 13.1 per cent before change to 8.2 per cent in 1994. This increased marginally to 8.4 per cent when Sarawak got one more seat in 1999. Thus over the entire period the apportionment advantage of East Malaysia declined from 13.1 per cent to 8.4 per cent, or by 35.9 per cent of what it was before any re-apportionment. However, the remaining 8.4 per cent is still significant and amounted to 16 seats in a parliament of 193 in 1999.

Next, in Table 3, we examine the apportionment of parliamentary seats among states within Peninsular Malaysia. Although also not bound by any rule or formula, the actual distribution after each re-apportionment does not deviate very much from what it should have been on the basis of each state’s share of the electorate. As can be seen in the ‘Difference’ column for each of the re-delineations, the deviations do seem to be kept within bounds and prevented from becoming larger during the period covered. The favoured states of Kelantan and Perak have retained two ‘extra’ seats. At the other end of the scale, the Federal Territory has had its ‘deficit’ reduced from four in 1984 to only one in 1994. Only the under-representation of Selangor can be said to be both significant and increasing after two consecutive changes in apportionment, with its ‘deficit’ of three seats in 1984 increasing to four in 1994.

Table 3 also lists the peninsular states and the Federal Territory according to their percentage of Malays voters. Malays form a majority of voters in each of

the first seven states, from over 90 per cent in Kelantan and Trengganu to slightly over 50 per cent in Malacca and Johore. The 'Difference' column does show a systematic bias in favour of the Malay-majority states in each of the re-apportionments. This bias has also persisted over the three re-delineations. In terms of its effect on ethnic representation, this bias can be said to advantage the Malays and disadvantage the non-Malays. However, as noted above, it is quite limited in extent, with the more Malay states enjoying an advantage of only half a dozen seats after the 1994 re-delineation.

Table 3: The Apportionment of Parliamentary (Dewan Rakyat) Seats among States in Peninsular Malaysia

State	1974			1984			1994		
	Actual	By Voters	Difference	Actual	By Voters	Difference	Actual	By Voters	Difference
Trengganu	7	6	+1	8	6	+2	8	7	+1
Kelantan	12	10	+2	13	10	+3	14	12	+2
Perlis	2	2	-	2	2	-	3	2	+1
Kedah	13	13	-	14	13	+1	15	14	+1
Pahang	8	7	+1	10	9	+1	11	10	+1
Malacca	4	5	-1	5	5	-	5	6	-1
Johore	16	17	-1	18	19	-1	20	21	-1
Selangor	11	11	-	14	17	-3	17	21	-4
N. Sembilan	6	6	-	7	7	-	7	7	-
Perak	21	21	-	23	21	+2	23	21	+2
Penang	9	0	-1	11	12	-1	11	12	-1
F. Territory	5	6	-1	7	11	-4	10	11	-1
Total	114	114	-	132	132	-	144	144	-

Sources: Election Commission, 1974b; 1984; Zakry, 1986: 58; and A. Rashid, 1994: Appendix II.

We move on to the delineation of parliamentary constituencies within the various states by the Election Commission. The most important issue here is the application of rural weightage, which since 1973 has been constitutionally left to the discretion of the Commission. Like the constitution, the Election Commission has not provided any definition for 'rural' and 'urban' areas. For the first general re-delineation for Peninsular Malaysia in 1974, the Commission stated in its report that it divided constituencies into the four categories of city, big town, small town and rural. Presumably, weightage for area increases or the number of constituency electors decreases progressively from city to rural. However, the Election Commission did not report using any numerical limits or range of voters for these categories of constituencies, whether federal or state (Election Commission, 1974b: 7). The Commission's report on the 1984 re-delineation did not provide any comprehensive classification of constituencies. The Commission stated only that it had striven to reduce the size of rural

constituencies: these would have no more than 40,000 electors each and the most remote ones would each have only 20,000 to 25,000 electors (Election Commission, 1984: 19-20). For the 1994 re-delineation, the Commission used five categories and also revealed the range of electors for both federal and state constituencies within each category. From rural to urban, the five categories were: rural, semi-rural, semi-urban, town/urban and city. For parliamentary constituencies, the electorate ranges for these categories were 20-29,000, 30-39,000, 40-49,000, 50-59,000 and 60-69,000, respectively; while for state constituencies, the electorate ranges were 7-10,000, 10-15,000, 15-20,000, 20-25,000 and 25-35,000, respectively (*New Straits Times*, 29 April 1994). Thus there appears to be considerable continuity in the development of the Commission's practice. The gradations of rural-urban constituencies have been elaborated but changed only slightly from 1974 to 1994. The minimum size of rural constituencies has remained at 20,000 electors, at least from 1984 to 1994.

The stipulated ranges for the 1994 re-delineation show that rural weightage can be as much as 3.5 to 1 for peninsular parliamentary constituencies. A closer look at the constituencies produced in the most recent re-delineation in 1994 can provide some idea of actual constituency disparities. Details on the 1994 constituencies, together with ethnic breakdowns of the electorate for every parliamentary and state constituency, are provided in a book on Malaysian electoral procedures written by the former secretary and present chairman of the Election Commission, A. Rashid Rahman (1994: Appendix II). An examination of the 1994 parliamentary constituencies shows that the stipulated ranges were used more as guidelines than as binding limits. They were generally but not strictly adhered to: six constituencies had more than 3.5 times, and the largest (Ampang Jaya, with 79,349 electors) had 3.8 times, the electors of the smallest constituency (Langkawi, with 20,808 electors) in Peninsular Malaysia.

The foregoing remarks on constituency sizes do not apply to Sabah and Sarawak. Constituency disparities in these states are generally larger than those in Peninsular Malaysia. This is especially so in Sarawak, where the difference between the largest and smallest parliamentary constituencies was 4.6 times in 1994. Comparing extremes for the country as a whole in 1994, the largest parliamentary constituency (Ampang Jaya, see above) is more than 5 times the smallest (Hulu Rajang in Sarawak, with 15,822 electors).

Turning to state constituencies, the much wider range of 5 to 1 stipulated by the Election Commission may appear striking. However, this is deceptive as it applies to the entire country and not to each state. To have a realistic number of seats in its legislative assembly, a state with a low population cannot avoid having constituencies that are much smaller than those in the more populous states. In fact, for the least populous state of Perlis, most of its state constituencies have less than the stipulated minimum of 7,000 electors. The real point, however, is this: for state elections, the relevant unit of contestation for power is not the

country but each of the states. Thus what is consequential is only mal-apportionment within each state and cross-state comparisons are totally irrelevant. A state by state examination of the 1994 state constituencies reveals that the largest constituency has between 2 and 3 times the number of electors of the smallest constituency in all states except Perlis (1.2 times), Kelantan (3.3 times) and Selangor (3.6 times) in Peninsular Malaysia. The differences for Sabah (3.6 times) and Sarawak (5.8 times) show that these two states have more mal-apportioned state as well as parliamentary constituencies, compared to Peninsular Malaysia.

The Election Commission's application of rural weightage has long provoked controversy as to whether the allowance of rural weightage has been carried too far by the Commission and thus incorrectly accorded precedence over the more fundamental principle of equal-size constituencies. After the 1974 re-delineation, even MCA leaders voiced concern with the resulting debasement of urban non-Malay votes. One of them complained that the electoral system has 'grossly under-represented the Chinese community' (Yeoh, 1982: 66). He later argued that 'the weightage should not be so skewed that in some places the value of a rural vote is more than double the value of an urban vote' and that this 'has aggravated the Chinese political dilemma, heightened perceptions of political inequalities and worsened racial polarization' (Yeoh, 1988: 27-28). Another complained that 'one cannot pin-point what constitutes "a measure of weightage" to be given to rural constituencies' (Kok, 1982: 59), while a third called for the adoption of the pre-independence 2 to 1 limit on rural weightage for the next (i.e. 1986) re-delineation and reversion by the year 1990 to the lower, Reid-proposed limit of 15 per cent deviation from the average constituency adopted at independence (Yong, 1982: 78-79). The most strident criticisms of the Commission's application of rural weightage are by the Democratic Action Party (DAP), a party supported largely by the Chinese. After the 1984 re-delineation, its leader argued that rural weightage 'must not be carried out to the extent of nullifying the "one man, one vote" principle, which is what the Election Commission has done in decreeing that one rural vote is equal to more than three urban votes' (Lim, 1986: 153). This practice was continued and even made 'official' by the Election Commission's announced guidelines in the 1994 re-delineation.

Apparently reflecting dominant local scholarly opinion as well, a British legal scholar judges that 'in practice the rural-weightage principle is taken somewhat to extremes' in Malaysia and that 'the current disparity of representation between urban and rural areas is much greater than can be justified' (Harding, 1996: 101-103). It is also significant that constituency disparities have not been reduced since the first re-delineation in 1974, as this alone reveals something about the Election Commission's application of rural weightage. The justification for rural weightage, originally stated in 1954, has remained unchanged: it is to compensate for 'the greater difficulty of contacting voters in

the country districts and the other disadvantages facing rural constituencies'. Although 'the other disadvantages' faced by rural constituencies have never been clarified, most of them as well as the specifically cited difficulty of contacting voters in rural areas must have been decreased, even significantly, by the spread of urbanization and government provision of better communication and other services to rural areas. Thus the application of a given measure of weightage should result in a progressive decline in disparities among constituencies after each re-delineation. However, no reduction in the permitted range of variation among constituencies was apparent in the 1984 and 1994 re-delineations, and large urban constituencies continue to contain in excess of 3 times the number of electors in the smallest rural constituencies. In fact, the retention in later re-delineations of similar constituency disparities when differences in facilities have narrowed between rural and urban areas implies a steady increase in the measure of rural weightage effectively applied by the Election Commission.

The Election Commission, on its part, has made no secret of its efforts to reduce the size of rural constituencies, which it considers necessary to lighten the burden on elected representatives in areas with poor communications and transport facilities. However, it also insists that it has not thereby deviated from the main principle of equality among constituencies (Election Commission, 1984: 19). The government not only supports the Election Commission's application of rural weightage but also continues to proclaim the independence of the Commission against opposition criticism (*Parliamentary Debates, House of Representatives*, 6 December 1984 and 25 April 1994).

Doubts about the Election Commission's impartiality and independence have arisen not only from the Commission's outputs but also from the procedure adopted by the Commission in delineating constituencies. Continuing MacDougall's earlier-noted criticism of the Election Commission's practice of allowing government leaders to vet its proposals, the DAP's Lim Kit Siang contends that it is common for the Commission to hold secret discussions and consultations with UMNO leaders when delineating constituencies (*Parliamentary Debates, House of Representatives*, 25 April 1994: 1148-1149). To him, constituency delineation has been reduced to 'another *wayang kulit* (shadow play) of Malaysian politics, where the political masters pull the strings of the Election Commission from the backstage, while both the government and the Election Commission would vehemently deny this puppet and puppet-master relationship' (Lim, 1986: 152). Such a process would ensure that the Commission delineates and recommends constituencies that would be acceptable to the ruling party. It is at least plausible that this, in addition to, or even instead of, the fear of public odium, may explain the prime minister's sparing use of his powers to amend the recommendations of the Commission prior to their approval by parliament.

The Election Commission has also been accused of complicity with the government in gerrymandering electoral constituencies. It should be noted that critics often use gerrymandering loosely to refer to all forms of partisan manipulation of electoral constituencies, without distinguishing between mal-apportionment and the manipulation of constituency boundaries or districting, for which the term gerrymandering is properly reserved. Although gerrymandering is always difficult to prove conclusively, allegations of its practice have received some support from scholars who have examined boundary changes in detail in Peninsular Malaysia. Citing examples from the Federal Territory of Kuala Lumpur and Perak, Senftleben (1975: 113) concludes that 'gerrymandering practices cannot be ruled out' in the 1974 re-delineation. Sothi (1993: 69) also points to the likelihood of gerrymandering in his examination of the 1974 constituency changes in Johore. Allegations of gerrymandering in East Malaysia are also increasingly heard, especially with respect to Sabah (Loh, 1999: 37; Chin, 1999: 13).

The Conduct of Elections

Elections in Malaysia are conducted by the Election Commission and in accordance with existing laws and regulations (chiefly the Elections [Conduct of Elections] Regulations 1981). Despite frequent complaints, indicating considerable room for improvement, the Commission's conduct of elections has been at least generally satisfactory and smooth. The Election Commission typically dismisses complaints as unfounded, much to the chagrin of complainants, usually from opposition parties. The main problem here, however, is not so much the Election Commission's conduct of elections as it is the laws and regulations that govern that conduct, although the Commission's application of the regulations, as we shall see, has not been free from controversy. These electoral laws and regulations as well as other laws and practices, tend to favour the ruling party in varying degrees and have been a perennial source of complaints by the opposition. More muted criticisms are occasionally heard even from the Election Commission.

Except for the first post-independence election in 1959, elections to parliament and the state legislative assemblies in Peninsular Malaysia have been held concurrently, with individual state elections held for Sabah and Sarawak. The constitution (article 55[4]) provides that 'a general election shall be held within 60 days from the date of the dissolution' of parliament. Within this period, the Election Commission fixes the nomination day, followed by a formal period of campaigning before polling day. The minimum campaign period provided in the Commission's regulations was reduced from 21 to 14 days in 1971 and to seven days in 1986 (Sothi, 1993: 39). In actual practice, the campaign period has been progressively reduced from the usual 35 days before 1970 to nine or ten days since the 1986 election. This shortening of the campaign period by the Commission, ostensibly in the interests of security, is held to handicap the opposition parties more than the ruling party, whose leaders have ample

opportunity to communicate with and persuade electors under other guises before the start of the official campaign.

In the electoral campaign itself, the opposition is hamstrung and disadvantaged by a multitude of legal restrictions and government practices. These are not of the Election Commission's doing and are not necessarily supported by it. Laws such as the Official Secrets Act, Sedition Act and Police Act are generally justified as necessary for security, but they impose various restrictions on political activity, including campaigning. Since 1978, open-air public rallies, the cheapest and most effective method of campaigning, and hence the most relied upon by the opposition, have been banned. The main campaign methods now used are media coverage and advertising, in-door meetings or *ceramah* (talks) and house-to-house canvassing. The media, both print and electronic, are generally unavailable as well as unfavourable to the opposition because of a combination of government ownership, government control and media self-censorship. The *ceramah*, which can reach only a limited audience, also require a police permit. To make matters worse, legal rules are not always applied equally or evenly to all parties. For example, opposition parties generally face more difficulties or obstacles in getting police permits for holding *ceramah*. The present chairman of the Election Commission has noted: 'Situations may appear very oppressive when on certain occasions certain rules may have been bent for certain parties ... (and) imposed differently on different groups and persons' (A. Rashid, 1994: 58). Inadequate laws on electoral expenditure – these control expenditure by individual candidates but not expenditure by political parties – also work to the advantage of the better-financed ruling BN. The BN's advantage is further enhanced by its frequent use of government machinery and public servants to assist its campaign.

A persistent complaint about the polling process concerns absentee or 'postal' voters, mainly the police and military. Although only a small part of the electorate (about 2 per cent in the 1999 election), they usually vote for the BN and often help BN candidates secure victory in close contests. Hence the lack of proper supervision of their voting by the Election Commission has attracted opposition criticism.

In fact, polling procedure is such that it is technically possible to know the vote of each elector. This is because the ballot paper and the counterfoil from which it is detached have the same serial number *and* the elector's own serial number (which accompanies his or her name on the electoral roll) is also written on the counterfoil: matching a used ballot paper with its counterfoil would provide the elector's serial number for knowing his or her identity in the electoral roll. However, the Election Commission's explanation that an elector's identity may need to be ascertained in case of litigation and would only be done on the order of an election judge (A. Rashid, 1994: 85), and the absence of its abuse, have generally allayed public fears.

The counting of votes has also become an issue with the changes introduced in the 1990 election. For that election, the government amended the Elections Act and the Election Offences Act to enable votes to be counted at polling stations instead of at a central counting centre within each constituency. A polling station is a subdivision of a polling district which is in turn a subdivision of a constituency. After amending its regulations accordingly, the Election Commission increased the number of polling stations so that each would cater to a maximum of only 700 electors. It is thus possible to know which party electors in a given polling station have voted for. Opposition parties maintain that, given the small number of electors in each polling station, this can only make electors apprehensive about voting for the opposition for fear of retaliation by the ruling party. No less worrisome, it may be noted, is that such information would also significantly empower, and hence even encourage, the would-be practitioner of gerrymandering.

Few observers have failed to comment unfavourably on or express misgivings about at least some of the above restrictions and practices that characterize the conduct of Malaysian elections. The prevalent view of their overall effect appears to be reflected by Crouch (1996a: 59): 'When examined separately, the many regulations and practices were not always manifestly unfair; but taken together they constituted a substantial barrier for opposition parties'.

Effects

The electoral system is important because of its effects on national politics (Ekstein, 1963; Rae, 1971; Grofman and Lijphart, 1986). This section will concentrate on what Rae (1971: 133) calls the 'proximal' effects of the electoral system, i.e. its direct effects on the outcomes of elections held under it. Whereas the conduct of election affects parties' chances of winning votes, these proximal effects work on the translation of votes into seats won. A few salient 'distal' effects, those that subsequently follow from the proximal effects, will be noted in assessing reform prospects in the next section.

A well-known inherent effect of plurality election is its big-party bias: it awards considerably more seats to the biggest party relative to its share of votes won. This pronounced non-proportional outcome is typically derided as unfair by critics of plurality election and hailed by its proponents as a valuable contribution to strong and stable government. This supposed virtue of plurality election was a major reason cited for its initial adoption in Malaya in 1954. The ruling party in Malaysia has always argued that a strong government is needed to maintain stability in the country's plural society and to promote economic development. By strong government it means not only one endowed with more powers but also one that commands at least the two-thirds majority in parliament needed to amend the constitution.

Table 4 shows that this two-thirds majority would not have been achieved but for plurality election. Malaysia has a dominant ruling party but it has never won two thirds of the votes in any of the ten parliamentary elections held thus far. Thanks to the 'bonus' given it by plurality election, however, the same ruling party has enjoyed a two-thirds parliamentary majority after every election except one. That was the 1969 election, but the deficiency was quickly made good by taking in a new coalition member. The electoral system has awarded the ruling party between 16.7 and 27.8 per cent of parliamentary seats over and above its share of votes, or an average bonus of 22.7 per cent of seats over the entire period. In Malaysia, this big-party bonus has been exaggerated or further enlarged by rural weightage, as the resulting increase in the value of the rural vote has mainly benefited UMNO and other *bumiputra* parties in the BN. However, even with rural weightage, the BN would probably not have captured two thirds of the seats without plurality election. To appreciate how momentous the choice of plurality election has been for the country, one only has to consider that the numerous amendments that the ruling party has made to the constitution since independence, including amendments to the electoral system, would probably not have been possible had proportional representation been chosen instead.

Table 4: Seats and Votes Won by the Government Party in Parliamentary (*Dewan Rakyat*) Elections

Year	No. of Seats	Total Seats	Seats (%)	Votes (%)	Difference (%)
1959	74	104	71.2	51.7	19.5
1964	89	104	85.6	58.5	27.1
1969	85	144	66.0	49.3	16.7
1974	135	154	87.7	60.7	27.0
1978	130	154	84.4	57.2	27.2
1982	132	154	85.7	60.5	25.2
1986	148	177	83.6	55.8	27.8
1990	127	180	70.6	53.4	17.2
1995	162	192	84.4	65.2	19.2
1999	148	193	76.7	56.5	20.2

Source: Funston, 2000: 49.

Indeed, in the Malaysian context of ethnic political competition, the effects of the electoral system on the balance of electoral power among the major ethnic groups in the country are highly important – even before the electoral strength of the ethnic groups is expressed as support for political parties. This is where the importance of rural weightage can be clearly seen. To begin with the federal level, the most important effect of the electoral system in this connection is its enhancement of Malay electoral power, thus tilting the ethnic balance of electoral power clearly in favour of the largest ethnic group in Malaysia.

With plurality election in single-member constituencies and voting along ethnic lines, a majority of voters belonging to one ethnic group would virtually ensure victory for their ethnic party within a given constituency. The proportion of Malay-majority constituencies therefore serves as a good indicator of Malay electoral power. Nearly all such constituencies are found in Peninsular Malaysia. It is difficult to determine the number of Malay-majority constituencies in East Malaysia. Reflecting salient political cleavages there, available ethnic breakdowns of constituency electorates have used other classifications and combined Malays with other and mainly Muslim *bumiputra*. Some Malay-majority parliamentary constituencies probably exist in Sarawak where Malays exceed a fifth of the state population, while none is likely to be found in Sabah where Malays form less than a tenth of the state population. However, it is highly instructive to examine peninsular Malay-majority constituencies alone, as they form the basis of UMNO's power.

Table 5: Peninsular Malay-Majority Parliamentary Constituencies as Percentage of Total Constituencies in Peninsular Malaysia and Federation

Year	1969	1974	1986	1994	1999
Malay-Majority Constituencies in Peninsular Malaysia	60	79	92	97	98
% in Peninsular Malaysia	57.7	69.3	69.7	67.4	68.1
% in Federation	41.7	51.3	52.0	50.5	50.8
Peninsular Malay Electorate:					
% in Peninsular Malaysia	55.7	57.9	55.3	56.3	56.7
% in Federation	47.8	47.7	47.0	46.9	47.9

Sources: Ratnam and Milne, 1970: 205; Sothi, 1984: 133 and 1993: 112; Zakry, 1986: 72-110; A. Rashid, 1994: Appendix I and II; and *New Straits Times*, 1 December 1999.

Table 5 shows the changes in the proportion of Malay-majority parliamentary constituencies within both Peninsular Malaysia and the Federation from 1969 to 1999. The election year of 1986 (for which the desired data is available) is used in place of the re-delineation year of 1984. However, the number of Malay-majority constituencies would only differ marginally, if at all, between the two years. It can be seen that the 1974 re-delineation brought about a sharp increase in Malay-majority constituencies. Prior to that, i.e. before any re-delineation, the 60 Malay-majority constituencies in Peninsular Malaysia formed 57.7 per cent of the 104 parliamentary constituencies there and 41.7 per cent of the total for the entire country. After the 1974 re-delineation, the number increased to 79 and constituted 69.3 per cent of the total for Peninsular Malaysia and 51.3 per cent of the total for the country. Malay-majority parliamentary constituencies in Peninsular Malaysia thus exceeded two thirds of the total there and half of the total for the Federation as a whole. These proportions, which were maintained in the 1984 and 1994 re-delineations, were in all years considerably higher than the peninsular Malay share of the electorate in the corresponding

territories, as shown in the last two rows in Table 5. Not only has the Malay electoral advantage significantly increased in Peninsular Malaysia since 1974, but also the amount of this advantage enjoyed by Peninsular Malays is such as to ensure their hold on national power, even with the remaining apportionment disadvantage of the peninsula in relation to East Malaysia. The Malay hold on federal power is even more secure if account is also taken of those parliamentary constituencies (numbering ten, or just over 5 per cent of the country's total of 193 in the 1999 election) in which Malays form the largest group or plurality of electors, albeit not the majority.

To see the contribution of constituency re-delineation to Malay electoral power in perspective, Table 6 uses a simple method, first applied to Malaysia by MacDougall (1968) and later followed by Sothi (1980; 1984), to decompose the Malay electoral advantage into two components. The enfranchisement advantage is the difference between the percentage of Malays in the electorate and the percentage of Malays in the population, while the delineation advantage is the difference between the percentage of Malay-majority constituencies and the percentage of Malays in the electorate.

Table 6: Sources of Malay Electoral Advantage in Peninsular Malaysia: 1955-1999

Year	1955	1959	1964	1969	1974	1986	1994	1999
% Malay in population	49.8	50.0	50.0	52.9	53.2	55.2	58.1	59.3
% Malay in electorate	84.2	57.1	54.4	55.7	57.9	55.3	56.3	56.7
% Malay-majority constituencies	96.2	57.7	56.7	57.7	69.3	69.7	67.4	68.1
Enfranchisement advantage	+34.4	+ 7.1	+ 4.4	+ 2.8	+ 4.7	+ 0.1	- 1.8	- 2.6
Delineation advantage	+12.0	+ 0.6	+ 2.3	+ 2.0	+11.4	+14.4	+11.1	+11.4
Total electoral advantage	+46.4	+ 7.7	+ 6.7	+ 4.8	+16.1	+14.5	+ 9.3	+ 8.8

Sources: Table 5; Sothi, 1993: 112-113; Ratnam and Milne, 1967: 368; A. Rashid, 1994: Appendix I and II; *Vital Statistics Malaysia*, 1994: 6-7; 1999: 17-18; *New Straits Times*, 1 December 1999.

Malays enjoyed a huge enfranchisement advantage in 1955 when most non-Malays were not citizens and therefore ineligible to be registered as electors. This advantage dropped sharply in 1959 after the liberalization of citizenship laws at independence and had become almost insignificant by 1969. The sizeable Malay delineation advantage in 1955 arising from the two to one rural weightage applied in the 1954 delineation of constituencies was also reduced to insignificance when the Election Commission divided each of the 52

constituencies into two for the 1959 election. As Moore (1960: 375-376) notes, the Commission showed 'a scrupulous concern for fairness' and, in many cases, divided a formerly Malay-majority constituency into one with a Malay majority and the other with a non-Malay majority. As a result, the total electoral advantage enjoyed by Malays in the 1959, 1964 and 1969 elections was much smaller than in 1955. The 1960 re-delineation based on the lower, Reid-prescribed rural weightage in the constitution (as it stood then) would have reduced this advantage even further in 1964 and 1969 had it not been annulled by the 1962 constitutional amendments.

Against this background, the role of the constituency re-delineations after the 1973 amendments in restoring and maintaining Malay electoral advantage can be clearly seen. The 1974 re-delineation restored the Malay delineation advantage to about the 1955 level and thus enabled the Malays to regain some of the overall advantage they had lost, mainly from increased non-Malay enfranchisement, since independence. This restored level of delineation advantage, mainly due to increased rural weightage or mal-apportionment, has been generally maintained in subsequent re-delineations: after the slight increase in the 1984 re-delineation, it has reverted to the 1974 level following the 1994 re-delineation.

Table 6 also shows that the Malays have gradually lost their enfranchisement advantage and after 1986 begun to suffer a small enfranchisement disadvantage, probably because of the younger age profile of the rapidly growing Malay population compared to the non-Malay population. Thus Malay electoral advantage after 1986 has been derived entirely from delineation. Almost entirely because of the reversal in enfranchisement advantage, the overall electoral advantage of the Malays has declined from its restored high in 1974 to nearly half that level after the 1994 re-delineation. However, the Malay share of the electorate is high enough (as well as trending upwards in recent years) so that the reduced but still significant electoral advantage (entirely from delineation) is sufficient to produce Malay-majorities in slightly over half the total number of parliamentary constituencies.

It is important to point out that the Malay delineation advantage, as measured above, should not be attributed entirely to mal-apportionment and gerrymandering, or assumed to be zero in the absence of these malpractices. The extent to which such an assumption would be approximated depends on the spatial distribution of the various races. This can be illustrated by taking two extreme situations. The said assumption would be true (that is to say, the share of Malay-majority constituencies will be proportional to the Malay share of the electorate) if the Malay electorate were completely separated geographically from the other races, which in Peninsular Malaysia is still largely but not completely true. At the other extreme, where the various races are evenly or randomly distributed over space, the Malays would command a

majority identical to their overall majority in the electorate in all constituencies without needing any help from delineation. With plurality election, as Taylor and Gudgin (1976) have statistically shown, some delineation advantage would accrue to the largest political group (or party) in most cases of chicanery-free constituency delineation. This is why the measure of delineation advantage is not confined to the effect of mal-apportionment and gerrymandering. This clarification prevents error in interpretation; it does not diminish the measure's usefulness for indicating change in delineation advantage over time.

Table 7: Percentage of Malay-majority State Constituencies (Seats) and Malay Electorate in Peninsular States

	1978		1986		1994		
	Seats	Seats	Electorate	Diff.	Seats	Electorate	Diff.
Trengganu	100	100	94.1	5.9	100	94.8	5.2
Kelantan	100	100	92.8	7.2	100	93.6	6.4
Perlis	97.7	92.9	81.8	11.1	93.3	82.1	11.2
Kedah	92.3	89.3	73.7	15.6	83.3	74.7	8.6
Pahang	78.0	81.8	63.5	18.3	89.5	65.3	24.2
Johore	75.0	72.2	53.6	18.6	72.5	52.7	19.8
Malacca	80.0	70.0	51.4	18.6	68.0	53.5	14.5
Selangor	66.7	61.9	48.0	13.9	68.8	49.4	19.4
Negri Sembilan	62.5	64.3	46.8	17.5	68.8	49.0	19.8
Perak	59.5	60.9	43.6	17.3	63.5	44.8	18.7
Penang	37.0	39.4	33.7	5.7	39.4	32.7	6.7

Sources: Ismail, 1979: Appendix; Zakry, 1986: 72-110; and A. Rashid, 1994: Appendix I.

The electoral system has also affected the ethnic balance of power at the state level. The same trend of increasing Malay-majority constituencies to ensure Malay political control has also occurred within the states of Peninsular Malaysia. This can be seen in Table 7, even though it is not as complete as the corresponding Table 5 for the federal level. Desired data (on the percentage of the Malay electorate and of Malay-majority state constituencies in each state) is only complete for the situations resulting from the 1984 and 1994 re-delineation years. For state constituencies re-delineated in 1974, only the percentage with Malay majorities, as these constituencies stood in 1978, is available. However, any difference is likely to be marginal. As in Table 5, information on the pre-delineation situation before 1974 would be useful but is not available. However, the sharp increase in Malay-majority constituencies brought about by the 1974 re-delineation at the federal level leaves little doubt that a similar change also occurred at the state level. In Table 7, the states are listed according to the 'Malayness' of their electorates to facilitate examination of the 'borderline' or 'problem' states, i.e. those that do not have clear Malay majorities in the electorate. These are the bottom six states in the table.

In the west coast states, where the Chinese are concentrated, Malays form a slight minority of the electorate in Perak, Negri Sembilan and Selangor (even after Kuala Lumpur became a Federal Territory). However, since the 1974 re-delineation, the number of Malay-majority state constituencies has formed a comfortable majority (60 per cent and above) of the total in each of these states. In Malacca and Johore, where Malays form only a slight majority of the electorate, the proportion of Malay-majority constituencies has been enhanced, to about 70 per cent, since 1974. In Johore, the Election Commission's 1974 recommendations for the state's 32 seats were amended by the prime minister, with the result that Malay-majority seats increased 'from 19 in 1969 and 20 according to the Commission's recommendations to 26 after the amendments' (Sothi, 1993: 69). In all these states, with the exception of Selangor, the delineation advantage (shown in the 'Difference' column) in 1986 and 1994 is higher than the delineation advantage for parliamentary constituencies (see Table 6) in these two years. Only in Penang, where Malays form only a third of the electorate and have majorities in 40 per cent of constituencies, is their numerical disadvantage apparently too large to be overcome by exploiting delineation advantage. This does not seem to be seriously attempted and the Malay delineation advantage in Penang remains as low as in Kelantan and Trengganu, where it is not needed. Thus, except for Penang, all peninsular states, including Perak, where the 44 per cent Malay electorate is substantially below half the total, have about 60 per cent or more of their state constituencies containing Malay majorities and have thus been securely under Malay political control since the 1974 re-delineation.

The power contest in the East Malaysian states of Sabah and Sarawak (like their ethnic composition) is more complex than in Peninsular Malaysia, but is mainly between predominantly Muslim *bumiputra* (which include Malays) and predominantly non-Muslim *bumiputra*. The largely urban Chinese remain important in deciding victory for one side or the other, even though their votes are even more devalued by rural weightage than in the states of Peninsular Malaysia. Constituencies for Sabah and Sarawak are re-delineated separately from each other and from Peninsular Malaysia. An important feature of the last re-delineation in Sabah and Sarawak, completed in 1995 in both cases, is the increase in the number of state constituencies having a majority of Muslim *bumiputra* electors.

In Sabah, Muslim and non-Muslim (mainly Kadazan-Dusun) *bumiputra* are numerically balanced: each has 40 per cent of the state population with the remaining 20 per cent mainly Chinese (Chin, 1999: 2). However, the 1995 re-delineation raised the number of constituencies with Muslim *bumiputra* majority from the previous 18 to 26, thus exceeding half the unchanged total of 48 state constituencies. Constituencies with a majority of Kadazan-Dusun (the predominantly non-Muslim *bumiputra* led by the PBS) were reduced from 18 to 12, and those with Chinese majority from eight to five, with the remaining five

being mixed (Chin, 1999: 13-14). Muslim *bumiputra* are thus effectively placed in control in a state in which they constitute only 40 per cent of the population.

In Sarawak, the 62 state constituencies delineated in 1995 had the following ethnic distribution in the September 2001 state election: Malays and Melanau together form the majority in 21 constituencies and the largest plurality in three constituencies, Dayaks form the majority in 24 constituencies and the plurality in one constituency, and Chinese form the majority in 12 constituencies and the plurality in one constituency (*New Straits Times*, 28 September 2001). No group controls more than half the number of state constituencies. However, the Malay-Melanau Muslim *bumiputra* group, which comprises 28 per cent of the state population, has had its electoral strength enhanced to about the same level as the Dayaks, the largest and predominantly non-Muslim *bumiputra* group with over 40 per cent of the state population.

The above changes in the ethnic balance of electoral strength have direct and important implications for the ethnic political parties competing for power. In Peninsular Malaysia, the increase in Malay, and the corresponding reduction in non-Malay, electoral strength through constituency delineation clearly advantages Malay political parties and disadvantages non-Malay ones. This advantage has accrued mainly to UMNO, the largest Malay party, and will continue to do so as long as UMNO retains the bulk of Malay electoral support against PAS. To ensure this, UMNO has continually adjusted government policies to benefit the Malays, including moving increasingly towards Islamization to counteract the Islamic religious appeal of PAS. Until possibly the 1999 election, UMNO had been highly successful in competing for the crucial Malay vote, enabling the coalition it led to maintain uninterrupted control of the federal government and in all peninsular states except Kelantan and Trengganu, to which PAS control has been confined.

At the federal level, success in winning Malay votes, together with the ethnic distribution of constituency electorates shown in Table 5, underlies the claim by Mahathir Mohamad, the present UMNO president and prime minister, that 'UMNO can actually win more than half of the parliamentary seats', i.e. all the Malay-majority constituencies in existence in Peninsular Malaysia since the 1974 re-delineation. Although he added that 'this is intentionally not done as UMNO is willing to share the seats with other component parties' in the interests of peace and stability (*New Straits Times*, 28 August 1992), this detracts nothing from his reminder that UMNO can rule alone with only Malay support and is thus much less dependent on its coalition partners than the other way around. At the state level, the proportions of Malay-majority state constituencies shown in Table 7 have entrenched UMNO as the undisputed leader of the ruling coalition in all BN-controlled states except Penang. Even in Penang, the increase in Malay-majority constituencies has enabled UMNO to hold the largest number of state seats, outnumbered only by the combined seats of the two non-Malay BN parties.

With its peninsular Malay power base sufficient to ensure control of the federal government, UMNO had long been content to confine itself to Peninsular Malaysia, that is until its 1991 entry into Sabah. Winning additional parliamentary seats from Sabah would obviously strengthen UMNO's federal position. However, no such felt need drove UMNO into Sabah. The move was clearly motivated by the desire to unseat the 'recalcitrant' PBS from the Sabah state government. In this it was quickly successful, thanks in no small measure to the abovementioned 1995 changes in Sabah's state constituencies. That re-delineation in fact had effects even before it was completed. As explained in one report: 'Pairin (then PBS chief minister) ... called for (a) snap poll a year before elections were legally due. He did so to pre-empt the ongoing constituency delineations, being carried out by the Elections (sic) Commission, which he alleged would make it very difficult for the PBS to win future elections' (S. Jayasankaran, 1994: 8). The PBS believed that the re-delineation's purpose was 'to redefine (i.e. gerrymander) electoral boundaries along ethnic lines in order to consolidate Muslim votes and help UMNO Sabah win power in the state' (Chin, 1994: 908). In the 1994 snap election, the PBS won 25 of the 48 state seats but defections from the party quickly led to its downfall and the formation of an UMNO-led Sabah government. Interestingly, and also understandably, UMNO has opened its doors to other *bumiputra* in Sabah, where Malays are only a small minority, while it remains a Malay party in Peninsular Malaysia. It has also introduced a system, unique to Sabah, of rotating the chief minister's post between a Muslim *bumiputra*, a non-Muslim *bumiputra* and a Chinese person to facilitate co-optation of other parties as coalition partners and to isolate the PBS. However, given the ethnic configuration of the state constituencies re-delineated in 1995, it would appear that UMNO would be able to win outright with Muslim *bumiputra* support and that any future PBS challenge would have to win more than Kadazan-Dusun and Chinese votes to succeed.

In Sarawak, the only state where UMNO has stayed out, the electoral system has benefited the predominantly Malay-Melanau Parti Pesaka Bumiputra Bersatu (PBB or United Bumiputra Pesaka Party), the leader of the Sarawak BN. The opposition to the BN in Sarawak is very weak. However the state's demographic structure has encouraged the main Dayak party, the Parti Bansa Dayak Sarawak (PBDS or Sarawak Dayak Party) to challenge the PBB for leadership of the Sarawak BN. The PBDS made attempts to do so in both the 1987 and 1991 state elections, but failed. The strengthening of the Malay-Melanau electoral strength by the 1995 re-delineation helped to bolster the PBB and insulated it against future Dayak attempts to dislodge it from its state leadership position.

While UMNO leaders were justifiably confident that their party would be the main beneficiary when they acted to enhance the Peninsular Malay vote, the results of the last election provide the most dramatic demonstration to date that this cannot be taken for granted. In the 1999 parliamentary election, PAS won

about as many Malay votes as UMNO did in Peninsular Malaysia, aided no doubt by weaknesses within UMNO and the government led by it – including, even mainly, weaknesses engendered at least partly by success itself, principally intra-party factionalism and excesses in the use of power. Indeed, the 1999 election is possibly unique in that it provided a comfortable two-thirds parliamentary majority for the BN but with a stinging rebuke to its leader, UMNO. Non-Malay support for the BN was solid (with dismal results for the DAP) but Malay voters apparently deserted the ruling coalition in unprecedented numbers (mainly for PAS but also for the newly formed multi-racial but Malay-led Parti Keadilan Nasional (National Justice Party), providing the country for the first time with a Malay (PAS)-led parliamentary opposition and UMNO with its biggest challenge ever (Funston, 2000; Strategic Info Research Development, 2000).

Reform?

The issue of electoral system reform deserves a question mark because that is precisely what it is in the Malaysian context. Various reforms (canvassed later in this section) can be made to reduce criticism and increase confidence in the electoral system. Whether and what reforms will be undertaken, however, depends on the ruling party, the opposition and the Malaysian public. This follows Schattschneider (1960: 2), whose point that the outcome of most political fights will depend not only on the protagonists but also critically on their ability to arouse and involve what he calls the audience is particularly appropriate for understanding electoral system reform.

More concerned with winning big than winning fairly, the ruling party has shaped the electoral system to its advantage and is understandably resistant to reforms that will reduce its advantage. However, this does not mean that it will never consider reform or that it has no interest at all in reforming the electoral system. It should not be overlooked that the ruling BN is a coalition whose member parties are differently affected by the present electoral system and hence have varying interests in electoral system reform. The important amendments that have been made to the electoral system are mainly the handiwork of UMNO and primarily serve its interests. Non-*bumiputra* parties in the BN, most notably the MCA, also feel short-changed by the increase in rural weightage. Although they have been unable to dissuade UMNO from its course and are thereby further weakened in relation to UMNO, they have neither fully supported the increase in rural weightage nor, as we have seen, refrained from suggesting its reduction. Thus, within the ruling BN, it is mainly UMNO that is reluctant to reform the electoral system.

Even for UMNO, there are general considerations that may provide it with some motivation for considering reform. To power-holders, winning an election

is preferable to other means of winning power, mainly because electoral victory can help make the power-holders and their power more legitimate in the eyes of the governed, as well as induce losers to accept their defeat with good grace and refrain from questioning the legitimacy of power-holders. The latter effect is similar to what Goffman (1964) calls 'cooling the mark out', i.e. the con man's need to prevent his victim or mark from squawking or resorting to reprisals. Both these legitimating and cooling functions are maximally served by free and fair elections, and manipulation of the electoral system can reduce and vitiate its ability to perform these valuable functions for power-holders. Power-holders can thus still be persuaded to undertake reforms so that the electoral system can continue to serve these functions adequately.

The second important factor is the level of dissatisfaction of opposition parties and their ability to extract reform concessions. Following Ware (1996: 149), Sachsenroder (1998: 26-27) states that opposition parties are able to do this essentially through some form of blackmail. In Malaysia there has been no lack of squawking by opposition parties, especially Chinese ones, about the unfairness of the electoral system. Nearly all the amendments to the electoral system, as well as all the re-delineations of electoral constituencies examined earlier, were denounced inside and outside parliament as the ruling party's resort to unfair means to perpetuate their hold on power. To the DAP's Lim Kit Siang, the problem with Malaysian elections is not 'vote-rigging', the stuffing of ballot boxes on polling day, but what he calls 'pre-rigging', or the ruling party's manipulation of the electoral system, especially constituency delineation, and the electoral process generally (*Parliamentary Debates, House of Representatives*, 25 April 1994: 1143).

However, opposition parties continue to take part in elections, which have been held regularly since independence. Boycott of elections by opposition parties is not unknown in the country's electoral history, but recently no political party has refused to take part in the electoral game on the grounds that the rules of the game are hopelessly stacked against it. These rules, however biased against opposition parties, have not prevented them from winning some seats in parliament or in the legislative assemblies in the states. This is true even of Chinese-based opposition parties like the DAP. The DAP has also tried, but failed, to capture the government in the state of Penang. The main Malay opposition party, PAS, has been able to capture the state government in Kelantan and Trengganu, as has the PBS for a while in Sabah. To boost their chances at the federal level, opposition parties have co-operated in various elections in order to have straight fights between the government party and the opposition in most constituencies – thus providing support for what is probably the best-known distal effect of plurality electoral systems, namely its encouragement of the formation of two major rival parties or coalitions. A major problem in this regard in Malaysia is that the ruling BN has effectively occupied the political centre, and the formation of an opposition coalition, such as the so-called

Barisan Alternatif (BA or Alternative Front) in the 1999 election, by parties at opposite ends of the ethnic political spectrum, is inevitably a steep uphill task. Not surprisingly, the greatest effort and also success in forging an opposition front were seen when there was a split in the BN caused by factional struggles within UMNO, as in the 1990 and 1999 elections. In short, opposition parties have not exercised their blackmail potential beyond denouncing unfairness in the electoral system and process. This brings us to the public audience, the third and arguably the most important factor in assessing electoral reform prospects.

Popular interest in and understanding of the electoral system may be increasing, but do not appear to be widespread as yet in Malaysia. Nevertheless, several aspects of the electoral system and process have contributed to a growing awareness that the electoral system contains elements of unfairness, and that elections, though still free, are not entirely fair. One-sided rules and practices in the conduct of elections and especially in campaigning are more transparent and easier to understand, and their criticism by the opposition has probably contributed to a general impression of the unfairness of elections. The Election Commission is generally seen as the main body responsible for elections and rightly or wrongly – probably both rightly and wrongly – its reputation has suffered as a result. Rural weightage is also a well-known feature of the Malaysian electoral system; however, dissatisfaction with rural weightage is largely confined to the Chinese. The perception of unfairness certainly exists and even appears to be on the rise within the Malaysian public – or within the various Malaysian publics, as dissatisfaction is likely to be more widespread among the Chinese than other ethnic groups.

In the absence of systematic survey data, it is difficult to gauge the extent of dissatisfaction with the electoral system. However, available indicators suggest that dissatisfaction has not reached alarming levels. Saravanamuttu (1992: 56) reports that, in a 1989 survey of 464 office-bearers in voluntary organizations (i.e. middle-class opinion-leaders) in Peninsular Malaysia, 91 per cent of Malays, 62 per cent of Indians and 59 per cent of Chinese agree with the statement that the electoral system is fair. These findings suggest that the electoral system is regarded as fair by nearly all the Malays and the majority of the non-Malays, although the significant proportion of the latter (38 per cent of the Indians and 41 per cent of the Chinese) who do not agree that the electoral system is fair should be reason enough for concern. The level of understanding and of dissatisfaction is likely to be lower among the general Malaysian public than among Saravanamuttu's respondents. Another positive sign for the government is that turn-out for general elections continues to be high overall, usually in excess of 70 per cent, indicating that the electoral game is not rejected as no longer worth playing by a clear majority of electors. Non-*bumiputra* turn-out is often lower than that of *bumiputra*, but not alarmingly so.

In considering reform prospects, the above attitudes on the electoral system must also be seen in the larger context of public attitudes towards democracy and the importance of elections in democracy. One also wishes for better data here, but a 1994 survey of several locations in Peninsular Malaysia and Sabah by Welsh (1996) indicates that Malaysians were at best moderately supportive of both democracy and elections. The results show that the political attitudes of Malaysians were broadly 'semi-democratic', 'elections were not held to be *the* critical aspect of Malaysian democracy' (p. 890), and 'Malaysian respondents accepted a semi-democratic form of institutions, contestation, and participation' (p. 902). There was also a strong correlation with ethnicity: 'Malay respondents overall opposed the expansion of democracy; the minorities, especially the Indian respondents, favoured democracy, while the Chinese respondents were more ambivalent. ... Malay respondents very strongly opposed ... universal suffrage' (p. 900).

All this has contributed to a strong, stable and secure government in Malaysia. Although widely regarded as semi-democratic, even authoritarian (Zakaria, 1989; Case, 1993; Crouch, 1996a), it continues to command widespread electoral support and even legitimacy. This support and legitimacy is derived not just from electoral victory. Other factors are probably no less important: the BN government consists of parties representing all major ethnic groups, there appears to be no viable alternative to the BN as a governing party and the government has demonstrated adequate levels of performance and responsiveness. On the last point, Crouch (1996b) explains that electoral victory, even under a favourable electoral system, still requires winning enough votes, and this the ruling party has achieved by being sufficiently responsive to all ethnic groups. This support may be more akin to passive acquiescence than to positive feelings of legitimacy among large numbers of the non-*bumiputra* (Case, 1995), but then this is what UMNO government leaders probably expect and are satisfied with from these ethnic groups.

The above does not augur well for major electoral system reform, or for greater democratization of the Malaysian political system generally. Malaysians are probably more appreciative, certainly more lectured, than most of the advantages of strong government. Nonetheless, like most political arrangements, a strong government by a dominant party is a very Faustian bargain. And the most recent election in 1999 suggests that increasing numbers of Malaysians, especially younger ones, appear to be becoming less tolerant of its negative effects for government performance, some of which the writer has tried to document elsewhere (Lim, 2001). Dissatisfaction with the government has sparked a *reformasi* or reform movement (Kessler, 2000) and generalized demands for good governance (Subramaniam, 2001). However, the electoral system has not become the target of *reformasi* pressures, although it is importantly responsible for the dominance of the ruling BN. Realistically, therefore, the BN, or UMNO in particular, is unlikely to feel compelled in the near future to

undertake major reform of the electoral system. That said, it might still be useful to note some problems of the Malaysian electoral system and briefly consider some reform suggestions.

The least politically feasible is any suggestion of a radical system change from plurality election to some form of proportional representation, even though it has been shown (e.g. Taylor and Johnston, 1979: ch. 8) that this is the only effective way to solve the problem of unfairness in constituency delineation, a major source of complaint in Malaysia. Looking at the past performance of the ruling BN in Malaysia (see Table 4), there can be little doubt that a complete switch to proportional representation would deprive it of the two-thirds majority required for amending the constitution. For this reason, proportional representation would appeal not only to opposition parties but also to those concerned about the frequent amendments to the constitution and the perceived trend towards authoritarian government in Malaysia. The German system shows that proportional representation can still retain the representation of geographical constituencies that is regarded by some as a virtue of plurality election. For those who fear that a complete change to proportional representation may lead to weak or unstable government, a mixed system of part proportional representation and part plurality election such as that in Italy and Japan may provide the solution. In fact, such a system has been repeatedly proposed for the country by a judge turned academic, Harun Hashim (1999: 64; *New Straits Times*, 9 August 2001), who would have one third of the seats in parliament filled by proportional representation and the other two thirds by the present method of plurality election. He also points out that such a system would enable political parties to ensure the election of prospective candidates for cabinet positions by placing them high on the party slate. Another possible objection to proportional representation is that its adoption in Malaysia may heighten and solidify ethnic loyalties as political parties vie for the various communal proportions of seats. However, this objection would appear to have little force, as the present system of plurality election has also fared poorly in reducing outbidding among ethnic parties. As indicated, the main problem with proportional representation, whether as a whole or part of the electoral system, is that it is unlikely to be accepted by the ruling party. Probably for this reason, opposition members and other malcontents have focused attention on correcting the weaknesses of the present system rather than push for proportional representation.

The most serious problem of the present electoral system is that it is inequitable between the various races because of the liberal application of rural weightage in constituency delineation. Not only is the rationale for rural weightage problematic, but constitutional limits to rural weightage have also been removed and it has been administratively applied in increasing measure by the Election Commission to qualify the fundamental principle of vote equality. Harding (1996: 101-102) warns 'there is a real danger of lack of legitimacy if the electoral

system diverges too sharply from the principle of “one-man-one-vote-one-value” and urges as his principal reform suggestion that ‘the delineation of electoral constituencies needs to be reviewed on a more principled basis’. Reducing rural weightage would provide a real boost to the perceived fairness of the electoral system among non-*bumiputra* politicians and their constituents. A more meaningful balance of electoral power arguably constitutes the only reliable basis for ensuring political and governmental moderation in the Malaysian plural society. Restoring the electoral parity of the more middle-class urban vote would also provide a necessary impetus to the values of responsible and accountable government. As noted earlier, a member of the MCA has proposed a phased or gradual reversion to the position at independence. However, the perceived interests of *bumiputra* parties, most importantly UMNO but probably the opposition PAS as well, militate strongly against any reduction in rural weightage.

An increasingly serious problem with the Malaysian electoral system is that the Election Commission is seen as insufficiently independent and impartial. Although its former power to determine electoral constituencies is unlikely to be restored, the Election Commission’s role is still pivotal and measures to address the mounting public scepticism about its independence and impartiality appear necessary for maintaining the credibility of the electoral system. Strengthening constitutional and statutory safeguards, especially introducing a procedure for ensuring that Commission members are acceptable to both the government and the opposition – for example, by making appointments subject to confirmation by simple majorities from both sides of the floor in parliament – would go a long way in this regard. These particular reforms may not immediately appeal to the government. However, the problem of sagging public confidence in the Election Commission is likely to demand attention.

Even within existing rules – in other words, without any real reform of the present electoral system or other laws – there is much that both the government and the Election Commission can do to improve the situation. More governmental restraint and even-handedness in applying its various legal powers could contribute significantly to a more level playing field and a perception of fairness in electoral and political competition in the country. The Election Commission for its part can be more attentive to public sentiment and avoid giving cause for doubting its impartiality in administering the electoral system and conducting elections. Even greater diligence in carrying out its legal duties can help.

In fact, shortcomings in performing routine tasks, especially those that have become the subject of widespread public attention and criticism, are the most likely to be addressed. Already the government has promised, in the wake of the aforementioned Likas case (see p. 116), to help the Election Commission to clean the electoral rolls of phantom voters in Sabah (*New Straits Times*, 9 August

2001). Considerably greater public pressure would seem to be required for other, more consequential changes in electoral administration or the electoral system itself.

Conclusion

Electors in Malaysia are free to cast their vote, but it is difficult to dispute the conclusion by Crouch (1996a: 75) that 'the Malaysian electoral system could not be described as fair'. The country's system of plurality election in single-member constituencies, the most manipulable of all electoral systems, has been shaped in multitudinous ways of varying subtlety by and for the benefit of the dominant party. This is also discernibly the major theme in virtually all prior analyses of the Malaysian electoral system, principally those by MacDougall, Senftleben, Sothi and Crouch cited earlier, as well as Lee and Ong (1987). The Malaysian case bears considerable resemblance to what Mackenzie (1958) calls 'manufacturing' or 'making' elections through 'electoral management'. His description of this (p. 172) is worth quoting at length:

The manufacture of elections is not technically a difficult operation; at practically every point ... officials can intervene to bias the system in favour of one set of candidates and against others. Elections made skilfully are made by minor interventions at a large number of points, not by brutal imposition at a few. The officials do not block all opposition by sabotaging the nomination of all candidates; they merely twist matters a little in delineating constituencies, dealing with nominations, giving facilities for the campaign, conducting the poll, enquiring into disputed cases. The sum of these things should be enough to keep the government in power, unless it has involved the nation in disaster, and they do not incur the odium of dictatorship.

Indeed, electoral management in Malaysia is not confined to the electoral system. To ensure and enlarge electoral victory for itself, the dominant party in Malaysia has managed numerous other aspects of the political system as well, in ways that support and enhance the effects of the electoral system.

Nonetheless, the effect of electoral management on election outcomes in Malaysia should not be exaggerated. To quote Crouch (1996a: 59):

Thus, the electoral system contained built-in advantages for the Malay community. There was no realistic possibility of a non-*bumiputra* party's or coalition's "going it alone" and winning an election. The only way for Chinese and Indian politicians to participate in government was by allying themselves with Malays, inevitably as junior partners. In practice, only two types of government could emerge from elections: an all-Malay government or a Malay-dominated coalition.

While every statement in the passage is unexceptionable, it should be pointed out that the outcome assertions (which refer to the federal level) would hold

regardless of the electoral system used. With voting largely along ethnic lines, the country's population composition and trend (outlined earlier in this chapter) would suffice to realize those outcomes – especially with plurality election, but even with proportional representation. What the present electoral system does, and has been made to do, is to further enhance the electoral power of the Malays and other *bumiputra*, essentially by increasing the value or efficacy of their votes when these are translated into seats in elections, inevitably at the expense of non-*bumiputra*. And in the prior struggle to win votes, various electoral and extra-electoral rules also favour the ruling coalition and handicap its opponents. Nonetheless, what is thereby manufactured or gained by the ruling coalition is emphatically not electoral victory *per se* at the federal level – for no electoral management is needed for that – but a bigger win for the ruling coalition and for UMNO itself, thus boosting the dominance of the ruling coalition and also that of UMNO within it. Only in Sabah and a few peninsular states, where Malay/Muslim *bumiputra* do not form a majority of the electorate, can it be said that electoral management was needed (and used) to secure Malay/Muslim *bumiputra* political control and ensure victory for the BN.

The BN's concept of victory at the federal level as at least a two-thirds majority also deserves notice. Maryanov (1967: 102) regards this demanding standard, first achieved 'in the peculiar pre-independence conditions of 1955', as a possible 'disservice' to the ruling party itself. More assuredly and importantly, the retention of the standard, or more precisely the ruling party's determination and actions to achieve it, has been a major disservice to the country's democratic development.

Dissatisfaction doubtless exists with the electoral system among opposition parties and their supporters. However, it does not appear serious enough to compel the UMNO-led government to reform the electoral system in order to safeguard its legitimating and cooling functions. Nor has the electoral system become a target of recent pressures for political change in the country. Serious reform of the electoral system has not become part of the political or policy agenda in Malaysia. Only actions to improve glaring and widely publicized weaknesses in the operation of the present electoral system have been promised and can realistically be expected in the short term.

Still, so long as voting is free and opposition parties are free to challenge, the holding of regular elections, even managed ones, provides a powerful reminder of the government's dependence on the people. This electoral dependence is frequently highlighted by government leaders, especially Mahathir, and provides the main support for the existence of democracy in Malaysia. Plainly, power-holders in Malaysia (and elsewhere) can cope – and have coped – with this dependence in a variety of ways. This is demonstrated again in their reactions to the 1999 election. Increasing public awareness of and revulsion at ruling elite excesses were widely seen as significant factors in UMNO's setback.

This reminder of its vulnerability has since compelled the party and its government leaders to restrain some past excesses and introduce several needed party and policy reforms in order to recover Malay support before the next election in 2004. However, it has also resulted in more ethnic appeals and posturing, more attempts to curb the opposition and increased efforts at political control (Funston, 2001). More rather than less electoral management may follow as well.

List of Abbreviations

BA - Barisan Alternatif (Alternative Front)
BN - Barisan Nasional (National Front)
DAP - Democratic Action Party
MCA - Malayan/Malaysian Chinese Association
MIC - Malayan/Malaysian Indian Congress
PAS - Parti Islam Se-Malaysia (Pan-Malayan/Malaysian Islamic Party)
PBDS - Parti Bansa Dayak Sarawak (Sarawak Dayak Party)
PBS - Parti Bersatu Sabah (United Sabah Party)
PBB - Parti Pesaka Bumiputra Bersatu (United Bumiputra Pesaka Party)
UMNO - United Malays National Organization

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