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After GE13: Strengthening Democracy in Malaysia

Dato' Muthiah Alagappa Ph.D.

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About the paper

The outcome of Malaysia's 13th General Election (GE13) is still contested. Some argue that since Pakatan Rakyat won the popular vote, Barisan Nasional therefore does not have the legitimacy to rule. But all political parties entered the election knowing that popular vote is not the deciding factor in a parliamentary system. Popular vote cannot be the basis to protest against the elected government, but it can be used to call for reform of the political system especially the electoral system.

Positing that a healthy democratic system is the best legacy we can pass to future generations, this paper takes the premise that there is now an opportunity to deepen democracy in Malaysia by moving on and focusing on issues that matter.

Democracy in Malaysia is a legacy to be cherished. Many developing countries have not been able to build strong democratic institutions. But we have these institutions today and we urgently need to strengthen them.

Reforming the electoral processes is a key step to deepen democracy in Malaysia. Creating a parliamentary committee to oversee the Election Commission (EC) may be a step in the right direction, but replacing the EC leadership with one that can command more public trust would be a much stronger step. Once that is done, it would be necessary to look into the unequal constituency apportionment, political financing, and press freedom. All are important to improve the democratic election of a government.

The paper also discusses other important reforms to deepen democratic governance, such as the need to distribute power to other levels of government, strengthening the role of civil society and parliament in providing check and balance, creating healthy interaction between government and opposition, and ensuring positive relationship between the federal and state governments regardless of which party is in power.

I. Introduction

The outcome of Malaysia's 13th General Election (GE13) has been embraced by important quarters leading to the formation of new governments at the federal and state levels. At the same time certain segments of the body politic continue to contest the outcome giving rise to challenges and a sense of unrest in some quarters. Some challenges relate to the legitimacy of the government and political system.

Contestations of the legitimacy of government and political system are in part due to the inability or failure on the part of political leaders and the general public to understand the nature of our democratic system as well as the conflation of government, political system and state. These are separate and distinct political entities.

The popular vote cannot be the basis for judging the legitimacy of the government in a parliamentary system. The parties in power at the federal and state levels won through a competitive process based on the rules prescribed by the present system. If their legitimacy is to be challenged, it has to be on the basis that they violated those rules. And such contestations should be taken up through appropriate legal and administrative channels. If those channels are deemed unfair, then there should be demands for more even-handed and transparent institutions and processes.

Contesting legitimacy through political rallies risks undermining law and order. Undermining the rule of law is to no one's advantage. An important attribute of Malaysia since independence has been observance of rule of law and the law-abiding

nature of citizens. It is possible to argue that the independence of the judiciary and rule of law have weakened over the last few decades. We should not further compound that situation. Instead we should act with maturity to strengthen the independent role of the judiciary and the rule of law.

The popular vote, however, does provide a basis for contesting the legitimacy of the electoral delineation under the present political system. Although it is not uncommon in parliamentary systems for the winning party to not win the popular vote, it also does not bode well to have a gross imbalance between the popular vote and the election outcome. It is important to begin rectifying the structural and procedural problems in our democratic political system that makes possible such unbalanced outcomes. Delineation of constituencies should be undertaken with a view to enhancing equality of votes and fairer voter representation in federal and state legislatures. Equality, representation and citizen participation are key features of a democratic system.

Though the elected government and political system are important pillars, the democratic state is more than them. It also comprises systems, processes, and institutions like the police force, armed forces, civil service, election commission, and other professional institutions that enforce laws, defend and administer the country under the direction of the elected branches of government but are distinct from them. Dissatisfaction, disenchantment or fears in some quarters about certain institutions reflect perceived professional weaknesses of those

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institutions, and their perceived failure to maintain professional independence especially in the process of electing a new government and in governance.

Recognising the unease in certain quarters and to instill confidence in the independence of the Election Commission (EC), Prime Minister Najib recently announced his intention to transfer the control and functions of the EC to a special committee comprising MPs from all parties. Though a step in the right direction and we await further details, overseeing committees may not be the answer. They may in fact impair effective governance. If this precedence is followed, committees to oversee the work of numerous state institutions may have to be established. There may also be a need for committees to oversee and coordinate the work of the numerous overseeing committees. That is likely to make for cumbersome and ineffective government.

Why not tackle the problem at source by appointing a new EC leadership that is demonstrably more independent? Band-aid solutions should be avoided. The focus should be on building strong professional state institutions. Without judging the integrity and competence of the present team, it is important to appoint a new leadership for the EC. The political situation demands a new and demonstrably more independent leadership whose work on the all-important delineation process will be respected and widely accepted. The concern to restore credibility in the institution that manages election of a new government must be directly addressed.

Challenges to the legitimacy of the Malaysian system of democracy may or may not be legitimate but the sense of unease and distrust they engender must be addressed so as not to permanently discredit the process of electing a new government or the democratic system of governance. A strong case can be made to strengthen the democratic system and process of government in Malaysia.

With that in view, I am happy that IDEAS has decided to publish in a single collection the four columns I wrote on strengthening democracy in Malaysia. These columns first appeared in The Edge Malaysia on 21 January 2013, 18 February 2013, 1 April 2013 and 22 April 2013. I would like to thank The Edge for granting permission to reprint those columns.

Deepening democracy in Malaysia should focus on strengthening the process of electing a new government (electoral democracy), building checks, balances, transparency, accountability and citizen participation in the exercise of state power (democratic governance), democratising the state by devolving power to lower levels of government as appropriate, and ensuring strong professional state institutions that are efficient, independent, and reflect the multi-ethnic and multi-religious character of the country with due attention to gender representation. Issues pertaining to all these aspects of democracy are discussed in the columns. Though not exhaustive by any measure, the columns can be a valuable guide to those who are interested in political transformation to ensure a healthy system and process of democratic governance

in Malaysia.

As I have remarked on numerous occasions a healthy political system is just as important, if not more important than economic transformation. Economic transformation can help but by itself cannot resolve political problems. Strengthening the democratic system of governance through a meaningful political transformation programme is perhaps the most important legacy we can pass on to future generations.

2. Democracy in Malaysia: A legacy to be cherished and further developed

(A version of this article was first published by The Edge on 21 January 2013)

Barring unforeseen circumstances, Malaysia's parliament should be dissolved on or before 28 April 2013. The constitution requires general elections to be held within 60 days and a new parliament to sit within 120 days from the date of dissolution of parliament. Per these provisions Malaysia should have a new parliament and government at the latest by third quarter 2013. That will be the 13th time a government has acceded to power through the ballot box. Except during 1969-1971, democratically elected governments have governed Malaysia since 1959. This is no mean feat. All Malaysians should be proud of that accomplishment.

At the same time it is possible to argue that democracy in Malaysia has eroded over time. In the interest of stability, certain constitutional provisions have been placed beyond public debate and scrutiny. For the

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same reason some civil liberties have been constrained.

Several provisions of the constitution that could have deepened democracy remain diluted or unimplemented. The power and independence of some public institutions especially the judiciary have been compromised. For various reasons, government, opposition parties, civil society, the private sector, and the public at large have not fully adhered to democratic practices leading to charges and counter charges of anti-democratic practices.

Notwithstanding the charges and counter charges of anti-democratic practices, it is crucial that the upcoming elections is seen as clean and fair as possible. All parties must accept the election outcome as the verdict of the people. That will avoid debilitating political struggles. Clean elections and acceptance of the verdict are in the national interest and should supersede political interests of individuals and parties.

In 2000, despite winning the popular vote, Al Gore accepted the verdict of the U.S. Supreme Court that went against him. Patriotism triumphed, preventing a bitter political struggle. Our political leaders are capable of and must demonstrate such maturity. They must commit themselves to uphold the integrity and legitimacy of the election process and to accept the election outcome. This will be their greatest contribution to the country, and it will override all other promises and achievements. It is easy to weaken or break a system or institution but extremely difficult to rebuild and restore its credibility as witnessed by the wide-ranging public perceptions of our law

enforcement institutions.

Political leaders of all stripes and responsible government officials must put the public good ahead of private interests. They must cherish, protect, and strengthen the democratic system of government which is an important legacy of our forefathers and framers of the constitution.

Unlike in some other countries, our leaders did not take the path of outright autocracy, authoritarianism, or military rule even when opportunities presented themselves (although one or two individuals may have tended in that direction). Despite erosion in some basic features, over the last several decades we have reaped the benefits of democratic rule. By allowing citizen participation and regularised competition for state power, democracy conferred the mandate of the people on the winning party and fostered peaceful change in government leadership.

Many developing countries have not been able to institute legitimate systems of government. We only have to look at the debilitating political struggles in our neighboring countries to realise the significance of our democratic inheritance. We should not squander that asset.

A democratic system of government has several merits. First, and most importantly, it provides the basis and mechanism for implementing the principle of popular sovereignty. Sovereignty today is explicitly tied to the support of the people. No ruler or government can be legitimate without a mandate from the people. Second, democracy recognises citizenship rights and treats all citizens on an equal plane.

Civil liberties and the system of one person one vote empower all citizens. Democracy does not create classes of citizens on the basis of selective franchise. It has the potential to provide voice for the marginalised and the minority.

Third, a democratic system of government provides a means for peaceful competition for state power. It delegitimises seizure of state power by force of arms and other such means. Democracy enables the ouster of a government that abuses state power or no longer serves the interest of the people. Fourth, democracy also empowers and accommodates civil society as a key vehicle for interest articulation and governance. These are among some of the benefits of democratic form of government.

Some especially those with autocratic bent and those who cherish strong government view democratic government as messy and incapable of delivering rapid economic growth. They believe government and leaders know what is best for the people. They prefer guided or controlled democracy. Indonesia's experiences from the early 1960s to 1998 demonstrate the weaknesses of controlled democracy and autocratic rule. Despite twenty years of rapid economic growth, the legitimacy of the Suharto regime was severely undermined and decades of economic growth dissipated quickly. Today Indonesia has a democratic system of government and its economy is beginning to pick up speed.

It is important to avoid the mistake of linking the type of government and the rate of economic growth. The Chinese Communist Party

(CCP) has ruled China since 1949 but the country has experienced rapid economic growth only since 1979. Likewise India has had democratic government since 1947 but has experienced rapid economic growth only since 1991.

The explanation for growth lies in policies, effectiveness of state institutions, and the human resource base of the country, not in the type of political system. The primary function of a political system is, as the name implies, political: selection and legitimation (or de-legitimation) of government, and the deployment of state power to enhance the security and welfare of citizens. Here democracy is undoubtedly the best form of government that relies on popular sovereignty. That it may be messy and requires a set of special skills to manage government cannot be denied. But that should not be the reason for rejecting democracy. Rather we should strengthen democracy to make it more resilient.

We should rebuild and deepen democracy in Malaysia. A durable democratic system of government will be our primary legacy to future generations. It is equally if not more important than economic growth and development. Although good governance and economic performance are important, they are not durable bases of legitimacy. It is a mistake to believe otherwise. In reality, a resilient political system is essential for political stability and internal security which in turn are vital for economic development.

Deepening democracy in Malaysia entails strengthening electoral or procedural democracy as well as civil liberties. The emphasis in most quarters has been on electoral

democracy especially on the process for acquisition of state power. However, a mature democracy also requires checks and balances on the exercise of state power as well as the entrenchment of civil liberties.

Malaysia aspires to be a developed country by 2020. As a developed country our political system must inculcate features of both electoral and substantive democracy. Our political system must empower and check government, opposition, state institutions, civil society, the private sector, and citizens. All concerned must act responsibly within the constitutional framework and abide by democratic norms.

Adherence to democratic principles, norms, rules and procedures will strengthen democracy. We must reach a stage when the democratic system of government is the only game in town. All other forms of government must be de-legitimated in principle and practice. I will write on specific ways to strengthen democracy in Malaysia in ensuing columns.

3. Deepening Democracy in Malaysia

(A version of this article was first published by The Edge on 18 February 2013)

As with numerous social science concepts, democracy defies neat definition. There is no consensus on how to count democracies, leading to a proliferation of democracies with adjectives. One study has identified more than 550 subtypes of democracy. Nevertheless the core meaning of democracy is uncontested: Regularised competition for state power, citizen participation (direct and/or indirect

through elected representatives) in the governance of their lives, and institutional checks and balances.

Participation, representation, and equality are key attributes of a democratic government. Deepening democracy therefore entails strengthening citizen participation, representation, and equality in the election of government and in the process of governance. Democracy also requires protection of the liberties and rights of citizens and groups, and an effective state.

Election of government by citizens through regularised competition for state power, commonly known as procedural or electoral democracy, is a central pillar of democracy. Equally important are two other lesser-known pillars: the proper exercise of state powers and the protection of the liberties and rights of citizens and groups that constitute the polity. The purposes for which state powers can be used and the processes for employment of state powers should be subject to rule of law and institutional checks and balances.

Democratic governments cannot act as they please after they accede to power. They must exercise state powers in accordance with the constitution and other laws of the land. They must serve the interests of citizens. The ultimate purpose of this pillar is to ensure responsiveness, transparency and accountability of governments to citizens. Along with other considerations like good governance and performance, the second pillar underpins continued legitimacy of governments.

Protection of liberties and rights of citizens and groups is the third

pillar of democracy. Liberty is essential for citizens to realise their aspirations and potentials as well as to discharge their democratic responsibilities. An effective state is required to guarantee liberties and rights of individuals and groups, and this will also prevent tyranny by any group. The second and third pillars are captured by terms like substantive or liberal democracy.

Although they do not exhaust the content of democracy, the attributes of participation, representation and equality and their expression in the election of government, the exercise of state powers and in guaranteeing citizens' liberties and rights constitute the core of democracy. They also provide a basis for systematic discussion of how to strengthen democracy in Malaysia. I should note here that democracy is not a rigid ideology. It has to be adapted to local circumstances but key attributes should not be compromised.

In this column I will focus on the expression of the principles of participation, representation and equality in the first pillar of democratic government – the election of government by citizens. Citizens are the basic units of a democratic polity. They confer power and authority on the state to govern on their behalf. The state exists primarily to protect the rights and interests of citizens. All citizens in a democratic state enjoy political and legal equality. Each citizen has a vote that he/she deploys in the election of government.

Equality of franchise is a crucial marker of democracy. However, this is not the reality in many countries. After long and bitter struggles, women and blacks gained their

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rights to vote in the United States in 1920 and 1965 respectively. In certain countries the votes of women and certain ethnic or religious groups count for less than those of male voters from preferred ethnic or religious groups.

In Malaysia all citizens have the right to vote but for a number of reasons their votes are not equal. Apportionment of parliamentary seats to states, for example, does not correspond to their populations resulting in over representation of some states in parliament and under representation of others. The votes of citizens in under-represented states count for less than their counterparts in over-represented states. Likewise the rural weightage principle applied in the delineation of constituencies makes rural votes more potent than the urban votes.

Several legitimate reasons may underpin these distortions of democracy. However, as we move forward we should strive to make all votes equal. Representation in parliament and state legislatures should be proportional to the population in a state or constituency. To ensure minorities are effectively represented it may be necessary to explore the idea of proportional or other forms of representation for certain segments of the population.

Representation plays a key role in democratic governance. Citizens elect representatives to parliament and state legislatures to govern on their behalf. These representatives must be well versed with the concerns and interests of the people they represent.

For effective representation, representatives must come from

respective constituencies and meet stringent residency requirements. Such requirements may limit the flexibility of parties but they foster stronger connection between elected representatives and the people they represent. It will also foster greater accountability on the part of elected representatives.

Further, elected representatives must be committed to public service and not personal enrichment. They should have a clean record. Those contesting seats in parliament and state legislatures should declare their assets and explain how they accrued them. The intent here is not to vet, clear or reject candidates (that is the responsibility of political parties) but to provide information to the public to enable them to make informed judgments on whom to vote for.

There should also be stringent limits on the amount of money that individual candidates and parties can spend during an election campaign. This could help reduce the problem of money politics. Candidates with public service in mind rather than personal enrichment will make stronger parliamentarians and state legislators.

Civil society (print, broadcast and digital media, NGOs, opinion makers and others) could play key roles in the provision of impartial information and in the scrutiny of candidates, political parties, and their promises. They can also make candidates and parties more transparent and accountable. Unfortunately Malaysians have little or no access to non-partisan media and NGOs. It is important to guarantee media freedom but also demand accountability. Civil society should be defined broadly

to include the functions of interest articulation, governance, discourse, communication, and advocacy. It should be distinguished from the political society. A concerted effort should be made to explore how Malaysian civil society can best expand democratic space in the country but also be transparent and accountable.

Interest articulation, aggregation, representation and governance are the forte of political parties. Strong parties with coherent policies to govern the country and which conform to democratic principles and practices both in their internal conduct and external behaviour are crucial for the effective functioning of democracy. Malaysia is fortunate in that it has several relatively strong political parties. However, internal practices and external behaviours of some parties do not conform to democratic principles and norms.

It is important to demand that all political parties conform to democratic principles and practices in their internal and external conduct. Multiparty competition for state power is a healthy indicator of democracy but such competition must be based on philosophical and policy differences rather than personalities and character assassinations. Most important, political parties must accept the outcome of elections. Challenges must follow the relevant provisions in the constitution.

For political parties and civil society groups to accept election outcomes, the election process must be deemed to be clean and fair. The Election Commission (EC) has an important role to play in ensuring clean and fair elections. Our constitution provides for the

setting up of an EC by the Yang di-Pertuan Agong and specifies its roles and duties. The EC has a challenging task. It has to work closely with the incumbent government but also be impartial and demonstrate independence.

Of late the independence of the EC and integrity of the election process have been questioned by certain segments in political and civil societies. Their contestations may or may not be valid but it is important for the EC to be seen to be independent and not favouring any party. Restoring public confidence in the EC and election process is crucial.

The above are some measures that can improve the democratic election of government in Malaysia. These are not quick fixes. They require further study and a concerted effort to devise enabling legislations. They will require commitment, time and considerable political capital. Ruling and opposition parties along with civil society groups and independent experts must address these concerns in an impartial manner with the larger good of the country in mind.

4. Strengthening Democratic Governance

(A version of this article was first published by The Edge on 1 April 2013)

In my last column I addressed several ways to strengthen the democratic election of government. In this column I highlight three areas of concern that require attention to strengthen democratic governance after a government accedes to state power. One is the concentration

of state power in the executive branch of government and the importance of checks and balances in the exercise of that power. Second is the confrontational and suspicious relationship between civil society and government. Third is the bitter, confrontational relationship between government and the opposition. Addressing these concerns will go a long way toward strengthening democratic governance and development of a mature democracy in Malaysia.

Although there are four branches of government in Malaysia (executive, parliament, judiciary and the Rulers), for a number of reasons there has been a steady growth over the last five decades in the power and role of the executive and a corresponding erosion in the powers and roles of other branches of government. Today the power of the executive is in several ways unbridled. Concentration of power in the executive has made for intense competition with opportunities for patronage and abuse. To prevent such consequences, it is important to set firm criteria for the exercise of state power and correct the imbalances among the four branches of government.

State power is the prize for which political parties compete. Victory allows the winning party to execute its preferred policy platform. However, victory does not give the ruling government a blank check. The party in power cannot do as it pleases. Three criteria must govern the exercise of state power. First, state powers must be deployed to serve public good. Public good here implies the interests of all citizens and groups and the interest of the

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country as a whole, not just of those who supported the party or of party members.

The hallmark of a democratic government is that it is responsive to citizen interests. At the same time the government must have sufficient autonomy to act on behalf of the entire national community and in the longer term interests of the country. This is a challenging task that requires careful balancing between populist policies and responsible governance. Victory in political competition for state power must be seen as a mandate to implement certain philosophy of government and a set of policies. Success or failure in that effort provides a measure for the electorate in future elections. This criterion for the exercise of state power would discourage personality-based competition for state power and money politics, as it would encourage policy competition.

The second criterion is that state power must be exercised in accordance with the laws of the land and through legal, transparent, and accountable institutions and processes. Formulation and execution of laws and policies, interactions among state, political society, civil society and the private sector, dealing with transgressions of the law, threats to public order and security, awarding state contracts and the like must follow constitutional and legal provisions. They must be subject to checks and balances by relevant branches of government, and be open to public scrutiny.

Third, dispensing government funds, goods, contracts and services must be through impartial state

institutions (principally the civil service at the federal and state levels but also other arms of the state) and non-political civil society organisations. It is important to separate government from party. Fusion of the two can breed corruption and abuse of state power. Personal, party and public interests must be separate and transparent in the exercise of state power.

The exercise of state power must be a shared responsibility and function of all branches of government. Each branch must check others to ensure state power is deployed to serve the public good. As stated earlier there are four branches of government in Malaysia. However, for a number of reasons the concentration and exercise of state power have become heavily tilted toward the executive. The parliament has all along been a weak institution with many labeling it a rubber stamp in the hands of a powerful executive.

A strong judiciary branch, compromised over the years, is in the process of rebuilding. The Malaysian constitution assigns important roles to the Rulers but their significance in the political system has not been fully appreciated. It is important to define, elaborate and strengthen the democratic roles of each branch of government to foster checks and balances among them without hindering effective government.

Of particular significance is the role and responsibility of parliament which is the principal representative institution. It has a special responsibility in ensuring the proper exercise of state power to serve the interests of citizens. The

constitution assigns key roles to the Dewan Rakyat including legislation, debates on key matters, and control of government finances including taxation and budget. Although the parliament has not been bypassed, it would appear to have under-played its roles and responsibilities. The parliament must be strengthened to enable it to effectively scrutinise and if necessary challenge the work of the executive, vigorously debate, pass or reject legislation, debate issues of national significance, and closely scrutinise government revenues and expenditure.

Parliament can be strengthened in several ways including empowering parliamentarians, nomination and election of parliamentarians by their respective constituencies, fostering substantive debates in parliament, revitalising existing or establishing new issue-specific select committees to closely review relevant bills, requiring all such bills to be processed through select committees that must have representation from ruling and opposition political parties as well as professional staff with input from independent experts, creating a parliamentary research unit that services all parliamentarians, and educating parliamentarians on their roles and duties.

The image of the Malaysian parliament must be transformed from one of insignificance and subservience to a well-informed, vigorous institution that is on par with the executive. Parliamentarians should take pride in their institution and their own contributions to the security, welfare, and development of the country and their constituencies. Ways should also be explored to make the Dewan

Negara a more representative body with important roles in democratic governance.

In addition to the four branches of government, civil society can play important roles in deepening democratic governance. However, the present confrontational and suspicious relationship between segments of civil society and the government is unhealthy and unhelpful. Reengineering that relationship must begin with the acknowledgement that like political society and the private sector, civil society is a legitimate and vital space with potential to make important contributions to democratic governance. This is now the situation in countries like South Korea and Taiwan which previously viewed their civil societies with deep suspicion and animosity.

Citizen participation does not end with the election of a government. Through dialogue and discourse among them and with relevant branches of government, groups, associations, and organisations operating in the civil society space including the media, NGOs and academia can scrutinise policies and performance of the government, expose abuse of state power, advocate policy alternatives, provide expertise, give voice to peoples and groups not heard through the machinery of government, deliver services, and engage in governance.

We should disabuse ourselves of the notion that all governance must be by government. Government is not the solution to all our problems. Civil society can govern in many areas. We should seriously explore the domains in which civil society can govern.

To enable civil society groups to effectively perform advocacy, alternative discourse, monitoring, delivery and governance roles government must recognise and guarantee the civil society space through appropriate legal frameworks. At the same time civil society groups must distinguish themselves from political society. Civil society organisations do not seek state power but political parties do. It is important to keep them separate if civil society organisations are to carry out their functions effectively.

It is a fact that political parties compete for state power and frequently that process is confrontational with each seeking to undermine or outdo the other(s). However, once the election is over, government and opposition must shift their focus to issues of governance. Effective democratic governance requires all political, bureaucratic, civil society, and private sector leaders to commit themselves to democratic principles, norms and practices. They must all role play accordingly. Without such commitment, no institutional or procedural design is full-proof.

Political opposition must accept and respect the government in power. Its primary purpose must be not to oust a duly elected government by whatever means (as in the case of Bangladesh, for example) but to play the role of loyal opposition in governance. There should be space and opportunity for the opposition to play that role. For example, a specific time (e.g. one out of every five or ten days of parliamentary time) should be set aside for opposition business in Parliament.

The ruling party and opposition

should be proportionately represented in parliamentary select committees. The formation of shadow cabinet will enable the opposition to focus on policy. Respect, space and opportunity will facilitate the development of a mature democracy, avoiding debilitating political struggles. It will also prevent the conflation of government and state institutions (like the civil service, armed forces, police force, and judiciary). Although they function under the direction of the incumbent government, they should remain autonomous institutions.

5. Democratising the State

(A version of this article was first published by The Edge on 1 April 2013)

Earlier, when discussing the importance of cherishing and building on the democratic legacy handed down by our forefathers, I wrote about deepening the democratic process for acquiring state power (election of government) and strengthening democratic governance after the winning party accedes to state power. In this column I focus on democratising the state, i.e. the distribution of power among different levels of government and among the various institutions of the state.

Though used interchangeably the state and government are not the same. The state includes the elected government (executive and legislature at the federal, state, and other relevant levels), but is more than that. It also comprises systems and processes for governance as well as professional state institutions

in law enforcement (police, justice, and judiciary), defense (armed forces) administration (primarily the civil service but also the professional services) and other functions of the state.

Democratising the state in this column refers to the distribution of state powers to the different levels of government and institutions to achieve greater equality and citizen participation in the exercise of that power. It ensures that state power is deployed to serve public good and prevents abuse (corruption, cronyism) through checks and balances.

In an earlier column I had stressed the importance of redistributing the power that over the last several decades has accumulated in the executive branch of government at the federal level. In particular I emphasised the importance of invigorating the federal legislature to enable it to play a more active role in governance. In this column I focus on the distribution of power between federal and state governments and also between the elected government and professional state institutions that in theory outlive elected governments in a democratic state.

The distribution of power between federal and state governments is important for a number of reasons. I will mention two. First, as a lower level of government, state governments are closer to the people than the federal government. At least in the abstract they should be in constant touch with the people and be in a better position to assess, represent and respond to their needs and desires. With a smaller constituency (they are only responsible to the people of the

state) state governments should be more representative and effective. It is important to observe here that Malaysian states are viable units of democratic governance. Each state has its own constitution, Ruler or governor, chief minister, executive committee, and legislature.

Second, in our federal political system, different parties can be in power at the national and state levels. The Alliance and subsequently the Barisan Nasional coalitions dominated the federal and state governments until the 2008 election. Thereafter five states (Kelantan, Kedah, Penang, Selangor and temporarily Perak) came under the rule of the federal opposition parties, making federal–state relationships more complicated, tension-prone and pushing it into uncharted terrain. The concentration of power and resources in the federal government has the potential to complicate the life of state governments ruled by another party. It also enables state governments to shirk their responsibilities leading to blame and counter blame.

Federal-state relations were relatively harmonious and unimportant when the same party governed at the federal level and in most of the states. This may now be a thing of the past. We should deal with situations in which different parties control federal and state powers.

Even if the same party wields federal and state power, state governments should be more independent, attuned and accountable to the people of that particular state. Going forth, our goal should be to make government at the state level more responsive, effective

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and accountable to its residents. It is important for each state government to have the authority, power and resources to govern effectively. Devolution of power to the states must be accompanied by building the capacity and the relevant institutions to prevent abuse of power at that level.

The Malaysian constitution devotes one chapter, several parts in other chapters, and a number of schedules to the domain of the state and to federal-state relationships. However, the constitution's primary focus is on institutions and processes relating to the parliamentary system of government at the federal level. It envisions a narrow role for government and governance at the state level. The time has come to review and rectify that shortcoming.

Some may contend that strengthening state government may make for paralysis in federal-state relations. The reality is, such paralysis, even if it exists, could be a consequence of other situations as well. The key is to have processes in place to manage differences and conflicts as well as to have institutions that can rule on such differences and conflicts when the need arises. The ultimate goal should be to make the state a more effective unit of democratic governance as well as to facilitate amicable relations between federal and state governments regardless of which parties wield power at these levels.

Moving forward an independent non-partisan political and legal commission should be instituted to review and recommend changes to the roles, responsibilities and functions of state governments, their revenue base, the division of labor between federal and state

governments and to set forth institutions and processes for resolving differences and conflicts. As amendment of the constitution will take much time and political effort, it may be useful to begin with legislative changes that could be subject to periodic review over a ten or fifteen year period after which successful practices can be incorporated as amendments to the constitution. The constitution should not be amended frequently but at the same time it should be a living document that accommodates durable changes.

Next I want to briefly touch upon the relationship between elected branches of government and professional state institutions that are distinct but form part of government and serve whichever party is in power.

In one-party dominant states like China and Vietnam, and in authoritarian systems like those under Suharto in Indonesia and Marcos in the Philippines, professional state institutions are fused with the party and state. Their primary function is to defend the supremacy of the party or the authoritarian leader. On the contrary, in a democratic system state institutions form part of the government and carry out the lawful directions of the elected government in power but remain distinct from it.

In certain democratic countries where one party has wielded state power for long periods, there may be an inadvertent tendency to fuse professional state institutions with the ruling party and elected government. This can be dangerous in that it can sap their professionalism, leading to corruption and abuse of state power

by elected governments. This may or may not be the case in Malaysia but it is important to acknowledge the possibility, and institute measures to prevent such occurrences. It may be opportune to revisit and revitalise the domain and efficiency of professional state institutions in Malaysia, their relationships to the elected executive branch of government at the federal and state (negeri) levels, and explore how best to build their distinctiveness and professionalism.

Heads of the professional state institutions must provide professional advice and stand their own ground without being insubordinate or disobeying the incumbent government. The

relationship of professional state institutions, which are nearly always national in nature in Malaysia, to state (negeri) governments is of particular importance. Having to serve different political masters at the federal and state (negeri) levels may become common for professional state institutions. We are not starting afresh here. We have a fair bit of experience to draw upon especially over the last five years.

Distribution of powers to different levels of government and among the relevant institutions is crucial to prevent tyranny and abuse by elected governments. A democratised state is the fundamental building block for a

strong democracy. It defines and sets limits on the power for which political parties compete. Devolving powers to and strengthening state (negeri) governments in Malaysia should not be viewed as a panacea or as problematic. Making state (negeri) governments more effective units of democratic governance requires careful review, deliberation and development.

About the author

Dato' Dr. Muthiah Alagappa is non-resident senior associate with the Carnegie Endowment for International Peace in Washington DC. From 2006 to 2010 he was Distinguished Senior Fellow at the East-West Center. Prior to that he was founding director of East-West Center Washington (2001-2006), director of the integrated research program in East-West Center Honolulu, (1999-2001) and a senior fellow at the East-West Center. Dato' Dr Muthiah was a Senior Fellow at the Institute of Strategic and International Studies (ISIS) Malaysia from 1985-1988.

Prior to his academic career, Dato' Dr Muthiah served as a career officer in the Malaysian Armed Forces (1962-82) holding field, command, and staff positions, including senior army member defense planning staff in the Ministry of Defense and command of three signals regiments.

Dato' Dr Muthiah has published widely in highly reputed university presses and international journals. His recent publications include

- 'A Changing Asia: Prospects for War, Peace, Cooperation, and Order,' *Political Science*, 63, 2 (December 2011): 155-185;
- 'International Relations Studies in Asia: Distinctive Trajectories,' *International Relations of the Asia-Pacific*, 11, 2 (2011): 193-230;
- *The Long Shadow: Nuclear Weapons and Security in 21st Century Asia*, Stanford University Press, 2008;
- *Civil Society and Political Change in Asia: Expanding and Contracting Democratic Change*, Stanford University Press, 2004;
- *Asian Security Order: Instrumental and Normative Features*, Stanford University Press, 2003.
- National Making In Asia: From Ethnic to Civic Nations?, Inaugural Lecture Tun Hussein Onn Chair in International Studies, ISIS Malaysia monograph, 36 pages, 2012.

The views expressed in this paper do not necessarily reflect those of the institutions with which he is affiliated.

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