Review

Managing the state-civil society relations in public policy: Deliberative democracy vis-a-vis civil society movements in Malaysia

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This paper is trying to examine the state-civil society relation and also argue from the theory of deliberative democracy in explaining the roles of civil society in Malaysia. Carolyn Hendriks sees deliberative, from two fundamental approaches; there are micro deliberative which concentrates on defining the procedural conditions of a structured deliberative forum and macro deliberative which are more concerned with the messy, unstructured deliberation which takes place in the public sphere. With the combination of civil society and deliberative democracy, this paper will open up the discussion on the state-civil society relations in Malaysia. It manages to trace that Malaysian civil society movements, in engaging and managing the relation with the state, have employed both deliberative methods of deliberative democracy. In fact, Malaysian civil society has gone a step further by joining the opposition party and contesting in the election for power due to hostile relation between the state and civil society. However, the reality is that there are too many considerations that need to be contemplated by the state and civil society in their relations, especially when it involves national security and race issues.

Key words: Civil society, deliberative democracy, Malaysia.

INTRODUCTION

The preservation of inter racial harmony appears to be the legitimising factor that props up the argument supporting the ruling elite's domination of the government, proposing the idea that political organisations should consent to the larger programmatic mission of the state-representing-the-nation (Nair, 1999). Generally, the government, including the prime minister, does not set a high priority on civil society movement in Malaysian democracy. Indeed, the government is of the view that opposition parties and civil society's activists, often encouraged by foreign countries and organisations, are a hindrance to the country's economic development and jeopardise its stability (Milne and Mauzy, 1999). Former Prime Minister Mahathir Mohamad (1982) argues that the activities of movements in civil society that tend to meddle in politics should be curbed as they clearly aim to weaken government authority and do not contribute to the public good. The government is of the opinion that opposition parties and non-governmental organisations

(NGOs) should be closely monitored as they have the ability to influence public opinion, endanger public order and even obstruct well-planned, national development. The state has labelled advocacy-oriented NGOs together with the organised left, dissident student movements, labour groups, and opposition political parties an 'internal other' against whom society must struggle to remain peaceful, unified, and secure. Before, NGOs and other dissident groups were labelled 'communist', now, they are lambasted as 'Western' or 'non-national'. For instance, former Federal Territory Minister Abu Hassan Omar declared in December 1986 that seven groups – two opposition parties and five NGOs – were out to destroy 'the country's political and social fabric' (Tan and Singh, 1994). Thus, the role of this group in politics is so essential to ensure the smoothness of democratic system in Malaysia, credibility of the judiciary, effectiveness of the police institution, and media. The political organisation is likely to be seen as the group that will maintain

the effectiveness and efficiency of all those political institutions for the public good, although, they will probably face a risk of government's sanctions.

Restrictive laws and the full authority vested in the Minister of Home Affairs to decide on the establishment and activity of any association under the Societies Act 1966 (1998) has diminished the role of political organisation and political speech. The Societies Act 1966 (1998) consolidates the various existing ordinances that regulated and restricted the formation and activities of societies, clubs, organisations, associations and political parties in Malaysia. The Act requires that all non-corporate groups of seven persons or more, be formally registered as a society by a civil servant, the Registrar of Societies, responsible to the Minister of Home Affairs. If a society's designated 'office-bearers' (president and member of the governing body) fail to conform to the orders of the Registrar, they are liable upon conviction to a fine or imprisonment of up to five years. Ordinary members of an 'unlawful' society, or persons who allow such a group to meet on their premises, are liable to a fine or imprisonment of up to three years. Under the Act, as amended in 1981, Section 5(1) states that:

"it shall be lawful for the Minister in his *absolute discretion* by order to declare unlawful any society...which in his opinion, is or is being used for purposes prejudicial to or incompatible with the interest of the security of the Federation...public order or morality."

Section 13(1) (b) gives the power to the Registrar to:

"prohibiting the society from having, directly or indirectly, any affiliation, connection, communication or other dealing whatsoever, with any society, organisation or other body whatsoever outside Malaysia...."

In 1981, the category of a 'political' society, subject to specific restrictions, was introduced. A 'political' society was defined as any group or body that sought 'to influence in any manner, the policies or activities of the Government of Malaysia, or of the Government of any State, or of any local authority'. Once designated 'political', a society's membership was effectively restricted: under previous legislation, members of certain professions, including university lecturers, are not allowed to take part in political activity, and would therefore be prevented from joining a political society (Amnesty International, 1999). The 1981 amendments introduced a clause that allows the minister to categorise an organisation as 'political' – suggesting that the Act could be used against any pressure group seeking to comment on, or influence government policy. It was sharply criticised by a broad spectrum of social and political organisations, leading to its amendment in 1983.

A range of restraints however still remains in place or has been added, including the effective denial of judicial review of government decisions (Amnesty International, 1999).

Concern for political freedom in Malaysia is not high because political competition is not as great as, for example, in Western countries. Singh (1990) points out that lobbying methods used by pressure groups in Western countries are 'just not available or possible in Malaysia'. The result is a very narrow and officially defined sphere of the political within which state agents and political parties are the only legitimate actors; politics thus becomes that which is party-mediated and electoral-driven (Nair, 1999). However, the opposition and political NGOs try to involve in any policy-making decisions even though the government will not tolerate them lobbying on the issue of free speech and media freedom. For instance, the opposition party and NGOs have organised several activities lobbying to the government to improve the human rights conditions in Malaysia.

In the case of civil society activism in challenging the government policy on democracy, the year 2007 saw several large protests against the government and its policies. One of the cases was the 2007 BERSIH (the Joint Action Committee for Electoral Reform) rally held in Kuala Lumpur on 10 November, 2007, where 40,000 people defied ban attending the rally. The non-violent and peaceful rally organised by the opposition parties and civil society movements to campaign for electoral reform was denied a permit by the police and was marred by the confrontation between the police and the rally participants nearby Masjid Jamek. Police used chemical-laced water bombs and tear gas in a violent crackdown. The police arrested 34 people, released a night later, and injured several more (BERSIH, 2007). In separate BERSIH's demonstration, two people suffered bullet wounds from Police actions during a BERSIH information rally held in September in Batu Burok, Terengganu. Meanwhile, nine people were arrested for their participation in the International Human Rights Day and twelve more were arrested for organising or participating separate rallies calling for government reform (North, 2007).

In the same month, the Hindu Rights Action Force (HINDRAF), a coalition of 30 Hindu NGOs committed to the preservation of Hindu community rights and heritage, had organised a rally turned riot of 10,000 people on 25 November, 2007 to submit a petition to the British High Commission. The group had led agitations against what they saw as an 'unofficial policy of temple demolition' and concerned about the steady encroachment of *shariah*-based law. Abdullah first responded defensively, calling on the protestors to stay at home. The police also denied every request for protest permits, under the guise of protecting public safety. When those measures did not work, Abdullah adopted the tough tack of his predecessor, Mahathir Mohamad, by intimidating his political opposition. The police used tear gas and water cannons

to disperse the crowd. Over 130 people were arrested during the incident, which saw thousands gathering at various locations along Jalan Ampang and Jalan Tun Razak (The Star Online, 2007a). On 13 December, 2007, five Indian activists, P. Uthayakumar, M. Manoharan, R. Kenghadharan, V. Ganabatirau and T. Vasanthakumar, who participated in the rally, were detained under the ISA. It is learnt that they were detained under Section 8(1) of the ISA after Abdullah, as Internal Security Minister, signed their detention order for two years (The Star Online, 2007b).

This is clear that there is tension in relations between the state and civil society in Malaysia. This makes the involvement of civil society rather limited. This raises the question on how the civil society movement can influence the state in public policy formulation and how the state-civil society movement can be managed properly in producing public policy that is good for the nation. Therefore, by analysing the theory on deliberative democracy, this paper will try to show how effective the civil society movement in penetrating the government agenda in decision making for policy formulation is.

THE STATE-CIVIL SOCIETY RELATIONS AND DELIBERATIVE DEMOCRACY

Etzioni (1995) and Sandel (1996) argue that civil society is positive for democracy because it provides a site where communities, not self-interested individuals or the state, co-determine their own destinies. Communitarians define civil society largely in terms of 'given' or 'ascriptive' social relationships based on such as family, religion, race, and ethnicity. Like liberals, they see civil society as an essentially private realm, but they think of it not in terms of contractual relationships and exchange, but in terms of natural social ties and communal identities. The defining actor in this model is 'the bondsman tied to community by birth, blood, and bathos'.

Furthermore, Barber (1998) contends that what is needed is a 'third sector' or 'civic terrain' made up of families, clans, churches (mosques), communities, and voluntary associations that can effectively mediate between 'prince and market' – between big government and wholly private commercial markets, between public and private, between the power of public communities and the liberty of private individuals. Barber interprets civil society not as an alternative to democratic government, but rather, as the free space in which democratic attitudes are cultivated and democratic behaviour is conditioned. He calls it 'the space of uncoerced human association and also the set of relational networks – formed for the sake of family, faith, interest and ideology – that fill this space'. It is the domain of 'you and me as we gather into we's' (Barber, 1998). As a proponents of 'strong democracy', Barber favours civil society that seeks to maximise citizen participation and work on behalf of the common good. This model defines civil society not as a private realm but as a mediating civic domain or 'commons' comprised of voluntary and inclusive rather than ascriptive and exclusive groups. Neither wholly public nor wholly private, it is a primarily civic in orientation, committed to exploring common ground, doing public work, and pursuing common relations.

Barber (1998) stresses that both the state and private enterprise must be enlisted in the effort to revitalise civil society. State must take a more active role in nourishing, protecting, and encouraging robust civic activity. When problems demand it, it must also act on behalf of the citizenry. State is civil society's common arm, just as civil society is state's animating body. At the same time, private enterprise must be more sensitive to the demands of democracy and civility. As Barber sees it, corporations must either 'give us back our state and, while pursuing profits, accommodate state encroachments and regulation in the name of the public weal, or they themselves will have to become more civic-minded and democratic, no matter what the cost to their profits. Anything less means the end of democracy' (Barber, 1998).

It is believed that the role played by civil society is crucial in any democratic state. A strong civil society could act to check and balance the power of the government. According to Levine (2003), democracy requires deliberation for three reasons which are to enable citizens to discuss public issues and form opinions, to give democratic leaders much better insight into public issues than elections are able to do, and to enable people to justify their views so we can sort out the better from the worse. For Gutmann and Thompson (1990), a deliberative democratic or public deliberation theory offers 'a conception of democracy that secures a central place for moral discussion in political life'. They argue that the promise of a deliberative democratic theory lies in a concern for 'finding terms of cooperation that each citizen can accept' for the reason that contemporary societies are driven by deep conflict and moral disagreement. Bohman (1996), another defender of deliberative demo-cracy, posits that democracy in some form implies public deliberation, which is 'the deliberation of citizens is necessary if decisions are not to be merely imposed upon them…consent, is after all, the mean feature of democracy'. In other words, political decision-making is legitimate insofar as policies are produced in 'a process of public discussion and debate in which citizens and their representatives, going beyond mere self-interest and limited points of view, reflect on the general interest or on their common good'. Therefore, public deliberation is an approach to decision-making in which citizens consider relevant facts from multiple points of view, converse with one another to think critically about options before them, and enlarge their perspectives, opinions and understandings. Deliberative democracy strengthens citizen voices in governance by including people of all races, classes, ages and geographies in deliberations

that directly affect public decisions. As a result, citizens influence – and can see the result of their influence on – the policy and resource decisions that impact their daily lives and their future (Deliberative Democracy Consortium, 2003).

Hendriks (2002) intelligently and thoroughly discusses and analyses the growing literature on deliberative democracy where there are two emerging streams of thought and both have something different to say on the role of civil society. There are micro deliberative democrats who concentrate on defining the procedural conditions of a structured deliberative forum (Elster, 1997; Gutmann and Thomson, 1996) and macro deliberative democrats who are more concerned with the messy, unstructured deliberation which takes place in the public sphere (Dryzek, 1990; Habermas, 1996). These two streams of deliberative democracy implicitly offer contrasting ideas on the role of civil society with respect to the state. With their focus on proceduralism, micro theorists encourage civil society to engage in collaborative practices with the state. In contrast, macro theorists advocate that civil society work outside and against the state in oppositional politics.

Micro accounts of deliberative democracy concentrate on defining the ideal deliberative procedure. In normative terms deliberation is a form of face-to-face communication which emphasises reasoned argument and persuasion rather than manipulation, coercion and deception. In a deliberative forum, free and equal participants uphold a series of procedural norms aimed at communicative, rather than strategic goals. Participants listen, are reflective and open to the views of others and are committed to the values of communicative rationality and impartiality (Elster, 1998; Bickford, 1996). Cohen (1997) for example, defines a deliberative procedure as '…arenas in which citizens can propose issues for the political agenda and participate in debate about those issues'. Accordingly, a forum is democratic and deliberative if the participants are free and equal to decide on the agenda, propose solutions to the problems set for discussion and aim to settle on an alternative. Similarly, Gutmann and Thompson (1996) provide the standards of reciprocity, publicity, and accountability for judging the quality of deliberation. Given the limited consideration of civil society in these micro accounts of deliberative democracy, one can only infer its role from the notion of legitimacy or from the conditions of deliberation. According to Elster (1998), the democratic part of a deliberative democracy refers to the '…notion that collective decision making with the participation of all who will be affected by the decision or their representatives'. This definition seems implausible given the difficulties of involving everyone in decisions in modern plural societies. Alternatively, we can look at the conditions of deliberation and explore what participants are best suited to this task. For example, in a deliberative process, participants are expected to communicate openly, seek mutual understanding, and

reflect on the ideas and perspectives of others. The heart of deliberative theories of democracy is the notion that discussion tends to shift the preferences of participants towards the common good and the truth. Difference democrats warn that micro theories of deliberative democracy are highly exclusionary because they place too much emphasis on the formality of deliberative processes (Sanders, 1997). Young (1996) calls for an expansion of political discussion beyond the domain of the 'rational argument' to include other forms of communication and ways of 'knowing', which might be positive to the democratic project. For example, deliberation should encompass greeting, rhetoric and story-telling, as well as more strategic forms of action such as protest and direct action.

An alternate conception of deliberative democracy takes the macro perspective. Theorists such as Jürgen Habermas and John Dryzek emphasise the loose unstructured forms of deliberation where discourses are free to overlap and engage with one another. Discourses can be likened to coherent story lines, which build upon facts, values, myths and opinions. They represent '…a shared means of making sense of the world embedded in language' (Dryzek, 2000). Macro or discursive deliberation takes place in the informal spaces in society where communication is unconstrained, spontaneous and 'anarchic' (Habermas, 1996). It encompasses a range of communicative spaces from small face-to-face discussions through to action by social movements and the media. Highly unpredictable, discursive deliberation does not necessarily exclude more strategic forms of action such as protest, boycott and radical activism. In macro theories of deliberative democracy, civil society plays a predominant role. Civil society is called on to play an unconstrained and even oppositional role against the state by engaging in acts of communication (Habermas, 1996). Its key role is in the formation of public opinion, which is transmitted into institutionalised decision-making fora, such as the court and Parliament. Based on this depiction of a deliberative democracy, sectors in civil society such as interest groups and citizens can be broadly involved in deliberation, for example, by contributing to a discourse or joining a social movement.

These two interpretations of deliberative democracy present two different and potentially conflicting roles for civil society. Both interpretations of deliberative democracy address the inequitable distribution of power and resources within civil society in different ways. The procedural norms for deliberation as specified in micro theories are aimed at readjusting asymmetries amongst participants. For example, Cohen's (1997) criteria for legitimate deliberation that it be 'free' and 'equal' requires that the deliberative procedure remove any inequalities that exists amongst participants, for example, with respect to power, influence and resources. Gutmann and Thompson (1996) also emphasise egalitarian conditions such as 'liberty' and 'opportunity' as a necessary basis for authentic

deliberation. In contrast, macro theories of deli-berative democracy are not to draw too much attention the potential communicative distortions which result from inequalities within civil society. Theorists such as Dryzek (2000), and Bohman and Rehg (1997) appear reluctant to admit the large inequalities present within civil society and the dangers these might present to the quality of democratic deliberation at the macro scale. On the whole, macro deliberative democrats remain highly optimistic that broad scale deliberation within the public sphere, with its openness for 'unrestricted communication', is rigorous enough to counter illegitimate claims and attempts to distort communication (Habermas, 1996).

One exception to this is that Habermas (1996) acknowledges that 'the general public sphere is… more vulnerable to the repressive and exclusionary effects of unequally distributed social power, structural violence, and systematically distorted communication than are institutionalised public spheres of Parliamentary bodies'. In order to correct these distortions, Habermas firstly proposes a set of legal and constitutional safeguards. Secondly, he calls on specific liberating sectors of civil society to ensure that communication is not distorted. These sectors can be distinguished by their 'dual orientation' of political engagement. On the one hand, these actors seek to influence the political system but on the other hand, they also seek to empower and enlarge civil society's capacity to take action. The kinds of groups who might take on this anti-distortion role are those new social movements who pursue issues both at the grassroots and at the policy level. However, Hendriks (2002) argues that to the extent that social movements might prevent communication distortions, the capacity to do so is not necessarily the same in all democracies. The recent comparative work of Dryzek et al. (2003) on green movements in four western democracies indicates that the vitality of new social movements is influenced by the orientation of the state. Their findings suggest that depending on the degree to which states are inclusive or exclusive to groups in civil society, the fate of social movements ranges from effective incorporation into the state through to co-option or destruction by the state. Thus, the capacity of social movements to readjust communication distortions within civil society is unlikely to be uniform across all democracies.

In my view, there should be a bridge to unite the micro and macro versions of deliberative democracy. Few theorists have attempted that. First, Habermas' (1996) two-track model links the informal deliberation in the public sphere with the deliberation that occurs in formal institutions of the state such as the courts and Parlia-ment. Opinions formed in the public sphere are trans-mitted to the state through 'transmission mechanisms' (Dryzek, 2000) or 'currents of public communication' (Habermas, 1996). For Habermas, the primary transmis-sion mechanisms are elections and the media, whereas other macro theorists such as Dryzek(2000) emphasise

transmission through the contestation of discourses. Once public opinion is somehow trans-ferred into the state, deliberation occurs in formal institutional settings such as Parliament, where 'will formation' (law making) occurs.

Secondly, Mansbridge (1999) suggests that we con-sider a 'deliberative system'. This system consists of a deliberative continuum, the extremes of which are differentiated by the degree of formality. At one end is the everyday talk amongst citizens, social movements and interest groups that takes place in public spaces (such as in the media) as well as in private spaces. At the other end of the deliberative system is formal decision- making institutions such as public assemblies and Parliament. Mansbridge acknowledges that certain components of the system that may not necessarily reflect the ideal deli-berative procedure as proposed by micro theorists or that they might exclude certain sectors of civil society in the case of more formal deliberative venues. However, the key, she argues, is that the total system reflects deli-berative conditions (Mansbridge, 1999). This is a more promising and realistic picture of how civil society might engage in deliberative politics. A healthy deliberative system would provide both formal and informal venues in which civil society can participate in deliberation.

THE STATE-CIVIL SOCIETY RELATIONS IN MALAYSIA

The ideal concept of consensus politics in Malaysia should be generated through the process of managing public deliberation. Consensus through public delibera-tion is more holistic and able to reflect and serve the people interests in, such as, public policy and political culture. This concept or method will be the best to protect common good of the society from any manipulation especially from the state. Therefore, the responsibility of civil society is crucial to make sure that this type of con-sensus politics will benefit the people from different races in Malaysia. However, Malaysia does not have a strong civil society that can equal and check and balance the power of the government. According to Hassan (2002), most of the civil societies or NGOs in Malaysia, except Angkatan Belia Islam Malaysia (ABIM) and Dongjiaozong, do not have a mass base, which leaves them with little bargaining power vis-à-vis the state, even if they are vocal and to some extent influential in their advocacy and dissemination of opinions over broad fields of legal and human rights. Some of the NGOs may not realise that, paradoxically, strengthening civil society by extending political participation requires the precondition of strengthening the state (Marcussen, 1996). From this point of view, because the Malaysian state continues its commitment of conducting regular general elections, the space available to NGOs and other political groups re-mains an important marker of possibilities for enhancing

civil society. Malaysia's civil society movements also try to implement deliberative democracy in engaging with the government especially in influencing the public policy and decision-making processes. The role of civil society and ways their influencing the processes, can be looked from Hendriks' (2002) arguments or mapping of micro and macro deliberative democracy. However, the state-civil society relations in Malaysia depend on the issues that they could deliberate and the willingness of government in accepting the deliberative process and critical views from the civil society.

The state-civil society relationship can be characterised, linking with the micro deliberative democracy process where both the state and civil society collaborate in handling the issues such as the environment, welfare, women, youths, and child development. The government has involved organisations such as the Federation of Malaysian Consumer Association (FOMCA), the National Council of Women's Organisations, the United Chinese Schools Committees Association, and others to participate in the debate and deliberation on development and public policy. NGOs that collaborate most successfully with the government are non-political, like the Malaysian AIDS Council, the Malaysian Nature Society (MNS), and the World Wide Fund Nature for Malaysia (WWF). NGOs struggle for human rights like SUARAM, ALIRAN, and Persatuan Hak Asasi Manusia Malaysia (HAKAM, Human Rights Association of Malaysia) have also been invited such as in meetings held by SUHAKAM. Sometimes, NGOs have to use a variety of ways in order for them to get involved in deliberation process. For instance, NGOs and institutes in Sabah, such as the Partners of Community Organizations (PACOS), lack the capacity to influence public policies but, along with other organisations such as the Center of Orang Asli Concerns (COAC) and the Peninsular Malaysia Orang Asli Association (POASM), have been able to communicate ideas to the government regarding the condition of Orang Asli (indigenous people) and their cultures (Verma, 2004). Moreover, NGOs that have close link with the government such as Majlis Belia Malaysia (MBM, Malaysian Youth Council), Gabungan Penulis Nasional (GAPENA) and Gabungan Pelajar Melayu Semenanjung (GPMS) have more opportunity to get invited in deliberation process. NGOs in Malaysia have become stronger, and their growing advocacy work in policy and media circles has led to some notable successes such as in lobbying to enact the Domestic Violence Act and setting up the SUHAKAM. Their ongoing participation and deliberation in the fields of consumer protection, economic and social development, women's rights, the environment, and human rights have enabled them to operate effectively and to communicate with the government, media and other institutions (Verma, 2004). This micro process could be the most effective in contributing views, arriving at consensus in the decision-making process, and producing policies for a common good. However, there

are problems with this approach of micro deliberative democracy in relation with the state-civil society relationship in Malaysia. The problem is when the government invites civil society that its favours or can please it, not civil society that can critically deliberate views. Cohen did mention that micro deliberative demo-cracy requires a process of 'free' and 'equal' between parties where the deliberative procedure remove any inequalities that exist. Therefore, there is a highly unlikely concept of 'agree to disagree' practise in the state-civil society relationship where the state always likes to show its authority in making the final decision, despite the fact that the people and civil society are disfavoured with the decision such as in the case of the fuel prices hike in 2008. Unless the views of the government are coincidently similar, or slightly similar with the civil society, like in the blasphemy case between Muslim Scholars Association of Malaysia (MSAM) and secular-liberal writers, the government unexpectedly supported the secular-liberal writers against MSAM. The intention in inviting NGOs to be involved in the decision-making process most likely was for the purpose for consultation only. There is also a concern that civil society's participation in the process was for the purpose to legitimise the already planned policy.

On the contrary, macro deliberative democracy process advocates that civil society participate in the public sphere and work outside and against the state in oppositional politics. Non-state contestations are initiated by a number of critically minded and highly politicised NGOs. NGOs such as Suara Rakyat Malaysia (SUARAM), Aliran Kesedaran Negara (ALIRAN), Malaysian Human Rights Association (HAKAM), ABIM, Jemaah Islah Malaysia (JIM), Dongjiaozong, and lesser ones such as Just World Trust (JUST) and Centre for Peace Initiative (CENPEACE) have been utilised the public sphere and have been critical to the state policies on a wide variety of issues. Many of them have been unhappy with the state of democracy in Malaysia, the lack of human rights, the limited freedom of the press, the denial of cultural rights to certain ethnic communities, and the use of repressive laws by the regime (Verma, 2004).

Civil society in Malaysia has become a legitimate channel for social and political participation and for influencing policy formation and public opinion. Signs of change started to appear during the Reformasi period following the arrest of Anwar in 1998. The contribution that Malaysia's nascent civil society made to the anti-authoritarian struggles of the 1990s is widely recognised today. Since then, students, intellectuals, professional associations, religious groups, and also opposition parties have been raising questions regarding the authoritarian nature of the government. In the process some groups have begun to adopt a more radical stance on issues of human rights and judicial reform. But in dealing with NGOs, the government has always maintained that it places national security above all other concerns because it views NGOs as government harasser out to

foment discontent (Verma, 2004). NGOs, that adopt the macro deliberative democracy approach, tend to associate or link their organisations with opposition parties. For example, in the 2008 general election, a political analyst, James Wong said that: 'There is the traditional opposition which has been now joined by civil society, students, independent journalists and NGOs' (Kuppusamy, 2008). Several activists are contesting under the banner of the Democratic Action Party (DAP) and among them is Charles Santiago, the coordinator of the Coalition against Privatisation who has fought to prevent privatisation of water and stop big business from raising the prices of a natural resource. Others, such as Tian Chua and Sivarasa Rasiah of People Justice Party (PKR), who used to be involved with SUARAM. Human rights leaders see the NGO participation in the general election as 'pivotal' and which adds a new dimension to participatory politics. Yap Swee Seng, executive director of SUARAM, believe that 'The general election is the time for NGOs to push the civil society agenda and make their voice heard….The ultimate objective is to ensure a strong, multi-party opposition that can better safeguard the constitution and people's interest' (Kuppusamy, 2008). With the good result for the opposition in the 2008 general election, many former NGOs' activists won the election such as Tian Chua and Sivarasa Rasiah in Parliamentary seats, and Elizabeth Wong, former HAKAM's activist, won for PKR in state assembly seat and has been appointed as Executive Councillor in Selangor's Pakatan Rakyat (PR) state government. This shows that civil society movement is now entering the real politics in struggling for power. Perhaps, this is the best way to serve the people and struggle for what they believe in.

The problem with macro approach of deliberative democracy in Malaysia is that, little or no attention has been paid to these organisations because of their being critical to the state. More often than not the views and arguments of these critically minded NGOs would be dismissed by the state on the grounds that they are anti-development and sponsored by some foreign agencies for the pursuance of some ulterior motives (Ramasamy, 2004). The government controls mainstream media, thus the space in the public sphere is very limited for the NGOs except in the cyberspace of the Internet (see next section on the new media). The government belittles critiques from the NGOs by portraying them as marginal and out of touch with the mass public. However, in term of the effectiveness of contribution in the decision-making process, this macro approach is sometimes more effective in certain sense in Malaysia. For instance, the government decried a proposed NGO-organised public tribunal on the abuse of police powers: 'Mahathir claimed that some NGOs were deliberately challenging the government to take action against them and threatened that he would do so, if they had broken the law' (Milne and Mauzy, 1999). However, through persistent campaigns and pressure onto the government, Prime

Minister, Abdullah Ahmad Badawi, agreed to the establishment of The Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police, approved by the King on 4 February, 2004, under the Commission of Inquiry Act, 1950. In its 576-page report, submitted to the Prime Minister on 29 April, and which was publicly released on 12 June, 2005, the Commission made 125 recommendations focusing on three main areas of reform – crime reduction, eradicating corruption and observing human rights in policing the country (Amnesty International Malaysia, 2007). This is a proof that constant macro deliberation can influence the government in implementing policy prioritised by the people but previously not in the government's agenda.

Scholars such as Habermas admit that in order for macro approach to be functioned well, it needs to be assisted by the media. The problem is that Malaysia does not have a free media. However, the current revolution of media industry and technology through the introduction of Internet was responsible in creating a new public sphere for public deliberation. This new media is able to strengthen the use of macro approach, plus, it also manages to be utilised in transforming the public opinion as what has happened in Malaysia during the 2008 general election (Azizuddin, 2009).

Malaysia definitely needs a strong civil society movement that can ensure the success of public deliberation and can check and balance the power of the state. In Malaysia, the NGOs had sought to provide a democratic conscientisation of the public which was deemed to be politically apathetic or ignorant of their fundamental rights and duties. In particular, the Malaysian public was urged to be 'more aware of how and why freedom is curtailed, whose interests are served by curbs upon freedom, what are the consequences of concentration of power with the executive, how people should respond to the emasculation of democracy and what alternatives are available to those of use who are committed to greater freedom and justice' (Chandra, 1986). Loh (2003) argues that, Malaysians disillusioned with political parties and electoral politics have the option of engaging instead in informal politics. What has made this option possible, he suggests, is the proliferation of NGOs since the 1980s and their increasing political import since the late 1990s. Not only do these organisations offer venues for participation outside the channels of electoral politics, but the engagement of NGOs with opposition political parties helped to enrich those parties as well as hasten the process of political reform.

Public campaigns by the civil society are one of the best examples of the deliberation method. Public campaign is a more civil and peaceful approach without any force or violence means in practising it. Most of the campaigns are for public education, mobilisation and lobbying. For instance, the signature campaign is when members and supporters of the NGOs involve in collecting names, signatures and identity card (IC) numbers

from as many individuals as possible. The petitions are then delivered to the relevant government ministry. This method does not seem very efficacious, however, this is not the case and sometimes it works in influencing public policy when NGOs submitted over 70,000 signatures in 1981 in opposition to the amendments to the Societies Act. While the fact that the Bill was with-drawn twice and underwent substantial changes shows that the campaign as a whole, whether due to the petition or not, had some effect, in the end only the most controversial clauses were removed (Tan and Singh, 1994; Weiss, 2004).

Civil societies also utilise the printed media and the Internet to spread their views in influencing the government's policy. For example, ALIRAN produces a magazine called Aliran Monthly and SUARAM produces annually The Human Rights Report. Both NGOs have also published many books and newsletters. They even have their own websites, 'http://www.aliran.com' and 'http://www.suaram.net'. Through the publication and the internet, ALIRAN manages to promote its agenda of social justice, political reform and multi-religious and multi-ethnic dialogues. SUARAM can also report and monitor human right violations in Malaysia and the region. However, the access of these groups in mainstream media has been blocked due to the anxiety on the behalf of the government that NGOs could influence public opinion in challenging the government. Furthermore, civil society constantly organise fora and seminars, inviting government officials to participate in the debate and discussion. For instance, Era Consumer regularly organises conferences on the performance of Human Rights Commission of Malaysia (SUHAKAM), of course in discussing the issue of human rights. SUHAKAM's commissioners take part in presenting papers and also debating the current issue of human rights in Malaysia. Therefore, the role of civil society is important to create a proper deliberative democratic system in Malaysia where freedom of political speech is protected for the good of the people.

EASY SAID THAN DONE IN MANAGING SENSITIVE ISSUES

Racial hostility, degenerating into racial hatred, is an ongoing threat in Malaysia. It could be found in the attitude of certain non-Malay based opposition parties in the sixties. They were opposed to the status of Malay, instead of English, Mandarin/Cantonese or Tamil, as the sole official and national language of the country because this policy jeopardised the vernacular schools, especially the Chinese schools and the Indian schools which used their own languages as official language in school. Likewise, a Malay party of the same period was angry that citizenship was given to the non-Malays on such a liberal basis and wanted 'Malay sovereignty' restored (Chandra, 1986). The violence of the racial conflict on 13

May, 1969, and the problem of multiracial relations resulted in the government taking a major policy initiative involving the formal declaration of a national ideology called the *Rukunegara* on 31 August, 1970. It was designed to be the basis for creating a consensus on communal issues by establishing principles that could be invoked to restrain the more extreme demands of ethnic chauvinists (Means, 1991).

In Malaysia, there is a view that the Malays as 'sons of the soil' should defend the 'special right' and preserve the historical character and original Malay sovereignty of the land. Non-Malays, however, demand equal rights in keeping with the notion of modern democracy and popular sovereignty (Ikmal, 1992). One of the latest cases that have sparked the crisis between races in Malaysia is the issue of Suqiu Demands. On 16 August, 1999, a few months before the 1999 general election, eleven Chinese NGOs established a lobby group called the Malaysian Chinese Organisations Election Appeals Committee (or its acronym Suqiu) and launched their seventeen-point Election Demands. The Suqiu demands could be divided into two types. First, the Suqiu supported a number of universal goals similar to the ones promoted by other groups and which were incorporated into the Alternative Front (BA or *Barisan Alternatif* – a coalition of opposition parties). These include the enlargement of democratic rights; the elimination of corruption, cronyism, and nepotism; the protection of freedom of speech, press, assembly and association; and the repeal laws such as the Internal Security Act (ISA), Official Secret Act (OSA), Sedition Act (SA), and Printing Presses and Publications Act (PPPA). On the other hand, it emphasised the usual Chinese concerns for equality of economic, education, cultural, and political rights. The Suqiu also recommended that steps be taken to abolish all aspects of the *Bumiputera/*non-*Bumiputera* dichotomisation (or special Malay rights) as stated in the Article 153 of the Federal Constitution. In terms of economic policy it advocated abolishing the quota system based on 'race' and replacing it with a means-tested sliding-scale; and finally it was in favour of removing the racial-based quota system for university admission (Lee, 2002). However, at a national-day speech delivered on 31 August, 2000, Mahathir publicly named Suqiu as one of the Chinese extremists group and claimed the group was using communist tactics. Any removal of the special rights, according to Mahathir, would lead to social chaos and political instability and would be deemed a direct challenge to Malay political supremacy (Chin, 2001). He warned people, whom he labelled 'extremists', not to politicise the issue of language, education, and quota in public service by raising racial issues.

During Abdullah Ahmad Badawi's period as prime minister, the Malaysian Bar Council convened a national conference to discuss a draft bill proposing the formation of a national inter-faith commission in February 2005. Its primary function would be to help the government make

clear and coherent policies to allow for greater interfaith relationships as well as avoid conflicts arising out of misunderstandings (Yeoh, 2005). Additionally, it would be empowered to determine whether or not there has been any infringement of freedom of religion, conscience and thought within the context of the Universal Declaration of Human Rights and the Federal Constitution. A loose coalition of Muslim NGOs, called the Allied Coordinating Comittee of Islamic NGOs (ACCIN), boycotted the conference, arguing that the inter-faith commission, if established, would usurp the functions of existing religious authorities. In particular, it characterised proposals brought by the Malaysian Consultative Council of Buddhism, Christianity, Hinduism and Sikhism (MCCBCHS) which allow Muslims the right to renounce Islam, to facilitate apostasy (*murtad*) through the civil courts and constitutional provisions, and to review religious enactments, as merely 'self-serving to non-Muslims' and 'anti-Islam'. Subsequent to the conference, Prime Minister Abdullah announced that deliberations on the proposed formation of the inter-faith commission would be shelved because of the heated debates reportted in the press. He opined that the statutory body, if willed into being, would be a setback to religious unity in the country. Instead, he suggested that more events promoting inter-religious dialogue be organised, and encouraged strengthen racial harmony through open houses during major festivals celebrated by the various races (Yeoh, 2005).

Gatsiounis (2006) argues that if the past is any indication, Abdullah will claim tolerance and unity as enduring traits of the Malaysian people. He will swear by *Islam Hadhari*, a political and ideological interpretation of the faith that stresses moderation and technological and economic competitiveness. However, there is a very different reality unfolding on Abdullah's watch, one that raises questions about his commitment to *Islam Hadhari* and may have far-reaching implications for this 'model Islamic democracy'. Hardline Muslims have grown more vocal in 2006, demonstrating at forums held by a coalition of NGOs, known as Article 11; that wanted the government to put its weight behind the Malaysian constitution, which guarantees equality and freedom of worship, as the supreme law of the land. Article 11 was concerned that *shariah* (Islamic law) courts have recently taken primacy over civil courts in a number of controversial decisions. The hardliners were also opposed to efforts to establish an Inter-Faith Commission to enhance understanding among Malaysia's various faiths. The latest protest came on 22 July 2006 in the state of Johor Bahru. As Article 11 gathered in an upper-floor hotel ballroom, some 300 Muslims scowled from behind a police line at the hotel entrance, brandishing signs that read, 'Don't touch Muslim sensitivities', 'Destroy anti-Muslims', and 'We are ready to sacrifice ourselves for Islam'. Before that, in May 2006, hardliners threatening to storm an Article 11 venue succeeded in bringing the forum to an abrupt end (Gatsiounis, 2006).

From soft approach encouraging the dialogue between disputed parties, Abdullah has seen enough and has taken a hard approach by saying 'Do not force the government to take action' to the Article 11 (Gatsiounis, 2006). He warned and accused Article 11 of playing up religious issues and threatening to shatter Malaysia's fragile social balance by highlighting 'sensitive' issues which should not be discussed openly. Abdullah has issued a stern warning to the media to stop reporting on issues related to religious matters. He has also not ruled out using the ISA, which allows for indefinite detention without trial, against Article 11 members should they continue with their activities. Abdullah's stance against Article 11 could be read as in keeping with Mahathir's belief that greater freedom of expression will stoke inter-ethnic tensions. However, according to Gatsiounis (2006), Abdullah's position is less encompassing and can be seen as applying a lopsidedly selective application: it is to allow hostile segments of the Muslim community to use free speech to dictate the limits of free speech. In my view, both parties, the hardliners and Article 11, should sit in close-door forum to discuss and resolve this matter. The government can be a neutral agent in guiding the forum because if all respective parties do not resolve this sensitive issue, it would give a negative implication for the future of race relations in Malaysia.

CONCLUSION

In identifying the common good of the society, the process of public deliberation or deliberative democracy must be implemented. Through this process, civil society has a strong role to contribute views, debate and deliberate in the decision-making process. A public policy is the outcome from a consensus politics between the government and civil society. The strong civil society can also be able to check and balance the power of the state. This process would definitely produce the common good wanted by the people and political freedom could be practiced effectively in the society. Regardless of its form or its justification, a democratic government is likely to face two possible implications (Raz, 1994):

1. Government responses to the wishes of the public can only be deemed as positive if those wishes made by the public are not entirely the product of government's manipulation.
2. Other things being equal, a better-informed public would be able to evaluate information at their disposal better and would provide a stronger case for the government to accede to their wishes.

These two considerations are important foundations for the democratic defence of political freedom. Furthermore, the role of civil society is crucial in ensuring those two agenda can be fulfilled. Therefore, in managing their relations with the state, the civil society movements employ two methods namely micro and macro deliberative

democracy. Both are effective and both can give a pro and cons impact factor in the state-civil society relations.

In Malaysia, the government is sometimes hostile against the civil society and accuses them as local operatives for foreign government's agenda. This makes the civil society movements rather weak because they do not have support from the government except for the government's closed link NGOs. Although from time to time, the government listens to the grievances expressed by the civil society and the public, several important considerations are always caused the anxiety among the people and the government especially when the sensitive issues are involving race relations and religious. Therefore, even though the micro and macro deliberative democracy are effectively employed by the civil society, problems and difficulties can always be surfaced when debating the sensitive issues. This lets the process of managing the state-civil society to sometimes become antagonistic. This becomes worse when the government manipulates the relations and also, sensitive issues to strengthen its grasp on political power. Without doubt, the state-civil society relation is essential for democracy. The strength of relations can be benefited for the common good of the people.

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