

Malaysian Electoral Reform – Three Proposals
A Report for the Southeast Asia Rules-Based Order Project

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Executive Summary

This paper investigates three areas of potential reform to Malaysian elections: the status of the electoral management body, the process of boundary delimitation, and the type of electoral system used. It argues that Malaysia's existing electoral arrangements are out of step with best practice globally in all three areas.

Establishing a genuinely independent electoral management body is the first step in restoring confidence in the Malaysian model of democracy. Urgent reform is also needed to the way by which electoral boundaries are apportioned and delimited to both equalise the number of voters in each electorate and to ensure that constituencies are drawn without recourse to political considerations. A final recommendation is to consider changing the way votes are translated into seats, suggesting that Malaysia consider moving away from its current first-past-the-post system to alternative electoral systems which can more truly reflect the will of the electorate.

Introduction

Elections are a unique area of public governance, being large-scale national events which require substantial state capacity, fundamental rights of speech and association, rule of law, and sufficient infrastructure and security to allow all adult citizens to participate. Well-functioning electoral processes balance the demands of the public at large with the rights of individuals, and must exhibit an overriding concern for the greater public good, as opposed to the good of special interests. For

democracy to work, elections must ultimately be a nation-building exercise, not a divisive one.

Malaysian electoral history shows clear deficiencies in achieving each of these goals. Established in 1957, the Malaysian Election Commission has a long history of conducting elections for the House of Representatives and state legislatures. The Commission is also the body responsible for recommending changes to constituency boundaries, which are then implemented by the parliament. The Commission is also responsible for the planning and oversight of all of the technical aspects of voter registration and elections. It also acts as a judicial body, hearing grievances from both candidates and electors about any aspect of the election process. However, it is not a fully autonomous body and in practice has fallen under the jurisdiction of the legislature in general and the prime minister in particular.

This situation is currently being addressed by the new Chairman of the Electoral Commission, Azhar Azizan Harun, who I met with in the course of writing this paper, but establishing a more independent perception of election administration in Malaysia will take some time.¹ For instance, global best practice in electoral administration has evolved from a situation, common in the past, where elections were run out of a government department, to increasing recognition today that an independent electoral management body, funded by but separate from the day-to-day workings of government, is to be preferred. While some countries still locate responsibility for the administration of elections within a government portfolio like the

¹ Meeting with the author, Electoral Commission of Malaysia, 28 May 2019.

interior or home affairs ministry, in most cases, a dedicated electoral management body (EMB) itself takes responsibility for running elections.

Electoral administration

Comparative experiences to date, including a global study sponsored by the United Nations Development Program and a comparative handbook published by the International Institute for Democracy and Electoral Assistance, emphasize the importance of truly *independent* electoral management bodies for the functioning of a democracy. Independent electoral commissions represent a clear best practice in terms of global electoral administration, and their perceived independence from political interference lends a basic credibility to the electoral process which is a crucial determinant of the success of any election (López-Pintor 2000, IDEA 2006).

A critical first step is the *composition* of an electoral management body. In some countries, electoral commissions comprise apolitical electoral officials; in others they are made up of judges; while in still others, they are formed by the political parties contesting the elections themselves. Problems with these models in some important recent transitional elections (for example, the 1999 elections in Indonesia, and the failed 2011–12 elections in Egypt) as well as established democracies (for example, the 2000 elections in the US) have highlighted their propensity for politicisation and deadlock, further underlining the importance of careful composition of electoral management bodies.

The comparative evidence, suggests that independent commissions run by non-partisan civil servants are definitely to be preferred. The UNDP review of 148

countries mentioned above found that 53% had their elections organized by independent electoral commissions; 27% conducted elections under the supervision of an independent electoral authority; and 20% had their elections run exclusively by the executive branch. Moreover, this distribution was also causally connected to a country's overall level of democracy, with electoral democracies more likely than electoral autocracies to install an independent electoral management process.

Another crucial question is the issue of *autonomy*. A truly independent commission is one that is able to operate effectively without direct ministerial control, including over its financial and administrative functions. It is also, ideally, comprised of nonpartisan appointees. In practice, many independent commissions around the world do not have complete financial independence and may include party representatives as well as nonpartisan appointments, but they are still able to operate free from government interference or control.

As a commission's degree of independence can vary, its permanence can also be manifested in a variety of ways. A permanently staffed electoral administration is costly, and in some countries it is not realistic to retain staff between elections. Over the longer term, however, permanent commissions are a more cost-effective option in many circumstances, and are much better avenues for building up substantive expertise in electoral administration. Many of the world's oldest electoral commissions (such as India's) have accumulated a capacity for mobilizing resources and a demonstrated record of expertise in electoral administration.

In Malaysia, the composition of the electoral management body has changed considerably over time. The Malaysian Electoral Commission originally consisted of three members, a chairman and two subordinates. In 1963 an additional member

was added to represent the states of Sabah and Sarawak. In 1981, the post of Deputy Chairman was established, bringing the total number of members of the commission to five, where it remains today. All members are appointed by the Paramount Ruler in consultation with the Conference of Rulers, an unelected body consisting of the executives of each state. The five members may serve until the mandatory retirement age of sixty-five, and may be removed from office only by a special tribunal called by the Prime Minister. This is clearly an issue relevant to Malaysia, given that six former Electoral Commission members are currently facing a tribunal over alleged misconduct in relation to the last general election.

Electoral administrative bodies are also highly dependent on the capacity of the broader government and the ability to collect accurate demographic data and population registers, such as via an accurate census and household registration data, which can be used to construct an electoral roll or to apportion and delineate electoral districts. For instance, as part of its extended political transition Myanmar held a (widely-criticised) national census in 2014, its first for several decades, in preparation for its transitional 2015 elections. This revealed major population changes between regions (not to mention major administrative problems with the census itself), including strongly contested recalculations of the relative population shares of some ethnic states – a recurring issue in population surveys of ethnically diverse states, with politically-fraught consequences (Horowitz 1985).

In sum, electoral management bodies must evidence both a high level of autonomy in terms of their own processes and composition, but are also inevitably dependent on other areas of government as well. This makes the overall credibility of electoral administration something of a balancing act, relying on public perceptions of the

electoral management body itself as well as of the broader reputation and governance capacity of the broader civil service. An electoral management body can be both permanent and independent but still fail to be trusted if, for example, they are formally independent but the outcomes of the elections they administer are not credible, or they are permanent but unstable because they lose members, and therefore institutional memory, after each election.

The primary objective of an electoral administration body is to deliver free and fair election services to the electorate. In doing this, it must undertake its functions in a credible manner. It must ensure that the integrity of each election process is adequately safeguarded from incompetent election officials and fraudulent manipulators. Those in charge of the administration must ensure that the organization and conduct of an election is right the first time; failure to fulfil even a simple election task or activity may not only adversely affect the quality of the services delivered, but may jeopardize public perception of the competence and impartiality of the election administrators.

Credibility is thus key to an electoral management body's public trust and support. It is important to note that neither independence nor permanence can guarantee the credibility of an electoral management body. Perceptions of a less than fully credible model of electoral administration, as Malaysia has had over the past decade, affect the democratic legitimacy of those elected.

Crucial to ensuring credibility is that functioning of an electoral body should not be subject to the direction of any other person, authority or political party; it must function without political favour or bias. The body in charge of administering or supervising an election must be able to operate free of interference not least

because any allegation of manipulation, perception of bias, or alleged interference, will have a direct impact not only on the credibility of the body in charge, but on the entire process.

There are many instances in which the perceived influence of a political party or parties over the electoral machinery has severely detracted from the validity of the election result. Again, Malaysia is one such case. While once well regarded, Malaysia's electoral administration has over time come to be captured by the interests of the government during the long period in which the Barisan Nasional held power. Malaysia's Electoral Commission was perceived to be subject to influence over what should be an independent electoral machinery. For instance, the Electoral Knowledge Network's ACE Project section on Malaysia states baldly that "The Election Commission is seen as one of the primary instruments through which the BN has manipulated the election process for its own political gain".²

Malaysia's lack of independence of electoral administration is compounded by a historical unwillingness of the judiciary to entertain complaints against it. In established democracies which have a history of relatively free and fair elections, allegations of abuse or bias are raised against an electoral administration can be adjudicated upon by the Courts, and do not necessarily detract from the credibility of the overall process. However, for less established democracies such as Malaysia, there is a much greater degree of vulnerability to allegations of undue influence and bias, thereby making the entire process more susceptible to credibility judgements,

² See http://aceproject.org/ace-en/topics/bd/annex/bdy/bdy_my#ref5

which then inevitably result in a limited acceptance of election results and of the process as a whole.

In sum, the composition, functioning and legal basis of the Electoral Commission of Malaysia has been a primary tool in the historical manipulation of the Malaysian electoral process. Just as constitutional and legislative amendments were used to create the problem, correcting this issue requires a legislative response. In particular, restoration of constitutional safeguards to protect the independence of the Electoral Commission are urgently required in order to give some distance between the government and the Commission. While the Government currently appoints all members of the Electoral Commission, and all changes to electoral law recommended by it must pass through the Parliament in order to take effect, there is scope for considering a more independent model freed from direct ministerial control if not oversight.

The Election Commission also needs to become a more responsive body. In the past, the Commission has proven unwilling to answer grievances against its conduct brought by concerned citizens, political parties or other groups. While allegations of abuse and disputes between parties or in relation to the election management body are inevitable, provision needs to be made for a special mechanism to process and adjudicate electoral complaints. Political parties, and civil society in general, are entitled to have their complaints heard in a speedy and efficient manner and by a judiciary or a body in which they have faith. The Electoral Commission's credibility will depend, in large part, on its ability to handle election-related complaints. This also means giving the electoral commission the resources

and jurisdictional ambit to address these complaints and meet the expectations of the population in ensuring free and fair elections.

Constituency delimitation

Constituency delimitation is inevitably a highly politicised aspect of electoral administration. Any electoral system based around single-member districts, such as that used in Malaysia, requires a regular and transparent process of drawing and re-drawing electoral boundaries given demographic changes, population shifts and changes in the size of parliament. The way in which electorates are demarcated will depend on issues such as demography, cohesiveness, 'community of interest' and contiguity. Furthermore, this is not a one-off task, as boundaries have to be adjusted regularly to take population changes into account. This leaves an Electoral Commission vulnerable to criticism by those who perceive the results as not serving their interests.

In many countries that follow the Commonwealth tradition, responsibility for the electoral legal framework is vested in a separate body or commission which then assumes responsibility for boundary delimitation. However, while operating at arms' length from the electoral commission, this may still create issues of politicization if the process of electoral administration is itself politically compromised. In countries such as the United States, for instance, in which the responsibility for boundary delimitation is vested in the legislature of each state, this practice can easily lead to the imposition of district boundaries that are favourable to the current majority party in the legislature, thus institutionalizing their hold on power.

Attempts to remove “politics” from the redistricting process have usually seen non-partisan commissions established which draw district boundaries following a set of neutral redistricting criteria. The public is often encouraged to participate through a call for submissions or a public inquiry process. And the legislature is permitted only a limited role, if any role at all, in the redistricting process. These reforms have been adopted by many Commonwealth countries, and appear to have been quite successful in creating a non-political process for drawing boundaries. Redistricting is rarely viewed as “partisan,” even when the outcome of an election clearly favours one party at the expense of the other parties.

Despite their success in the countries that have adopted them, reforms of the redistricting process have not been embraced everywhere. For example, in the US example cited above, only some states have been able to move towards non-partisan models of redistricting, despite widespread agreement on the need to avoid gerrymandering. This can be explained in part by the fact that the US political system and political institutions were designed on the premise that competing factions, with special interests and parochial concerns, will vie for limited resources within the legislature, and thus that “politics” and the pursuit of political self-interest are inevitable.³

Malaysia on the face of it follows the more apolitical Commonwealth approach, but in reality is closer to the American model. There is no separate body responsible for boundary-drawing, rather the Electoral Commission itself, in cooperation with state governments, proposes and then defines electoral boundaries. The delimitation process takes place in two stages. The first stage is public participation to discuss

³ This draws on the discussion in the ACE Project on constituency delimitation.

the recommendations made by the Commission, while the second stage is parliamentary approval on the final proposal. The Commission is given two years to complete the first stage which begins with the publication of initial proposal and ends with the submission of final proposal to Prime Minister. This process takes place every ten years, with the most recent boundaries being introduced before the 2018 elections.

As there are no guidance on how boundaries should be drawn, core principles related to districting criteria are limited to timing factors, with limited guidance as to the principle by which boundaries should be drawn. There is also an overtly political aspect to the acceptance of electoral boundaries. The delimitation recommendation of the Commission are submitted to the Prime Minister, who must then present it to the House of Representatives with or without amendment for a simple-majority vote. This creates an inevitable confluence between the political advantage that a government and indeed individual MPs see in a particular set of boundaries and the process of constituency delimitation.

The Malaysian process for apportioning seats across the country has been widely criticised in comparative analyses for several reasons.⁴ The core issue confronting the Malay election system is the constitutional provision guaranteeing over-representation of rural constituencies. This principle was a product of negotiations held between the British colonial authorities and the two main Malay independence movements during the 1950s, which recommended equality of population between the single-member districts but qualified this proposal for rural areas. Since ethnic Malays predominated in the rural areas and non-ethnic Malays resided primarily in

⁴ http://aceproject.org/ace-en/topics/bd/annex/bdy/bdy_my#ref5

the urban centres, a “rural weightage” was introduced which effectively ensured Malay dominance of the political system. The initial process of seat apportionment was quite justifiable on democratic grounds, recommending that: “the number 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 ... should be given to the rural constituencies.” The original 1957 Constitution contained a provision limiting the size discrepancy between any two districts to no more than 15%. This was then widened to 33%, and has since been eliminated altogether.

Over time, as a result, the principle of “one person, one vote” inherent in the idea of “approximately equal” constituencies has been steadily eroded. Districts that demonstrated support for opposition parties often had disproportionately large populations when compared to those districts that have traditionally supported the government. As a result of large differences in constituency size, the value of votes is not equal across constituencies. For instance, a vote from the smallest constituency, the seat of government Putrajaya (15,791 electors), is worth nearly nine times the vote of the largest constituency, Kapar (144,369 electors). While the constitution does allow for increased weightage to be given to rural constituencies, this is many multiples of the 15% limit in the original Constitutional draft. This means that the value of each vote changes dramatically across the country.

Part of the reason for this disparity is that seats are allocated on the basis of state rather than national criteria, and that there are distinct arrangements for eastern Malaysia and for federal territories that accentuate the malapportionment nationally.

Thus at the most recent election the most under-represented state, Selangor, had 94,469 registered voters per constituency, which is 55.53% larger than the national average, 60,740. On the other end, Sarawak and Sabah were over-represented by 41.10% and 34.43% respectively. Compounding this, the two small federal territories of Putrajaya and Labuan are also allocated one parliamentary seat.

Chin Huat Wong (2018) has linked the process for electoral boundary drawing explicitly with the rise of electoral authoritarianism in Malaysia. He shows how the technical process of polling place allocation and boundary delimitation has allowed political considerations to control the process. In addition to the malapportionment discussed above, gerrymandering has been used to favour government-held districts. Thus in prior elections the Electoral Commission unconstitutionally modified boundaries for dozens of constituencies simply by alteration of polling districts (precincts), the building blocks of constituencies. Their power to do this relies on a creative interpretation of the *Election Act 1959*, which gives the Commission the power to alter polling districts when it sees fit. As the process is supposed to affect only where voters cast their ballots, and not which constituency they belong to, it is not subject to public oversight and objection.

Wong has shown that the Electoral Commission's use of this provision is actually highly political, and amounts to a constitutional abuse of power. Similarly, while a two-year period is provided for public discussions and objections to proposed boundaries, the Electoral Commission itself is the sole arbiter of whether objections against its proposal are valid, and is not required to provide grounds for its decisions. State governments are given only perfunctory opportunities to engage with this process. As approving the Commission's proposal requires only a bare majority on

the floor of parliament, any government then has the opportunity to ram through boundaries, and can modify any of recommended boundaries in the draft order that enforces them. As Wong notes, “All these mean that any government with a simple majority and a subservient Electoral Commission can change electoral boundaries in the manner it is pleased without effective check-and-balance both in and out of the Parliament” (Wong 2018, p. 69).

In sum, it is difficult to escape the conclusion that the practice of boundary delimitation has become a primary tool in the manipulation of the electoral process in Malaysia. Global best-practice requires changes to the role of both the Electoral Commission and the Parliament in allocating, drawing and redistributing electoral constituencies. While maintaining the parliament’s ultimate oversight of the process, taking the specific decision to accept or reject a given set of electoral boundaries out of parliament’s hands and vesting it in an independent commission is one possible reform. Another is to have a legislated and specific administrative process, potentially based on the national census, for the apportionment of constituencies, including a specific tolerance for rural communities, if necessary. Ideally, this would be administered by an independent boundaries commission that could draw electoral districts based on non-political criteria such as geographical features and community of interest within this population range. Legislating a requirement to give attention to both geographic and demographic factors such as topography, ease of travel, relative population distribution, administrative access and community needs are the best way to do this.

Similarly, the surest way to address Malaysia’s history of malapportionment is the restoration of previous constitutional safeguards, such as the original constitutional

provision to allow no more than 15 percent deviation between constituency populations, subject to prior guarantees for Sabah, Sarawak and the federal territories. The more precisely that Parliament can specify these criteria for boundary delimitation based on internationally-accepted standards, the more likely it is that confidence can be restored in the electoral process, and that the outcome will be seen as fair and accepted as legitimate by the public.

Electoral System Design

The design of an electoral system has many long-term consequences for democratic governance, and the choice of electoral system is one of the most important political decisions for any country. Electoral systems are the primary vehicles for people to exercise choice and citizens' voices to be heard, and are the main medium of representational governance. The shape of an electoral system can influence other aspects of the political system, such as the development of political parties, and has an important bearing on whether citizens feel closely-enough linked to their political leaders to demand real accountability, representation and responsiveness. Electoral systems also have profound implications for the poor and other marginal groups, helping determine the extent to which their voices will be heard and their power enhanced.

An electoral system is designed to do three main jobs. First and most fundamentally, it translates votes cast into legislative seats or one-person office(s) won. Second, it acts as the conduit through which the people can hold their elected representatives accountable. Third, it defines incentives for those competing for power to couch their

appeals to the electorate in distinct ways. In divided societies, for example, where language, religion, race or other forms of ethnicity represent fundamental political cleavages, particular electoral systems can reward candidates and parties who act in a co-operative, accommodating manner to rival groups or they can punish these candidates and instead reward those who appeal only to their own group.

Electoral systems are often categorized according to how proportionately they operate in terms of translating votes cast by electors into seats won by parties. A typical three-way structure divides such systems into plurality-majority, semi-proportional, and proportional representation (PR) systems – see Figure One.

Plurality-majority systems typically give more emphasis to local representation via the use of small, single-member electoral districts than to proportionality. Amongst such systems are the plurality or “first-past-the-post” system used in Malaysia, as well as other variants which often require a higher threshold of acceptance, such as runoff and alternative vote systems. By contrast, proportional representation systems use larger multi-member districts and deliver more proportional outcomes – include ‘open’ and ‘closed’ versions of party list PR, as well as “mixed-member” and “single transferable vote” systems. Semi-proportional systems offer another approach, as well as various mixtures of plurality and proportional models (such as the “mixed” models by which part of the parliament is elected via PR and part from local constituencies – a common choice in many new democracies over the past decade, especially in bicameral parliamentary systems).

In Malaysia, the combination of a first-past-the-post electoral system, extensive malapportionment, deliberate gerrymandering and constitutionally-mandated Malay supremacy has helped forge a party system in which a single Malay party, the United

Malays National Organisation (UMNO), was for many years able to dominate politics. It did this by forming a coalition and allying with subservient parties representing the country's major ethnic minorities, thus becoming a dominant kind of "consociational" grand coalition. In so doing it also tended to occupy the electoral centre ground, pushing opposition out to the ethnic "flanks"—toward Malay nationalism and Islamism among ethnic Malays, and toward parties advocating more strongly for minority rights among Chinese, Indians, and other groups (Horowitz 1985).

Because it was able to occupy the centre ground for many years, this long-ruling Barisan Nasional (BN) coalition received a degree of cross-ethnic support — one reason for Malaysia's decades-long periods of political stability and relatively harmonious ethnic politics in the 1980s and 90s. However, the increasingly undemocratic approaches to electoral politics over the past two decades by the ruling coalition saw these benefits decay. The BN was less and less a grand coalition, and more dominated by UMNO. Similarly, vote pooling became increasingly peripheral to Malaysian elections, with more targeted ethno-religious appeals by parties representing clear ethnic or religious constituencies.

Malapportionment and gerrymandering amplified this process. It was not until 2018 that an opposition multiethnic coalition was able to finally break through on the back of a huge swing against the former regime.

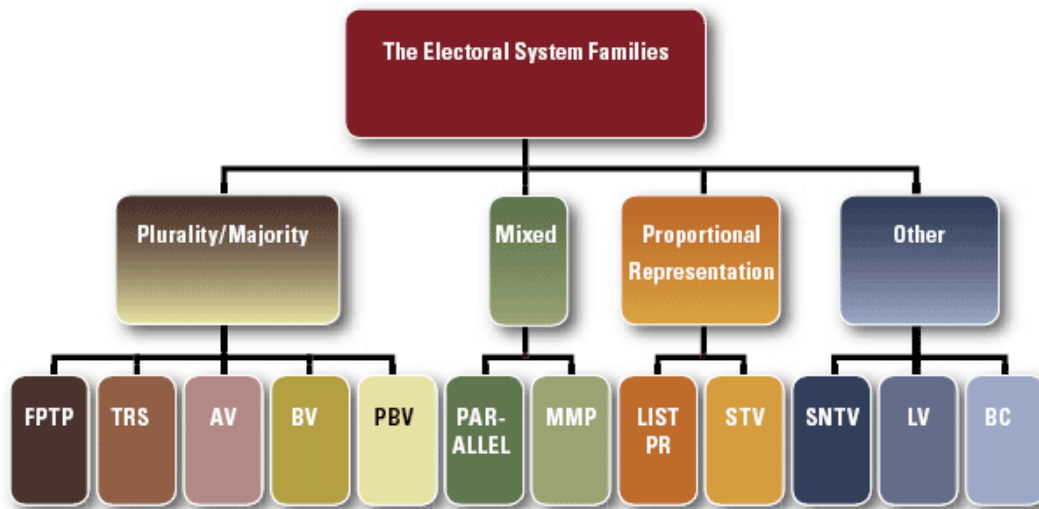
Malaysia now has an opportunity to redraft its electoral laws to make sure that some of the most egregious dysfunctions of the old system will not reappear. In addition to giving immediate attention be given to addressing the more pressing issues discussed above – the independence of the electorate commission and the boundary delimitation process; a more equal apportionment of voters across

constituencies; addressing disparities between rural versus urban electorates; and ensuring the judiciary's appropriate role in overseeing the electoral process – Malaysia's electoral system is now out of step with other Asian democracies, and hence a re-evaluation is in order.

Electoral system choices

In terms of practice, most experts would agree that there is no “best” electoral system, and that the choice of system needs to be made with desired goals in mind (e.g., proportional election outcomes, strong local district representation, margin of choice for voters above political parties' nominations, etc). While some electoral systems are certainly more likely to produce, say, proportional electoral results than others, the overall consequences of electoral systems are highly context-specific. For example, a party whose vote is thinly distributed over a wide area is likely to be disadvantaged by constituency-based plurality system, such as that used in Malaysia. However, a party with a regionally concentrated vote can easily be over-represented by the same systems.

Figure 1: The Electoral System Families



Plurality-majority systems

The five types of plurality-majority systems comprise two plurality systems (first past the post and the block vote), and three majority systems (the two-round runoff, the alternative vote and the supplementary vote). Plurality systems are won by those who win a plurality of the vote (ie more than any other contestant), while majority systems are structured so as to ensure that the winning candidate gains an absolute majority (ie more than 50 percent) of eligible votes.

Under *first past the post* systems, the winner is the candidate who gains the most votes, but not necessarily an absolute majority of the votes, in single-member districts. Such elections are typically presented as a contest between candidates, rather than parties. Voters choose their favoured candidate with a tick or a cross on the ballot paper, and the winner is simply the candidate who gains more votes than any other. This is the world's most commonly-used electoral system.

The *block vote* is the application of plurality rules in multi-member rather than single-member electoral districts. Voters have as many votes as there are seats to be filled, and the highest-polling candidates fill positions sequentially regardless of the percentage of the vote they actually achieve. The Philippines has in the past used this system for Congressional elections.

The most common form of majority system, the *two-round system*, takes place in two rounds of voting, often a week or a fortnight apart. The first round is conducted in the same way as a normal plurality election. If a candidate receives an absolute majority of the vote, then he or she is elected outright, with no need for a second ballot. If, however, no candidate has an absolute majority, then a second round of voting is conducted, usually as a runoff between the two highest polling candidates from the first round, and the winner of this round is declared elected.

Another majority system is the Alternative Vote, used in Australia, in which voters number their second and later preferences between candidates, in case their first choice does not win – a system sometimes called ‘Instant Runoff Voting’. This system provides voters the opportunity to offer an ordinal ranking of candidates by indicating their first, second, third etc choices on the ballot. For the single-member, lower house version of the system, any candidate winning an absolute majority is declared elected. However, if no-one has attained a majority, the candidate with the lowest number of first-choice votes is eliminated and their votes transferred according to the second-choice on each ballot, a process which continues until one candidate has a majority of votes left in the count.

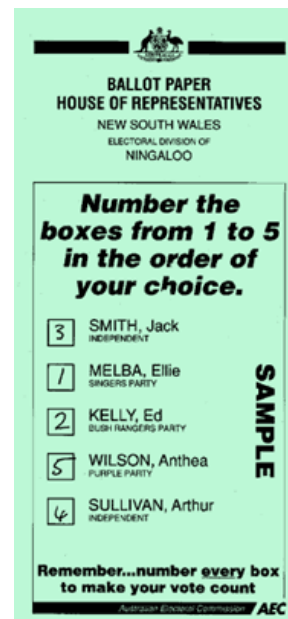
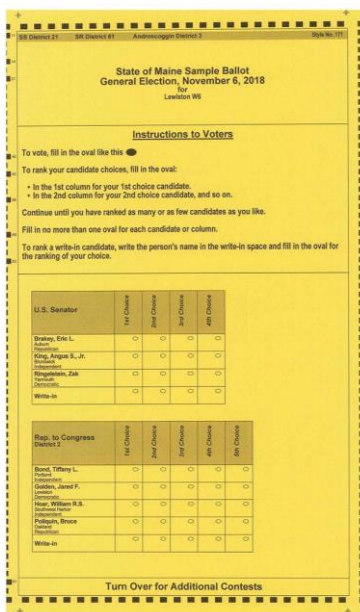
In an ethnically-diverse society such as Malaysia, such a system also allows for cross-ethnic voting, which has been found by scholars to be an important element in

building peaceful inter-racial relations. Thus, an ethnically Indian voter could use her first preference to choose a party representing her ethnicity, but could then use her second or later preferences to indicate which of the candidates from other ethnic groups she prefers. In multi-ethnic electorates this process mitigates against extremism, as politicians need to attract a range of both first-preference and secondary preference votes from different groups in order to win a majority.⁵

Such rank-order systems are also growing in popularity in the United States, with the US State of Maine recently adopting this model for its Congressional elections. The following picture shows an example of the different ballot structures used.

Maine

Australia



⁵ See Benjamin Reilly 2001, *Democracy in Divided Societies: Electoral Engineering for Conflict Management*. Cambridge: Cambridge University Press.

In virtually all cases, such systems are applied only in single-member electoral districts. When used in multi-member districts, plurality systems are known as either the block vote (if voters have as many votes as there are seats), the Limited Vote (if voters have fewer votes than there are seats), or the Single Non-Transferable Vote (if they have only one vote) - the Philippines party list system is actually a version of this system.

Proportional representation (PR) systems

The rationale underpinning all PR systems is the direct translation of each party's or candidate's share of the votes at an election into a corresponding proportion of seats in an elected body. For instance, a party that wins 20 percent of the votes should gain about 20 percent of the seats under a PR system, whereas the same vote total under most majoritarian systems would result in no seats at all.

There are three major types of PR system—open list, closed list, and single transferable vote systems. All of these systems require the use of electoral districts with more than one member: it is not possible to divide a single seat elected on a single occasion proportionally. As a result, multi-member electorates are essential to any PR model.

Closed list PR, the most common type of proportional representation system, requires each party to present a list of candidates to the electorate. Electors vote for a party or list rather than for individual candidates; and parties receive seats in proportion to their overall share of the national vote. Winning candidates are taken from the lists in the order fixed by the party itself, and voters are unable to express a preference for a particular candidate.

Open list PR, by contrast, allows voters to choose not just a party but also a particular candidate from a party list or, in some cases, more than one list. This changes the power of parties to control places on the list, making open list PR much more a contest for personal popularity than closed list PR, in which parties make the decisions about which candidates are placed in winnable positions.

The only form of proportional representation that does involve voting for individual candidates is the *single transferable vote* (STV) form of proportional representation. This system is used to elect the Australian Senate, in Ireland and a few other countries internationally.

Mixed Systems

Mixed electoral systems attempt to combine the positive attributes of both plurality/majority and proportional electoral systems. In a mixed system there are two electoral formulae running alongside each other. Votes are cast by the same voters and contribute to the election of representatives under both systems: typically, a district-based system, often utilising single-member districts, and a proportional list, often elected on a national basis.

Mixed systems are a feature of electoral system choice in the 1990s, and have been a particularly popular choice in transitional democracies -- perhaps because, on the face of it, they appear to combine the benefits of proportional representation with those of local district representation (Shugart and Wattenburg 2001). Mixed systems can be divided into two broad categories, *mixed member proportional* (MMP) and *mixed-member majoritarian* (MMM) systems.

Mixed member proportional systems are designed so that part of the parliament (often one-half) is elected from single-member districts, while the remainder is elected from PR lists. Voters can be given a separate vote for each or only one vote. MMP systems then use the PR list seats to compensate for any disproportionality produced by the district seat results. Such systems deliver truly proportional election results and are thus often categorised as a form of PR. Germany, New Zealand, and Mexico are examples. Thailand has recently adopted such a system for its 2019 elections.

Mixed member majoritarian systems, by contrast, use both PR party lists (see below) and local districts running side-by-side, but with no compensatory provisions. Part of the assembly is elected by proportional representation, part by some type of plurality or majority method. MMM systems are thus often referred to as ‘parallel’ systems.

As discussed below, many of electoral reforms in Southeast Asia in recent years have resulted in MMM systems, including the cases of Japan, Korea, Taiwan, Thailand and the Philippines. As a result, the region has become something of a showcase for the diversity of electoral system design. It not only provides clear examples from each the three main families of electoral systems – proportional representation, semi-proportional, and plurality-majority models – but also from most of the main electoral sub-types: list PR (Indonesia, Cambodia), plurality first-past-the-post (Myanmar, Malaysia), two-round runoff (Vietnam), and block vote (Laos) systems.⁶ In addition, the region provides several unique examples of electoral system design such as Singapore’s party-block system, Indonesia’s “distributional”

⁶ For more on these classifications, see Reynolds, Reilly and Ellis 2005.

electoral formulae, and the distinctively majoritarian MMM models found in Thailand and the Philippines.

Unlike MMM systems in other world regions, Asian mixed-member systems tend to be weighted heavily in favour of the districts and run the list component of elections separately, but with no interchange between the two (although the recent Thai election represents a partial exception). This makes them more majoritarian in their operation than most similar models in other world regions. Indeed, the shift towards more majoritarian electoral models can be considered a hallmark of the new 'Asian model' of democracy (Reilly 2007).

Elsewhere, the region's more conventional proportional and plurality electoral systems have also become increasingly contested by reformers and incumbents alike. After experimenting with several different models, Indonesia today uses an 'open list' PR system with relatively small district magnitude, which in some provinces results in two or three-member districts. Cambodia does much the same: a third of all seats in its list PR system are chosen from single-member districts, giving incumbents a marked structural advantage. At the other extreme lies East Timor: having used a mixed system for its founding 2002 elections, in 2007 East Timor switched to a pure PR model, with the whole country forming one constituency.

Reform options

Malaysia is one of the only democracies in Southeast Asia which continues use a 'first-past-the-post' electoral system – that is, the kind of single-member plurality system familiar to Anglo-American practice, which is also used in India, Myanmar

and many other countries. In Southeast Asia, however, most countries have moved away from straight first-past-the-post voting towards either proportional representation (PR) or a mixture of different systems. Thus, Indonesia and Timor Leste use full proportional representation; both Singapore and the Philippines employ a mixture of both single-member and multi-member plurality (with a party list in the case of the Philippines); and Thailand has recently introduced a form of 'mixed member proportional' voting, incorporating both local first-past-the-post districts and a national list, for its 2019 elections.

For Malaysia, a switch away from first-past-the-post to a fully proportional system (as used by the two top-ranked democracies in Southeast Asia, Indonesia and Timor-Leste) would be a major change as it would mean moving from small, geographically discrete single-member districts to much larger multi-member districts. In sparsely populated regions, such as parts of East Malaysia, this would mean that whole states may become electoral districts in order to produce enough seats to deliver a proportional outcome (at a minimum, preferably 5 or more).

Alternately, Malaysia may wish to examine electoral reform options which allow it to keep its existing model of having all or at least some MPs representing individual electoral districts. Assuming that Malaysia wishes to maintain at least some single-member electoral districts, consideration could be given to one of three different reforms that are currently proving popular in other countries:

- The first and most obvious would be to include a proportional upper tier, elected from a party list on either on a regional or (preferably) national basis, to give representation to those interests who are unable to win seats at a local level. Assuming that these list seats would be fewer in number than seats

elected from local districts, this would effectively change Malaysia to a mixed-member majoritarian system, along the lines of the other East Asian democracies noted above. List seats can also be used to represent specified marginalised groups including women, ethnic minorities or sectoral groups, as will be discussed below.

- A second approach would be to take this approach a step further, and use these party list seats to make the overall outcomes of Malaysian elections proportional on a votes-seats basis. This can be done by making the list seats half of the parliament in total, and then allocating such seats to balance for any disproportionality arising from the party list contest. For example, if a party had gained 20 percent of the vote nationally but won no district seats, it would be granted 40 percent of seats from the party list contest instead, and thus giving it 20% of the seats overall. Given the increasing preference for systems which combine some element of proportional representation around the region, this would be a very progressive change in line with global standards.
- A third approach, which would also be compatible with either of these changes, but more likely as an alternative to them, would be to change the electoral system used for the district seats to a form of 'instant runoff' voting such as a two-round system or a single-round ranked choice such as the alternative vote, described above. This is often suggested for ethnically-divided or polarized societies as it can promote a degree of cross-ethnic behaviour by giving voters the ability to indicate their preferences between all candidates standing, and making their second and third choices potentially influential in determining the electoral outcome. To win the seat, candidates

must gain an absolute majority of the vote, either outright or via these secondary preferences, giving them an incentive to try to represent all social groups, not just their own. If combined with multi-ethnic electoral districts, this system may be a good option for encouraging inter-ethnic politics in Malaysia (see Horowitz 1991, Reilly 2001).

Policy consequences

Introduction of any of these different electoral systems is likely to also have broader policy consequences. For instance, Michael Rock (2013) tested the implications for economic growth of Asia's move towards more majoritarian "developmental democratic states" in seven East Asian polities — Indonesia, Korea, Malaysia, the Philippines, Singapore, Taiwan and Thailand. Using regression analysis, he found that there was no trade-off between growth and democracy for those newly democratic states which adopted majoritarian electoral institutions compared to under authoritarianism. To the extent that the strong majoritarian bias of these reforms privileges efficiency and accountability over representativeness, Rock found that "the contribution to growth from majoritarian institutions in East Asia is as large as that from the region's developmentally oriented authoritarian governments" (2013:1).

The interaction between different electoral and party systems create divergent incentives for public goods delivery. Joel Selway (2015) argues that PR rules are better for public goods provision in homogenous states such as Japan, or states which do not display market inequalities between groups such as Switzerland, but

not so much in country's such as Myanmar (and possibly, Malaysia too) in which ethnic minorities are geographically-concentrated. The reason, he argues, comes down to incentives. PR in countries like Switzerland produces parties with geographically-dispersed bases of support, making it difficult to selectively target resources, while the list feature of PR gives candidates strong incentives to be loyal to the central party leadership who are more concerned with the party's overall success and thus the least responsive to narrow demands: "We thus see less success in catering to narrow constituencies with particularistic goods because it is simply more cost-effective to distribute government resources broadly" (Selway 2015, 14).

As a practical illustration, consider the example of health care and hospital construction in Thailand following the decision in 1997 to add a PR tier as a single national district to the electoral system. This reform led to a change in the party system, from a fractionalized system of narrowly-oriented parties based around local strongmen to a more nationalised two-party system. These new parties developed their own independent policy platforms to a much greater extent than had previously been the case as they sought to distinguish themselves in a national electoral contest. Health was a prominent campaign issue. In power, both the main parties made significant reforms: "whereas the pre-1997 era was characterised by building of hospitals and the over-purchasing of expensive medical equipment, and rampant corruption, the post-1997 era witnessed a much broader distribution of health resources. Specifically, access to health resources was extended to a much larger proportion of the population" via rural health clinics and the 30-baht health card. In sum, pre-reform health policy was focussed on expensive hospital and equipment

directed to strongman's local districts; post-reform policy was much more focussed on delivering goods throughout the country based on population size (Selway 2011).

However, despite their public-goods enhancement, Thailand's reforms have been characterized as a case of "be careful what you wish for" (Kuhonta 2008): so many incentives for cohesive parties and strong government were put in place that they unbalanced the political landscape and helped facilitate the rise of Thaksin Shinawatra and his Thai Rak Thai (TRT) party. Following the 2006 coup, many of these incentives for strong parties and stable government were revoked, in a direct response to the politics of the Thaksin years, which continue to echo through Thailand's contemporary modern of electoral authoritarianism. Given the ongoing strength of rural support, particularly in the northwest, for TRT's successor parties, in 2019 the military regime was tempted to further dilute the vote share of the regions via the latest round of electoral reforms, using a strategy of political fragmentation to ensure a weak parliament in what appears to be a new model of Asian electoral authoritarianism.

The Thai experience highlights the strategic nature of electoral system choice for incumbent regimes facing a strong and rising opposition challenge. Incumbent regimes and opposition movements face different incentives over institutional choices depending on their electoral prospects. Established major parties or those who think they will be able to secure a clear plurality of the vote have an incentive to choose majoritarian models such as first-past-the-post to maximize the seat bonuses that such systems typically provide to the largest party. Hence the support for such systems evidenced by incumbent parties such as Golkar in Indonesia in 1999 or the National League for Democracy in Myanmar today. By contrast, declining governing

parties or challengers less sure of their prospects are often tempted to choose PR, in order to protect themselves from an electoral wipeout and guarantee their retaining a fair share of seats (hence the late and ultimately abortive push for a shift to PR by the former USDP government in Myanmar prior in 2014). Mixed systems are a good each-way bet in situations of even greater electoral uncertainty. In short, rational calculations of future electoral support are important strategic considerations for system choice.

Challenges

Elsewhere in Asia, moves towards electoral reform have not been without problems. For instance, political scientists often laud the role of institutionalized political parties as “a crucial pillar in the functioning and consolidation of emerging democracies”, seeing them as the ‘missing link’ in the quest for democratic consolidation across the region (Hicken and Kuhonta 2011: 573). Indonesia, the world’s most populous emerging democracy, has taken such efforts the farthest, requiring parties to establish an organisational network across the archipelago before they can compete in elections.⁷ By effectively banning local parties, this has created putatively national parties with a cross-regional organisational basis by fiat, but also centralized the party system. While avoiding the rise of ethnic parties, the lack of local representation has been criticised for increasing the distance between MPs and their constituents, and for allowing candidates to buy their way onto party lists.

⁷ An exception to this rule applies in Aceh, and was a key part of the 2005 peace agreement there. See Hillman 2012.

Other electoral changes have been adopted in a piecemeal fashion and appear uncoordinated with other reforms. Indonesia is again an example: its open list model in theory promotes greater accountability but in practice weakens party cohesion by encouraging members of the same party to compete directly with each other for votes. The 2009 (and even more so, 2014) elections were thus very much a contest between candidate rather than party brands, and featured (predictably) high levels of intra-party contestation as electoral success is now dependent on a candidate's personal vote total rather than the party vote. This move, the result of a Constitutional Court decision, increased intra-party competition and undermined other efforts aimed at building stronger parties in Indonesia (Dressel and Mietzner 2012).

In other Southeast Asian countries, the courts have also been influential in electoral matters. In the Philippines, Supreme Court decisions led to the restricting party list group representation to a maximum of three seats and restricting the ability of larger parties to compete for them. The effect of these rulings appears to have been widespread confusion, and the list seats have been dogged by problems, with less than half the winning list of candidates taking up their seats in recent elections. In the absence of clear legal guidance, established parties have also colonised the party list seats with front organisations, to the point where some scholars argue that the party list seats have exacerbated, not ameliorated, the Philippines 'democratic deficit' (Hutchcroft and Rocamora 2003). In the same manner, the above-mentioned case of Indonesia's use of open list voting in 2009, introduced by Court order to build greater links between individual candidates and the electorate, has created internal pressures on party cohesion as members of the same party compete for votes.

There is also a broader tension inherent in different institutional reform packages in the region, some of which appear to work at cross-purposes. Thus the shift towards a mostly district-based electoral system in Thailand was made with an expectation that such systems would, over time, improve political accountability by forging closer links between individual politicians and voters. However, this may simultaneously retard another desired aim – the development of more nationally-focussed and programmatic political parties – as district-based systems are generally considered to be less effective at promoting nationally-cohesive parties than PR. Initial reforms in both Indonesia and Thailand also saw party-strengthening in lower house elections undercut by the design of ‘non-party’ upper houses (Rich 2012).

There are also a range of specific institutional devices that can be used to target under-represented groups such as women and the poor. In recent years, a number of countries such as Rwanda, Jordan, Uganda, Argentina, India, Bangladesh, Eritrea and Tanzania have experimented with the use of quotas to boost women’s representation. In addition, countries as diverse as India, the Philippines, Nepal and PNG (Bougainville) have worked specific provisions for under-privileged groups (and in some cases other specific sectoral groups, such as disabled, backwards regions, scheduled castes, and former combatants) into the design of their electoral systems. However, provisions for ethnic balance may require some formal identification of ethnicity as part of the electoral process, which may often be undesirable. The applicability of such schemes to Malaysia would also depend on the structure of the electoral system chosen.

Conclusion

Across Southeast Asia, many electoral systems have been redesigned in the past two decades, with direct implications that such reforms may have for Malaysia.

Electoral reforms to promote political stability have been linked to broader ideas of governance and development (Reilly 2006, Rock 2013). This represents something of a justification for the electoral engineering that has taken place across the region. In part because of a widespread elite consensus on the need for “pro-development” policies, there has been an active effort to promote more programmatic party politics, either via electoral system change (as in Japan and Taiwan), as part of a new constitution (as in Thailand or the Philippines), directly via political party laws (as in Indonesia), or combinations of all three. While distinct, most of these reforms have at their heart the quest for stronger and more cohesive party politics which could aggregate social cleavages and, in theory, deliver more stable and effective governance.

This paper suggests that electoral reform is also an important step in solidifying democracy in Malaysia. While many reforms are needed, re-establishing the credibility of Malaysian elections clearly requires change in three areas: the status of the electoral commission, the process for delimiting electoral constituencies, and, at least potentially, the system used to translate votes into seats. Just as constitutional and legislative amendments were used to create the problem of a lop-sided electoral playing field which allowed the elimination of checks and balances and a descent into electoral authoritarianism, correcting this issue will in many cases require a legislative response. These could include:

- The creation of a genuinely independent Electoral Commission whose role is legislatively-enshrined and is not under direct ministerial control;
- The reform of the process for apportioning the number of seats in the Malaysian parliament;
- The creation of an independent electoral boundaries authority, and removal of parliament from the process of delimiting and apportioning seats;
- Reform of the process for public hearings and lodging objections to proposed changes to electoral boundaries;
- Enforcement of existing Constitutional provisions, including removal of the Electoral Commission's ability to shift polling places across constituency boundaries, and enforcement of existing constitutional provisions that 'regard ought to be had to the inconveniences attendant on alterations of constituencies, and to the maintenance of local ties'; and
- The introduction of internal checks and balances within the Electoral Commission itself, such as an internal audit or ombudsman to review decisions, adjudicate complaints and ensure natural justice.

In regards to the electoral system, consideration could also be given to more 'centripetal' electoral system reforms such as

- The application of alternative or ranked-choice voting as a modification to the current plurality system in single-member districts;
- Strengthened majority-rule requirements such as a minimum winner threshold, followed by a run-off;

- Both of these would benefit from legislative requirements to create *ethnically-mixed* electoral constituencies,

If more ambitious reforms were envisaged, consideration could be given to more substantive changes to address the issue of representation of eg

- Stronger political party laws following, for instance, the Indonesian example which requires parties to have a cross-regional support base, thus strengthening national integrity;
- Introducing an element of proportional representation into Malaysian elections via a parallel or mixed-member majoritarian (MMM) system, in which voters were given a second vote for a nationally-elected party list in addition to their district-level representative (this would require the creation of additional seats or the reduction of some current district-level seats);
- Introducing full proportional representation into Malaysian elections via a mixed-member proportional (MMP) system. This would also require the creation of national list seats, and shift in the balance of seats between the district and national level, but would not require a two-vote system as the allocation of these national-elected seats would depend upon results at the district-level.

These various electoral system options would have different impacts, but all offer the potential for improvements on the existing first-past-the-post system. They would each allow Malaysia to keep its existing Westminster-style political arrangements and maintain the use of single-member electoral districts in all or at least some seats, depending on the option chosen. The introduction of an AV or run-off system

would deliver truly majority victories while also potentially incentivising improved cross-ethnic relations, while a more proportional model would boost minority representation and greatly improve the relationship between votes cast and seats won in an election, a basic measure of electoral fairness. Comparative experience suggests that each of these options offer some potential advantages but also carry the prospect for unintended consequences as well. Malaysian reformers interested in the country's democratic development would do well to consider them in the context of the current round of electoral reform discussions.

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