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Malaysia's Censorship Regime Collides with the Economic Realities of the Twenty-First Century

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NOTES

“I Want My Censored MTV”: Malaysia’s Censorship Regime Collides with the Economic Realities of the Twenty-First Century

ABSTRACT

Despite an extensive history of censorship and political speech suppression, Malaysia’s Vision 2020 goal of becoming a fully developed nation requires the nation to facilitate an open exchange of ideas and information. The government seeks to create a center for broadcasting, filmmaking, and the development of multimedia products. While Malaysia has begun to abandon some of its censorship practices, the remaining restrictions on its citizens’ speech and press freedoms threaten to hamstring the country’s efforts to become a fully developed nation by 2020.

This Note discusses Malaysia’s beginning as a British colony, identifying the religious, racial, and class distinctions now used to justify the nation’s censorship policies and laws. This Note then examines the current social and economic pressures forcing Malaysia to re-examine its economic focus and its system of censorship. The Note will critically examine Malaysia’s plans to create the Multimedia Super Corridor and to become a center for broadcasting and filmmaking, citing the legal and policy changes adopted to facilitate these projects. Finally, after concluding that Malaysia’s proposed modifications of its censorship policy will not allow the nation to completely achieve its Vision 2020, this Note suggests additional legal and policy alternatives. These proposals would enable Malaysia to more easily achieve its goal of developing the entertainment and information industries as a means of becoming a fully developed nation.

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I. INTRODUCTION

Less than five years ago, Malaysia drew international attention and criticism when it banned the movie *Schindler's List*, deeming it "propaganda."¹ In 1991, Malaysia banned all privately-owned satellite dishes,² describing the regulations as a matter of highest national unity and security: the preservation of Malaysian morals and values.³ Agencies affiliated with Malaysia's Information Ministry banned or censored every movie, television broadcast, and magazine legally imported or distributed within the nation.⁴ Malaysia's prime minister regularly lambasted the West for its declining morals and increasing violence.⁵

Then, in 1996, Malaysia launched its first broadcast satellite, Parliament approved an end to the ban on satellite dishes, and newly formed broadcast services began vying for Malaysian audiences.⁶ Instead of condemning Western immorality and human rights conceptions, Malaysia's prime minister gained attention for his speeches to Silicon Valley executives, proclaiming

1. *Malaysia Bans Oscar-Winning "Schindler's List,"* Reuters World Serv., Mar. 23, 1994, available in LEXIS, News Library, REUWLD File.

2. *Malaysia Bans Private Satellite Dishes for Television,* REUTER LIBRARY REP., Aug. 1, 1991, available in LEXIS, News Library, REUWLD File.

3. Lai Kwok Kin, *Satellite TV Presages Battle for Asian Skies,* REUTER LIBRARY REP., Feb. 27; 1992, available in LEXIS, News Library, REUWLD File.

4. See *infra* Part II.B.3 (describing Malaysia's media regulations).

5. See *The Nations Speak; UN General Assembly General Debate, September 27 to October 13, 1993,* 31 U.N. CHRON. 1, 8 (1994); Hugo Gurdon, *Malaysian Leader Attacks 'Rich and Arrogant' West,* DAILY TELEGRAPH, Jan. 28, 1992, available in LEXIS, News Library, TELEGR File.

6. See *infra* Part II.B.3.c.

the gospel of an uncensored Internet,⁷ and to Hollywood, praising its filmmaking excellence.⁸

This Note explores this dramatic change in Malaysian policy and considers whether Malaysia's plan to become a fully developed nation truly reflects a sea-change in public policy, or merely a pragmatic, reluctant shifting tide.

Part II examines the scope and history of censorship in Malaysia, beginning with its origins as a humble, struggling nation surviving on its rubber exports. Existing constitutional guarantees and restrictions on the freedoms of speech and press are surveyed. This part then analyzes the effects censorship and idea suppression have had on the country's political and legal institutions, particularly the judiciary. This analysis demonstrates the systemic problems censorship within a democracy creates.

Part III explores the political, international, and economic pressures behind Malaysia's recent policy changes. Malaysia's current economic concerns are the result of an amazing period of national economic growth. However, this growth has not occurred within a vacuum. This part examines the increasing economic competition forcing Malaysia to adopt a new strategy to fulfill its goal of becoming a fully developed nation by the year 2020. Next, this part identifies external and internal political issues that demand a less restrictive approach to the information and entertainment markets. Finally, this part notes the rapid emergence of new technologies eliminating the government's ability to enforce its censorship policies.

Malaysia's responses to these pressures are discussed in Part IV, which focuses on the ambitious plan to develop a "Multimedia Super Corridor," a center for the world's finest high-tech companies. An analysis of recent changes in Malaysia's telecommunications laws follows. In addition, this part addresses Malaysia's goal of becoming the center of a thriving broadcasting and filmmaking industry catering to audiences throughout Southeast Asia and the world. Finally, this part identifies remaining legal and political barriers to the realization of these plans.

7. Prime Minister's Office, *January 15, 1997 at the Silicon Valley Conference for Investors on the MSC* (visited Oct. 29, 1997) <<http://www.smpke.jpm.my/gn-data/ucapan.pm/1997/970115.htm>> (copy of Dr. Mahathir's speech presented at Stanford University).

8. Prime Minister's Office, *January 14, 1997 at the Luncheon Attended by Beverly Hills Entertainment and Community Leaders* (visited Oct. 29, 1997) <<http://www.smpke.jpm.my/gn-data/ucapan.pm/1997/970114.htm>> (copy of Dr. Mahathir's speech presented in Beverly Hills, California).

Part V suggests ways for Malaysia to eliminate these barriers, enabling the nation to achieve its goal of becoming fully developed. First, this part argues that Malaysia must restore the judicial independence that existed before 1988. Without this, the rule of law in Malaysia will continue to be threatened, and the courts will be unable to develop a culturally sensitive interpretation of the constitutional guarantees of free expression. Restoring independence will require changes to several statutes, including the Internal Security Act. Second, this part urges the government to completely relinquish control of the nation's mass media through privatization and legal reform. Third, this part suggests the creation of a consistent ratings system to guide producers and performers. Without such a system, ambiguous statutes and government overregulation will result in increasing self-censorship, further curtailing free expression within Malaysia's entertainment and information industries. Finally, this part proposes that Malaysia extend the guarantees of an uncensored Internet beyond the confines of the Multimedia Super Corridor.

Part VI concludes that, without these changes, many of Malaysia's economic objectives will be limited by a deep-rooted system of censorship.

II. MALAYSIA'S HISTORY OF CENSORSHIP

Before the British arrival in the early 1800s, the region occupied by Malaysia existed as a series of Islamic sultanates on the island of Borneo and the Malay peninsula.⁹ After accepting English law and protection, the Malay states began to form a federation, a process completed shortly after World War Two.¹⁰ A multinational commission chaired by Britain's Lord Reid prepared a constitution that became effective on August 31, 1957.¹¹ Following the addition of Singapore,¹² Sabah, and Sarawak in

9. ROBERT L. MADDEX, *CONSTITUTIONS OF THE WORLD* 165 (1995).

10. *Id.* In 1948, the British government and the Malay rulers agreed to a formal union, the Federation of Malaya. *Id.*

11. *Id.* This day is now celebrated by Malaysians as "Merdeka Day." *Id.* "Merdeka" means free or independent. H. P. LEE, *CONSTITUTIONAL CONFLICTS IN CONTEMPORARY MALAYSIA* 17 n.1 (1995).

12. Singapore remained in the federation for only two years. See MADDEX, *supra* note 9, at 165. Although geography suggests that Singapore would have belonged to the federation from the beginning, the tiny island remained a separate colony because of the "fears of the Malays that they would be dominated by the Malayan Chinese if Singapore's one million Chinese acceded to Malaya." LEE, *supra* note 11, at 6. The prime minister of Singapore originally desired an alliance with Malaysia because of the fear of communist influences. *Id.* at 8.

1963, the federation revised its constitution, renaming itself "Malaysia."¹³ The constitution established a parliamentary system of government¹⁴ based on the Westminster model and retaining its monarchy.

A. *The Roots of Censorship:
Racial, Religious, and Economic Division*

Racial politics and the suppression of racial hostility continue to be powerful forces behind much of Malaysia's legislation, particularly legislation that results in the suppression of speech and press freedoms.¹⁵ At its inception, Malaysia's population consisted of a diverse group of citizens. Approximately half of the population comprised Malay and other aboriginal groups, while thirty-seven percent was Chinese.¹⁶ Indians numbered twelve percent, and the remainder of the population consisted of Pakistanis and Ceylonese.¹⁷ Following Singapore's departure in 1965, the number of *bumiputeras*¹⁸ in Malaysia increased as the Chinese and Indian populations decreased.¹⁹

Cultural differences among these ethnic groups profoundly affected Malaysia's development. The Malay population is Muslim, speaks Bahasa Malaysia, and has traditionally inhabited the country's rural areas.²⁰ Malays traditionally dominated the

A measure of disagreement remains concerning the progenitor of the split. Compare *id.* at 10 ("Escalating political events and heightened racial tensions culminated in the expulsion of Singapore from Malaysia . . ."), with Rahmah Hashim, *Accommodating National Goals and Conflicting Societal Needs Through Privatization of Television Broadcasting: The Malaysian Case 54* (1989) (unpublished Ph.D. dissertation, Ohio State University) (on file with Ohio State University Library) ("Singapore withdrew from the enlarged Federation in August 1965, because of conflicting socio-political interests.").

Tension on both sides of the Straits appears to be resurfacing as Malaysia begins to compete economically with Singapore. S. Jayasankaran & Murray Hiebert, *Snipe, Snipe: Malaysia-Singapore Spat Reflects Growing Economic Rivalry*, FAR E. ECON. REV., June 5, 1997, at 24.

13. LEE, *supra* note 11, at 8-9.

14. MALAY. CONST. pt. IV, ch. 4.

15. See *infra* Part III.

16. HAROLD CROUCH, *GOVERNMENT AND SOCIETY IN MALAYSIA* 14 (1996).

17. *Id.* These populations are not evenly distributed throughout the nation. In Sabah and Sarawak, the population of Malays and other indigenous peoples is more concentrated. See Hashim, *supra* note 12, at 53-54.

18. Literally, *bumiputera* means "sons of the soil." The term refers to all indigenous peoples generally, though not exclusively, Malay. See CROUCH, *supra* note 16, at 14; Hashim, *supra* note 12, at 53.

19. The Chinese population decreased to 34.1%, while the Indian population accounted for only 9% of the population. Hashim, *supra* note 12, at 53.

20. *Id.* at 14-15.

agricultural sector, as well as the nation's bureaucracy.²¹ The Chinese and Indians controlled the business class, and, despite a greater variety of dialects and religious beliefs, achieved greater social and political mobilization than the Malays.²² The Malays, however, soon gained control of Malaysian politics through the United Malays National Organization (UMNO).²³

Achieving a federation of states required the support of non-Malay communities and their respective political parties. UMNO helped create an alliance leadership, aimed at forging a consensus on common issues.²⁴ For twelve years this alliance satisfied its diverse constituency. But on May 13, 1969, racial tension exploded into violence as Malays attacked Chinese and Indians.²⁵ The king announced an official state of emergency.²⁶ When Parliament reconvened, it quickly amended the constitution, seeking to correct racial and economic imbalances and to limit freedom of speech, particularly in the discussion of sensitive issues such as race.²⁷ Despite these restrictions and adjustments, racial and cultural differences and preferential treatment for Malays by a Malay-dominated government continued to be a source of conflict.²⁸ Yet, in nearly thirty years, this conflict has yet to result in wide-scale violence.

21. *Id.* at 15. The British considered the Malays the legitimate rulers of the country and favored them in bureaucratic appointments. *Id.* at 17.

22. *Id.* at 14-15.

23. Malay dominance in politics was largely the result of British support. The elite were English-educated Malays appointed to positions of leadership in the military, police, and bureaucracy. *Id.* at 17. Political control naturally followed this endowment.

24. *Id.* at 20.

25. LEE, *supra* note 11, at 13. The general elections preceded the riots by three days. *Id.* There had been earlier riots in 1964 and in 1967; the first occurred in Singapore when the island-city belonged to Malaysia. See CROUCH, *supra* note 16, at 23. Most observers blamed the dramatic income and status disparities in Malaysia's plural economy as the cause of lingering tension and periodic violence. *Id.* at 20-23. See also William Case, *Malaysia: Aspects and Audiences of Legitimacy*, in POLITICAL LEGITIMACY IN SOUTHEAST ASIA: THE QUEST FOR MORAL AUTHORITY 69, 93 (Muthiah Alagappa ed., 1995) (exploring the events and emotions preceding the May 13 riots). The efforts of the Malay government to establish Bahasa Malasia as the national language certainly contributed as well. LEE, *supra* note 11, at 23.

26. LEE, *supra* note 11, at 14.

27. *Id.*

28. See Melanie Beth Oliviero, *Human Needs and Human Rights: Which are More Fundamental?*, 40 EMORY L.J. 911, 921-22 (1991) (noting that the exclusive use of Bahasa Malasia, the official Malay language, "is increasingly contested by the other ethnic groups," and that the government's attempts to push for greater adherence to Islam has "exacerbate[d] the struggle for political power").

B. *Continuing Censorship:*
Malaysia's Speech and Press Restrictions

Malaysia's Federal Constitution (Constitution) grants its citizens "freedom of speech and expression;"²⁹ however, it simultaneously allows these freedoms to be restricted by Parliament when necessary to accomplish a broad range of objectives, including national security, public order, and morality, and to prevent "contempt of court, defamation, or incitement to any offence."³⁰ Shortly after its adoption, an annotated edition of the Constitution remarked that it was "anybody's guess" what the word "morality" meant.³¹ Now, forty years later, the definition is perhaps more apparent only because Parliament has so often used the word to justify its legislation.

Not only does the subjective wording of the available limitations provide Parliament with a broad range of grounds for restricting individual liberties, but the constitutional language also seems to preclude judicial review of governmental actions.³² Without judicial review, these constitutional guarantees appear worthless.³³ Yet, the judiciary has struck down some regulatory

29. MALAY. CONST. art. 10, § (1)(a). Freedom of assembly, *sans* weapons, is also allowed. *Id.* art. 10, § (1)(b).

30. *Id.* art. 10, § (2)(a). Freedom of assembly and association are similarly restricted. *See id.* art. 10, §§ (2)(b), (c) to (4).

31. L. A. Sheridan, *Federation of Malaya Constitution, Parts Two and Three*, 1 U. MALAY. L. REV. 175, 182 (1959).

32. Article 4, § (2)(b) of the Constitution states that "[t]he validity of any law shall not be questioned on the ground that . . . it imposes such restrictions as are mentioned in Article 10(2) but those restrictions were not deemed necessary or expedient by Parliament for the purposes mentioned in that Article." MALAY. CONST. art. 4, § (2)(b). Furthermore, a law can only be declared invalid as *ultra vires* in a special proceeding that requires permission from the Supreme Court and the inclusion of the government as a party if it so desires. MALAY. CONST. art. 4, § (3)-(4).

Courts, however, have occasionally resorted to natural justice principles to rule against the government. *See* Gurdial Singh Nijar, *The Right to Be Heard and the Imposition of Restriction Orders Under the Internal Security Act*, 2 JERNAL UNDANG-UNDANG 91, 91 (1975) (examining whether the government's "vast discretionary powers may be tempered with by [sic] one facet of natural justice, the right to be heard. . ."). *See also* Sheridan, *supra* note 31, at 182 (arguing that a law restricting a fundamental liberty could be challenged on the grounds that it does not relate to one of the government's interests). On this reading, § (1) may indeed pose some restrictions on the government.

33. *But see* Sheridan, *supra* note 31, at 182 (arguing the Constitution does pose limits on Parliament).

decisions as contrary to the Constitution.³⁴ Recent events, however, have made such decisions unlikely.³⁵

1. Common Law Speech Restrictions

For the most part, Malaysia's common law speech restrictions do not seem unusual to U.S. lawyers. The torts of defamation, slander, and libel³⁶ all exist in Malaysia. Less familiar, however, is a variation of contempt of court labeled "scandalizing the government."³⁷ This speech limitation serves the specific purpose of restricting discussion of government institutions,³⁸ and may be prosecuted by the Attorney General or a private citizen.³⁹ In *MBF Holdings BHD v. Houg Hai Kong*,⁴⁰ the court dismissed the defendants' arguments that only the Parliament has authority to enforce a scandalization action under the Constitution, reasoning that powers granted by the common law before Merdeka Day remain vested in the courts.⁴¹

The elements of scandalizing are identified in *Attorney General v. Lingle & Ors.*⁴² In this case, the government brought

34. See *J. P. Berthelsen v. Director-General of Immigration, Malaysia & Ors*, [1987] 1 M.L.J. 134, available in 1986 MLJ LEXIS 240 (Kuala Lumpur 1986) and *infra* notes 171-74 and accompanying text.

35. See *infra* Part II.C.1. But see *CROUCH*, *supra* note 16, at 142 ("Despite the fears of many, the judicial crises of 1988 did not completely destroy the independence of the judiciary.")

36. See generally *SALLEH HAJI BUANG, LAW OF DEFAMATION IN MALAYSIA AND SINGAPORE* (1992); *KEITH R. EVANS, THE LAW OF DEFAMATION IN SINGAPORE AND MALAYSIA* (1993) (each providing a thorough discussion of these torts).

37. Although most cases concern scandalizations of the judiciary, the law is not so limited. See *Michael Hor & Collin Seah, Selected Issues in the Freedom of Speech and Expression in Singapore*, 12 SING. L. REV. 296, 311 (1991) (describing the offense of "speech injurious to the reputation of public officials").

38. Contempt of court is explicitly mentioned in the Constitution, along with defamation. MALAY. CONST. art. 10, § 2. The British believed these restrictions were necessary to bolster the new institutions.

39. For an example of a scandalizing case brought by a citizen, see *Government of Malaysia v. Lim Kit Siang*, [1988] 1 M.L.J. 50 (1988), in which the court dismisses allegations that the prime minister had scandalized the judiciary by his uncomplimentary comments. See also text accompanying note 173.

40. [1993] 2 M.L.J. 516 (1993), available in 1993 MLJ LEXIS 188 (High Ct. 1993) (noting that Parliament has not used the constitutional authority available in § 10(2) to pass a specific law on contempt of court).

41. *Id.* at *16.

42. [1995] 1 S.L.R. 696 (1995), available in 1995 SLR LEXIS 15 (Sing. High Ct. 1995). Although not a Malaysian case, the law of Singapore and Malaysia is similar in this area. This case held that the criticisms scandalized the judiciary by implying that the "judiciary of Singapore is a willing participant to a scheme . . . to suppress political dissent by awarding substantial damages in unmeritorious civil suits initiated by government politicians against opposition

an action against a university fellow who had written an article characterizing the majority government as "relying upon a compliant judiciary to bankrupt opposition politicians."⁴³ Although acknowledging the right to criticize the government, the court explained that this freedom does not encompass writings or acts "calculated to bring a court or a judge . . . into contempt or to lower his authority," or to "obstruct or interfere with the due course of justice."⁴⁴ Even if unintentional, a publication that "impugns the integrity and impartiality of the court" is punishable.⁴⁵ The policy of this ruling was the protection of the members of the public "from the mischief they will incur if the authority of the tribunal is undermined or impaired."⁴⁶

2. National Security Regulations

Under the guise of national security, the government of Malaysia has restricted political discourse on a variety of important topics. In addition, the concept of national security has been stretched to justify the government's ban on satellite dishes, because of morality concerns. This example demonstrates the extent to which the government can label any objective or policy as a matter of national security, allowing the majority government the potential to restrict completely the populace's freedom of speech and expression.

Malaysia's national security regulations are many. Their collective scope is both broad and indeterminate. These statutes were crafted to give the executive sweeping powers in times of crisis. The delegation of these powers by the constitutional drafters and Parliament resulted in extremely ambiguous rules. Furthermore, judicial review in some cases has been curtailed. Without judicial review of the executive's actions, citizens cannot identify the limits of the power held by the executive and Parliament. Thus, Malaysians are faced with vague statutes imposing substantial penalties, enforced by an executive branch that has demonstrated a tendency to overregulate. As a result, Malaysians are likely to self-censor, avoiding even the possibility of a prosecution for violating one of the statutes enacted to preserve Malaysia's national security.

politicians." *Id.* at *17. The third-party publishers and printers of the offending article also received fines. *Id.* at *45-46.

43. *Id.* at *9.

44. *Id.* at *11.

45. *Id.* at *15.

46. *Id.* at *43.

a. Emergency Powers

The drafters of Malaysia's Constitution included provisions authorizing the use of emergency powers⁴⁷ but recommended their use only in a manner limited and defined, both in duration and extent of derogation allowed.⁴⁸ Because the use of emergency powers and the rule of law inherently conflict, the former can only be justified to the extent that it allows the latter to prosper in the long-term. Therefore, an analysis of Malaysia's emergency powers must focus on whether the government's use of such powers has led to a resumption of the rule of law or to an extended period of usurpation of power by the government.⁴⁹ This analysis can best be accomplished by measuring the proportionality of the government's response to a national danger or crisis.

Article 150 of the Constitution delegates to the king the power to declare an emergency.⁵⁰ This provision has been amended several times since 1957.⁵¹ Once an emergency has been declared, the executive authority of the government is unlimited.⁵² Parliament may "make laws with respect to any matter, if it appears to Parliament that the law is required by reason of the emergency."⁵³ Furthermore, this provision purports to insulate such laws from a judicial declaration of invalidity.⁵⁴

47. MALAY. CONST. pt. XI.

48. M. Ariff Yusof, *Emergency Powers and the Rule of Law*, 10 JURNAL UNDANG-UNDANG 87, 88 (1983) (quoting the *Report of the Federation of Malaya Constitutional Commission*, 1957).

49. *Id.* at 87.

50. If the Yang di-Pertuan Agong is satisfied that a grave emergency exists whereby the security, economic life, or public order in the Federation or any part thereof is threatened, he may issue a Proclamation of Emergency making therein a declaration to that effect. MALAY. CONST. art. 150, § (1).

The proclamation of an emergency may also take the form of a preemptive strike. *Id.* art. 150, § (2). The king is allowed to create ordinances during an emergency, but only when Parliament is not in session. *Id.* art. 150, §§ (2A)-(3).

51. Yusof, *supra* note 48, at 89. The most recent amendment is the Constitution (Amendment) Act of 1981 (Act A514). *Id.* This amendment was the last in a series of amendments that have relaxed the controls on the use of emergency powers. *Id.* at 92. See also *id.* at 92-94 (discussing in depth the changes wrought by this amendment).

52. MALAY. CONST. art. 150, §§ (4)-(5).

53. *Id.* art. 150, § (5).

54. *Id.* art. 150, § (6). Parliament is not free from judicial review, however, if it creates a law concerned with "Islamic law or the custom of the Malays, or with respect to any matter of native law or custom in the State of Sabah or Sarawak . . . [or] with the provisions of this Constitution relating to any such matter or relating to religion, citizenship, or language." *Id.* art. 150, § (6A).

The discretion afforded Parliament under the "emergency powers" clause is broad; application of this discretion has also been broad. Emergencies have been declared several times during Malaysia's short history, with emergency legislation resulting in 1964,⁵⁵ 1966,⁵⁶ 1969,⁵⁷ and 1977.⁵⁸ Furthermore, many of these emergency acts have not been revoked despite cessation of the emergency.⁵⁹ Thus, despite Malaysia's increasing political and social stability, the nation remains in a legal state of emergency.⁶⁰ This sense of emergency underlies many of Malaysia's entertainment and information laws and illustrates the government's continuing reliance on "public order"⁶¹ and "hostility between different races"⁶² as justifications for its restrictive legislation.

b. The Internal Security Act

The Internal Security Act of 1960 (ISA)⁶³ replaced a pre-federation emergency regulation⁶⁴ and has been a favored tool of

Fundamental liberties such as freedom of speech are conspicuously absent from this list. See Yusof, *supra* note 48, at 90.

The courts are also reluctant to strike down legislation imposed during emergencies; however, hesitancy in these circumstances is not exclusive to Malaysia's judiciary. *Id.* at 95-96.

55. Parliament passed the Emergency (Essential Powers) Act of 1964, responding to the opposition of the president of Indonesia to the creation of Malaysia. LEE, *supra* note 11, at 102.

56. This legislation was in response to "a constitutional impasse in Sarawak." *Id.* But see CROUCH, *supra* note 16, at 78-79 (stating the declaration was merely the mechanism used by the ruling party to remove an elected state government led by an opposition party).

57. A nation-wide state of emergency existed after the May 13 race riots. LEE, *supra* note 11, at 102. See *supra* Part II.A.

58. This emergency concerned a political crisis in Kelantan and led to the administration of the state by the federal government. LEE, *supra* note 11, at 102. But see CROUCH, *supra* note 16, at 78-79 (arguing the emergency was only a conflict between leaders of UMNO and the government in Kelantan, which was controlled by members of the opposition, Parti Islam Se-Malaysia (PAS)).

59. LEE, *supra* note 11, at 102. For example, the 1964 Act remains in effect, despite the goodwill now existing between Indonesia and Malaysia. *Id.* Under art. 150, § (7), a Proclamation of Emergency expires after six months, MALAY. CONST. art. 150, § (7), but article 149 does not contain this sunset provision. *Id.* art. 149, § (2).

60. See Yusof, *supra* note 48, at 124-25 (arguing, in 1983, for the revocation of the proclamations, except the 1969 emergency declaration).

61. Under MALAY. CONST. art. 149, § (1)(f), emergency legislation is authorized when an action "is prejudicial to public order in . . . the Federation."

62. *Id.* art. 149, § (1)(c).

63. Internal Security Act, No. 82 (1992) [hereinafter ISA].

64. Nijar, *supra* note 32, at 91. The British created the Emergency Regulations of 1948 to respond to a communist rebellion. CROUCH, *supra* note 16, at 78. When they expired in 1960, Parliament adopted the ISA. *Id.*

the government.⁶⁵ It allows the Minister of Home Affairs to detain without trial⁶⁶ any person who might detract from the nation's security.⁶⁷ Originally intended to combat communism, the Act has also been justified as a means of preventing racial violence.⁶⁸ In practice, political opponents have been the government's favored targets.⁶⁹ Prominent members of the government, including the editor of the *New Straits Times*,⁷⁰ have also been detained under the Act.⁷¹

To prevent judicial challenges by persons detained under the Act, Parliament amended the ISA in 1989.⁷² Section 8B of the Act limits judicial review⁷³ to issues of procedure.⁷⁴ Of course, the procedures required for complying with an act authorizing detention without trial are minimal. Thus, it is not surprising that these restrictions have successfully precluded all challenges to detentions under this act.⁷⁵

65. "Between 1960 and 1981, 3,102 people were detained at one time or another under the ISA." CROUCH, *supra* note 16, at 80. Mahathir's administration has not resorted to the ISA as often as prior administrations. Yet, in 1991, 142 people were still being detained, although the number decreased to 52 by the end of 1993. *Id.* at 81. More than 100 people were also arrested during the constitutional crisis of 1987. *Id.*

66. The Minister of Home Affairs can detain persons for as long as two years. ISA § 8(6). This sentence can be extended by consecutive terms of as long as two years. *Id.* § 8(7).

67. *Id.* § 8(1). The act authorizes detention even when the person threatens the nation's "economic life" or interferes with "the maintenance of essential services." "Essential services" include water services, electricity, postal services, telephone, telegraph, public transportation, and radio and television broadcasting. *Id.* §§ 8(2) & 8(3) (incorporating the Third Schedule).

68. CROUCH, *supra* note 16, at 81.

69. Democratic Action Party (DAP) leaders have been detained frequently, and leaders of a Muslim opposition party were detained in 1990. *Id.* at 82. In 1994, the leaders of a nonviolent Islamic organization were detained. *Id.* Leaders of environmental, religious, and human rights groups, as well as some common criminals, have also been detained under the act. *Id.* at 81-82.

70. The *New Straits Times* is one of oldest and most respected Malaysian newspapers. Hashim, *supra* note 12, at 88.

71. CROUCH, *supra* note 16, at 82.

72. *Id.*

73. Judicial review is defined broadly to include all proceedings, including the consideration of an application for a writ of habeas corpus. ISA § 8C.

74. There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

Id. § 8B(1).

75. For an analysis of Singapore's similar ISA, see Cheng Vincent v. Minister for Home Affairs, [1990] S.L.R. 190 (Sing.), available in 1990 SLR LEXIS

The drafters of the ISA devoted two chapters to the regulation of the entertainment and the mass media industries. Chapter III authorizes the minister responsible for printing presses and publications to prohibit or restrict the publication, possession,⁷⁶ and dissemination of documents believed likely to incite violence or disobedience to the law, to promote racial or class hostility, or to compromise "the national interest, public order, or security of Malaysia."⁷⁷ In addition, the careless may run afoul of the authorities under the ISA if they are responsible for spreading—by any means—"false reports . . . or false statements likely to cause public alarm."⁷⁸ Although a censored proprietor of a publication may object to the king, the king's decision is final and cannot be questioned by the courts.⁷⁹

Chapter IV empowers the Minister to demand information about any exhibit or performance scheduled in Malaysia.⁸⁰ The Minister is free to prohibit or impose on the event any conditions he deems necessary,⁸¹ and may even prohibit⁸² or close an event.⁸³ In addition, the promoter must attend the event.⁸⁴ The

297, in which the court held the ISA had "excluded any right of judicial review on the grounds of illegality, irrationality, and unconstitutionality of any detention orders".

76. The possession of documents forbidden under § 22 is punishable by a fine of as much as one thousand ringgit and a prison term of one year. ISA § 25(1). The possession of subversive documents is punishable by ten thousand ringgit and imprisonment for five years. *Id.* § 29(1). A subversive document is defined as one designed to "excite organised violence" or to advocate actions punishable under the ISA. *Id.* § 29(3). A person prosecuted for the possession of a subversive document is presumed to have known it was subversive, but this presumption can be rebutted by proving ignorance "to the satisfaction of the court." *Id.* § 29(4).

77. *Id.* § 22(1). In contrast to Chapter II, individuals charged with a Chapter III violation, the possession of subversive or prohibited documents, are entitled to a court proceeding for a determination of guilt or innocence. *Id.* § 25(1).

78. *Id.* § 28. In 1996, the *Star* was warned to stop reporting on rumors that a vampire had appeared to rural villagers. Syed Azhar, *Police: Stop Rumours About Vampire*, STAR (Malay.), Nov. 21, 1996 (copy of file with Author).

79. ISA § 23. *But see generally* Nijar, *supra* note 32 (arguing that the natural justice principle of a "right to be heard" and the notion of procedural due process may still allow judicial intervention). This approach has been rejected in Singapore, where the ISA remained in force after Singapore's departure from the Federation. *Id.* at 95 (citing *Lee Mau Seng v. Minister for Home Affairs*, Singapore, 2 M.L.J. 137 (1971)).

80. ISA § 32(1). The Minister or an agent thereof is free to obtain in writing any information whatsoever about the performance or exhibit. The act contemplates that the minister will be interested in the "particulars" of the promoters and participants of the event, their "interests," and their expected use of revenues from the event. *Id.* § 32(1) (a)-(d).

81. *Id.* § 33(1).

82. *Id.* § 35.

83. *Id.* § 39.

84. *Id.* § 34.

police may conduct searches without a warrant⁸⁵ and make seizures⁸⁶ if they suspect a violation of the ISA. As a result of these provisions and their use in causes such as the promotion of morality and racial harmony, promoters are extremely cautious. The range of justifications available for imposing onerous restrictions and criminal sanctions results in a high level of self-censorship.

Recent developments provide encouraging signs that the government might begin weaning itself from the power granted by the ISA. In 1996, the prime minister indicated that the ISA will be reviewed,⁸⁷ and opposition party leaders have sought limitations on the ISA for years.⁸⁸ But, until the government acts to reduce the ISA's impact, it will remain a key aspect of Malaysia's system of censorship.

c. The Sedition Act

The Sedition Act creates substantial barriers to the free discussion of political matters and government actions. Like the ISA, the Sedition Act was adopted in 1948 by the British government and was expanded by Malaysia's government after the May 13 riots in 1969.⁸⁹ Originally designed to circumscribe Malay discontent with the colonial government, the Sedition Act's definitions of sedition now includes speech that has a tendency "to promote feelings of ill-will and hostility between different races or classes,"⁹⁰ and speech that questions "any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153, or 181 of the Federal Constitution."⁹¹ In 1971, Parliament amended the Act to ban discussion of these and other sensitive matters even by members of Parliament.⁹²

85. *Id.* § 37.

86. *Id.* § 38.

87. *Internal Security Act to be Reviewed: Dr. M*, BUS. TIMES, Apr. 3, 1996, at 20, available in LEXIS, World Library, TXTLINE File.

88. See, e.g., Roger May, *Opposition Mounts Foreign Campaign to Get Leaders Released*, REUTERS LIBR. REP., Jan. 28, 1988, available in LEXIS, News Library, REUWLD File.

89. CROUCH, *supra* note 16, at 82-83.

90. Sedition Act 15 (1948) § 3(1)(e).

91. Sedition Act § 3(1)(f), Part III of the Constitution relates to citizenship. Article 152 makes Malay the national language, article 153 requires that the government give special treatment to *bumiputeras*, and article 181 concerns the sovereignty of the rulers. Section 3(1)(f) of the Sedition Act was added by an emergency ordinance issued by the king in 1970. LEE, *supra* note 11, at 111.

92. LEE, *supra* note 11, at 115-19 (discussing the Constitution (Amendment) Act of 1971 and its effects).

The Sedition Act has achieved its intended effect of constraining discussion on the most controversial issues affecting Malaysia. In a noteworthy case,⁹³ Dr. Ooi Kee Saik of the Democratic Action Party (DAP) was convicted of uttering seditious words when he delivered a speech⁹⁴ containing references to six instances of government policy favoring Malays.⁹⁵ The court found that these "scurrilous attacks on one ethnic group and . . . false views played a significant part in creating racial tensions that on another occasion had resulted in race riots;"⁹⁶ however, the court refused to sentence Dr. Ooi to jail, instead fining him 2000 ringgit.⁹⁷

Political opponents of the ruling political alliance have been the most frequent targets of the Sedition Act. Outside news sources and authors are similarly restricted by this Act. The Sedition Act seems to benefit Malays most often; bumiputeras seem to receive much greater latitude when criticizing other racial groups.⁹⁸ An important result of the Sedition Act's selective application has been an increase in the difficulty faced by opposition parties as they attempt to generate the political pressure necessary to force the ruling alliance to address issues affecting minority ethnic groups. Another disturbing result is that Asian writers have responded to this regulation by imposing a large measure of self-censorship.⁹⁹ A successful democracy cannot accurately represent the ideals of its citizens when elected representatives and members of the press are prohibited from discussing the nation's most pressing issues.

93. *Public Prosecutor v. Ooi Kee Saik & Ors.*, 2 M.L.J. 108 (O.Cr.J. 1971) (upheld by the Federal Court on Sept. 16, 1971 by a majority of four to one).

94. Dr. Ooi gave the speech on the release from prison of Mr. Lim Kit Siang, secretary-general of the DAP. *Id.* at 109. Lim Kit Siang had been detained under the ISA. *Id.*

95. *Id.* at 112.

96. *Id.* at 112-13.

97. As of November 1997, 2000 ringgit is the equivalent of U.S.\$620. Each of Ooi's co-defendants, the printers and publishers of his speech, was convicted and fined the same amount as Ooi. *Id.* at 114.

98. See *Public Prosecutor v. Mark Koding*, [1982] 2 M.L.J. 120 (1982), available in 1982 MLJ LEXIS 35, *aff'd*, [1982] 1 M.L.J. 111 (1982), available in 1982 MLJ LEXIS 90 (Kuala Lumpur 1993) (finding a Malay Parliament member guilty of only a technical violation of the Sedition Act, undeserving of punishment, when he questioned the government's policy of allowing Chinese and Tamil schools to continue in Malaysia and the use of Chinese and Tamil on road signboards, and suggested an amendment to Article 152 of the Constitution). *But see Malaysia: Human Rights Practices, 1992*, DEP'T ST. DISPATCH, Mar. 1993, available in LEXIS, Asiapc Library, DSTATE File (stating that Chinese language newspapers published in languages are less widely circulated and more free in reporting on sensitive political and social issues).

99. *Asian Writers Say They Censor Themselves*, UPI, Oct. 25, 1996, available in LEXIS, News Library, UPI File.

d. The Official Secrets Act

Before the 1986 amendment of the Official Secrets Act of 1972 (OSA), the act applied to any unauthorized publication of government-held information, notwithstanding its insignificance or the public's awareness of the information.¹⁰⁰ An important case arising before the enactment of these amendments involved Lim Kit Siang, who was convicted for disseminating information about the navy's purchase of ships under conditions suggesting corruption.¹⁰¹

The amendment increased the jail terms of the OSA to a minimum of one year and a maximum of fourteen.¹⁰² It also clarified the definition of an "official secret," restricting the scope of the act to "cabinet and state executive council documents and those relating to security, defense, and international relations."¹⁰³ Thus the amendment increased the number of documents available to opposition parties and the public while simultaneously adding mandatory jail terms to discourage opposition parties and newspapers from using these documents to expose government excesses and mistakes.¹⁰⁴ As with Malaysia's other national security regulations, the intended result is to encourage self-restraint by political minorities, the news media, and private citizens.

3. Mass Media Regulations

The unifying theme of the laws governing Malaysia's mass media is a determination to protect citizens from amoral or, alternatively, Western influences. Although detailed, these overlapping regulations form an amorphous whole, resulting in ambiguity in defining the precise conduct proscribed by these regulations. The government's history of applying these statutes as broadly as possible has caused political and racial minorities to protect themselves from prosecution by imposing a measure of self-censorship.

100. CROUCH, *supra* note 16, at 84.

101. See *Lim Kit Siang v. Public Prosecutor*, [1980] 1 M.L.J. 293 (1980), available in 1979 MLJ LEXIS 62 (Kuala Lumpur 1979) (upholding conviction and fines totaling 8500 ringgit).

102. This change came as a response to newspapers that were content to pay their journalists' fines. CROUCH, *supra* note 16, at 84.

103. *Id.*

104. *Id.*

a. Cinematograph Films (Censorship) Act of 1952

The Cinematograph Act¹⁰⁵ created the Film Censorship Board, responsible for censoring all films shown in theaters or on television.¹⁰⁶ Possession of an uncensored film or videotape can result in a fine and imprisonment.¹⁰⁷ Board members¹⁰⁸ have extremely broad discretion¹⁰⁹ to implement the government's directives to censor films containing elements of violence, horror, sex, or counter-culture (VHSC).

Applying these general guidelines, the Board has banned a number of popular U.S. films, including Schindler's List¹¹⁰ and Executive Decision.¹¹¹ The children's movie *Babe* was almost banned for its depiction of pigs.¹¹² Malaysians waited five years

105. Films (Censorship) Act, Act 35 (1952) (Malay.).

106. Hashim, *supra* note 12, at 152.

107. See Public Prosecutor v. Lim Yoo Hock, [1984] 1 M.L.J. 309 (1984), available in 1984 MLJ LEXIS 22 (Ipoh 1984) (conviction reversed on procedural grounds). Failure to comply with the act, however, will not result in a loss of copyright in that work. Foo Loke Ying & Anor v. Television Broadcasts Ltd. & Ors., [1985] 2 M.L.J. 35 (1985), available in 1985 MLJ LEXIS 15 (Sup. Ct. 1985).

108. The identity of Board members is a well-kept secret. Noraini Shariff, *The Censors are at it Again*, NEW STRAITS TIMES, Aug. 9, 1995, at 4, available in LEXIS, News Library, NSTRIT File (complaining about the Censorship Board's excessive cuts, including the removal of "pig scenes" in *Doc Hollywood*).

109. Although such a case has only been reported once, the Board's decisions can be challenged in court by citizens with a sufficient interest in the matter. See George John v. Goh Eng Wah Bros Film Sdn. Bhd., [1988] 1 M.L.J. 319 (1988), available in 1987 MLJ LEXIS 52 (Alor Setar 1987) (allowing a certifiably monogamous citizen to challenge the Board's decision to allow a film entitled *Happy Bigamist* and an advertisement celebrating a "two wives in one house" policy).

110. Labeling it propaganda because of its favorable portrayal and emphasis on the Jewish race, the Board refused to release the movie. Although Malaysia lifted the ban following international criticism, Steven Spielberg refused to allow the movie to be shown in censored form. William Branigin, *In Manila and Other Asian Capitals, Movie Censors Are Alive and Kicking Up a Fuss*, INT'L HERALD TRIB., June 17, 1994, available in LEXIS, News Library, IHUT File.

111. *Film on Muslim Fanatics May Be Banned*, NEW STRAITS TIMES, Mar. 15, 1996, at 25, available in LEXIS, News Library, STRAIT File. *Executive Decision* also caused an uproar among Arab-Americans because of the movie's depiction of Muslims as violent religious zealots. *Id.*

112. Hafidah Samat, *Babe May Be Screened Next Month*, NEW STRAITS TIMES, Apr. 17, 1996, at 3, available in LEXIS, News Library, NSTRIT File. The government's hesitation because of Muslim opposition to eating pork caught Hollywood by surprise. Judith Miller, *Making Money Abroad, and Also a Few Enemies*, N.Y. TIMES, Jan. 26, 1997, at 11. Scenes from the movie shown during the Academy Awards were cut in Malaysia. Joan Lau, *Comic Fable of Babe that Endears*, NEW STRAITS TIMES, June 1, 1996, at 4, available in LEXIS, News Library, NSTRIT File. This reaction to pig scenes was not the first: pig scenes in *Doc Hollywood* and *Unforgiven* had previously been edited. See *Reuters/Variety*

for the opportunity to rent a heavily edited *Basic Instinct*.¹¹³ Even Malaysian films have not escaped a ban the Board.¹¹⁴ An example is *Amok*, a highly anticipated movie directed by one of Malaysia's leading directors, banned for its "negative elements."¹¹⁵ In January 1996, the government implemented a rating system for television programs and films.¹¹⁶ But despite categories for general viewing and "above 18,"¹¹⁷ censors continue to be active, even on programs cleared for all audiences.¹¹⁸

Entertainment Summary, Reuters N. Am. Wire, June 5, 1996, available in LEXIS, News Library, REUNA File (mentioning the censorship of *Unforgiven*) and Shariff, *supra* note 108.

113. Errol Oh, '*Basic Instinct*' Here at Last, NEW STRAITS TIMES, Jan. 28, 1997, at 4, available in LEXIS, News Library, INSTIRIT File. Under a new name and without the sex scenes, the movie is 30 minutes shorter. *Id.*

114. Indian movies, however, may receive more lenient treatment because of their limited audience. See Brendan Pereira, *Tamil Movies Under Fire from Indian Groups*, NEW STRAITS TIMES, Feb. 14, 1997, at 24, available in LEXIS, News Library, STRAIT File.

115. Banned under § 19(3) of the Censorship Act, the movie cost 800,000 ringgit to make. The director reported it would take another 400,000 ringgit to eliminate the excessive "negative elements including the belief in the supernatural, sex and violence . . . [and] scenes that were unIslamic [sic] and not in keeping with Malay culture." *RM800,000 Malay Movie 'Amok' Banned by Censors*, NEW STRAITS TIMES, Mar. 15, 1995, at 2, available in LEXIS, News Library, NSTRIT File. In 1991, *Fantasia* (Teletrade Communications) was also banned, although it was allowed to be shown as *Fantasi* two years later, after being "reshot and overhauled." *Id.* The ban on *Amok* surprised the local film industry. *Id.* Even before his movie was banned, *Amok's* producer had commented that "[c]ensorship is the worst enemy of our film industry." Baharudin Latif & Don Groves, *Film Censorship Board Termed Fickle, at Best*, VARIETY, Aug. 22, 1994, at 38.

116. Zainal Alam Kadir, *Rating System, but Cuts Still Rule*, NEW STRAITS TIMES, Jan. 8, 1996, at 4, available in LEXIS, News Library, NSTRIT File.

117. *Id.* Programs for general viewing receive a "U" rating, while "over 18" films are labeled as follows:

18SG (programmes which do not depict excessive violence and horror), 18SX (those which do not depict excessive sex scenes), 18PA (programmes which discuss religious, social and political issues) and 18PL (those which contain a combination of any two of the categories). Films classified for viewers above 18 can only be screened on television and cinemas after 10pm while those categorised under general viewing (U) can be screened at any time.

Id.

118. *Id.* See also Suraya Al-Attas, *Censorship Board Runs Riot with Rating*, NEW STRAITS TIMES, Jan. 18, 1997, at 4, available in LEXIS, News Library, NSTRIT File (complaining about the 18SX rating for the television program *Friends* despite the censors' silencing of objectionable language throughout the show).

b. The Printing Press and Publications Act of 1984

The British enacted Malaysia's first Printing Press Act in 1948 after a communist uprising.¹¹⁹ While the original law sought to deter further communist organizing, the modern act has been broadened, implicitly reflecting the government's concern with maintaining race relations.¹²⁰ The Printing Press Act regulates all publications, documents, and audio recordings¹²¹ in an effort to eliminate obscene materials¹²² and items that could "promote feelings of ill-will, hostility, enmity, hatred, disharmony or disunity."¹²³ All printing presses¹²⁴ must be licensed annually.¹²⁵ Documents and items printed or created in other countries may also be censored or banned.¹²⁶

Although the Printing Press Act appears to grant the government absolute authority to ban virtually any communication located within its borders, it was strengthened after 1987 to give the Minister of Home Affairs complete discretion, not susceptible to judicial review.¹²⁷ During this time, the government has revoked the licenses of three majors

119. Hashim, *supra* note 12, at 149.

120. *Id.* at 150 (noting that "[p]ast events have shown just how easily social harmony can be threatened . . . if the media in Malaysia were allowed complete freedom of expression.").

121. Printing Presses and Publications Act of 1984 (Act 301), pt. I, § 2 (defining "publication" to include audio recordings and anything containing "any visible representation" or anything which is "capable of suggesting words or ideas.").

122. *Id.* pt. II, §4(1) (a).

123. *Id.* pt. II, § 4(1) (b). Part IV of the act further defines undesirable publications that may be proscribed as anything that:

contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, the relationship with any foreign country or government, or which is or likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest.

Id. pt. IV § 7(1).

124. The act defines "printing press" as any machine "capable of printing at a rate of 1,000 impressions per hour or more." *Id.* at Sch. I. The Minister of Home Affairs has the authority to update this definition. *Id.* pt. II, § 7.

125. *Id.* pt. III, § 5-6 (publishing or importing newspapers without a license can result in imprisonment for three years and/or a fine of 20,000 ringgit). See also Hashim, *supra* note 12, at 149-50.

126. *Id.* pt. IV, § 7(2), § 9. A publisher who runs afoul of the minister may have future editions of a periodical banned. See *id.* pt. IV, § 7(2)(b). Even the publisher's other publications may be denied circulation. *Id.* pt. IV, § 7(2)(c).

127. CROUCH, *supra* note 16, at 85.

newspapers.¹²⁸ After its suspension, the popular¹²⁹ English newspaper *The Star* no longer carried a column written by a former prime minister who often disagreed with the policies of current UMNO leaders.¹³⁰

Acting under authority of the Printing Press Act, the government has banned issues of foreign publications, including *Time*, *Far Eastern Economic Review*, *International Herald Tribune*, and *Asiaweek*.¹³¹ Although less popular periodicals have been able to obtain licenses, the government has conditioned licenses on limited circulation. Editors have also learned to impose a measure of self-censorship.¹³² The government has similarly banned a number of books under this act, including some academic works on Malaysian politics.¹³³ Yet, several books criticizing the government continue to circulate freely.¹³⁴

The judiciary has not blunted the impact of this act. In 1994, the Supreme Court upheld the act's constitutionality, holding it within the orbit of article 10, § 2(a) of the Constitution.¹³⁵ After noting that the dissemination of false news is only punishable under the act if it has been "maliciously published,"¹³⁶ the Court stated that § 8A(2) of the act merely creates a presumption of malice, rebuttable by the defendant.¹³⁷ Reasoning that the act would result in more careful and responsible news coverage, the

128. The government revoked the licenses of "the English-medium *Star*, the Chinese *Sin Chew Jit Poh*, and the Malay weekly *Watan*." *Id.* at 85.

129. *The Star*, controlled by the Malaysian Chinese Association, had become almost as popular as the UMNO-controlled *New Straits Times*, the oldest English-language newspaper in Malaysia. *Id.* at 86.

130. *Id.* at 86-87.

131. *Id.* at 85. See also *Dato Seri Dr. Mahathir bin Mohamad v. Derk Davies & Anor*, [1989] 1 M.L.J. 528 (1989), available in 1988 MLJ LEXIS 172 (Kuala Lumpur 1988) (allowing the prime minister's suit against *Far Eastern Economic Review* to proceed while dismissing the periodical's indemnity and contribution claims against the Minister of Home Affairs and the government of Malaysia, both of which had consented to circulation of the offending articles).

132. CROUCH, *supra* note 16, at 85. Critical publications such as the *Aliran Monthly* have also struggled to find printers willing to risk prosecution. *Id.*

133. *Id.* at 88.

134. Two such books are *Time Bombs in Malaysia* by Lim Kit Siang and Tun Salleh Aba's *May Day for Justice*, describing the events surrounding his removal as Lord President of the Supreme Court. *Id.*

135. *Public Prosecutor v. Pung Chen Choon*, [1994] 1 M.L.J. 566 (1994), available in 1994 M.L.J. LEXIS 25, at *33-34 (Sup. Ct. 1994). Although the Court denied the defendant's constitutional challenge, it also rejected the government's argument that the Court lacked constitutional authority to consider the act's constitutionality. *Id.* at *31. The defendant, editor of *The Borneo Mail*, had written an article in 1990 discussing the arrest of a Catholic priest under the ISA and the government's desire to arrest several other priests who had evaded the police. *Id.* at *13.

136. *Id.* at *28.

137. *Id.* at *40.

Court actually applauded the act because it “promotes and ensures that freedom of the press is neither abused nor exploited.”¹³⁸

c. The Broadcasting Act of 1988

Before 1988, Malaysian broadcasting was closely managed by the Ministry of Information through the Department of Broadcasting, better known as Radio Television Malaysia (RTM).¹³⁹ RTM continues to operate as a “public service broadcasting station,” responsible for all government mass media; however, its broadcasting monopoly ended when Malaysia began systematically privatizing its broadcast services in 1985.¹⁴⁰

To facilitate its privatization, the government adopted the Broadcasting Act of 1988,¹⁴¹ governing the use of broadcast services within Malaysia.¹⁴² Under this statute, the minister¹⁴³ responsible for broadcasting has the power to issue¹⁴⁴ and revoke licenses.¹⁴⁵ Among the seven reasons for revocation are a licensee’s failure to comply with the Broadcasting Act,¹⁴⁶ non-compliance with “direction given by the Minister,”¹⁴⁷ and the minister’s determination that termination is “advisable in the

138. *Id.*

139. The stated objective of RTM is as follows:

To provide broadcasting services and disseminate information through radio and television broadcasts with the aim of building individual attitude, thinking and proper values for the social and economic development in line with national aspirations.

Radio Television Malaysia, *Objective* (visited Oct. 29, 1997) <<http://spl.pnm.my/~rtm/rtm1.htm>>.

140. CROUCH, *supra* note 16, at 88. See generally Hashim, *supra* note 12 (discussing the privatization of Malaysia’s broadcasting services).

141. Privatization and the Broadcasting Act have largely supplanted the Telecommunications Act of 1950. The Telecommunications Act still governs the licensing and use of radio and television equipment and creates criminal penalties: § 29 provides that a person who transmits a “false or fabricated” message can be fined and imprisoned for three years. The act also empowers the Ministers of Information and Telecommunication to make any regulations deemed necessary. Telecommunications Act of 1950, Act 20, pt. II, 27 (1970).

142. Broadcasting Act of 1988, Act 338.

143. To assist in the regulation of broadcasting, the minister may delegate all or a portion of his authority except to the power to make resolutions to anyone of his choice. *Id.* pt. V, § 20.

144. *Id.* pt. II, § 4.

145. *Id.* pt. II, §§ 8-9. Before suspension or revocation for a violation of any of the reasons in § 9(1), the licensee will have the opportunity to “show cause” as to why the license should not be suspended or revoked. *Id.* pt. II, § 9(2).

146. *Id.* pt. II, § 9(b).

147. *Id.* pt. II, § 9(e).

public interest, for a special reason.”¹⁴⁸ Although no reported case has interpreted this last provision, the “public interest” would presumably include the national policy goals identified in other legislation, such as the reduction of discussion focusing on racial and religious issues, the airing of political criticisms, and the protection of the public’s morality. This broad regulatory power includes some of the largest penalties available within Malaysia’s media regulations. Broadcasting without a license is punishable by a fine of as much as one hundred thousand ringgit or three years’ imprisonment or both.¹⁴⁹

In addition to the power to issue and revoke licenses, the minister can prohibit a station from “broadcasting any matter, or matter of any class or character.”¹⁵⁰ The only limitation imposed on the minister’s power is that his actions must not contravene the act.¹⁵¹ A violation of the minister’s directions may result in the forfeiture of any equipment seized during investigation and a fine of as much as fifteen hundred ringgit.¹⁵²

Before 1996, the government had employed the Broadcasting Act and the Telecommunications Act to ban all satellite dishes from the country.¹⁵³ After launching two national satellites and committing to developing the nation’s information, entertainment, and multimedia industries, the government partially reversed its decision to ban satellite dishes in late 1996.¹⁵⁴ Although other satellite dishes remain unauthorized,¹⁵⁵ small dishes capable only of receiving signals from Malaysia’s national satellites are now legal. With this technology,¹⁵⁶ Malaysians willing to pay¹⁵⁷ for

148. *Id.* pt. II, § 9(g).

149. *Id.* pt. II, § 5.

150. *Id.* pt. II, § 10(2).

151. *Id.* pt. II, § 10(3).

152. *Id.* pt. II, § 18.

153. *Parliament to Plug Loopholes on Satellite Dishes*, NEW STRAITS TIMES, Oct. 13, 1992, at 16, available in LEXIS, News Library, STRAIT File.

154. The amendments are not yet available; however, the Ministry of Information has used its authority to adopt the legislation before their official adoption. *Sabah, Sarawak Folk Told to Take Down Illegal Dish*, STAR ONLINE, (visited Jan. 25, 1997) <<http://www.jaring.my/star/current/25jwpa.html>>.

155. *Id.*

156. The “state of the art” digital reception and Ku-Band technology used for this service were previously available only in the United States and Germany. Melanie Proctor & Ziemann, *Sky’s the Limit for TV and Radio*, NEW STRAITS TIMES, Dec. 30, 1996, at 3, available in LEXIS, News Library, NSTRTT File.

157. Malaysians willing to pay for television may also receive broadcasts via MegaTV. Since late 1995, this subscription service includes “five channels of news, documentaries, sports, movies and cartoon and variety,” including CNN. See Ali Deraman, *Dearth in Quality Local TV Programmes*, NEW STRAITS TIMES, Jan. 26, 1996, available in LEXIS, News Library, NSTRTT File. See also Elaine Lim, *Mega TV Service Next Month*, NEW STRAITS TIMES, June 23, 1995, at 5, available in LEXIS, News Library, NSTRTT File.

services provided by the All Asia Television & Radio Company (ASTRO)¹⁵⁸ now receive twenty-two channels, including Malay, Chinese, and Indian channels, HBO, MTV,¹⁵⁹ ESPN, NBC, CNN, and the Disney Channel.¹⁶⁰ A three-tiered censorship system that filters-out objectionable content necessitates broadcasting delays.¹⁶¹

Finally, all mass media advertisements must comply with the Malaysian Code of Advertising Practice.¹⁶² The code affords the government broad discretion to restrict advertising, posing problems not only for businesses struggling to comply,¹⁶³ but also for minority political parties. Although UMNO was barred from advertising on radio or television, newscasts and montages describing Mahathir's achievements with background songs such as "I Can See Clearly Now" and "Ain't No Mountain High Enough" became common during the elections in 1995.¹⁶⁴ Again, recitations of national and racial unity as justifications lack credibility when only the ruling party is allowed to advertise its political message, albeit implicitly.

158. Proctor & Zieman, *supra* note 156, at 3.

159. MTV's content raised serious concerns for the Malaysian government because many of the videos shown are those of music groups that were banned by the Ministry of Information. See Geoff Burpee & Alexandra Nuvich, *Malaysian Government Expresses Concern over Music-TV Content*, BILLBOARD, Aug. 10, 1996, at 43. MTV satisfied these concerns by tailoring the channel to Malay standards. The channel now offers Indian and Mandarin hit songs and is produced by Malays. Baharudin Latif, *MTV Goes Local in Malaysia*, DAILY VARIETY, Nov. 15, 1996, at 39, available in LEXIS, News Library, DLYVTY File.

In addition, MTV's cartoon characters Beavis and Butthead are not included in MTV's programming in Malaysia. Brendan Pereira, *Barring Yellow Culture from the Skies*, NEW STRAITS TIMES, Dec. 1, 1996, at 8, available in LEXIS, News Library, STRAIT File.

160. In addition to the 20 new channels, ASTRO carries two public RTM channels and eight radio stations. The service has pay-per-view and "near-video-on-demand" capabilities, and the station's chief operating officer has promised expansions to include interactive multimedia applications and Internet access. Deraman, *supra* note 157, at 7.

161. Workers hired by ASTRO dub, subtitle, censor, and provide ratings for every broadcast in accordance with the Ministry of Information's guidelines. Television station censors can also ban broadcasts. Finally, home viewers are equipped with controls to block out undesirable programs. Pereira, *supra* note 159, at 8.

162. Hashim, *supra* note 12, at 154. See also *id.* at 277 (providing excerpts and a discussion of the advertising code).

163. See Shengliang Deng et al., *Advertising in Malaysia—a Cultural Perspective*, 13 INT'L J. ADVER. 153 (1994) (advising foreign businesses about advertising in Malaysia).

164. Stephen Duthie, *Mahathir's Coalition Wins Easily, Boasting its Majority*, ASIAN WALL ST. J., Apr. 26, 1995, available in LEXIS, News Library, AWS File.

C. *Shifting the Balance: The Effect of Speech Restrictions and Media Control on Malaysia's Political Institutions*

Influenced by the British parliamentary system,¹⁶⁵ Malaysia's Constitution divides power among three branches: the legislature, the executive, and the judiciary.¹⁶⁶ Yet the constitutional ideal is far from reality. A series of political struggles and constitutional amendments have given the prime minister and Parliament an inordinate amount of power. Understanding the reality of the balance of power—or lack thereof—in Malaysia is essential for a complete understanding of the effect restrictions on the freedom of expression have had on Malaysia's democracy.

1. The Constitutional Crisis of 1988: Limiting the Judiciary's Independence

In 1988, the judicial branch suffered a loss of independence during a dramatic constitutional struggle¹⁶⁷ involving the prime minister, the king, and the head of the Supreme Court.¹⁶⁸ In early 1988, Tun Dato' Haji Mohammed Salleh bin Abas, then Lord President of the Supreme Court of Malaysia, wrote a letter to the king.¹⁶⁹ The letter, written on behalf of "all the Judges of the country," expressed disappointment with "various comments and

165. See MADDEX, *supra* note 9, at 166 ("Modeled on India's constitution, the Malaysian constitution was also influenced by the U.S. Constitution and the British Parliamentary model.").

166. See Yeong Sien Seu, Note, *Clarity or Controversy – The Meaning of Judicial Independence in Singapore and Malaysia*, 13 SING. L. REV. 85, 85 (1992). Malaysia's Constitution also reflects the nation's underlying ethnic diversity. It contains a detailed explication of the qualifications of citizenship, a matter of extreme importance in Malaysia given the political volatility attached to ethnic identities. See MALAY. CONST. pt. III (entitled Citizenship). This section is longer than the first two parts of the Constitution, respectively labeled "The States, Religion and Law of the Federation" and "Fundamental Liberties." *Id.* pts. I-II.

167. These events have been the subject of a number of scholarly articles. See, e.g., R.H. Hickling, *The Malaysian Judiciary in Crisis*, [1989] PUB. LAW 20; Andrew Harding, *The 1988 Constitutional Crisis in Malaysia*, 39 INT'L & COMP. L.Q. 57 (1990); H. P. Lee, *A Fragile Bastion Under Siege—The 1988 Convulsion in the Malaysian Judiciary*, 17 MELB. U. L. REV. 386 (1990).

168. The Constitution designates that the president of the court will be called "the Lord President." MALAY. CONST. art. 122, § (1). The Supreme Court, Malaysia's "court of last resort," is located in Kuala Lumpur. *Id.* art. 121, § (2). This court hears appeals from two High Courts: a High Court of Malaya, located in Kuala Lumpur, and a High Court in Borneo, located, by the king's designation, in Sabah or Sarawak. *Id.* art. 121, § (1)-(2).

169. See LEE, *supra* note 11, at 44.

accusations made by the Honorable Prime Minister against the Judiciary, not only outside but within Parliament."¹⁷⁰

Tun Salleh's letter was merely the last straw; a series of judicial actions had already provoked the prime minister. In 1987, the Supreme Court decided *J.P. Berthelsen v. Director-General of Immigration, Malaysia & Ors*,¹⁷¹ in which the Court reinstated an employment pass belonging to a U.S. staff correspondent for the *Asian Wall Street Journal's* Kuala Lumpur office.¹⁷² This decision allowed the reporter to remain in Malaysia. The court's decision frustrated the prime minister¹⁷³

170. *Id.* Later claiming he had sought to avoid a confrontation, Tun Salleh intimated that he had drafted the letter only after a judge of the High Court had threatened to speak out against the prime minister. *Id.* at 45. According to Tun Salleh, the author of the letter was Judge Abdul Razak. *Id.* at 78 n.7. Judge Abdul Razak also sent a letter to the Chief Justice Malaya, the man who later replaced Tun Salleh. *Id.* at 45. Originally Tun Salleh had planned to remain quiet during these criticisms, but in January 1988, the Lord President began to believe that continued silence would erode public confidence in the judiciary. *Id.* at 78 n.6. His response to the prime minister's comments came during an official book launching event. *Id.*

171. [1987] 1 M.L.J. 134 (1987), available in 1986 MLJ LEXIS 240 (Kuala Lumpur 1986).

172. The Director-General had determined that Berthelsen had violated the Immigration Act and the Immigration Regulations, and that his presence endangered national security. Relying on principles of natural justice, the Court reversed this determination, holding the pass cancellation had denied Berthelsen the opportunity to make "whatever representations he thought necessary in the circumstances." *Id.* at *15.

173. Shortly after Berthelsen, the prime minister vented this frustration in a magazine interview. *I Know How the People Feel*, TIME, Nov. 24, 1986, at 18. The excerpts of this interview include the following statement by Dr. Mahathir:

The judiciary says, "Although you passed a law with a certain thing in mind, we think your mind is wrong, and we want to give our interpretation." . . . We know exactly what we want to do, but once we do it, it is interpreted in a different way, and we have no means to interpret it our way . . . [W]e will have to find a way of producing a law that will have to be interpreted according to our wish.

Id. at 18. For a more recent statement of Mahathir's opinions on the judiciary, see Prime Minister's Office, *A Unique Political System* (visited Feb. 2, 1997), <<http://smpke.jpm.my:1025/testbox/a01c03.htm>>:

Judicial review cannot be unlimited. If it is, then . . . it will not be the elected representatives who will govern, but the Judiciary. Since the Judiciary is not chosen by the people, then Government by the Judiciary will negate the democratic concept of Government by the People. It is sufficient for the courts and the judges to be free from interference by the Executive or the Legislative bodies. Pressure, in the form of threats to remove them, cannot be applied in order to influence their decisions.

In response to Mahathir's statements, Lim Kit Siang, the opposition leader in Parliament, instituted a contempt of court action against the prime minister. See *supra* Part II.B.1 (describing the offense of "scandalizing the judiciary"). The High

because the government had previously banned the newspaper and expelled another of its journalists.¹⁷⁴

In *Public Prosecutor v. Dato' Yap Peng*,¹⁷⁵ a case destined to exhaust Parliament's last ounce of patience, a majority of the Supreme Court struck down a portion of the Criminal Procedure Code as unconstitutional because it allowed Parliament to interfere with the Court's freedom to grant and deny applications on appeal.¹⁷⁶ Parliament reacted quickly by enacting the Constitution (Amendment) Act of 1988,¹⁷⁷ which provided that the Supreme Court would have "such other jurisdiction as may be conferred by or under federal law."¹⁷⁸ The broad language of this amendment effectively eliminated the Court's freedom to decide jurisdictional issues.¹⁷⁹

After the Lord President's letter had been delivered to the king, the king ordered the prime minister to take action.¹⁸⁰ Mahathir promptly investigated the matter and soon reported that the Lord President's conduct had attained the level of misbehavior contemplated by § 125(3) of the constitution.¹⁸¹ He recommended the Lord President be removed from office.¹⁸² Pursuant to

Court dismissed the case and the Supreme Court affirmed, but judges in both cases offended the prime minister by noting that his statements resulted in misperceptions about the role of the judiciary. LEE, *supra* note 11, at 47-48.

In an unrelated case also instigated by Lim Kit Siang, dissenting judges on the High Court and Supreme Court implied that "some members of the judiciary were prepared to exercise judicial control over executive actions." *Id.* at 50. See *Government of Malaysia v. Lim Kit Siang*, [1988] 1 M.L.J. 50 (1988) (reprint of the oral judgment of the Supreme Court).

174. LEE, *supra* note 11, at 78 n.9.

175. 2 M.L.J. 311 (High Ct. 1987), *rev'd*, 2 M.L.J. 316 (Sup. Ct. 1987).

176. Under the code, the prosecutor could receive an automatic appeal before the Supreme Court after an adverse ruling by the trial court. LEE, *supra* note 11, at 51.

177. See *id.* at 52.

178. MALAY. CONST. art. 121, § (2)(c).

179. LEE, *supra* note 11, at 52.

180. *Id.* at 53.

181. *Id.*

If the Prime Minister, or the Lord President after consulting the Prime Minister, represents to the Yang di-Pertuan Agong that a judge of the Supreme Court ought to be removed on the ground of misbehaviour or of inability, from infirmity of body or mind or any other cause, properly to discharge the functions of his office, the Yang di-Pertuan Agong shall appoint a tribunal in accordance with Clause (4) and refer the representation to it; and may on the recommendation of the tribunal remove the judge from office.

MALAY. CONST. art. 125, § (3) (emphasis added).

182. LEE, *supra* note 11, at 53.

§ 125(4) of the Constitution, the king assembled a tribunal¹⁸³ to investigate the matter and suspended the Lord President on the prime minister's recommendation.¹⁸⁴

The tribunal concluded that Tun Salleh should be removed from office.¹⁸⁵ The king set the Lord President's final day in office as August 8, 1988.¹⁸⁶ This date coincided with the scheduled hearing of the "UMNO 11" case,¹⁸⁷ a case that could have resulted in the removal of Dr. Mahathir as leader of UMNO and as prime minister.¹⁸⁸ Not surprisingly, with the Lord President removed from office and the remaining justices sufficiently intimidated, the Supreme Court dismissed the case the next day.¹⁸⁹

Since 1988, the judiciary has been noticeably affected.¹⁹⁰ Courts may be unwilling to risk a decision opposing the

183. The composition of the tribunal that heard the matter was questionable. It included the chief justices of Malaya, Borneo, and Sri Lanka, along with a judge of the Singapore High Court and two retired Malaysian judges. Most objectionable was the inclusion as chairman of Tan Sri Abdul Hamid Omar, the Chief Justice of Malaya. Not only had he been involved in the events culminating in Tun Salleh's "judicial protest letter," but the Chief Justice stood to replace Tun Salleh as Lord President if the Tribunal recommended dismissal. LEE, *supra* note 11, at 52-57.

Tun Salleh's solicitors raised objections to the membership of the tribunal, and the Malaysian Bar Council vigorously attacked the constitution of the tribunal in a press statement. *Id.* at 55. Tun Salleh also requested that the proceedings be held in public, but the request was denied. *Id.*

184. *Id.* at 54. After leaving the country for medical treatment, Tun Salleh returned in mid-May to find himself at the center of a maelstrom. *Id.* at 53. On May 28, 1988, he tendered his resignation, but he voided this decision the following day. *Id.* at 54. He then called a press conference and consented to an interview by the BBC. *Id.* This was considered to be further evidence of misbehavior. *Id.* The Lord President attempted to secure a legal restraint against the tribunal, but when five Supreme Court judges granted his application, they were investigated by a Second Tribunal for their "gross misbehavior." *Id.* at 56. All five judges were suspended; two were later dismissed on the Second Tribunal's recommendation. *Id.* at 57.

185. *Id.* at 56.

186. *Id.* at 57.

187. Mohamed Noor bin Otham v. Mohamed Yusof Jaafar, [1988] 2 M.L.J. 129 (1988).

188. LEE, *supra* note 11, at 52-53.

189. *Id.* at 57.

190. Harold Crouch writes:

Despite the fears of many, the judicial crisis of 1988 did not completely destroy the independence of the judiciary. Since then, the courts have continued to hand down occasional decisions that have been unfavorable to the government. Nevertheless, any tendency to interpret the law in ways that impose stricter limits on government prerogatives has been nipped in the bud. When court decisions have threatened fundamental government interests, the government has taken whatever action necessary to defend its position. . . . The judges continue to be essentially conservative custodians of a political system dominated by the Malay elite

government's interests. The judiciary also has been left with a carefully circumscribed role within the constitutional system. In fact, the phrase "judicial power" has been deleted from the Constitution.¹⁹¹ The prime minister's ability to use speech-related regulations to accomplish a major constitutional power shift must be emphasized because speech regulations, manipulation of the media, and public opinion were employed five years later to restrict the monarchy.

2. The Monarchy and the Constitutional Crisis of 1993

Reflecting Malaysia's history as a federation of Islamic sultanates, the Constitution provides for the election of a king from among the historic royal families.¹⁹² The *Yang di-Pertuan Agong*¹⁹³ serves as head of state and holds the executive power, chiefly the power to appoint a prime minister and cabinet from the membership of the ruling party.¹⁹⁴ The executive's powers, however, are largely illusory: the king must appoint as prime minister one whom he believes "likely to command the confidence of the majority of the members of th[e] House."¹⁹⁵ Furthermore, the cabinet must be chosen on the advice of the prime minister.¹⁹⁶ In practice, the king selects the leader of the ruling party as prime minister, who subsequently selects his cabinet.

The Constitution granted members of the royal family immunity from legal action, but in 1993 Parliament introduced a constitutional amendment to limit this privilege.¹⁹⁷ The king's

to which most judges belong. The crisis arose in part because of the prime minister's lack of understanding of legal tradition and seems to be largely a by-product of the UMNO crisis. With the passing of that crisis, government-judiciary relations were allowed to fall back into their old mold.

CROUCH, *supra* note 16, at 142.

191. Hickling, *supra* note 167, at 26.

192. The king "shall be elected by the Conference of Rulers for a term of five years, but may at any time resign his office by writing . . . or be removed from office by the Conference of Rulers, and shall cease to hold office on ceasing to be a Ruler." MALAY. CONST. art. 32, § (3).

193. *Yang di-Pertuan Agong* is the king's Malay title; the English translation is Supreme Head of the Federation. *Id.* art. 32, § (1).

194. *Id.* arts. 40, §§ (2)(a), 4(3). The *Yang di-Pertuan Agong's* powers also include the right to grant pardons and to serve as commander-in-chief of the armed forces. *Id.* arts. 41-42.

195. *Id.* art. 43, § (2)(a).

196. *Id.* art. 43, § (2)(b).

197. The impetus behind Parliament's move to amend the Constitution was apparently the alleged assault of a school hockey coach by the Ruler of Johor. LEE, *supra* note 11, at 86. Following a loss to a team from Perak, the Sultan's son attacked the opposing goalkeeper. The Malaysian Hockey Federation

signature was necessary before the law could take effect, but the royal families (the Rulers) objected to this limitation.¹⁹⁸ Despite the provision of a Special Court to hear any of these cases, the Rulers refused to sign.¹⁹⁹ Then Parliament threatened the Rulers with the loss of various privileges.²⁰⁰ The government-controlled mass media began a daily barrage of stories featuring "revelations of scandalous waste of public funds, misbehaviour of some Rulers and [of their] extravagant life-styles."²⁰¹ Finally, the Rulers consented to the bill.²⁰² Following this amendment, the Federal Constitution proclaimed that the monarch "shall take precedence over all persons in the Federation and shall not be liable to any proceedings whatsoever in any court except in the Special Court."²⁰³

Although announced as a victory for the rule of law in Malaysia, the ease with which the prime minister wielded the

suspended the player. *Id.* at 87. Soon after this disciplinary measure, many of the teams associated with the Malaysian Hockey Federation withdrew from a major competition, presumably under pressure from the Sultan. *Id.* at 87. When a hockey coach protested his "forced" withdrawal from the competition, he was summoned to the Sultan's palace. *Id.* He emerged four hours later and issued a press statement denying the truth of his prior allegations against the Sultan. *Id.* A private clinic provided medical treatment to the coach the next day for cuts and bruises on his face. *Id.* He subsequently filed a police report alleging that the Sultan assaulted him at the palace. *Id.* The prime minister and UMNO seized this opportunity to challenge the Rulers' immunity.

198. Under art. 66, § (3) of the Constitution, a bill must receive the assent of the king following its passage by both houses of Parliament. MALAY. CONST. art. 66, § (3).

199. See LEE, *supra* note 11, at 89.

200. *Id.* at 93-94 (listing seven examples of methods the government employed to make the royal families uncomfortable, including guidelines promulgated to the television and radio networks to limit coverage of the royalty to official occasions).

201. *Id.* at 93, 97 n.18 (quoting *Rulers Can Still Live Well*, NEW STRAITS TIMES, Jan. 23, 1993, available in LEXIS, News Library, NSTRIT File). The prime minister also threatened to attempt an unprecedented legislative veto if the Rulers continued to object. *Id.* at 90. This would have forced the Rulers to seek a decision from the courts as to the legality of a veto. *Id.* It also would have been an ironic twist, considering the monarchy's starring role in the judiciary's crisis of 1988. See *supra* Part II.C.1. A leader in UMNO proclaimed that a legal challenge would require proof of various objectionable actions of the ruling party as support for the necessity of the amendment. LEE, *supra* note 11, at 95. Facing the distinct possibility of a loss in court, and a continuing embarrassment by the ruling party—in the press and in the courts—the Rulers backed down. *Id.* at 93-95.

For a further exegesis of this and other political skirmishes between the Rulers and the Parliament, see A. J. HARDING, THE CONSTITUTIONAL EVOLUTION OF THE MALAYSIAN MONARCHY, WORKING PAPER NO. 4 (1993).

202. *Id.*

203. MALAY. CONST. art. 32, § (1) (emphasis added). See also MALAY. CONST. pt. XV, "Proceedings against the Yang Di-Pertuan Agong and the Rulers."

mass media and public opinion as weapons against the Rulers raised concern about the degree of power enjoyed by the prime minister.²⁰⁴ These events were particularly ironic, considering the king initiated the judicial crisis of 1988, which made legal recourse unattractive to the Rulers during their own constitutional crisis.

3. Running the Show: The Power of Parliament and the Prime Minister

Notwithstanding the constitutional scheme of checks and balances, since the constitutional crises of 1988 and 1993, Parliament—headed by the prime minister—has wielded the nation's power. Since the nation's birth, the Barisan Nasional,²⁰⁵ an alliance of the "mainstream parties of the major ethnic groups as well as assorted splinter parties," has ruled the country.²⁰⁶ Dr. Mahathir, leader of UMNO, has headed the legislative branch since 1981.²⁰⁷ Contributing to the power of Parliament is the

204. "The fact that it was Dr. Mahathir alone who was able to unleash public criticism and launch the constitutional reform shows the unique concentration of power in his hands." LEE, *supra* note 11, at 99 n.32 (quoting Robert Kershaw, *Shattered Symbiosis: The Road to Conflict between Malay Nationalism and Monarchy*, 24 INTERNATIONALES ASIENFORUM 283 (1993)). See also *id.* at 95-96.

205. Barisan Nasional means "National Front." Hashim, *supra* note 12, at 60.

206. *Id.* at 59-60. UMNO, the most popular Malay party, dominates within the alliance. For a detailed analysis of UMNO's efforts to extend its support base to non-Malays, see Case, *supra* note 25, at 72-78.

The Malaysian Chinese Association (MCA) and the Malaysian Indian Congress (MIC), the other founding members of the Barisan Nasional, remain the most powerful minority parties. Eleven parties now belong to the alliance. Hashim, *supra* note 12, at 59-60. Opposition parties include those desiring a more Islamic government, the PAS, and the DAP. *Id.*

207. Anthony Spaeth, *Bound for Glory: He's Obsessed with Control and Quick to Bash the West, but Mahathir Mohamad has Left his Mark on Malaysia*, TIME, Dec. 9, 1996 at 22. A trained physician and an early member of UMNO, Dr. Mahathir was expelled from UMNO following the May 13 riots after Prime Minister Tunku Abdul Rahman took offense at Mahathir's allegations that he was "pro-Chinese." *Id.* In 1972, the prime minister who succeeded Rahman allowed Mahathir to return to the party, appointing him Education Minister in 1974. *Id.* Within seven years, he had wrestled control of UMNO and become prime minister. *Id.* His defiant attitude toward the West on foreign policy, environmental, and human rights issues has won him wide popularity among developing nations. Ismail Kassim, *Datuk Abdullah: Pluses Outweigh Minuses*, NEW STRAITS TIMES, Mar. 20, 1994, available in LEXIS, News Library, NSTRIT File. He has even been rumored to be eyeing the position of secretary-general of the United Nations. *Malaysia Censors Mahathir's Live Internet Debut*, Reuters World Serv., Dec. 27, 1995, available in LEXIS, News Library, REUWLD File.

ease with which the constitution can be amended.²⁰⁸ Before becoming prime minister, Mahathir lamented that "[t]he manner, the frequency and the trivial reasons for altering the Constitution reduced this supreme law of the nation to a useless scrap of paper."²⁰⁹ Yet during his fifteen years as prime minister, Parliament has amended the Constitution ten times.²¹⁰

Although originally intended to improve festering race relations, the various media and speech regulations have been used by the UMNO-led Barisan Nasional to further its political dynasty, eliminating intervening constitutional barriers. Because the prime minister's objectives are now so easily converted into statute, Dr. Mahathir's ideas for Malaysia have become extremely important policy indicators.

III. PRESSURES ON MALAYSIA'S SYSTEM OF CENSORSHIP

The regulatory system UMNO employed to restrict the dissemination of information is increasingly being challenged as Malaysia enters the twenty-first century. UMNO's political control seems to be weakening, global and national economies are changing, and Malaysia's human rights practices are attracting international attention. In addition, Malaysia must contend with the administrative pressures created by the Internet. These pressures, and their combination, seem to be forcing Malaysia to alter or abandon much of its regime of censorship.

A. Economic Pressures

Malaysia's recent economic history has been marked by impressive success, averaging growth rates between eight and nine percent during the last nine years.²¹¹ But Malaysia's economy still exhibits further room for growth. The nation's per capita gross domestic product (GDP) in 1996 was \$9,470, less than half the GDP of Singapore or Hong Kong.²¹² And while the economy still relies heavily on manufacturing, "a fast-rising standard of living and labor shortages threaten to price Malaysia

208. See Tun Salleh Abas, Amendment of the Malaysian Constitution, [1997] M.L.J. 2, at xxxiv.

209. CROUCH, *supra* note 16, at 138 (quoting MAHATHIR BIN MOHAMAD, THE MALAY DILEMMA 11(1981)).

210. *Id.* at 139. "[C]onstitutional amendment acts were passed in 1981, 1983, twice in 1984, 1985, 1988, 1990, 1992, 1993, and 1994." *Id.*

211. Helen Johnstone, *Entering the Twilight Zone*, ASIAN BUS., Feb. 1997, at 48, available in LEXIS, Busfin Library, ABI File.

212. Singapore's GDP in 1996 was \$23,565; Hong Kong's was \$23,892. *Id.*

out of the competition for all but the highest level of value-added manufacturing.²¹³ Some companies have already begun to move their production to other Asian countries.²¹⁴ Malaysia's rapid success will soon render it unable to compete with its South Asian neighbors, unless the composition of its economy dramatically changes.

Solving this problem has forced Malaysia to reconsider its approach to the entertainment and information industries. In the past, as recently as 1994, Malaysia attempted to protect its citizens from the moral decline that would supposedly result from cable television. In the process, Malaysia became "one of the most strictly controlled TV markets in Asia."²¹⁵ But with overwhelming competition in the manufacturing sector, an increased demand for television in markets all over Asia, and a realization that "[i]nformation is wealth today,"²¹⁶ Malaysia appears ready to abandon its fears and plunge into the Information Age.²¹⁷

Prime Minister Mahathir's ambitious Vision 2020 plan is designed to catapult Malaysia from a developing nation into a fully developed nation by the year 2020.²¹⁸ To implement this plan, the government has called for the creation of the Multimedia Super Corridor (MSC), an ideal environment for businesses "to create, distribute, and employ multimedia products and services in Southeast Asia."²¹⁹ The MSC will measure nine miles wide and thirty miles long,²²⁰ occupying approximately 290 square miles as

213. Tom McHale, *Multimedia Drives Future*, ELECTRONIC BUYERS' NEWS, Jan. 27, 1997, at 10, available in LEXIS, Market Library, PROMOT File.

214. *Id.*

215. Helen Johnstone, *Airwaves Open for Business*, ASIAN BUS., Jan. 1997, at 33, available in LEXIS, Busfin Library, ABI File (citing a study by Prof. Joseph Chan of Hong Kong's Chinese University).

216. *Astro Bodies*, CABLE & SATELLITE ASIA, Jan. 1997, at 20, available in LEXIS, News Library, CSASIA File (quoting Information Minister Datuk Mohamed Rahmat).

217. Liberalizing its censorship laws will be necessary for Malaysia to achieve its economic goals. See John Tusa, *International Satellite Television—Good Neighbour or Global Intruder?*, 7 EUR. BUS. J. 45 (1995), available in LEXIS, BUSFIN Library, ABI File (observing "[t]here is strong evidence that a country cannot modernise and turn from a controlled economic system to an open one unless it enjoys access to open information. The more educated a society, the less it can be separated from news that does not insult its intelligence.").

218. Vision 2020 was introduced by Dr. Mahathir in a working paper titled *The Way Forward*. See Prime Minister's Office, *Vision 2020: The Way Forward—Vision* (visited Nov. 1, 1997) <<http://www.smpke.jpm.my/jaring/highlight/vision.html>> [hereinafter *Vision 2020*] (providing some thoughts by Dr. Mahathir on the future course of Malaysia). See *infra* Part IV (discussing Vision 2020).

219. Stephanie Langenfeld, *How Commerce Conquers Censorship in Southeast Asia*, CHRISTIAN SCI. MONITOR, Mar. 24, 1997, at 19.

220. McHale, *supra* note 213.

it extends from Asia's tallest building, newly completed in downtown Kuala Lumpur, to Asia's largest airport.²²¹ The government also plans to create a new paperless administrative capital, Putrajaya, and an "intelligent" city named Cyberjaya, both located within the MSC.²²² In addition, a multimedia university and a technology park will be incorporated into the area.²²³ This gamble on the nation's economic future could cost as much as \$40 billion.²²⁴

Because Malaysia lacks the workers, knowledge, and companies necessary to fill the MSC on its own, the gamble can only pay off if Hollywood and Silicon Valley are willing to move their multimedia developments overseas.²²⁵ Some believe that Malaysia can only realistically expect that the innovation, creativity, and knowledge held by leading-edge technology and entertainment corporations will eventually have a "trickle down" or "rub off" effect within Malaysia.²²⁶

Thus, it is not surprising that the MSC's international advisory panel is a veritable "Who's Who List" of high technology business leaders from the United States and Japan.²²⁷ Several of these executives have already agreed to locate aspects of their companies within the MSC.²²⁸ But despite the high number of applications for the MSC²²⁹ and initial enthusiasm for the project, some wonder whether these locations will ever be used to create multimedia applications, in part because of Malaysia's history of

221. *Malaysia's Information Ambitions: Virtually Fantastic*, ECONOMIST, Mar. 1, 1997, at 67.

222. "Cyberjaya" is Malay for "CyberCity." See McHale, *supra* note 213.

223. *Id.*

224. *Id.*

225. *Id.*

226. Jeff Greenwald, *Thinking Big*, WIRED (visited Aug. 1997) <<http://www.wired.com/wired/5.08/malaysia.html>>.

227. Among the members are the heads of Microsoft, Sony, and IBM. Multimedia Development Corporation, *MSC International Advisory Board* (visited Nov. 1, 1997) <<http://mdc.cinenet.net/msc/advisory/index.html>> (listing the membership of the panel).

228. Sun Microsystems, for example, plans to create "competency centers" for learning Java, its programming language for Internet-based applications. A. Shukor Rahman, *Sun Microsystems to Focus on JCC*, NEW STRAITS TIMES, June 19, 1997, available in LEXIS, News Library, NSTRIT File. Oracle has begun work on several applications for the MSC. Toh Han Shih, *Oracle to help Malaysia's MSC with 3 Flagship Projects*, BUS. TIMES (Sing.), July 4, 1997, available in LEXIS, News Library, BUSTMS File.

229. By October 1997, the corporation managing the MSC had received 150 applications from companies seeking MSC status. Francis C. Nantha, *Two Firms Show Faith in MSC Project by Moving OHQ*, NEW STRAITS TIMES, Oct. 26, 1997, available in LEXIS, News Library, NSTRIT File. Of these applications, 35.3% were submitted by local companies and another 26.6% were joint ventures with foreign corporations. *Id.*

media censorship.²³⁰ Malaysia's Multimedia Development Corporation, responsible for enticing businesses to come to the MSC, can offer deferred taxes and an impressive technological infrastructure, but it will be difficult to convince the Internet and multimedia communities to relocate to a country that continues to devalue freedom of expression.²³¹

B. Political Pressures

The government's traditional approach to the information and entertainment industries belies a fundamental skepticism of democracy. The government has traditionally implied that political and information rights would damage the economy, although empirical studies have never found a connection between authoritarian impulses and economic growth.²³² In reality, the government's authoritarian impulses seem most closely related to the Barisan Nasional's desire to remain in power. History has taught political leaders that an expanding economy is a good way to maintain power.²³³ Therefore, it is not surprising that human rights issues and democratic aspirations have taken a back seat to political self-preservation, accomplished through occasional authoritarian actions.

Democratic pressure within Malaysia is increasing; however, steady economic growth has created an educated middle class.²³⁴

230. Greenwald, *supra* note 226. One business leader has suggested that "the MSC will work only 'if there is a wall built around it' [to keep out Mahathir's authoritarian leadership]." *Id.*

231. *Id.*

232. Daniel A. Bell, *The East Asian Challenge to Human Rights: Reflections on an East-West Dialogue*, 18 HUMAN RTS. Q. 641, 645 (1996).

According to Harvard University economist and philosopher Amartya Sen, however, there is little evidence to vindicate the "general theory" that political and civil rights hamper economic growth. Systematic cross-national statistical studies do not support the claim that there is a correlation or causal connection between authoritarianism and economic success. In fact, civil and political rights may help to safeguard economic security in the sense that such rights draw attention to major social disasters and induce an appropriate political response.

Id.

233. Despite a victory by the Barisan Nasional, Malaysia's recession in the mid-1980s led to a party split in UMNO and to a consolidated opposition. CROUCH, *supra* note 16, at 246-47.

234. Michael Shari et al., *Damage Control: Can Mahathir Get Back on Course?*, BUS. WEEK, Sept. 22, 1997, at 48. See also Kieran Cooke, *Survey of Malaysia*, FIN. TIMES, Sept. 19, 1995, available in LEXIS, News Library, FINTME File (quoting Finance Minister Anwar Ibrahim's comments that the membership of UMNO has changed from "fishermen, farmers and teachers" to "corporate leaders, entrepreneurs and professionals").

Gradually, this group has learned the importance of democratic rule in attaining long-term stability and economic growth. After Dr. Mahathir's attempts to resolve the nation's currency crisis single-handedly, some have begun to suggest that the Prime Minister resign.²³⁵ Such sentiment is remarkable, considering the intense popularity and control Dr. Mahathir has held during his seventeen years as prime minister.

Increased attention to the democratic process by citizens and minority political parties may also lead to problems within the ruling alliance.²³⁶ Eventually, infighting²³⁷ and corruption²³⁸ may also lead to a loss in confidence among concerned voters and politicians within UMNO, allowing more democratic members of the party to lead. One such leader is Finance Minister Anwar Ibrahim, heir-apparent to the nation's highest political office.²³⁹ Mr. Anwar is more than twenty years younger than Dr. Mahathir, and his public statements suggest a relaxed and democratic approach to the nation's censorship regime.²⁴⁰

235. Shari et al., *supra* note 234, at 49.

236. See Cooke, *supra* note 234 (noting that "[w]hile no one in his administration dares at present to question the prime minister's authority, there is political ferment within his [UMNO] party").

237. Because UMNO has often awarded lucrative contracts for public projects to political supporters as a method of consolidating its power, factions within the party are motivated not only by political power, but also by the potential for wealth. *Id.*

238. See Quest Economics Database, *Malaysia: July 1997*, HILFE COUNTRY REP., July 1997, available in LEXIS, News Library, QUESTD File ("Perhaps the main threat to UMNO's control of the political scene is the possibility of some negative fall-out through association with corruption charges and other illegal practices."). UMNO has been increasingly beset by political scandals. An important party leader in the state of Malacca resigned after allegations that he had sex with an underage girl. Cooke, *supra* note 234. See also *Cracking Down on Corruption*, BUS. TIMES (Malay.), June 7, 1997, available in LEXIS, News Library, MBUSTM File (discussing several other incidents of corruption involving high-ranking UMNO officials).

Nonetheless, UMNO remains completely in control of the nation's politics, controlling Parliament and the local governments in every state except Kelantan, and possibly Sabah. Quest Economics Database, *supra* (the PAS controls Kelantan). After some success in the 1990 elections, opposition parties were disorganized during the 1995 elections and lost many of their seats in the state assemblies and Parliament. *Id.* Recognizing this threat, Dr. Mahathir stressed the importance of curbing political corruption during his party's conference in October 1996. *Id.* In addition, anti-corruption laws have been strengthened. Brendan Pereira, *Gov't vs. Graft: Who's Ahead?*, NEW STRAITS TIMES, Aug. 17, 1997, available in LEXIS, News Library, STRAIT File.

239. See Quest Economics Database, *supra* note 238 (stating that Anwar is widely expected to replace Mahathir as prime minister in 1999).

240. Shari et al., *supra* note 234.

C. Human Rights Issues

Western conceptions of human rights have been consistently criticized by Dr. Mahathir, much to the delight of leaders in other developing nations.²⁴¹ His beliefs about human rights have, in turn, been condemned by foreign commentators and non-governmental organizations (NGOs).²⁴² Malaysia's heavy-handed responses to protestors in East Timor,²⁴³ the struggles of the orang asli,²⁴⁴ and Vietnamese immigrants²⁴⁵ have drawn critical attention from the international media and human rights activists. As Malaysia seeks to market itself as a "foreigner-friendly"²⁴⁶ center for developing multimedia and entertainment products, its human rights practices will come under closer scrutiny. Thus, even though Malaysia disputes the existence of internationally-recognized human rights, the country may alter its censorship practices to prevent further "public relations" fiascoes.

Malaysia's current system of media regulations raises human rights concerns that implicate several international agreements.

241. See Kieran Cooke, *How Malaysia Discarded its Fear of China: A New Alliance is Emerging to Counter Western Influence*, FIN. TIMES, Feb. 10, 1995, available in LEXIS, News Library, FINTME File (noting the response of the Chinese government). See also Kassim, *supra* note 207.

242. See, e.g., *Malaysia-Human Rights: Reopen East-West Debate on Rights*, Inter Press Serv., Aug. 1, 1997, available in LEXIS, News Library, INPRES File (noting the reactions of the U.S. and European Union to Dr. Mahathir's proposal that the U.N. Universal Declaration of Human Rights be re-examined because it does not reflect Asian views); Anil Noel Netto, *Malaysia: Activists Protest Government Crackdown on NGOs*, Inter Press Serv., Jan. 15, 1997, available in LEXIS, News Library, INPRES File.

243. Syed Azman, *Malaysia Deports 10 Timor Meeting Activists*, Reuters N. Am. Wire, Nov. 11, 1996, available in LEXIS, News Library, REUNA File.

244. The orang asli are nomadic and semi-nomadic societies of indigenous Malays that inhabit the forests of Malaysia. See Robert M. Hardaway et al., *Tropical Forest Conservation Legislation and Policy: A Global Perspective*, 15 WHITTIER L. REV. 919, 937-38 (1994) (discussing the difficulties faced by the orang asli in preserving their homelands); P. Prashanth, *Malaysia: Aborigines Assert Rights to Their Jungle*, Inter Press Serv., Jan. 25, 1990, available in LEXIS, News Library, INPRES File.

245. Although he subsequently changed his mind, on June 15, 1979, Dr. Mahathir threatened to expel more than 70,000 Vietnamese refugees living in Malaysian camps and to shoot any more attempting to land. *Malaysia Threatens Vietnamese*, FACTS ON FILE WORLD NEWS DIGEST, June 22, 1979, available in LEXIS, News Library, FACTS File.

246. Prime Minister's Office, *The 12th International General Meeting Of The Pacific Economic Cooperation Council* (visited Sept. 30, 1997), <<http://www.smpke.jpm.my/gn-data/ucapan.pm/1997/970930.htm>> ("The industrialisation and rapid growth of Malaysia is due to foreign investments. We are foreigner-friendly.").

Article 19 of the Universal Declaration of Human Rights (UDHR) provides for "information rights," identified as the "freedom of opinion and expression," including the right to "seek, receive and impart information and ideas through any media and regardless of frontiers."²⁴⁷ Malaysia's paternalistic approach to the media industries runs counter to the letter and spirit of this agreement, as well as the International Covenant on Civil and Political Rights²⁴⁸ and the International Covenant on Economic, Social and Cultural Rights.²⁴⁹ Known as the International Bill of Rights in combination with the UDHR, these documents elaborate on the basic principles outlined in the UDHR.

Although the International Bill of Rights has long achieved widespread assent, Malaysia's resistance is typical of lesser developed nations²⁵⁰ that do not agree with the principles outlined therein.²⁵¹ The UN's approach has been criticized because it canonizes the "free flow of information" principle

247. G.A. Res. 217 (III)A, U.N. Doc. A/810 (art. 19), at 71, 74-75 (1948), reprinted in 2 DUSAN J. DJONVICH, UNITED NATIONS RESOLUTIONS, SERIES I: RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY 135, 138-39 (1973).

248. International Covenant on Civil and Political Rights, adopted Dec. 19, 1966, 999 U.N.T.S. 171 (1976).

249. International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

250. Developing nations are not alone in opposing a completely unrestricted approach to the media. Some fully developed nations oppose this principle, although generally for reasons of cultural preservation, not paternalistic morality or economic development. See Lucien J. Dhooge, *No Place for Melrose: Channelsurfing, Human Rights, and the European Union's "Television Without Frontiers" Directive*, 16 N.Y.L. SCH. J. INT'L & COMP. L. 279, 316-33 (1996).

251. Two oft-given arguments against Western-style human rights are: (1) the claimed right to limit human rights to correct social and political crises, and (2) the belief that cultural and moral differences yield different conceptions of human rights. See Bell, *supra* note 232, at 643-44. Islamic nations also approach human rights issues from a different perspective. See generally Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?*, 15 MICH. J. INT'L L. 307 (1994).

The UDHR also suffers as a tool for enforcing human rights because it was created without the opinions of East Asian nations. See Bell, *supra* note 232, at 655-56.

Although the UDHR is normatively binding, most East Asian states endorsed it for pragmatic, political reasons and not because of deeply held commitment to the human rights norms it contains. The UDHR thus does not have the normative force and political relevance of a constitution that emerges from genuine dialogue between interested parties keen on finding a long term solution to a shared political dilemma. It is possible, however, that if the International Bill of Human Rights . . . has a proper enforcement mechanism—such as an international UN force with the explicit mission to intervene in cases of gross human rights violations—it could gain greater legitimacy among states.

resulting from U.S. inspirations.²⁵² Rather than encouraging an uninhibited press and communications industry espoused by the United States, many countries attempt to foster responsible media production through state control.²⁵³ In Malaysia, the government exhorts the media industries to provide accurate reporting²⁵⁴ and responsible entertainment. These exhortations are backed with punishments to guarantee that these industries understand their role in the economic development of Malaysia.²⁵⁵

Appeals to national economic development or social stability as justifications for limiting information rights are common in developing countries. Yet, such appeals are wearing thin in Malaysia, where the rate of economic growth has hovered at an amazing eight percent for the last five years, and the last significant racial violence occurred more than a quarter century ago.²⁵⁶ A more recent justification for Malaysia's human rights violations of political and religious minorities has been the proposition that the "right of the majority for a comfortable life" supersedes the countervailing human rights.²⁵⁷ Nevertheless, while democratic nations have occasionally been forced to suspend the rights of citizens during periods of crisis,²⁵⁸ no crisis

252. Jonathan Graubart, *What's News: A Progressive Framework for Evaluating the International Debate Over the News*, 77 CAL. L. REV. 629, 631-32 (1989).

253. *Id.* at 632. Although this concept may have originated with the United States, it has been widely accepted. See Thomas R. Wolfe, Note, *A New International Information Order: The Developing World and the Free Flow of Information Controversy*, 8 SYRACUSE J. INT'L L. & COM. 249, 251-52 (1980) (stating that the ideal of freedom of information has achieved the status of customary international law).

254. *Minister: We do Enjoy Press Freedom*, NEW STRAITS TIMES, Apr. 28, 1996, available in LEXIS, News Library, NSTRIT File (quoting a government minister's statement that news reporting should be responsible, accurate, and truthful).

255. See *Journalists Told to be Responsible*, NEW STRAITS TIMES, June 12, 1995, available in LEXIS, News Library, NSTRIT File. The Chief Minister suggested that "as the government is stepping up its effort to develop the economy, the media could assist by reporting more on the development and less on politics." *Id.*

256. See Bell, *supra* note 232, at 649-50 (commenting that "[o]nce the economic or political troubles are more or less successfully overcome, then according to the government's own logic the denial of rights is no longer justified").

257. Ashraf Abdullah, *Practice What You Preach*, NEW STRAITS TIMES, Mar. 11, 1996, available in LEXIS, News Library, NSTRIT File.

258. Article 4 of the International Covenant on Civil and Political Rights recognizes the right of nations to undertake emergency measures.

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present

currently exists in Malaysia. The desire to perpetuate a frenetic pace of economic growth cannot justify the country's long-term displacement of human rights.²⁵⁹

Despite Malaysia's reliance on economic growth as a panacea, remaining racial tensions cannot be forever repressed by a popularly-elected government.²⁶⁰ Successfully completing the Vision 2020 plan will require Malaysia to confront the international community's growing clamor over the nation's widespread human rights violations.

D. *Emerging Technologies:*
An Outer Barrier on Government Censorship

The Internet poses special problems for Malaysia's regulatory system. The prime minister has admitted that censoring this medium is virtually impossible.²⁶¹ New technological advances may eliminate the government's ability to regulate other entertainment and information sources. Technological improvements are already decreasing the distinction between radio,²⁶² television, movies, and "traditional" Internet features such as electronic mail and the World Wide Web.²⁶³ Live

Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law. . . .

International Covenant on Civil and Political Rights, *supra* note 248, at 174.

259. Bell, *supra* note 232, at 649-50.

260. Nonetheless, Malaysia appears to be targeting economic growth as a solution to remaining racial tensions. See *Growth Necessary for Stability*, S. CHINA MORNING POST, Sept. 30, 1997, available in 1997 WL 13265767 (reporting Deputy Prime Minister Anwar Ibrahim's comments that the nation's economy must grow more than 4% annually to avoid a repeat of the 1969 race riots).

261. Lee Lam Thye, *Solution Not in Censoring the Internet*, NEW STRAITS TIMES, Jan. 8, 1996, available in LEXIS, News Library, NSTRTT File. In addition to the quantity of information available on the Internet, the ability to mirror web sites further increases the challenge of regulating the Internet. See John T. Delacourt, *The International Impact of Internet Regulation*, 38 HARV. INT'L L.J. 207, 214 (1997) (describing one use of mirror sites to thwart censors in Germany); Kelly Kunsch, *Diogenes Wanders the Superhighway: A Proposal for Authentication of Publicly Disseminated Documents on the Internet*, 20 SEATTLE U.L. REV. 749, 769-70 (1997) (discussing the use of mirror sites to improve the flow of information on the Internet).

262. Many radio stations, including Malaysian stations, broadcast simultaneously on the Internet. See, e.g., RTM, *Radio Live* (visited Oct. 29, 1997) <<http://www.asiacconnect.com.my/rtm-net/live/index.html>> (listing six Malaysian radio stations available on the Internet).

263. Harold M. White, Jr. & Rita Lauria, *The Impact of New Communication Technologies on International Telecommunication Law and Policy: Cyberspace and the Restructuring of the International Telecommunication Union*, 32 CAL. W. L. REV.

television²⁶⁴ and interactive videos²⁶⁵ delivered via the Internet may soon be widely available and completely uncensored.²⁶⁶ This possibility threatens to render large portions of Malaysia's regulatory system obsolete. Already, technological advances have had the effect of overwhelming Malaysia's censors.²⁶⁷ The vast amount of information available in cyberspace and its ease of access only compound the problem.

IV. "I CAN SEE CLEARLY NOW": VISION 2020, MALAYSIA'S RESPONSE TO THE PRESSURES OF ITS REGULATORY SYSTEM

Malaysia's dramatic decision to plunge into the Information Age began with a paper presented by Prime Minister Mahathir in early 1991.²⁶⁸ Titled "Malaysia: The Way Forward," this paper set an agenda for the nation to become fully developed by 2020.²⁶⁹ This agenda, subsequently labeled Vision 2020, reflects far-sighted goals of achieving developed-nation status, but it also

1, 1-3 (1995) (discussing the integration of communication industries and technologies, and the effect on governments' regulations).

264. At least one television channel already broadcasts simultaneously on the Internet. See Fox News Network, *Fox News Channel* (visited Oct. 29, 1997) <<http://www.foxnews.com>> (file is fnc20.rm, viewable with Real Media software). CNN maintains video clips of recent broadcasts on its website. See CNN, *Today on CNN*, (visited Oct. 29, 1997) <<http://www.cnn.com/CNNPromos/cnn.html>>; CNN, *CNNfn-OnAir* (visited Oct. 29, 1997) <<http://cnnfn.com/fnonair/>> (viewable with VXtreme software).

265. White & Lauria, *supra* note 263, at 2.

266. Malaysians with Internet access, a fast modem, and the right software can already receive the Fox News Channel live on their computers. See Fox News Network, *supra* note 264.

267. Dr. Mahathir has already admitted the censors are being overwhelmed by the amount of material that should be censored. *Malaysia's Mahathir Urges Self-Censorship*, Reuters World Serv., Oct. 22, 1996, available in LEXIS, News Library, REUWLD File. The government has expressed its concern over the use of the Internet to communicate political messages. Norlin Wan Musa, *Traitors 'Feeding Foreign Media'*, STAR (Malay.), Oct. 9, 1997 (copy on file with Author) (reporting the Information Minister's statements that some Malaysians have been acting as "agents" for the foreign media, treacherously feeding them "malicious information" over the Internet).

Of more concern to Malaysia, however, is the availability of pornography online, an issue that has drawn world-wide attention. See, e.g., Anthony Flint, *Skin Trade Spreading Across US; High Tech Fuels Boom for \$10b Industry*, BOSTON GLOBE, Dec. 1, 1996, available in LEXIS, News Library, PAPERS File. See also Jason Kay, Note, *Sexuality, Live Without a Net: Regulating Obscenity and Indecency on the Global Network*, 4 S. CAL. INTERDISC. L.J. 355, 355-68 (1995) (exploring the different types of pornography currently available on the Internet, as well as the potential for "virtual sex" over the Internet).

268. Farid Alatas, *The Real Challenge Facing the New Malay*, BUS. TIMES (Sing.), Nov. 3, 1993, available in LEXIS, News Library, BUSTMS File.

269. See *Vision 2020*, *supra* note 218.

reflects the administrative and political difficulties the nation presently encounters while attempting to censor a vast amount of information.

Vision 2020 identifies nine challenges for Malaysia to overcome.²⁷⁰ These challenges can be grouped within separate, but closely related political, social, psychological, and economic agendas.²⁷¹ The political agenda identifies three challenges to Malaysia's quest to join the ranks of the developed nations. The first challenge is "establishing a united Malaysian nation with a sense of common and shared destiny."²⁷² The other challenges are "fostering and developing a mature democratic society" and establishing a "mature, liberal and tolerant society."²⁷³

Socially, Vision 2020 seeks to overcome two challenges by developing a "fully moral and ethical society, whose citizens are strong in religious values and imbued with the highest of ethical standards" and by "establishing a fully caring society and a caring culture."²⁷⁴ The psychological agenda targets the creation of a "psychologically liberated, secure and developed Malaysian society with faith and confidence in itself."²⁷⁵

The government's primary focus, however, seems to be the economic agenda. It encompasses three challenges: establishing a prosperous society with a "competitive, dynamic, robust and resilient" economy, ensuring a just society with equitable wealth distribution, and creating an innovative, scientific, and progressive society.²⁷⁶

The aspirations included in Vision 2020 identify the conflicting pressures within Malaysia. The government desires greater religious commitment, while simultaneously seeking economic development and increased democratization. Yet, the infusion of western values and influences that will result from the MSC and liberalized broadcasting laws is viewed negatively. Vision 2020 merely creates a destination; it does not suggest a resolution to these value conflicts.

A. *The Multimedia Super Corridor: Asia's Silicon Valley?*

By far the most expensive and most strategic aspect of the Vision 2020 plan is the MSC. Malaysia envisions the MSC as a center for the development of seven "Flagship Applications,"

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

divided into categories for "Multimedia Development" and "Multimedia Environment."²⁷⁷ Eventually, however, Vision 2020 will demand more from the MSC than a stream of investment revenue. To overcome its "challenge" and become a center for multimedia development and innovation, Malaysians must acquire knowledge and a sense for innovation from the MSC's foreign investors and eventually develop its own multimedia products.

To attract multimedia and technology corporations to the MSC, Prime Minister Mahathir has embarked on a series of promotional campaigns in the United States, Europe, and Japan. In his speeches, the prime minister has expressed Malaysia's commitment to a "Bill of Guarantees," extended to any company allowed to operate within the MSC.²⁷⁸ In addition to guaranteeing "a world-class physical and information infrastructure" and "competitive financial incentives," the list of promises includes the promise that Malaysia will ensure the Internet is not censored.²⁷⁹

It is ironic, considering Malaysia's history of censorship, that the country now guarantees an uncensored Internet within its MSC. This guarantee evidences two concerns: skepticism of potential multimedia investors and competition for investment

277. Multimedia Development Corporation, *MSC Flagship Applications* (visited Nov. 1, 1997) <<http://mdc.cinenet.net/flagship/index.html>>. The Multimedia Development applications are "Electronic Government," "Multi-Purpose Card," "Smart Schools," and "Telemedicine." The Multimedia Environment applications are "R&D Cluster," "World-Wide Manufacturing Webs," and "Borderless Marketing." *Id.*

278. Multimedia Development Corporation, *MSC—Incentives—Bill of Guarantees* (visited Nov. 1, 1997) <<http://mdc.cinenet.net/msc/incent/bill/index.html>> (reproducing Malaysia's guarantees):

1. Provide a world-class physical and information infrastructure.
2. Allow unrestricted employment of local and foreign knowledge workers.
3. Ensure freedom of ownership by exempting companies with MSC Status from local ownership requirements.
4. Give the freedom to source capital globally for MSC infrastructure, and the right to borrow funds globally.
5. Provide competitive financial incentives.
6. Become a regional leader in intellectual property protection and cyberlaws.
7. Ensure no Internet censorship.
8. Provide globally competitive telecoms tariffs.
9. Tender key MSC infrastructure contracts to leading companies willing to use the MSC as their regional hub.
10. Provide a high-powered implementation agency to act as an effective one-stop super shop.

279. Chris Petrikin, *Malaysian Technopolis Tries to Curry Biz Favor*, DAILY VARIETY, Jan. 16, 1997, at 12, available in LEXIS, News Library, PAPERS File.

from Singapore or other high-tech ventures in Southeast Asia, such as the Subic Cybercity in the Philippines²⁸⁰ and Taiwan's Hsinchu Science Park.²⁸¹ By making this promise, Malaysia gains a marketing advantage over Singapore and other nations that continue their attempts to censor the Internet.²⁸² Of course, there are limits: the Internet remains subject to censorship outside the MSC.²⁸³ In addition, the broad language employed in the Printing Press Act and other statutes remains applicable to the Internet and related technologies.²⁸⁴ Thus, MSC corporations could be regulated for content distributed on the Internet although it was created within the MSC. This may become a more significant concern if the government's attitude toward Internet censorship changes as the Internet becomes widely used within Malaysia for everything from shopping to pornography to political organization.²⁸⁵

In addition to censorship concerns, the MSC faces two significant obstacles. First, Malaysia's recent currency crisis may threaten foreign investment, especially because the circumstances surrounding the crisis suggest that a more open flow of information within the country could have prevented the market overvaluation that preceded the market crash.²⁸⁶ Second,

280. *Subic Cybercity Rising from Old US Navy Base*, METRO. COMPUTER TIMES, May 8, 1997, available in 1997 WL 10172372.

281. *Malaysia's Information Ambitions: Virtually Fantastic*, ECONOMIST, Mar. 1, 1997, at 67.

282. Neighboring Singapore has chosen to vigorously regulate pornography and political discussion on the Internet. Peng Hwa Ang & Berlinda Nadarajan, *Censorship and the Internet: a Singapore perspective*, COMM. OF THE ACM, June 1996, at 72.

283. Malaysia has only committed to an uncensored Internet with corporations that attain MSC status. See Multimedia Development Corporation, *supra* note 278.

284. The prime minister has stated that all existing regulations continue to apply to the Internet. Calvin Goh & Zainul Ariffin, *Dr. M: Malaysia Still Attractive to Investors Despite Competition*, NEW STRAITS TIMES, Jan. 17, 1997, available in LEXIS, News Library, NSTRTT File. As an example, the prime minister explained that "should a user transmit or distribute pornographic or illegal materials from the World Wide Web he could be charged for transgression." *Id.*

285. See *supra* note 261 and accompanying text. Currently, few Malaysians use the Internet. One reporter has estimated that only one out of every thousand Malaysians has Internet access. Joseph Edwin, *Malaysia Moves Toward Less Censorship*, USA TODAY, May 3, 1996, at 7A. A different source estimates the total number of Malaysian Internet users at 50,000. *Singapore—Government Clamps Down on Internet and Supports its Future*, TELENEWS ASIA, Mar. 21, 1996, available in LEXIS, News Library, NWLTRS File.

286. See *Rational Expectations*, JAKARTA POST, Aug. 6, 1997, available in LEXIS, News Library, JKPOST File (discussing the role of information in Asian financial markets).

Malaysia must overcome a shortage of "knowledge workers."²⁸⁷ Although the Multimedia University and the government's guarantee of unrestricted employment of knowledge workers from overseas will help, potential MSC corporations may be adverse to waiting for employees to be trained and to importing employees.

B. *Asia's Hollywood?*

A related aspect of the MSC and Vision 2020 is Malaysia's goal to become a broadcasting and filmmaking center for Asia.²⁸⁸ During a speech to entertainment industry leaders in Los Angeles, Dr. Mahathir invited Hollywood to use the MSC as a means of diversifying its audience through "multicultural content creation."²⁸⁹ Entertainment "localised in its languages, myths, characters, music, allusions and locations" would appeal to the increasingly wealthy citizens of Asia's developing nations.²⁹⁰ The prime minister also suggested that the increasing use of computer-generated images in movies and video games creates the possibility for Hollywood to forge partnerships with the MSC.²⁹¹

Malaysia's broadcasting industry also has aspirations independent of any partnership plans with Hollywood. The demand for locally-produced television programming has increased as a result of the legalization of satellite dishes and simultaneous creation of a satellite television industry.²⁹² To meet this demand and to become a broadcasting and filmmaking center for Asia, the Information Ministry has investigated the creation of a "film city."²⁹³ Currently, most Asian language films are created in Hong Kong or India, but these film industries have

287. *Slightly Slower Rate of Employment Growth*, BUS. TIMES (Malay.), Oct. 18, 1997, available in LEXIS, News Library, MBUSTM File (discussing the general labor shortage in Malaysia, as well as the government's proposals to increase the numbers of knowledge workers).

288. *Proposal for National Film Board to Oversee Local Film Industry*, NEW STRAITS TIMES, May 3, 1997, available in LEXIS, News Library, NSTRIT File. The Malaysia East Asia Satellite Corporation was "one of the first companies to set up in the MSC." Johnstone, *supra* note 215.

289. *Hollywood Invited to Use Malaysia's MSC to Localise in Asia*, ASIA PULSE, Jan. 15, 1997, available in 1997 WL 10596915.

290. *Id.*

291. Karen Lowe, *Mahathir Seeks Hollywood's Help to Convert Malaysia into Media Hub*, Agence Fr.-Presse, Jan. 15, 1997, available in 1997 WL 2040346.

292. Freddie Ng, *Proposal for Setting Up of 'Film City' Under Study*, NEW STRAITS TIMES, Sept. 2, 1997, available in LEXIS, News Library, NSTRIT File (noting a government directive that by 2000, television stations must air 80% local programming).

293. *Id.*

struggled to compete with Hollywood.²⁹⁴ Malaysia hopes increased production of local content will generate markets throughout the region.²⁹⁵

Nonetheless, Malaysia's aspirations of becoming an entertainment center will be impeded by the uncertainty created by the nation's censorship regulations. The prime minister's ideas easily become overlapping restrictions and make compliance difficult, while simultaneously increasing the penalties for non-compliance.²⁹⁶ The regulatory scheme places enormous authority in individual cabinet members to augment the censorship system with individual decisions. The Ministry of Information has already used this power to block two CNN broadcasts, one discussing the plight of the orang asli²⁹⁷ and another documenting the return of the Pope from Paris.²⁹⁸ A concert by pop artist Michael Jackson was delayed almost a year until the prime minister overruled a regional minister's decision to ban it.²⁹⁹

The cost to promoters when events or films are banned can be severe.³⁰⁰ The potential repercussions from a dissemination of undesirable news or entertainment may be even more serious. In 1994, Malaysia briefly instituted a "Buy British Last" campaign after an erroneous story in the Sunday Times suggested that a British company was prepared to bribe Prime Minister Mahathir to secure a construction contract.³⁰¹ Malaysia's reaction conjured up memories of a similar conflict in the early 1980s.³⁰² Television programs shown outside Malaysia may result in retaliation if they are critical of the government.³⁰³ With such

294. Don Groves et al., *Movie Malaise Grips Asia*, VARIETY, July 21, 1997, at 5, available in LEXIS, News Library, US File.

295. See Ng, *supra* note 292.

296. Many provisions of the acts discussed in Parts II.B.2. and II.B.3. have corresponding penal code provisions. For example, causing feelings of enmity on the grounds of religion is punishable under § 298A of the Penal Code and under pt. 2, § 4(1) of the Printing Press Act. See Printing Presses and Publications Act 1984, Schedule II.

297. See Hardaway et al., *supra* note 244, at 937-38; Prashanth, *supra* note 244.

298. See Pereira, *supra* note 159. The Pope's visit was censored out of sensitivity to Muslim viewers. *Id.*

299. Brendan Pereira, *Moonwalk on a Tightrope*, STRAITS TIMES, Nov. 5, 1996, available in LEXIS, News Library, STRAIT File.

300. See *Essential Issues to Conquer in 1997*, NEW STRAITS TIMES, Jan. 1, 1997, available in LEXIS, News Library, NSTRTT File (complaining about the costs imposed on promoters because of the absence of clear guidelines).

301. *Britain and Malaysia Will Make Up - Minister*, Reuters World Serv., Apr. 10, 1994, available in LEXIS, News Library, REUWLD File.

302. *Id.*

303. CROUCH, *supra* note 16, at 85 n.28 (discussing a report of a government-encouraged "smear campaign" aimed at Australia).

possibilities, promoters, producers, and actors will hesitate to expend the resources necessary to create entertainment products that can compete with Hollywood products.

Unpublished regulations and inconsistent decisions present further problems. Following the ban of the Malaysian movie *Amok*, producers expressed their frustration over the lack of predictable standards to guide their creative projects.³⁰⁴ The Censorship Board instituted a ratings system in 1996, but Malaysians remain unable to ascertain the Board's criteria for deciding whether content matter warrants a U or an 18SX.³⁰⁵ Viewers complain that popular sitcoms created in the United States continue to receive an adult rating for sexual content after censors have replaced all sexual innuendoes with long periods of silence.³⁰⁶ At times, inattention to modern pop culture and slang has also led to inaccurate censorship.³⁰⁷ Some have suggested that censorship decisions may occasionally be based on political or anticompetitive pressure, rather than on the content of a broadcast.³⁰⁸ Furthermore, censorship decisions can be reversed without persuasive explanation, instilling further uncertainty into the regulatory system.³⁰⁹ Lacking clear guidance, most filmmakers and broadcasters seem to find it easier to produce inexpensive predictable productions rather than risk financial ruin on new, creative themes.³¹⁰

Finally, despite exultations of Malaysia as a "multi-cultural content centre for digital entertainment,"³¹¹ the nation's stringent censorship rules create considerable subject matter limitations. Many of Malaysia's most dramatic and commercially interesting

304. By Zieman, *Ban on Amok Shocks Filmdom*, NEW STRAITS TIMES, Mar. 18, 1995, at 28, available in LEXIS, News Library, NSTRIT File (noting industry members' demands that the Censorship Board be made independent from the Home Ministry and protests about the board's limitations on the local film industry).

305. See Al-Attas, *supra* note 118.

306. *Id.*

307. Although references to sex would have been eliminated, the prime minister's daughter noted that the phrase "humping around" had escaped the censors' scissors. Michael Vatikiotis, *Music: Rapping in Malaysia*, FAR E. ECON. REV., July 22, 1993, at 32-33.

308. See *Chinese Judge, Malaysian Judgment*, ECONOMIST, Oct. 21, 1995, at 40 (discussing the Information Ministry's ban of a popular Taiwanese-made television series ostensibly because the costume worn by the show's main character, a judge, caused the show to violate a prohibition on "Chinese costumed dramas").

309. *Top Gun* was shown on television in 1994, but was banned from television in 1995 because of violence. Melanie Proctor, *VHSC Ruling Leaves Viewers in the Lurch*, NEW STRAITS TIMES, Mar. 18, 1995, at 28, available in LEXIS, News Library, NSTRIT File.

310. See Groves et al., *supra* note 294.

311. Prime Minister's Office, *supra* note 8, at para. 10.

political and social events could never be the subject of a film or television presentation. The removal of Tun Salleh as Lord President of the Supreme Court, the May riots, the Rulers' conflict with the prime minister in 1993, and even Dr. Mahathir's struggles against UMNO in his early career are examples of stories that could become successful movie ventures in a less repressive system.

Without increasing the predictability of its regulatory approach, producers, actors, and promoters within Malaysia's entertainment industry will continue to impose a measure of self-censorship, restricting the quality and quantity of information and ideas reaching the nation's population. In addition, laws forbidding the discussion of "sensitive" political topics have had the effect of preventing Malaysian audiences from experiencing entire genres of film and television. Unless these laws are relaxed, many political and social stories or themes that could be exploited commercially will remain undiscovered by Malaysian audiences. And unless Malaysia's producers begin to create attractive Malaysian alternatives to subtitled Hollywood blockbusters, Malaysia's ambitions of becoming an entertainment center will not succeed.

V. A CORRECTED VISION: PROPOSALS FOR ACHIEVING MALAYSIA'S GOALS, WITHOUT CENSORSHIP

Defining predictable legal standards to govern the regulation of multimedia products must become a priority for Malaysia. The indeterminate potential for severe government censorship or an outright ban will certainly discourage multimedia developers from devoting substantial time and money to projects.³¹² Now that the government is encouraging innovation and creativity, along with its traditional cries for self-censorship and responsibility, filmmakers, journalists, and other multimedia developers need clear standards to illuminate the government's acceptable limits.

The best way to ensure consistency and predictability in Malaysia's regulatory system would be to employ a method of recorded adjudications in content regulation cases. The Film Censorship Board and similar governmental agencies could develop an adjudicatory system, recording its decisions. The

312. Consider the experience of the producers of the Malaysian movie *Amok*, who were forced to choose between increasing the cost of the movie by 50% or abandoning their artistic efforts. See *RM800,000 Malay Movie Amok Banned by Censors*, *supra* note 115. The developers of multimedia products should expect similar experiences with Malaysia's ambiguous regulatory scheme as these products become similar to traditional entertainment products.

result would be a coherent body of administrative law to inform corporations, citizens, and legislators. Judicial review of agency decisions would assure constitutionality and procedural justice. An independent judiciary would prevent usurpation of power by Parliament or the prime minister.

A. *Restore the Constitutional Mandate
of a True Separation of Powers*

In a democracy, the judiciary's role is to serve as a check against government intrusions on liberties held by the nation's citizens or corporations. In close cases pitting the government's economic or political goals against citizens' constitutional rights, the judicial branch is systemically the most appropriate body to resolve the conflict.³¹³ The experiences of judicial branches in several Southeast Asian democracies, including Malaysia, however, suggest a fundamental misconception of the role of the judiciary.³¹⁴

Contrary to the implicit beliefs of members of Malaysia's Parliament and the prime minister, judicial review of administrative or legislative actions restricting freedom of expression will encourage growth within the targeted multimedia and entertainment sectors. First, a body of case law defining the limits of Parliament's authority to censor citizens' speech will enable members of these strategic industries to gauge the acceptability of projects before their completion. Eliminating this legal ambiguity would have several positive effects. It would reduce the costs of content production by allowing producers to rely on a culturally sensitive body of case law to avoid the massive post-production editing frequently required by the board of censors.³¹⁵ It would also reduce the risks of overregulation stemming from majoritarian political or religious motivations. The deterrent effect of possible government overregulation would then equal the protection provided by a judicial remedy for

313. See Christopher M. Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605, 606 (1996) (discussing the role of the judiciary in preserving the rule of law during the process of documentation). "Ideally, through the application of judicial or constitutional review, judges cannot only mediate conflicts between political actors but also prevent the arbitrary exercise of government power. In fulfilling this role, the courts become powerful actors in maintaining the submission of the state to law." *Id.*

314. Hickling, *supra* note 167, at 26 (suggesting that one part of the problem of the judiciary's role is the aversion to confrontation common to Asian cultures).

315. See *RM800,000 Malay Movie Amok Banned by Censors*, *supra* note 115 (discussing the edits required of two major Malaysian movies).

violations of protected freedoms. As a result, media producers, newspapers, and multimedia developers will be less likely to engage in self-censorship as a means of self-protection.

A second result of judicial review would be to deter Parliament and the prime minister from using the media and media regulations as a means to accomplish political ends. Because judicial decisions are not self-enforcing, however, this result necessitates the recognition and cooperation of the separate branches of Malaysia's government. Regrettably, hostility to the judicial process, exemplified by the many statutory provisions designed to limit or proscribe judicial review, indicates that an era of cooperation among governmental branches remains distant.

Malaysia's judicial branch has not quietly acquiesced in its displacement from the constitutional scheme. In some cases, judges lacking a constitutional legal basis for action have invoked principles of natural justice to review government activity.³¹⁶ These cases exemplify a courageous judiciary's desire to maintain its authority and to limit an overzealous Parliament. Nonetheless, a higher level of institutional respect must be afforded the judiciary to prevent further separation of powers violations. Recent events involving the judiciary indicate that the government is willing to move in this direction.³¹⁷ If not, the ultimate recourse of the judiciary will be to hope that the public will hold "the Legislature-Executive politically accountable for their attacks."³¹⁸

B. *Eliminate Political Control of the Mass Media*

In addition to restoring judicial review, the government could increase predictability within its legal system by relinquishing control over many aspects of the nation's information and entertainment industries. Again, a more predictable legal environment would result in less self-censorship and increased innovative efforts.

316. See, e.g., *J. P. Berthelsen v. Director-General of Immigration, Malaysia & Ors*, [1987] 1 M.L.J. 134 (1987) and text accompanying note 172; see generally Nijar, *supra* note 32 (discussing a "right to be heard" as requirement of procedural due process and natural justice, despite the language of the ISA).

317. In July 1996, the Attorney General refused to prosecute a High Court judge who resigned after writing a pamphlet containing "112 allegations of corruption, abuse of power, misconduct and immorality . . . which were directed at 12 judges," Ashraf Abdullah & Carolyn Hong, *Poison-Pen Letter: Judge was Responsible*, NEW STRAITS TIMES, July 10, 1996, at 1, available in LEXIS, News Library, NSTRIT File; however, the Attorney General indicated that the judge's resignation accomplished the probable and desirable result of a prosecution. *Id.*

318. Seu, *supra* note 166, at 88.

1. Develop an Industry-Designed Ratings System

The current television and movie ratings system, administered by the Ministry of Home Affairs, the Censorship Board, and the Ministry of Information, has created a host of problems,³¹⁹ including difficulties in determining which government body has jurisdiction.³²⁰ To resolve some of the problems created by the number of agencies involved, the Information Ministry has proposed the establishment of a National Film Board (NFB) to centralize and streamline the work of these agencies.³²¹ Devoted to developing the nation's local film industry, the NFB could assist film producers by reducing bureaucratic delays and conflicting policy interpretations.

Although centralizing government control of the film industry will eliminate some problems, the lack of predictability in the application of ratings and censorship standards will remain. Recorded decisions by agencies charged with applying the censorship standards would reduce this uncertainty. The government's interests, however, would be best served by a ratings system voluntarily administered by the film industry. Such a system would foster creativity by reducing the uncertainty currently faced by media producers.³²² A voluntary ratings system would also reduce the government's role, confining it to prosecutions for violations of an agency's guidelines. In addition, a voluntary ratings system would eliminate the inconsistent applications of restrictions resulting from the use of slang.³²³

A properly used ratings system would also help Malaysia develop different segments within its media markets by implicitly encouraging producers to create movies and television programs with specific ratings in mind. Although Malaysia's media markets are small by Western standards, a successful use of an industry ratings system might lead to an extension into other ASEAN countries, thereby expanding the region's media markets and creating a greater role for Malaysian broadcasting.³²⁴

319. See *supra* Part IV.B.

320. *Proposal for National Film Board to Oversee Local Film Industry*, *supra* note 288.

321. *Id.*

322. See Hor & Seah, *supra* note 37, at 329 (arguing "censorship" should be retained, but as a voluntary classification system which would guide the public and provide certainty to media producers).

323. For an example of the censors' lack of slang comprehension, see Vatikiotis, *supra* note 307, at 33.

324. ASEAN members have already agreed to form a regional broadcasting confederation. *Asean Broadcasters Confederation to be Formed*, ASIA PULSE, Feb. 27, 1997, available in LEXIS, News Library, APULSE File.

The voluntary ratings system employed by the film industry in the United States could provide a useful model for a Malaysian film industry ratings system. During the 1960s, the Motion Picture Association of America (MPAA) responded to conflicting decisions by local censor boards by creating a "production code."³²⁵ In 1968, this code was abandoned in favor of a voluntary ratings system, designed to provide parents with information about the film concerning its suitability for viewing by children.³²⁶ Ratings are based on age suitability and often accompanied by explanations.³²⁷ Because this ratings system focuses on informing parents,³²⁸ the ratings are assigned by a board composed of persons with "parenting experience."³²⁹

Unlike Malaysia's government-imposed regulatory system, the MPAA ratings do not constitute or require censorship.³³⁰ In the United States, only productions that exceed First Amendment protection may be censored by the government.³³¹ Therefore, because of the MPAA ratings system, the U.S., state, and local governments have virtually no regulatory involvement in the vast majority of films released every year. By displacing government censor boards, the MPAA has fostered "creativity in the movie industry, while assuring that parents are receiving information to guide them in supervising what their children see at the theaters or on videos."³³² Malaysian implementation of a similar system for rating entertainment products would likely have similar effects by centralizing the ratings process, eliminating the censorship

325. Richard M. Mosk, *The Jurisprudence of Ratings Symposium Part I: Motion Picture Ratings in the United States*, 15 CARDOZO ARTS & ENT. L.J. 135, 135-36 (1997). Compliance with the code was required before a film could be exhibited in theaters, but compliance created the assurance that the film would not be censored. *Id.*

326. *Id.* at 136-37.

327. *Id.* at 138. Additional information about the Motion Picture Association of America is available at <<http://www.mpa.org>>.

328. The MPAA and its ratings board "does not purport to determine what is or is not appropriate for children. Rather, [the board] seeks to determine how parents would consider the picture and what they would want to know about the picture." Mosk, *supra* note 325, at 139.

329. *Id.* at 138.

330. Although an NC-17 board rating impedes a film's exhibition, this is the result of the choices of advertisers and theaters. *Id.* at 141.

331. *Id.* at 141-42.

332. *Id.* at 144. A similar ratings system is now in use for television. Diane Holloway, *New Program Rating System Begins Today*, AUSTIN-AM. STATESMAN, Oct. 1, 1997, available in LEXIS, News Library, AUSTIN File. A ratings system has also been proposed for video games. Matthew Hamilton, *Graphic Violence in Computer and Video Games: Is Legislation the Answer?*, 100 DICK. L. REV. 181, 181-82 (1995) (discussing a proposed "Video Game Rating Act" which would have established a commission responsible for rating video games).

concerns of many producers, and providing valuable information to parents.

2. End Political Control of the Mass Media

Although Malaysia began privatizing ownership of its television and radio broadcasts in 1985,³³³ most mass media producers continue to be controlled by political actors.³³⁴ Until 1993, UMNO overtly controlled the New Straits Times, and it is now run by four executives with strong ties to the deputy prime minister.³³⁵ The Star newspaper has traditionally been controlled by the MCA.³³⁶ The termination of the television monopoly gave rise to TV3,³³⁷ a new station owned by companies closely affiliated with UMNO.³³⁸ Radio remains subject to a government monopoly.³³⁹ The bias of these news sources is often apparent.³⁴⁰ For example, during political campaigns, UMNO candidates are described in glowing terms, while statements of opposing party's candidates are misquoted or taken out of context.³⁴¹

By ridding the media industry of these political controls, Malaysia could create a more objective, competitive, and open media industry. With newspapers competing to report the truth, even from differing perspectives, Malaysians would be more equipped to weigh their candidate's political positions during elections. They might also be informed about government scandals that might otherwise be kept from the public. The right to information cannot be meaningful if the information granted is distorted or inaccurate.

333. See generally CROUCH, *supra* note 16, at 88; Hashim, *supra* note 12.

334. "The most conspicuous aspect of state control of the mass media has been through ownership of majority shares. A monopoly of the media has been accomplished through the business involvements of the main Barisan component parties." ANNE MUNRO-KUA, *AUTHORITARIAN POPULISM IN MALAYSIA* 124 (1996).

335. CROUCH, *supra* note 16, at 86.

336. *Id.*

337. Popularly named TV3, the full name of the television station is Sistem Televisyen (M) Berhad. *Id.* at 88.

338. *Id.*

339. *Id.*

340. See MUNRO-KUA, *supra* note 334, at 125.

341. CROUCH, *supra* note 16, at 88.

3. End Government Control Over Foreign News

The Malaysian government continues to control the nation's only authorized news service, Bernama.³⁴² All foreign news must flow through this news agency before dissemination into Malaysia.³⁴³ When the government officially gave Bernama monopoly rights in 1990, the amendment allowed the news agency to "cease being guided by U.N. declarations on freedom of information."³⁴⁴

In June 1997, citing the government's commitment to "a free flow of information" consistent with the MSC, the Information Minister proposed a bill to eliminate Bernama's monopoly.³⁴⁵ Although the bill has since been tabled, it is likely to be enacted, pending successful privatization of the news agency.³⁴⁶ Bernama could continue to be "an information distributing agency" and might become a potential "content provider" within the MSC.³⁴⁷

Despite the government's discussion about eliminating Bernama's monopoly on foreign news, the broadcast media has already begun to supplant Bernama's position.³⁴⁸ Therefore, eliminating this "monopoly" will have little practical effect, except in increasing the credibility of the news agency and bolstering the government's commitment to democracy.³⁴⁹

C. Eliminate Internet Censorship throughout Malaysia

Malaysia has already agreed to eliminate censorship within the MSC. This commitment reflects both an acknowledgment of the impossibility of censoring the medium and an ironic

342. "In June 1990, Parliament enacted legislation making the Malaysian News Agency (Bernama) the sole distributor of foreign news in Malaysia, formalizing previous practice." *Malaysia: Human Rights Practices, 1992*, *supra* note 98.

343. *Malaysian News Agency to Lose Rights Over Foreign News*, ASIA PULSE, June 12, 1997, available in 1997 WL 10657514.

344. Lai Kwok Kin, *Malaysia Passes Controversial Bill on News Distribution*, REUTER LIBR. REP., June 12, 1990, available in LEXIS, News Library, REUWLD File.

345. See *Malaysian News Agency to Lose Rights Over Foreign News*, *supra* note 343.

346. *Move to Amend Bernama Act Withdrawing Sole Foreign News Rights*, NEW STRAITS TIMES, Oct. 10, 1997, at 8, available in LEXIS, News Library, NSTRIT File.

347. *Id.*

348. *Id.* (reporting comments by Bernama's former editor-in-chief that the news agency cannot compete with Astro and TV3).

349. See Kin, *supra* note 344 (quoting opposition leaders who opposed the 1990 amendment on these grounds).

marketing strategy; however, Malaysia has not extended this guarantee to the entire nation.

Given the minimal numbers of Internet users,³⁵⁰ the government clearly has little to gain by censoring the Internet in the nation's nether regions. A commitment to the "free flow of information" now may even facilitate a more rapid expansion of the MSC to other parts of the nation. At the very least, it would be consistent with its marketing scheme for the MSC.

VI. CONCLUSION

Kuala Lumpur is home to the world's tallest buildings, the highest flagpole on earth, and a communication tower taller than any in Southeast Asia.³⁵¹ Malaysia has succeeded in creating its own national automobile and in attracting manufacturing business.³⁵²

But the MSC is unlike any other project Malaysia has attempted. Infusing an innovative and creative spirit into a population accustomed to censorship and reliance on trading abilities will prove much more difficult than building cars and skyscrapers. Despite the recent changes in its broadcasting laws and the prime minister's guarantees, much of Malaysia's regime of censorship remains intact. Malaysia is preparing to enter the twenty-first century, but reluctantly.

The success of Hollywood and Silicon Valley have become models for Malaysia's Vision 2020 development plan. Yet, Malaysia must not ignore the legal environment enabling these communities to succeed. Unless Malaysia eliminates the uncertainty in its censorship regulations and restores judicial independence to counter government over regulation, the country risks stifling the innovation and creativity it needs to become a fully developed nation.

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350. See Edwin, *supra* note 285 (noting the small number of Malaysians with Internet access).

351. See Greenwald, *supra* note 226.

352. *Id.*

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