

# **MULTI-CULTURALISM & NATION-BUILDING IN PLURAL & DIVDED SOCIETIES: CONSTITUTIONAL EXPERIENCES**

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# INTRODUCTION

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The humble purpose of this presentation is to examine “constitutional designs” in multi-cultural, plural and divided societies with special emphasis on Malaysia.

It is submitted that with all its flaws, the Constitution of Malaya/Malaysia was a masterpiece of moderation, compassion, compromise and accommodation.

Sadly , there is lack of constitutional literacy and the constitution’s provisions on ethnic relations are gravely misunderstood.

Also, as is true of all societies, a wide gap has developed between constitutional theory and existentialist reality.

What is required is (i) a return to the spirit of 1957 and 1963 and (ii) a fine tuning of some provisions to meet the felt necessities of the times.

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There are nearly 180 written Constitutions around the world. Most belong to plural and divided societies where diversity, difference and identity politics dominate the discussion. The choice of constitutional design and the drafting of the “founding law” in such societies pose a special challenge because there is no set menu of constitutional solutions for diverse societies.

More than other fields of law a Constitution is silhouetted against the panorama of history, geography, economics, politics and culture. The Constitution reflects the dreams and demands, the value and vulnerabilities of the body politic.

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Three broad approaches to tackling diversity seem to exist around the world:

- 1. Melting pot:** In some Constitutions like Australia (1901) and Thailand (2014), the melting pot ideology was employed. This involved the effort, either by force or through encouragement, for people of diverse backgrounds to submerge their identities in something bigger. Some form of assimilation was demanded or encouraged.

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**2. Mosaic:** The other model is that of a mosaic or rainbow. There is recognition that the law cannot by force extinguish the special regard that a substantial number of people have towards their religion, race, region, culture, language or tribe. Efforts to promote a national identity should involve the recognition that unity does not mean uniformity. It must be a unity in diversity. We must live and let live. Differences must be appreciated or, at least, tolerated.

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3. **Hybrid:** A mixture of the above two approaches is often employed - a mosaic is accepted in some areas but conformity and assimilation is insisted in others.

# CONSTITUTION-MAKERS' TOOL-BOX

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If the intention is to build a society in which there is respect for diversity, inclusiveness and tolerance of the cultural mosaic, then the following principles, institutions and procedures are normally relied on to create the circumstances for stability, harmony and peaceful social engineering.

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- 1. A supreme Constitution** which determines the main institutions of government and allocates the distribution of power amongst the organs of the state.
  - 2. An independent judiciary** tasked with the duty to preserve, protect and defend the basic Charter.



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- 3. Legal pluralism** is permitted. Religious and customary legal systems are allowed to exist and to operate in demarcated areas. Regrettably, conflict of jurisdictions are not uncommon as in Malaysia between civil law, Syariah law and customary law.
  - 4. A representative Parliament** that permits different sectors of society to be included in public life.

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**5. An electoral system** that produces a representative Parliament. There are many electoral designs:

*(a) The single member, first past the post, simple plurality system* that we have adopted. The hallmark of this system is that there are as many electoral districts as there are seats in Parliament. The candidate obtaining the most votes is declared elected even if he/she does not obtain more than 50% of the votes polled.

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Thus if in a three-cornered contest candidates A, B and C receive 35%, 34% and 31% of the votes respectively, the “winner” will be the 35% candidate and 65% of the voters will have no representation in the constituency. In addition to non-representative outcomes in individual constituencies, the simple plurality system (as it operates in the UK and Malaysia) permits a massive disparity at the national level between the overall percentage of votes and the percentage of parliamentary seats won.

MALAYSIAN ELECTORAL RESULTS –

GOVT'S SHARE OF VOTES & SEATS

1959: 51.7% vote, 71.1% seats

1964: 58.5% vote, 85.5% seats

**1969: 49.3% vote, 66.0 % seats**

1974: 60.7% vote, 87.6 % seats

1978: 57.2% vote, 84.4% seats

1982: 60.5% vote, 85.7% seats

- 1986: 55.8% vote, 83.6% seats
- 1990: 53.4% vote, 70.5% seats
- 1995: 65.2% vote, 84.3% seats
- 1999: 56.5% vote, 76.8% seats
- **2004: 63.9% vote, 90.4% seats**
- 2008: 50.6% vote, 63.0% seats
- **2013: 46.5% vote, 59.9% seats**
- **2018: 48.3% vote, 54.5% seats.**

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In this winner-take-all system, voters who cast votes for unsuccessful candidates receive no representation at all. This tends to promote narrow sectoral interests and may not be suitable for plural societies.

However, from a utilitarian point of view this simple plurality system favours large parties and coalitions, eliminates small groupings, produces large majorities in parliament, enables stability in government and ensures easy passage of legislation.

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(b) **The proportional representation system** of Belgium, France, Norway, Germany, Sweden and Switzerland. The constituencies are territorially large with multiple members. Seats are distributed proportionally according to the percentage of votes obtained.

The proportional representation system has many variations: the List System, the Preferential System, and the Cumulative Vote System. The proportional representation system provides incentives for groups to build alliances and to reach out to broader portion of the electorate than the simple plurality system.

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(c) Singapore's **Mixed Group Representation system** in which the 83-member legislature consists of 9 single-member constituencies. The 74 other MPs belong to Group Representation Constituencies of 3-6 MPs each. In each Of these at least one candidate belongs to a minority. The voter elects the team rather an individual.



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6. **Consociational democracy:** The scholar Arend Lijphart argues that majority rule in divided plural societies results in majority dictatorship. No system that depends on majority form of government in presidential or parliamentary systems is adequate for protecting ethnic minorities. For this reason, Arend recommends “consociational democracy” which permits the elites of various groups to arrive at negotiated settlements (a social contract) about power sharing and a constitutional design that permits consensus and respect for diversity.

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The problem of consociational democracy is that it does not represent popular opinion but is a top-down elite arrangement. Regrettably, once the forefathers disappear from the scene, the “consensual” arrangements may disappear. As Mirjan Damaska says: “The music of the law changes... when the musical instruments and the players are no longer the same”.

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7. **Federations:** This involves non-centralisation of power and the creation of dual or triple levels of government that enjoy some regional diversity in all aspects of government including legislative, executive, judicial, financial and linguistic matters. Federal systems like in Nigeria, Kenya, Australia and the USA create sub-national governments with considerable autonomy. Nigeria recently increased the number of states from three to 36 states thereby limiting the power of the largest ethnic groups and protecting minority groups.

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**8. Asymmetrical federations:** A second way of practising non-centralisation is to confer on some regions of the Federation, special, asymmetrical powers guaranteed by the Constitution. Kashmir in India (till early August 2019), Quebec in Canada and Sabah and Sarawak in post-1963 Malaysia are examples of unequal, asymmetrical division of powers to the states, provinces or regions. This system recognises the special needs of linguistic, religious or tribal groups while also drawing them into the centre.

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**9. Devolution in unitary states:** Many unitary states decentralise by delegating or devolving powers on special matters to their restive regions. This has happened in Scotland, Northern Ireland, Aceh and Mindanao. Devolution is different from federal division of powers because devolved powers can be taken back whereas the federal division is constitutionally entrenched.

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**10. Human rights:** There must be constitutional recognition of human rights especially of equality, freedom of religion, right to establish religious schools, language and educational rights. In India e.g. 22 languages are recognised in the Constitution. A triple language formula is formulated for education – Hindi (the national language), English, plus the regional language.

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**11. Equality & affirmative action:** A commitment to equality often goes hand in hand with affirmative action policies for marginalised communities.

**12. Citizenship:** An inclusive concept of citizenship is adopted.

**13. Civilian control of the forces:** Military and other security service structures are kept under civilian control.

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**14. Difficult amendment procedures:** The Constitution is difficult to amend. Either all or some selected provisions are so deeply entrenched that their amendment requires -

- (a) special majorities in Parliament and
- (b) consent of persons or institutions outside of Parliament.

Of the 14 institutions and procedures mentioned above, the Malaysian legal system satisfies all except number 9.



## DO THE ABOVE TOOLS WORK?

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Constitutions can indeed make a difference in promoting diversity and pluralism. At the same time, they can ease as well as intensify tensions. All the mechanisms mentioned above have their ups and downs.

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**Theory versus reality:** The way a Constitution will work is difficult to predict. Post-drafting developments in economic and political ideology, the rise of religious and regional movements, international developments and the changing interaction between different social and political groups often submerge the Constitution under the rip tide of populist movements. A wide gap between legal theory and social reality emerges.

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**Judiciary:** The role of the judiciary to preserve and protect human rights is not always successful. Many judges put their race, religion and region above their duty to the Constitution. In Malaysia, in a host of situations “inarticulate major assumptions” seem to have guided court majorities in cases involving Muslim apostasy, the Kalimah Allah case, use of Mandarin in a privately funded institution of higher learning, unilateral conversion by one parent of children to a new religion, rights of natives to traditional land and some other contentious issues between West and East Malaysia.

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**Affirmative action** policies address historical injustices but introduce their own pathologies of entitlement and group definition. Often the most needy of a protected group are left out and elites within the group corner the bulk of the benefits. In India, Bolivia and Malaysia, where affirmative action is written into the Constitution, more and more groups compete with each other for inclusion into the ethnically protected categories. Colombia offers a more successful application of affirmative action policies, perhaps because those marginalised are minority groups.

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**Post-independence Constitutions** like those of Ghana, Nigeria and Malaysia were so pre-occupied with institutions that they paid insufficient attention to other aspects of nation-building like an educational system that fosters knowledge of and respect for other cultures and traditions. It must be remembered that constitutional arrangements are only a small part of building an inclusive society.

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**Post-conflict Constitutions:** In post-conflict societies like Bosnia-Herzegovina (BH), Northern Ireland, Burundi, Kenya (until 2013) and Lebanon, the main aim was to bring peace and to appease the fears and interests of opposing groups. Such Constitutions often freeze identities, exclude the non-dominant groups and provide negotiated settlements that may over time become outdated but are so entrenched as to prevent change.

**Individualism:** In most post-independence Asian Constitutions, civil and political rights are focussed on individuals. Collective (group) rights are often ignored.

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**Minorities within minorities:** In federal systems, minorities within ethnically divided states are not always well protected. States carved out on ethnic lines deepen ethno-regionalism. There is a tendency to discriminate against settlers from other states who are not indigenous (e.g. the Mujahirs in Pakistan; and the non-natives in Sabah and Sarawak). Regional autonomy in Syariah matters in Northern Nigeria and Malaysia has resulted in enactment of laws that have been onerous to women, non-Muslims and Muslim minorities. The federal government of Malaysia is unable (or unwilling) to intervene.

# THE MALAYSIAN CONSTITUTION & MULTI-CULTURALISM

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Where does Malaysia stand on the rights of minorities? It is submitted that despite many weaknesses and imperfections, our Constitution sought to provide workable arrangements for the people of our multi-hued nation to live together in peace and harmony.



# INDIGENOUS FEATURES

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The drafting of the Merdeka Constitution was in the backdrop of many historical, economic and cultural facts. Among them were that before the arrival of the British, Malaya was overwhelmingly populated by the Malays; that monarchy existed in various forms in early Malay history; that for centuries Islam had become the identifying feature of the Malay personality; and the struggle for independence was initiated, headed and waged largely by Malay organisations with the cooperation of non-Malay counterparts.

It is also well documented that poverty and under-development amongst the Malays was very pronounced; and due to discriminatory colonial policies on education, economic development and import of labour, there developed an undesirable identification of race with function.

The Merdeka Constitution therefore incorporated a number of features indigenous to the Malay archipelago. Among them were:

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**THE SULTANATE:** The Malay Sultanate was preserved but transformed to a constitutional monarchy (Article 71).

**ISLAM:** Despite opposition from the Reid Commission, Tunku Abdul Rahman insisted that Islam be adopted as the religion of the Federation but with freedom to other communities to practise their religion in peace and harmony (Article 3(1)). However Article 3(1) was accompanied by Art. 3(4) that nothing in this Article derogates from any other provision of the Constitution.

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**SYARIAH LAWS:** Schedule 9 provides for the existence of syariah laws and syariah courts to deal with matters of Islam.

However, the syariah applies only in 24 areas enumerated in the Constitution's Ninth Schedule, List II, Para 1. Syariah law does not apply in (i) areas assigned to the Federal List or (ii) covered by federal law. (Regrettably, some state assemblies do not understand this limitation).

Further, there is a clear provision that syariah courts shall have no jurisdiction over non-Muslims. (Regrettably, some syariah courts and officials do not follow this restriction).

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**MALAY SPECIAL POSITION:** The historical tradition of a “special position” for the Malays and (in 1963) the natives of Sabah and Sarawak was continued in Article 153. The Reid Commission’s recommendation of a 15-year time limit for Article 153 was rejected by Tunku and his Alliance partners.

**MALAY RESERVES:** Malay reservation lands were recognized (Article 89).

**BM:** Bahasa Melayu in Rumi was entrenched as the official language for all official purposes but with freedom to other communities to preserve their languages and to use them for non-official purposes (Article 152).

**CUSTOMARY LAWS:** Special protection for the customary laws of the Malays and (since 1963) native law in Sabah and Sarawak exists even in times of emergency (Article 150(6A)).

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**RURAL WEIGHTAGE DURING ELECTIONS:** There is weightage for rural areas (which are predominantly Malay) in the drawing up of electoral boundaries (Twelfth Schedule).

**STATE POSTS:** The historical reservation of some top posts in the State Executive for Malays was continued but with power to the Malay Ruler to provide an exception..

**PREACHING OF RELIGION TO MUSLIMS:** As this is an issue with public order implications, legal restrictions are permitted on preaching of any faiths to Muslims (Article 11(4)). The restriction applies to all persons – whether Muslim or non-Muslim.

# PROTECTION FOR NON-MALAYS

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However, the Malay-Muslim features in the Constitution are balanced by other provisions suitable for a multi-racial and multi-religious society. The Constitution is replete with safeguards for the interest of other communities. Notable features are as follows:

**CITIZENSHIP:** Citizenship rights are granted to all persons on a non-ethnic and non-religious basis (Articles 14-19). The concept of *jus soli* (citizenship by birth in the country) was part of the Constitution in 1957 and was used to grant citizenship to 1.2 million non-Malays in a country with a then population of about 6.2 million. However, *jus soli* was removed from the Constitution in 1963.

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**ELECTORAL PROCESS:** The electoral process permits all communities an equal right to vote and to seek elective office at federal and state levels. Race and religion are irrelevant in the operation of the electoral process (Article 119).

**FUNDAMENTAL RIGHTS:** The chapter on fundamental rights grants personal liberty, protection against slavery and forced labor, protection against retrospective criminal laws and repeated trials, freedom of movement, protection against banishment, right to speech, assembly and association, freedom of religion, rights in respect of education and right to property to all citizens irrespective of race or religion (Articles 5-13). Subject to a few exceptions fundamental rights are available to all persons equally.

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**FEDERAL POSTS:** At the federal level, membership of the judiciary, the Cabinet of Ministers, Parliament, the federal public services and the special Commissions under the Constitution are open to all irrespective of race, religion or gender.

**EDUCATION:** Education is free at the primary and secondary levels and is open to all irrespective of race or religion. Malaysia meets international standards in this area. However, university education is subjected to strict quotas under Article 15.

To open up educational opportunities for non-Malays, private schools, colleges and universities are allowed. Foreign education is available to whoever wishes to seek it.



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**FINANCIAL ASSISTANCE FOR EDUCATION:** Government education scholarships and loans are given to many non-Malays though this is an area where a large discontent has developed over the proportions allocated.

**PROTECTION DURING AN EMERGENCY:** Even during a state of emergency under Article 150, some rights like citizenship, religion and language are protected by Article 150(6A) against easy repeal.

**SABAH & SARAWAK'S SPECIAL RIGHTS:** The spirit of give and take between the races, regions and religions is especially applicable in relation to Sabah and Sarawak. These states enjoy special legislative, executive, judicial and financial powers: Schedule 9. However, many complaints of unfulfilled promises have arisen that need attention.

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**CONSTITUTIONAL SUPREMACY - ARTICLE 4(1):** Though Islam is the religion of the Federation, Malaysia is not an Islamic state. The Constitution is supreme. The syariah does not override the Constitution (Article 3(4)).

**RELIGIOUS FREEDOM:** The syariah does not apply to non-Muslims. All religious communities are allowed to profess and practise their faiths in peace and harmony. State support by way of funds and grant of land is often given to other religions. Missionaries and foreign priests are allowed entry into the country.

Every religious group has the right to establish and maintain religious institutions for the education of its children.

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Recently in the *Indira Gandhi* case the Federal Court made a number of rulings that have a very significant and positive impact on the rights of minorities in this country. The court speaking through Tan Sri Zainun FJ ruled that –

- (i) the unilateral conversion of children to Islam is not permissible without the consent of both parents.
- (ii) Article 121(1A) does not prevent the superior civil courts from exercising their inherent, review or supervisory power over the Syariah courts or Syariah officials if they act beyond their jurisdiction.
- (iii) Some “basic features” of the Constitution including the power of judicial review and the rights of minorities cannot be destroyed by amendments to the Constitution.

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**VERNACULAR LANGUAGES:** Though Bahasa Melayu is the national language for all official purposes there is protection for the formal study in all schools of other languages if 15 or more pupils so desire. There is statutory protection for the existence of vernacular schools and legal permission to use other languages for non-official purposes.

**MALAY RESERVES:** Though Article 89 reserves some lands for Malays, it is also provided that (i) no non-Malay land shall be appropriated for Malay reserves and (ii) that if any land is reserved for Malay reservations, an equivalent amount of land shall be opened up for non-Malays. (iii) Malay reserves do not apply in Sabah and Sarawak.

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**ARTICLE 153:** Article 153 on the special position of Malays is hedged in by a number of limitations. (i) Along with his duty to protect the Malays and the natives of Sabah and Sarawak, the King is also enjoined to safeguard the legitimate interests of other communities. (ii) The special position of the Malays applies only in the public sector. (iii) It applies in only four prescribed sectors and services – licences and permits; civil service positions; post-secondary education; scholarships and education facilities. (iv) In these sectors the YDPA may reserve such proportions as “he may deem reasonable”. The use of the word proportion implies that monopoly or exclusivity was not contemplated by the Constitution.

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(v) The proportion is not prescribed and the government may fix it “as may be necessary”. (vi) In the operation of Article 153, no non-Malay or his heir should be deprived of what he already has. (vii) No business or profession can be exclusively assigned to any race. No ethnic monopoly is permitted. (viii) Article 153 does not override Article 136. Quotas and reservations are permitted at entry point but once a person is in the public service he should be treated equally. (ix) Though there is no time limit for Art 153 reservations, the Constitution allows the YDPA to exercise his functions “in such manner as may be necessary”.

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### **UNITY DOES NOT MEAN UNIFORMITY:**

The various communities were allowed to maintain their distinct ethnic identities, cultures, religions, languages, lifestyles, dresses, foods, music, vernacular schools etc.

Culturally the country is a rich cultural mosaic. Barring a short period after 1969 when ethnic practices like lion dances were not permitted, and forced integration was experimented with, the overall effort of the last 62 post-independence plus two pre-Merdeka years has been to find some areas of cooperation and to allow distinctiveness in other spheres of existence.

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- Secularism and religion live side by side. Mosques and temples and churches dot the landscape.
  - Despite the prohibitions for Muslims, non-Muslims are not forbidden from taking alcohol, have gambling permits, rear pigs and dress in their own or the permissive ways of the West.
  - Political parties, business and cultural associations are allowed to be organized on ethnic or religious lines so much so that Malaya (later Malaysia) began its tryst with destiny looking a little bit like a rainbow with colours that are separate but not apart.



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Some success has indeed been achieved to discover that which unites us and to tolerate that which divides us. Sometime ago we scored fairly well on the World Peace Index, being ranked 19 out of 153 states evaluated.

# POLITICS OF ACCOMMODATION

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In addition to the above legal provisions, the rainbow coalition that has ruled the country for the last 62+2 years is built on an overwhelming spirit of accommodation between the races, a moderateness of spirit and an absence of the kind of passions, zeal and ideological convictions that in other plural societies have left a heritage of bitterness.

# USING ECONOMY TO UNITE THE PEOPLE

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In the commercial and economic area, there is right to property, freedom of trade and commerce, a relatively open, globalised economy, encouragement to the non-Malay dominated private sector to invest in the economy, freedom to import and export and to transfer funds to and from abroad. In general, economic opportunities have given to everyone a stake in the country.

The non-Malay contribution to the building of the economic infrastructure of the country has given the country prosperity as well as stability.

# DARK CLOUDS OVER THE HORIZON

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Sadly, we have suffered a regression. Since the nineties and especially after GE14, racial and religious polarization has reached alarming levels. An endless list of controversies continue to disturb the calm.

Ethnic and religious ideology and racial politics is causing a hardening of cultural boundaries. We have become a “nation of strangers”.

In many corners of the world walls of separation are being dismantled. Sadly, in our society these walls are being fortified.

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Besides inter-religious and inter-racial disharmony we are lately witnessing a fairly high degree of intra-racial and intra-religious discord. The voices of hate against “pluralist”, “deviationists”, “liberals”, Shias and those who are “traitors to their race and religion” have reached strident proportions.

Due to Article 153’s emphasis on reducing inter-racial distribution of wealth, not much attention has been paid to the growing social and economic inequalities within each ethnic group.

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In many areas the Constitution's negotiated compromises are not being followed. The Constitution's "social contracts" of 1957 and 1963 are not being fully observed. The public sector as well as the private sector and all sides of the racial and religious divide are culpable of causing breaches. There is wide gap between constitutional theory and existentialist reality. A "silent rewriting" of the Constitution is taking place.

Some grievances of Sabah and Sarawak are soundly grounded in the Constitution and need urgent attention. The MA63 Committee is trying to bridge as many differences as possible.

# GOVERNMENT'S ROLE TO RESTORE OUR FOREFATHERS' VISION OF A SHARED DESTINY

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What can be done to strengthen our social fabric, strengthen our ethnic bridges, dismantle ethnic walls, heal and reconcile and develop a vision of unity? As we celebrate 62 years of political freedom we need to restore moderation, recapture the spirit of 1957 and reintroduce our winning formula for living together. The task is very large and holistic. Only a few proposals can be mentioned.

**RECOGNISE DIVERSITY AS AN ASSET:** All members of the political executive and the public services and all members of society need to come to terms with our diversity, heterogeneity, pluralism and multi-culturalism. This diversity is here to stay. We should regard it as an asset despite its many challenges.

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**IMPROVE CONSTITUTIONAL LITERACY:** We need to impart in our education system, knowledge of the Constitution's glittering generalities, especially its provisions on inter-ethnic relations.

If we read about the making of the Constitution, we will see that by far and large the forefathers of our Constitution especially Bapa Malaysia, Tunku Abdul Rahman, were animated by a remarkable vision and optimism of a shared destiny among the various peoples of the Peninsula. "Out of Many, One" was perhaps their creed. Their life was enlightened by a spirit of accommodation, compassion and tolerance. They abjured ideological purity of the political, economic and religious type. They walked the middle path of moderation.



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They gave to every community a stake in the nation. No group received an absolute monopoly of power or wealth. Every community received something to relish and cherish. Pluralism was accepted as a way of life and the unity that was sought was a unity in diversity.

The Constitution, even in its “ethnic provisions” sought to avoid extreme measures and provided for a balance between the interests of the “Bumiputera” and “non-Bumiputera” communities.

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It is submitted that the lack of familiarity with the basic charter's provisions even within the top echelons of the civil service, the police, parliamentarians and politicians is contributing to the present state of unease. This can be remedied.

We can restore the spirit of 1957 and 1963. If we have to go forward as a united nation, we need to go back to the spirit of moderation, accommodation and compassion that animated the body politic in 1957 and 1963.

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Our secondary schools and universities, our school teachers, our civil servants, MPs, police and local authority officials and our foreign trained judges must have a familiarization course on the basic features of the Constitution and the reasons for the many delicate compromises contained therein. Knowledge of the Constitution is a prerequisite to good citizenship. Such knowledge will also help to moderate extremism and to give appreciation of one of the world's most unique and hitherto successful experiments in peaceful co-existence in a nation of dazzling diversity.

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**PROVIDE A NEW STATUTORY, INSTITUTIONAL FRAMEWORK FOR RECONCILING RACE AND**

**RELIGIOUS CONFLICTS:** Conflicts are unavoidable in any vibrant society. What is necessary is to reconcile them with the least friction and to provide appropriate remedies when rights are infringed.

It is time to consider a new legislative initiative. A National Harmony Act (or a Race and Religious Relations Act or a Maintenance of Religious Harmony Act) should be drafted after wide consultation. An Equal Opportunities Commission was proposed by the National Economic Advisory Council in its report entitled New Economic Model for Malaysia (2010).

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The National Unity Council should be upgraded to a statutory status (much like the Race Relations Boards of the UK) or converted to a statutory Community Mediation Council.

Perhaps there should also be a statutory Inter-Faith Council whose job should be to foster dialogue over all that unites us and to seek tolerance and compassion toward

Race relations training should be part of the agenda. A Community Mediation Council as well as the Inter-Faith Council could be incorporated into a new National Harmony Act. All in all, the new National Harmony Act should have a triple purpose.

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First, to administer cautions and warnings whenever peace is poisoned by hate speech or actions.

Second, to try to bring parties together through education and conciliation. To this end, a Community Mediation Council could be set up. Singapore offers such an example.

Third, to impose sanctions as a matter of last resort when conciliation fails. Sanctions, when imposed, need not be custodial. Community-service, injunctions and damages may be better alternatives.

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**PROMOTE INTERFAITH STUDIES:** In schools, colleges and universities, interfaith studies should be encouraged as a step towards understanding, tolerance and unity. Most prejudices are born out of ignorance. With greater knowledge and understanding we learn that it is not differences that cause disunity. It is intolerance of differences that leads to disunity and violence. We have to teach people that the primitive ethic of tribalism, racism or religious exclusiveness has no place in modern society. The circle of life has expanded. We are all brothers and sisters on this big blue marble.

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**OUR EDUCATIONAL SYSTEM MUST BE REVAMPED:** An educational system must nurture tolerance, mutual respect and intercultural dialogue. It must bring the learners together, not separate them on grounds of race, religion or language at least from the secondary level onwards. If young people do not learn together, how will they live together?



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It is submitted that vernacular education and national education can go together if we put our heads and hearts together.

The ethnic diversity of school teachers and school principals must be restored. We must use school sports as a uniting force.

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**ROLE OF RULERS:** Their Majesties the Malay Rulers are the sovereigns for all citizens in their states. They are the head of Islam in their territories. They have power as members of the Conference of Rulers under Article 38(2) to deliberate on any matter they think fit. Their Majesties can play a significant role to moderate extremism in all forms and to build bridges of understanding. Thank you DYMM Paduka Seri Tuanku Sultan for providing leadership in this area.

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**DECLARATION ON RELIGIOUS & RACIAL HARMONY:** Similar to the Rukun Negara let us put our heads together to draft such a Declaration. It will act as a polestar for executive and judicial action and will exert normative influence on citizens.

**HATE SPEECH:** Hate speech polarizes communities and often leads to violence. Existing provisions in the Penal Code, Communications & Multimedia Act, Printing Presses & Publications Act and the Sedition Act need to be buttressed by a National Harmony Act. Prosecutions must be commenced expeditiously, vigorously and equally against all who poison our air with hate speech.

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**WE NEED TO LEARN FROM OTHERS:** In many societies including Singapore, UK and the USA, the law is being used to socially engineer a more tolerant society. There is no shame in emulating others and building our garland with flowers from many gardens. In fact we can look to Sabah and Sarawak's good example of unity amidst diversity.

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**Special rights of Sabah and Sarawak:** The special position of these states in 1963 has been deeply compromised in many areas – partly due to the acts of their own past leaders. There is little doubt, however, that some constitutional amendments, some federal policies and some superior court decisions have been insensitive to the rights of Sabah and Sarawak. The recent decision on native land is a case in point.

**Orang asli:** The orang asli do not qualify for the special position of Malays and the natives of Sabah and Sarawak. However Art. 8(5)(c) talks of their protection and more needs to be done to bring the rays of justice to these forgotten people.

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**Reform of the electoral system:** There are no ideal electoral systems, but it is generally true that the single member constituency system we operate makes it difficult for ethnic and religious minorities to win seats. Reforms to the system to accommodate some multi-member constituencies under a proportional representation system may give minorities more representation. If more constituencies are racially mixed, political parties will be forced to give up extreme race or religious agendas and to adopt more inclusive policies.

Reform of the manner in which the Dewan Negara's 44 appointed Senators are chosen may also help to make the upper House more representative of the States and of minorities.

# ROLE OF ORDINARY CITIZENS

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**RECOGNISE THAT OUR CULTURES ARE INTERMINGLED AND INTERDEPENDENT:** For centuries Malay, Chinese Indian, Indonesian, Thai, Kadazan-Dusun, Iban and European cultures have mixed in our soil to constitute our rich cultural mosaic. “There is far more cross-cultural mingling, sharing and co-dependence among us than we care to recognise, admit or celebrate”. (Patrick Pillai). Malaysia “is a society where three major cultures live together and more importantly have probably contributed more than they think to each other’s cultural development”. Social science research can do much to highlight this reality. We should not be ashamed to acknowledge our mixed heritage.

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**AS FELLOW-CITIZENS, WE MUST BUILD BRIDGES, NOT WALLS:** It is time for building ethnic bridges and dismantling walls; for healing and reconciliation; and for developing a vision of unity.

**DISTINGUISH RACISM FROM RACE CONSCIOUSNESS:** We need to distinguish between racism (which is hatred for others and a desire to keep them down) and race-consciousness which is a positive desire to help the upliftment of a community, not necessarily our own.



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**CONSTITUTIONAL LITERACY:** We must familiarise ourselves with the Constitution's carefully crafted clauses on ethnic compromises.

**WE MUST ACKNOWLEDGE AND DEVELOP MULTIPLE IDENTITIES.**

**WE NEED TO ADOPT MODERATION AS A WAY OF LIFE.**

**WE MUST RECOGNISE HUMAN RIGHTS FOR ALL, NOT ONLY FOR OURSELVES.**

**WE MUST WELCOME SOCIAL ENGAGEMENT.**

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**WHILE VENERATING OUR RELIGION, WE MUST NEVER CONDEMN OTHER FAITHS.**

**WE MUST NOT STEREOTYPE ANY RACE OR RELIGION.**

**WE MUST BE THE CHANGE WE WISH TO SEE IN THE WORLD.**

May I end by quoting from Kofi Anan: *“AS WE WALK THROUGH THE MEADOWS OF OUR MIND, LET US CONFRONT IGNORANCE WITH KNOWLEDGE, BIGOTRY WITH TOLERANCE, AND ISOLATION WITH THE OUTSTRETCHED HAND OF GENEROSITY”*.

May God be with us all. May our nation recapture the spirit of accommodation, and moderation for which it was an exemplar for the rest of Asia and Africa. Amin.

Wassalam.

AMPUN TUANKU