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The Legal Framework of Centre-Local Connections in Malaysia. Beyond the Postcolonial Narrative: Legacy or Reinvention?

Pasquale Viola

Abstract The Malaysian experience of decentralisation is one of the Asian cases of shift from a strong 'centripetal' political system towards power-sharing amongst concentric tiers of government. In this regard, the constitutional framework is still dealing with such changes, and it may be a facilitator or an obstacle for further measures aiming at the implementation of effective local governance. Moving from the previous assumptions, in order of highlighting the question of whether the colonial legacy has to be considered a form of 'traditional paradigm', the chapter provides a brief outline of modern Malaysia and its political system, a focus on the constitutional provisions related to the local-centre relations/connections, and an analysis of the Local Government Act of 1976.

1 Introduction

With the purpose of securing a more equitable governance and an effective decentralisation of decision-making and service delivery, centre-local relations in Asia represent a vibrant field of study, both in theoretical and pragmatic ways. The phenomenon of devolution in favour of local authorities is strictly tied with liberal democracies and multi-party systems. Nonetheless, decentralisation also arose in few Asian countries through the 'dominant paradigm' of 'deliberate decentralisation of power from a powerful or imperial centre that has strongly asserted control over its peripheries'.[1]

[1] Harding and Sidel (2015), p. 2, where the editors refer to the 'power-sharing' genesis in Europe and Asia. While in Asia the empowerment of local units seems to be *octroyé*, historically, local governments in Europe 'existed before national government and survived its establishment, contributing to the establishment of central government'. This chapter was partially elaborated within the framework of the PRIN 2017 'From legal pluralism to the intercultural state. Personal law,

The Malaysian experience of decentralisation offers an example of the aforementioned Asian trend, which shifted from a strong 'centripetal' political system towards power-sharing among concentric tiers of government. In this regard, the constitutional framework is still dealing with such changes, and it may be a facilitator or an obstacle for further measures addressed to the implementation of efficient local governance. Starting from the previous assumptions, this chapter portrays the current developments in local-centre relations in Malaysia through the constitutional lens. The text is divided into three parts: (1) a brief outline of modern Malaysia and its political system, which provides some historical and sociological hints for Western legal scholars; (2) a focus on the constitutional provisions related to the local-centre relations/connections in Malaysia; and (3) a detailed reconstruction of the Local Government Act of 1976. The conclusion provides brief comparative suggestions for further analysis and highlights the question of whether the colonial legacy has to be considered a form of 'traditional paradigm.'

2 An Outline of Malaysian Society and Political System: Waving Between Homogeneity and Pluralism

The rise of Malaysia as a modern state originated in the fifteenth century, with the conversion of Melaka 'from a quiet fishing village to a world-renowned emporium and centre'.[2] Along with Indonesian coasts, this territory became the necessary trajectory linking the Indian Ocean with the South China Sea. On this aspect, historians divide the events related to modern Malaysia into pre- and post-Malaccan period, although human habitation evidence dates back to approximately 10,000 years ago.[3] The reasons to recall—at least in a simplistic way—the historical origins of the country rely on the quest for finding the attitude to evolve in a more unitary or decentralised way, with the aim of finding the ratio between nationalism, minorities' claims, and local demands.

Before independence, the territory of the Malay peninsula and the island of Borneo comprised several sultanates, where Portuguese and Dutch colonizers established their businesses; the British colonizers imposed their hegemony in the late eighteenth century. After the Japanese colonial period (1942–1945) and more than a decade under the British rule, Malaysia gained independence in 1957. In 1963, the British colonies of Singapore, Sabah and Sarawak joined the federation, establishing the modern state of Malaysia. In 1965, Singapore turned into an

exceptions to general rules and imperative limits in the European legal space' (2017RYJAFW_001).

[2] Watson Andaya and Andaya (1982), p. 7.

[3] There are several hypotheses on the first human settlements in the Malay region, and one of the most ancient human finds dates back to 35,000 years ago in Sarawak's Niah Caves; the most ancient human relics date back to 10,000 years. See Watson Andaya and Andaya (1982), p. 9.

independent state, thus forcing the centre to foster the unity of the remaining states of the federation. Language, education, and arts played an important role in nurturing a sense of belonging to a unitary state, while the 1970s Islamic fundamentalist revival (*dakwah* movement) played a key-role in determining the 'true Malay'.[4]

Out of a population of more than 32 million people, there are currently three major ethnic groups (Bumiputera, Chinese and Indian)[5] and different languages along with the official one (Bahasa Malaysia).[6] On this issue, Saran Kaur Gill stresses that

> in the Malaysian context, the decisions made about language and the nation are 'top-down' since they are 'policies that come from people of power and authority to make decisions for a certain group, without consulting the end-users of the language'.[7]

Islam is the state religion, but there is an increasing number of Buddhist, Christian, Hindu and other religious minorities.[8] Religion was a crucial factor that facilitated the establishment of a strong nationalistic core, and even British colonizers nurtured what Khairudin Aljunied calls 'colonial Islamisation', i.e., 'a range of tactics, laws, establishments, compulsion, and negotiations—in an endeavour to reform and refashion Islam in their [the British] image and to their advantage'.[9] Nowadays, religion still represents a solid political means under a functional approach, considered as a 'powerful force [. . .] for social and political mobilisation',[10] rather than a mere personal belief.

Thanks to geographical and historical features, the territory that today comprises modern Malaysia in the past was a crossroad of different cultures, leading to the foundation of a multicultural society under the aegis of a mono-cultural social core.

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[4]The Islamic revival of the 1970s led some factions to use the term *bumiputera* to identify individuals that are 'ethnically Malay, speak Malay and are Moslems', while a more 'moderate and influential' sections of this movement 'see the official use of *bumiputra* as an important step towards eliminating all categories and creating a united people with a single identity.' Watson Andaya and Andaya (1982), p. 302.

[5]Bumiputera 62% (Malays and indigenous peoples, including Orang Asli, Dayak, Anak Negeri), Chinese 20.6%, Indian 6.2%, other 0.9%, non-citizens 10.3% (2017 est.). https://www.cia.gov/the-world-factbook/countries/malaysia/#people-and-society

[6]Bahasa Malaysia (official), English, Chinese (Cantonese, Mandarin, Hokkien, Hakka, Hainan, Foochow), Tamil, Telugu, Malayalam, Panjabi, Thai. In Malaysia there are 134 indigenous languages (112 indigenous and 22 non-indigenous). https://www.cia.gov/the-world-factbook/countries/malaysia/#people-and-society.

[7]Gill (2014), p. 12, recalling Kaplan and Baldauf (1997), p. 196.

[8]Muslim (official) 61.3%, Buddhist 19.8%, Christian 9.2%, Hindu 6.3%, Confucianism, Taoism, other traditional Chinese religions 1.3%, other 0.4%, none 0.8%, unspecified 1% (2010 est.) https://www.cia.gov/the-world-factbook/countries/malaysia/#people-and-society.

[9]Aljunied (2019), p. 109, who also argues that 'Colonial Islamization was a complex process that engulfed much of Malaysia in phases and in varying degrees. The Straits Settlements were exposed to colonial Islamization much earlier and more intensively, followed by the Federated Malay States and then the Unfederated Malay States, which were the least affected until the post-World War Two period.'

[10]Shah (2017), p. 3.

The current administrative division of Malaysia comprises thirteen states,[11] three federal territories, and 150 local authorities.[12] Nine states are hereditary monarchies, the Governor (*Yang di-Pertuan Negeri*) is the head of the states of Malacca, Penang, Sabah and Sarawak, while the Grand Ruler (*Yang di-Pertuan Besar*) is the head of the Negeri Sembilan. Among constitutional monarchies, Malaysia's political system represents a suitable example of traditional and post-colonial rulings' mixture, combining a 'second-degree' form of legal/rational legitimation through the election of the federal head of the state for a 5-year-long term (*Yang di-Pertuan Agong*) and a Westminster parliamentary system.[13] The elected lower house and the appointed upper house constitute the Parliament, which is the constitutional body entitled to exercise the federal legislative power. The federal executive power is formally allotted to the *Yang di-Pertuan Agong*, although according to his constitutional duties, the head of the federation acts on Cabinet and ministers' advice (Arts 39 and 40 of the Constitution).

The central government directly administers the three federal territories of Kuala Lumpur, Labuan, and Putrajaya. The 150 local authorities constitute the third tier of government, and the division of administrative units is grounded on geographic features, on historical and institutional legacies, as well as on political reasons. States have little autonomy compared to the centre, and only Sabah and Sarawak enjoy more authority on their territories.[14]

3 The Constitutional Framework: Sketches on the (Quasi-) Federal Scheme

Current taxonomies of states' administrative patterns have challenged and decisively diluted the traditional approach which basically divided states into federal or unitary. In spite of the post-colonial trend of adopting federal forms with the aim of accommodating different ethnic demands and fostering the sense of belonging to the state, the complex taxonomy of 'hybrid' states currently embraces many different phenomena of aggregation and/or devolution.[15] To this extent, according to Ronald Watts, in Asia there are several examples of 'new', 'quasi-', and 'hybrid' federations, and on the basis of the analysis of the formal constitutional machinery and of

[11] Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Perak, Perlis, Pulau Pinang, Sabah, Sarawak, Selangor, Terengganu.

[12] Ban Lee (2015), pp. 93–102.

[13] On the current role of the Rulers within the constitutional framework and for further critical assessments and hypotheses on the Malay constitutional system, see Lee (2017).

[14] Lee (2017), p. 8.

[15] Malay federalism arose from a combination of aggregation and devolution phenomena in three phases: (1) The 1948 centralised federation relied upon the devolution of the 1945 Malayan Union; (2) the establishment of the Malaysian federation in 1957; (3) the aggregation of the states of Sabah, Sarawak (in Borneo) and Singapore. The development of this process is recalled in Watts (2013).

the operational reality, Malaysia falls under the category of quasi-federations, along with other notable examples, such as Canada and India, due to the prevailing and overriding role of the federal government.[16] On the same—but differently conveyed—hypothesis, Michael Burgess classifies Malaysia as a 'flawed federal democracy', due to the gap between the federal constitutional text, the law in action, and the role of the federal government in the political system.[17]

The impact of political evaluations on the definition of the legitimate divide between 'law in the books' and 'law in action' poses unavoidable questions on the effectiveness of constitutional provisions. This reasonable scepticism might be better addressed through the analysis of the constitutional framework from the viewpoint of a civil law and a top-down approach. In other words, consistently with this chapter's aims, the formal description of the constitutional provisions offer a suitable framework for the understanding of the local bodies' role in the Malaysian quasi-federal state, explaining the aforementioned classifications.

Part VI of the federal Constitution is devoted to the relations between the federation and the States, detailing eight principal grounds of application: (1) legislative powers; (2) executive powers; (3) financial burdens; (4) land; (5) national development; (6) federal surveys, advice to states and inspection of state activities; (7) the National Council for Local Government; (8) application to the states of Sabah and Sarawak.

As per Art. 74 and the Ninth Schedule,[18] federal legislative powers concern external affairs, defence, internal security, civil and criminal law (both substantial and procedural), citizenship, finance, trade, shipping, navigation and fisheries, education, and welfare of the aborigines.

States have residual legislative powers, as well as exclusive powers related to personal laws, land, agriculture, and forestry. They play an important role in regulating local authorities, as per their powers related to local government (excluding the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya), administration and municipal corporations, services, rates, elections, obnoxious trades, and public nuisances in local authority areas. In the light of Malaysian asymmetrical federalism, the set of legislative powers of the states of Sabah and Sarawak encompasses additional matters, mainly related to chthonic traditions, i.e., native law and customs,

[16]Lee (2017), p. 21: 'In Canada and India, for example, the initial constitution was clearly quasi-federal, containing some central overriding powers more typical of unitary systems. However, in both cases, the use of these powers has been moderated (virtually completely in the Canadian case) such that the operational reality today comes closer to that of a full-fledged federation.'

[17]Burgess (2013), p. 56. In reference to the taxonomy 'flawed federal democracy', the author emphasises that '[t]he justification for this category of federal model is that it includes states which although formally federal with a written federal constitution, are highly defective and deficient in terms of federal political practices—the operation of the federal political system—and executive abuses of power in terms of the rule of law, human rights, corruption and the intimidation of legitimate political opposition. There is evidence of some efforts to improve different aspects of its liberal democratic credentials and behaviour but it is patchy and largely ineffective'.

[18]The articles mentioned in this paragraph are constitutional provisions.

personal laws, the establishment and the rules of procedure for native courts, as well as their jurisdiction.[19]

Regarding the executive powers, basically the

> authority of the federation extends to all matters with respect to which Parliament may make laws, and the executive authority of a State to all matters with respect to which the Legislature of that State may make laws.[20]

In any case, states must ensure compliance with the federation, as well as avoid 'imped(ing) or prejudice(ing)'[21] the federal executive's interest. The allotment of legislative powers determines the distribution of financial burdens too, but in case of single or multiple states acting in accordance with federal policies, the federation takes the burden of the expenditures deriving from such federal commitments.

The management of land also displays the 'constitutional favour' for federal policies, in light of the provisions regarding the acquisition of land for federal purposes.[22] In spite of an equivalent role of the states and of the federation in the composition of the Lands Tribunal,[23] the general legal discipline provides for the supremacy of the federation's interests, as exemplified by the second clause: '[. . .] the Federal Government shall not require the grant of any land reserved for a State purpose unless it is satisfied that it is in the national interest so to do'.[24] As per the aforementioned asymmetrical set up of the federal system, other clauses establish a different legal discipline involving the customary lands in Negeri Sembilan, Malacca, and in Malaysian holdings in Terengganu.[25] Differently, the special status and the peculiar application of constitutional provisions granted to the states of Sabah and Sarawak cover a broader legal domain, specifically related to legislative and executive powers. Additionally, according to the National Development Plan in federal-state relations, after hearing the National Finance Council, the National Land Council and the government of any state concerned, the *Yang di-Pertuan Agong* may

[19] The List IIa 'Supplement to State List for States of Sabah and Sarawak' encompasses a wide range of matters, mainly related to local traditions, i.e., native law and custom (personal law in reference to marriage, divorce, guardianship, maintenance, adoption, legitimacy, family law, gifts or succession, testate or intestate), registration of adoptions, the jurisdiction of native courts related to the matters in List IIa (including the right of audience in such courts, excluding the offences except in so far as conferred by federal law), ports and harbours (other than declared to be federal), regulation of traffic by water in ports and harbours or on rivers, Cadastral land surveys, the Sabah Railway, water supplies and services (subject to the federal law List).

[20] Art. 80(1), Federal Constitution.

[21] Art. 81(b), Federal Constitution.

[22] Art. 83, Federal Constitution.

[23] The Land Tribunal consists of a chairman, a member appointed by the federal government, and a member appointed by the state government. The Rules Committee defines the procedures before the Tribunal, and an appeal may lie from the Lands Tribunal to the Federal Court. Art. 87, Federal Constitution.

[24] Art. 83(2), Federal Constitution.

[25] Art. 90, Federal Constitution.

proclaim specific development areas for the improvement or the conservation of natural resources.[26]

Some of the instruments provided to the federal government by the constitutional framework are significantly pervasive and explanatory of the role the federal level plays in the centre-states balance. In particular, the federal powers of survey, advice, and inspection of states carry a duty for these to respond to the demands of the federal government, which may impose directions on such purposes.

The National Council for Local Government (hereinafter NCLG) bridges local, state, and federal interests and loads. Essentially, the NCLG, after consulting federal and state governments, frames the national policy 'for the promotion, development and control of local government throughout the Federation and for the administration of any laws relating thereto'.[27] Both the centre and the states have to comply with NCLG's policies and consult it with respect to proposed legislation on local government and matters.

Moreover, if analysed through a formalistic legal approach, constitutional provisions reveal the 'centripetal tendencies' of the federal scheme, confirming the above-mentioned classification of the Malaysian experience within quasi-federations and flawed federal democracies. Such trend is also the result of the genesis of this specific form of federalism without subsidiarity, rooted on colonial precedents of recognizing separate states excluding ethnic demography,[28] and 'deeply related to the continuance of the Malay monarchies'.[29] The failure of the British colonizers in trying to centralise the administration of the peninsula in the 1930s[30] still reverberates as a reminder for the Malaysian federation, which fears the effect of a devolution process that could hardly be reversed once initiated and reinforced, undermining the authoritarian and top-down approach of the federal government.[31]

[26] Art. 92, Federal Constitution.

[27] Art. 95(a), Federal Constitution.

[28] Francis Kok Wah Loh points out that 'major ethnic groups are distributed unevenly all over the peninsula. The Chinese and Indians tend to reside in more urban areas while the Malays predominate in rural areas. It is only in Sabah and Sarawak that there are large concentrations of regional 'native' minorities namely the Kadazandusuns in Sabah and the Dayaks in Sarawak.' Wah Loh (2019), p. 202. About the ethnic dimension related to geography and the federal asset of Malaysia, '[t]he Chinese and the Malay elements in the population are present in almost equal proportions in a number of states while the 'Indian' community stands only as a balancing force between the two. Thus, unlike the French community in Quebec, the Chinese or the 'Indian' communities in Malaysia cannot claim autonomous 'homelands'. Therefore, a kind of federal compromise, in a social sense, is required not only at the national level but also in a number of the states. In fact, so far as Malaya proper is concerned, a federal form of government was adopted not because of but in spite of 'racial' diversity, though it must be pointed out that the pattern of areal predominance of the communities in the country has created a politico-geographic situation that favours a federal rather than a unitary organization of State.' Dikshit (1971), p. 200. Cf. Simandjuntak (1969), pp. 297–298.

[29] Harding (2012), p. 133.

[30] Wah Loh (2019).

[31] See Siew Nooi (2008).

4 The Functioning System of Local Institutions: The Local Government Act of 1976

As previously mentioned, local authorities are the lower tier of the Malaysian federal system. Unlike other federal democracies, these bodies are composed by unelected officers[32]: the state government appoints mayors or presidents, while the federal government has direct control over territories such as Kuala Lumpur, Putrajaya, and Labuan. Excluding the federal administrative centre and Labuan, there are currently 150 local authorities,[33] divided into city councils and halls, municipal and district councils.[34] Historically, Malaysian local government has been shaped by two main events: (1) the suspension of local government elections in 1965 as an emergency measure; (2) the entry into force of the Local Government Act of 1976.

The Constitution pays little attention to local bodies, even though the highest authority in such administrative field is the National Council for Local Government, which is enshrined in the Constitution. The main legal framework for the local bodies—except Sabah and Sarawak—is the aforementioned Local Government Act of 1976,[35] which defines local authority as

> any City Council, Municipal Council or District Council, as the case may be, and in relation to the Federal Territory means the Commissioner of the City of Kuala Lumpur appointed under section 4 of the Federal Capital Act 1960 [Act 190].

Formally, the functions of states in reference to local bodies seem to prevail, as it is proven by the sentence 'with the approval of the State Authority' in many provisions[36] and the power of state authorities to issue directions. Despite such formal arrangement, the role and the functioning of the states—also the ones with asymmetric features—in practice need to be reconsidered or even reduced. In fact, the 'political control and even manipulation by the developmental state at the centre' nurtures the federation's pressures on states in reference to political, legal, administrative, and financial matters.[37]

Local government is given a wide range of legally constraint powers (i.e., the regulation of the management of several matters refers to local activities, for

[32] Cf. Tennant (1973); Shabbir Cheema and Ahmad Hussein (1978); Barraclough (1986).

[33] Ban Lee (2015), p. 95.

[34] Ban Lee (2015), p. 95. For further empirical studies 'from the inside': Rashidah et al. (2013); Mat Nurudin et al. (2015); Jackson and Seng Wong (2017).

[35] Jackson and Seng Wong (2017). Along the Local Government Act of 1976, there are other relevant legal sources for the definition of the role of local authorities within the Malay political system and their powers: Town and Country Planning Act of 1976, the Street, Building and Drainage Act of 1974 and the Uniform Building By-laws of 1984. In reference to the states of Sabah and Sarawak: Local Government Ordinance of 1961 (Sabah) and the Law of Sarawak, Chap. 20, Local Authority Ordinance of 1996.

[36] The Local Government Act of 1976 mentions the State approval in §§ 2, 17, 18, 46, 68, 97, 127, 143, 163.

[37] Harding (2012), p. 159. Cf. Ban Lee (2015).

instance, public spaces, pollution of streams, food, markets, sanitation and nuisances, burial places, and further powers as per Part XII[38] and Part XIV[39] of the 1976 Act), therefore potential actions *ultra vires* may be considered void or null. Local authorities exercise their powers through by-laws, rules or regulations, and each of them has to be confirmed by the state authority, even though a local authority is entitled to exercise such power under the 1976 Act. States exercise control over local bodies also in those matters that 'are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants or for the good order and government of the local authority area and in particular in respect of all or any' of the purposes enlisted in par. 102 of the 1976 Act. A specific provision concerns extraordinary powers in case of emergency:

> [t]he Commissioner of the City of Kuala Lumpur, Mayor or President, as the case may be, may direct the immediate execution of any work or the doing of any act for safety of life or property and may direct that the expenses thereof be paid out of the Local Authority Fund and shall report the same at the next meeting of the local authority.

The revenues of local authorities consist of those associated to taxes, charges and profits of local activities, interests on invested money, plus the amounts provided by the federation and the state governments. The Local Authority Fund includes all the incomes deriving from the aforementioned sources, and the local authority may loan, issue mortgages, charges and debentures with the state approval. Local authorities may also rise loans, and the state and the federation may surrogate the debtor as per par. 47 of the 1976 Act.[40]

In the light of the complex and 'equivocal' federal mechanisms in establishing political legitimacy and securing democracy and the rule of law, the position of local authorities within this system poses a peculiar issue: the appointment of local 'representatives', which is currently under debate, as it merges bottom-up democratic instances with top-down political imposition. As Andrew Harding argues, the Malaysian authoritarian government is centralizing, rather than fostering power-sharing in favour of local authorities, and the emergence of a stable political

[38]The list is significant, very specific and heterogeneous, encompassing, for instance, powers related to buildings, plant and trees, public facilities, historical sites, monuments, memorials, public libraries, botanical and zoological gardens, drinking fountains, etc.

[39]Part XIV 'Miscellaneous' deals with several powers, i.e., licenses, notices, power to enter premises, recovery of expenses, etc.

[40]'There are three main types of grants for states: tax-sharing grants, general purpose grants, and specific purpose grants. [...] General purpose grants provide general-purpose funds to state governments; they are formula based according to population size and GDP per capita.' [...] Among subnational entities, local governments' expenditures account for less than 3% of total government expenditures in 2013, compared to almost 10% for state governments' expenditures. 31.6% of state expenditures are allocated to capital expenditures, compared to 16.9% for local governments.' https://www.oecd.org/regional/regional-policy/profile-Malaysia.pdf. Over the past decades, local authorities' revenues derived approx.: 32% from rents, fees, and licenses, 17% from state and federal transfers; 51% from local taxation. See Harding (2015), p. 156.

opposition is the 'countereffect' of such policy.[41] Although scholars acknowledge that Malaysian federalism is not grounded on ethnic conflict, the political narrative that 'political polarisation that reigns in Malaysia requires a structure in which inter-ethnic coalition constructed along the lines of consociationalism imposes authoritarian government'[42] is the founding thesis of the Barisan Nasional Coalition.[43] Differently, the Pakatan Rakayat coalition[44] considers that 'local self-government represents a significant opportunity for the exercise of autonomy that can help to lower the tensions of contestation [. . .] at the national level'.[45]

As Goh Ban Lee suggests recalling the Athi Nahappan Commission, unelected local authorities are an 'anachronism and a relic of colonialism',[46] which affect urban governance. To this extent, we should recall also the electoral revolution that has been ongoing since 2008: for the first time in the history of Malaysian politics, the opposition coalition gained power at the state level. [47] In the light of the 14th and 15th general elections' results,[48] the federal government's top-down approach

[41] The emerging of a strong and rising opposition party—and the genesis of a two-party system—is the effect of 50 years of authoritarian government, which centralised Malay federalism. Harding and Chin (2014). See also Yeoh (2019).

[42] Harding (2015), p. 151.

[43] The Barisan Nasional (BN, National Front) is the ruling political party since independence (1957). For an historical account on the genesis of the BN: Mauzy (1983). See also Weiss (2005).

[44] The Pakatan Rakayat (PR, People's Alliance) is the political opposition to the BN. Over seven decades of BN governments, since the 12th general election, the PR is gaining power at the state level. At the 14th general elections held in 2018, the PR prevailed in all states in peninsular Malaysia (excluding Perlis and Pahang). This result has been defined as 'historical'. To this extent, Muhamad Nadzri proposes a division in phases of the political competition in Malaysia: (1) from 1957 to 2007, one-party dominant system; (2) from 2008 to 2015, two-coalition party system; (3) since mid-2015, after the Parti Islam Se-Malaysia (PAS, Pan Malaysia Islamic Party) left the PR coalition, multi-party system; (4) from mid-2018, two-plus-one party system). Nadzri (2018). Cf. O'Shannassy (2009); Hutchinson and Hwok Aun (2019).

[45] Harding (2015), p. 152.

[46] Ban Lee (2015), p. 98: 'Nominated advisers cannot effectively voice the interests of the ratepayers because they are not answerable to them. Nomination is no real substitute for elective representation. If anything, nomination is an anachronism and a relic of colonialism. It is antithetic to democracy. Athi Nahappan (1968), p. 99.

[47] Athi Nahappan (1968), p. 99. The Author recalls the Athi Nahappan Commission of Enquiry: 'Even if there were legal provisions governing the principle of nomination, it is common knowledge that the Government of the day usually favours and appoints its own party members or supporters and not always the best persons available. The legal provisions are often conveniently circumvented by the appointing authority. Nomination therefore is a much abused system.' (Ibid., 97). Regarding the critique to the functioning of local authorities, Andrew Harding points out that 'even a federal minister was moved to call local-government authorities 'secret societies' because of the lack of transparency and accountability': Harding (2015), p. 157; quoting Lim (2006).

[48] Wah Loh (2019), p. 207: 'In the 13th general election held in 2013, the Barisan Nasional (BN) ruling coalition emerged victorious for the 13th time. It won 133 of 222 parliamentary seats at stake although it garnered only 47.5% of the popular vote; the Pakatan Rakyat (PR) opposition coalition polled 50.9% of the vote. The PR's performance denied the BN a two-thirds majority in Parliament—which allows for amendment of the constitution. The PR also defeated the BN in the

reveals the 'conviction' of the centre's political attitude, influencing the cooperation among administrative entities and fostering political struggles rather than dialogue among the levels of government.

5 Conclusion

Is colonial legacy a form of 'traditional paradigm'? According to the Malaysian experience, the attitude of the British towards the sultanates and the political powers of the peninsula established a suitable way to handle autonomist demands. This 'attitude' is a workable methodology, rather than a tradition, that provides a pragmatic approach to the endless 'unitary/federal dilemma'. In this respect, also '[t]he resurgence of the Malay Rulers [. . .] assisted by the changing political landscape' provides an important aspect for further hypothesis on the 'true' Malaysian federal pattern.[49]

The role of local bodies on the grounds of political and financial autonomy questions the *de jure* federal scheme of Malaysia, that is indeed far from a *de facto* devolution, as it is much more consistent with the central government's preference for unitary arrangements. However, beyond the strictly legal analysis, the clash between centralisation and devolution is developing and will evolve on the political ground, mainly in reference to political powers in those states governed by the Pakatan Rakayat coalition, and the leading theme will be the autonomy of local bodies and their democratic representativeness.[50]

In this respect, other Asian experiences provide examples of a more genuine devolution process, as the Indonesian special autonomy in issues related to natural resources and religion.[51] Nevertheless, this process still shows problems concerning the concurrent powers and the harmony of legislation within the Indonesian legal system.[52] Indian *panchayat* (local government) as third tier of government were implemented only starting from the 1990s, 40 years after the entry into force of the Constitution, leading to a democratic revolution that allowed women and scheduled castes, through reserved quotas, to join the democratic machinery.[53] Differently, the Malaysian case would be close to the Pakistani administrative division: 'a federation

states of Kelantan, Penang and Selangor. The 2013 electoral results mirrored the outcome of the 12th general election held in 2008 when the BN lost not only its two-thirds majority but an unprecedented 5 of the 13 states to the PR. These electoral results have led to new tensions in federal-state relations in Malaysia's centralized federalism.' On Malaysia's 14th general election: Weiss and Hazis (2020). This chapter has been drafted before the 15th Malaysian general election, which have been scheduled to be held on the ninth of December 2022.

[49] Lee (2017), p. 74.

[50] Wah Loh (2019); cf. Kok Wah (2017), pp. 72–82; Prasad (2016); Weiss and Hazis (2020).

[51] Harding and Sidel (2015).

[52] Butt (2015), pp. 85–103.

[53] Mathur (2017).

in name but centralised in substance'.[54] To this extent, as Barbara Watson Andaya and Leonard Andaya argue:

> the centrifugal tendencies remain, but with strong and committed leaders in Kuala Lumpur dedicated to the preservation of the Federation and the primacy of the centre, there is every reason to believe that these tendencies will be effectively restrained.[55]

The ultimate question is whether the long-lasting *de facto* unitary approach will survive under the increasing political claims for local participation and elected local representatives.

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[54] Bengali (2020), pp. 271–285.

[55] Watson Andaya and Andaya (1982), p. 301.

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