

REFSA BRIEF

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Reforming the Dewan Negara Part 1: Evolution and Critique



Executive Summary

Parliamentary reform is important for Malaysia's democracy. While there is an increasing public awareness of the importance of a functioning and effective Parliament, the conversation has often focused on the elected *Dewan Rakyat* (House of Representatives), with little attention given to the unelected *Dewan Negara*, also known as the Senate. Arguably, this has impeded serious conversation on reform of the *Dewan Negara*, which occupies an important position in our legislative system as the second chamber of Parliament.

In this paper, we begin by examining the history of the *Dewan Negara* and its founding ideals, first elaborated at the dawn of the independence of our nation. The Reid Commission noted that the *Dewan Negara* was to occupy an esteemed and influential position not only in the law making process, but also in society as a whole.

We trace the evolution of the composition of the chamber from the independence era to the formation of the Federation of Malaysia and subsequently after Singapore's 1963 expulsion from the Federation. We discovered that the composition gradually evolved from a majority of state Senators to today's majority of senators federally appointed by the *Yang di-Pertuan Agong*. The hijacking of the selection process for political purposes also has negative consequences on the dynamics of the discussion in the chamber, rendering it neither democratic nor technocratic.

Lastly, we undertake a critical analysis of the current *Dewan Negara*. The analysis scrutinises the performance of the chamber and its Senators, and concludes that the *Dewan Negara* suffers from several inherent structural flaws. These flaws have created well known issues such as the quality of the Senators and the *Dewan Negara's* legislative work, and has also prevented the chamber from reaching its full potential as second chamber to debate government legislation in a more holistic manner.

This is the first of a two-part series. In the next paper, we will further explore the options for the reform of the *Dewan Negara*, drawing comparisons with other Commonwealth Senates.

Introduction

The Malaysian Parliament is a bicameral legislature based on the British Parliament, from which it derives a significant portion of its traditions and practices. It consists of two chambers, namely the *Dewan Rakyat* and the *Dewan Negara*, both being parallels of the House of Commons and the House of Lords respectively. Like its British counterpart, the *Dewan Rakyat* is composed of elected Members, and is constitutionally designed to be the more powerful of the two Houses in contrast to the unelected *Dewan Negara*. This has arguably resulted in far less attention in the realm of public consciousness towards the function of the *Dewan Negara*.

The lack of attention towards the *Dewan Negara* does not detract from the fact that it is in need of serious reform in order to strengthen Malaysia's parliamentary institution as a whole. The *Dewan Negara* was originally envisioned to be an "influential forum of debate and discussion"¹ and to contribute "valuable revision"² to legislation. Instead, the *Dewan Negara* is more widely associated as a method of appointing failed election candidates to a ministerial position as a way to satisfy a ruling party's own internal politics, as well as serving as a rubber stamp to legislation passed by the *Dewan Rakyat*. This clearly demonstrates that the *Dewan Negara* has strayed far from its original intention.

While the topic of Parliamentary reforms has gained some steady traction amongst civil society, there is greater attention placed on the more prominent *Dewan Rakyat* than the *Dewan Negara*. This two-part essay will attempt to shine a spotlight to the *Dewan Negara*. The first part will examine the evolution of the chamber and critically assess its present-day performance. In the second part, a comparative study involving the Australian and Canadian Senates will be undertaken, and considerations of possible reforms to the *Dewan Negara* will be analysed.

Powers of the Dewan Negara

The existence of the *Dewan Negara* is governed by Article 44 of the Federal Constitution, which also establishes the *Dewan Rakyat*:

"The legislative authority of the Federation shall be vested in a parliament, which shall consist of the Yang di-Pertuan Agong and two Majlis (houses of parliament) to be known as the Dewan Negara (Dewan Negara) and the Dewan Rakyat (House of Representatives)."

From this, the *Dewan Negara* almost mirrors the functions of the *Dewan Rakyat*. Similar to the *Dewan Rakyat*, it can introduce legislations, as well as reviews, revisions and hold debates over legislation³ passed by the *Dewan Rakyat*. This is where the similarities end. To begin with, the chamber is restricted from introducing or amending "Money Bills"⁴, which remain the sole domain of the *Dewan Rakyat*. In the event where the *Dewan Negara* does not pass a Money Bill without amendments within a month, the Constitution⁶ provides for the Bill in question to be presented directly to the *Yang di-Pertuan Agong* for assent.

1 Reid Commission, Report of the Federation of Malaya Constitutional Commission (1957) para 64 (iv).

2 Ibid.

3 Federal Constitution of Malaysia, Article 66(1).

4 Federal Constitution of Malaysia, Article 67(1).

5 The phrase "Money Bills" here is defined by Article 67 (1) and refers to Bills that primarily concern taxation and financial matters of the Federation.

6 Federal Constitution of Malaysia, Article 68(1).

A similar restriction also applies to the *Dewan Negara's* handling of other Bills. Under Article 68(2), the *Dewan Negara* may reject a Bill or pass it with amendments not agreed to by the *Dewan Rakyat*. This will result in the Bill in question being debated again by the *Dewan Rakyat* at least one year after its initial passage in the *Dewan Rakyat*⁷. Should the *Dewan Rakyat* pass the Bill without accepting any alterations in the *Dewan Negara* (or with those defined in Article 68(3)⁸), and upon being sent to the *Dewan Negara* it is rejected or passed with amendments not agreed to by the *Dewan Rakyat*, the Bill (either in its original form or with mutually agreed amendments) will be directly presented to the *Yang di-Pertuan Agong* for assent.

Effectively, this allows the *Dewan Rakyat* to completely bypass the *Dewan Negara's* objections to its legislation, negating the possibility of a deadlock occurring between the two Houses over legislative disagreements. Ideally, the one year time period is there to allow both Houses to negotiate or seek compromises over any disagreements should they wish to. In contrast, the *Dewan Rakyat* may choose to not negotiate with the *Dewan Negara* where urgency is not a factor, as it can simply repeat the process again and constitutionally bypass the reservations of the *Dewan Negara*.

Composition of the Dewan Negara

The *Dewan Negara's* composition is set out in Article 45 of the Federal Constitution. It is composed of 70 unelected Senators, all appointed or elected to 3 year terms with a further 2-term limit. The Senators are broken down into 30 Senators⁹: two representing each of the 13 States of the Federation and Kuala Lumpur respectively, and one each from the other two Federal Territories - Labuan and Putrajaya. The other 40 Senators are appointed by the *Yang di-Pertuan Agong*¹⁰.

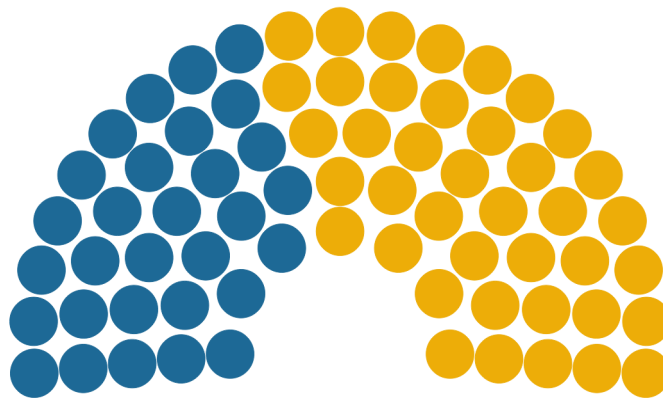


Figure 1: Graphic representing the current majority of appointed Senators in the chamber. Blue represents State Senators while the yellow represents the Yang di-Pertuan Agong appointed Senators.

7 Federal Constitution of Malaysia, Article 68(2)(b).

8 This refers to alterations to the Bill certified by the Speaker of the Dewan Rakyat to be necessary owing to the time which has elapsed since the Bill was passed in the earlier session, or to represent amendments made in that session by the Senate.

9 Hereinafter referred to collectively as "State Senators" unless otherwise stated, as FT Senators still represent a territory despite being federally appointed.

10 Hereinafter referred to interchangeably as "federally appointed Senators" and "Yang di-Pertuan Agong appointed Senators".

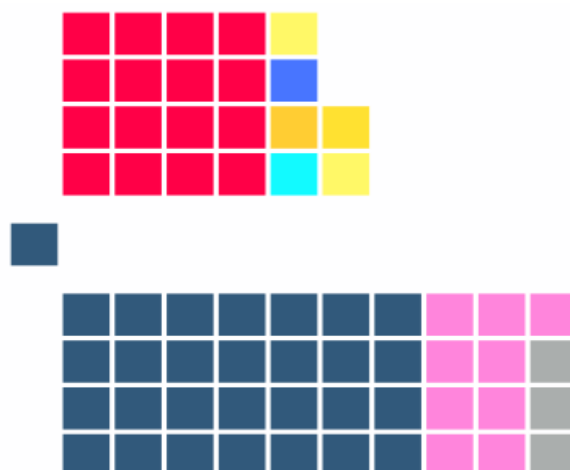


Figure 2: Graphic representing the current Party composition in the chamber. The PN Government and its allied Senators are on the lower half of the image, in practice to the right of the President.

The 26 State Senators are appointed by their respective state assemblies. As the Federal Territories do not have legislative assemblies of their own, their Senators Territories are appointed by the *Yang di-Pertuan Agong*, as is the case with the 40 federally appointed Senators; The Prime Minister is responsible for the nomination of such qualified persons and the nominations are then assented to by the *Yang di-Pertuan Agong*. Since Malaysia is a constitutional monarchy, the *Yang di-Pertuan Agong* usually appoints the nominees without any changes, effectively making the Prime Minister the final decision maker in the appointments process.

The President and the Deputy President are the presiding officers of the *Dewan Negara*. Article 56 (1) requires the President and the deputy to be chosen from among the 70 Senators. This differs from the *Dewan Rakyat*, where a person need not be an MP to be elected as Speaker.

Evolution of the Dewan Negara

In order to better understand the issues underlying the *Dewan Negara*, it is crucial to trace its history and subsequent evolution from the Malayan *Dewan Negara* to its current form today. This would provide a deeper insight into the standards the *Dewan Negara* was originally held to, with a view to adopting them as the basis for efforts to reform the *Dewan Negara*.

The Federation of Malaya

The present Malaysian Parliament has its roots in the constitutional proposals drawn up by the Reid Commission for the Federation of Malaya¹¹ in February 1957. The Commission proposed a bicameral legislature, a structure later adopted for the Malayan (and subsequently, the Malaysian) Parliament. In addressing the role of the *Dewan Negara*, the Commission conceived it as being an "influential forum of

11 The Federation of Malaya Constitutional Commission.

debate and discussion"¹², and contributing "valuable revision"¹³ to legislation. The *Dewan Negara's* secondary role compared to the *Dewan Rakyat* was also specifically emphasised, complete with the assertion that the *Dewan Negara's* exercise of its power to delay legislation would be in "exceptional" cases.

The Commission envisioned the *Dewan Negara* as an indirectly elected body, with the majority of the members being elected by the legislative councils of the 11 Malayan States (the State Senators). The remaining members would be nominated for a term by the *Yang di-Pertuan Agong*¹⁴ (the federally appointed Senators). A majority of the Commission recommended that the *Dewan Negara* be composed of 2 Senators from each of the 11 Malayan states, and of 11 nominated members. This gave the proposed Malayan *Dewan Negara* a composition of 22 State Senators and 11 federally appointed Senators, making a grand total of 33 Senators.

The requirement for federally appointed Senators were a matter that the Rulers and the Alliance parties specifically advocated for in their memoranda evidence to the Commission. However, the report did not elaborate on any of the specific arguments made in favour of these appointed Senators. Nonetheless, it can be speculated that their advocacy centred on the need for distinguished individuals and representatives of ethnic minorities to be represented in the legislative process, given that this was proposed and later adopted as the criteria for appointed Senators.

Nevertheless, 2 members of the Commission-Sir William McKell and Justice Abdul Hamid- dissented¹⁵, deeming an unelected *Dewan Negara* to be unjustifiable. Viewing an unelected *Dewan Negara* as not conforming to the system of parliamentary democracy, they described it as being incompatible with the desire of Malaysians to enjoy "self-government in the real sense and democracy in its purest form". Yet perhaps most poignant was their invoking of the spirit of Merdeka:

*"Merdeka, to the celebration of which the people of Malaya are looking forward, means to them freedom, freedom to govern themselves through representatives of their own choice under a system in which their parliamentary institutions shall be exclusively representative of the people's will."*¹⁶

In particular, they noted the irony of allowing Malaysians to directly elect the members of the predominant lower House, while not trusting them to elect the members of the much "weaker" *Dewan Negara*¹⁷. Addressing the inclusion of federally appointed senators, they described this class of Senators as being out of step with a parliamentary democracy¹⁸, due to the fact that while they are able to debate, vote on, and delay legislation already passed by the lower House - their being appointed rather than elected precludes them from public accountability¹⁹. Specifically, the inability to vote a Senator out of office is mentioned²⁰, which is evidently applicable in cases where the *Dewan Negara* votes down legislation popularly supported by the people, or

12 Reid Commission, Report of the Federation of Malaya Constitutional Commission (1957) para 64 (iv).

13 Ibid.

14 Called the "Yang Di-Pertuan Besar" in the report.

15 Reid Commission, Report of the Federation of Malaya Constitutional Commission (1957), Note by Sir William McKell and Mr Justice Abdul Hamid on Paragraphs 61 and 62.

16 Ibid.

17 Ibid.

18 Ibid.

19 Ibid.

20 Ibid.

legislation that forms part of the governing party's manifesto. Similar arguments were also made by the duo against the proposed indirect election of State Senators by the state assemblies, arguing that the Federal Parliament should not be concerned with local matters²¹.

Their views ultimately remained a dissenting opinion, but the Commission allowed the possibility of the composition of the *Dewan Negara* being amended along similar arguments in the future. They subsequently recommended that the Malayan Parliament should have the powers to affect any such changes if they so desire, and this was indeed accepted and later incorporated into the Constitution.

The eventual Malayan *Dewan Negara* was very close to the Commission's recommended composition. In absence of access to original the text of the Malayan Constitution is lacking, notes appended to the current Constitution gives the Malayan *Dewan Negara* as having 16 federally appointed members rather than the recommended 11²². This would have given the *Dewan Negara* a composition of 22 State Senators and 16 federally appointed members—a total of 38 Senators. Despite this apparent increase in numbers of appointed senators, the balance in the House still tilted towards the State Senators by virtue of their numbers alone. The *Dewan Negara* would retain this composition until the formation of Malaysia in 1963.

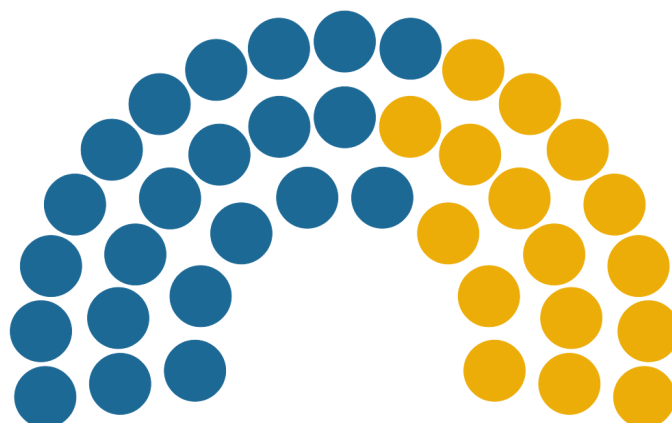


Figure 3: Graphic illustrating the first Malayan Dewan Negara and its majority of State Senators. Blue represents State Senators while the yellow represents the Yang di-Pertuan Agong appointed Senators.

The Federation of Malaysia

The formation of Malaysia in 1963 saw a further evolution of the existing Malayan constitutional framework, in order to accommodate the new additions of Singapore, Sabah (North Borneo) and Sarawak. What ultimately became the present Malaysian constitution was the result of deliberative work performed by two bodies created in 1962: the Cobbold Commission and the Inter-Governmental Committee (IGC). The former was setup first and foremost as a commission of enquiry to determine Sarawakian and Sabahan attitudes to the formation of Malaysia. In addition to its findings, the Commission's report also contained recommendations on the

21 Ibid.

22 The Commissioner of Law Revision, Federal Constitution of Malaysia (15th reprint) notes on Article 45.

constitutional arrangements to be implemented for the expanded federation. The findings and recommendations of the Cobbold report²³ were further considered by the IGC, formed of representatives of the British, Malayan, North Borneo and Sarawak governments. Unlike the Cobbold Commission, the IGC's area of deliberations were wholly concerned with constitutional matters, and its recommendations formed the basis of many new provisions designed to safeguard Sabah and Sarawak's position in the federation.

Both the Commission and the IGC maintained the existence of the *Dewan Negara* and expanded the existing composition to include Senators from the new States. The Commission recommended a continuation of the existing quota of 2 State Senators per state²⁴, and this was accepted by the IGC²⁵. This was premised on the Commission's findings that it would be "difficult" to increase the allocation to more than 2 Senators per state²⁶, and implied that further state representation should be achieved through the federally appointed members²⁷. The IGC did not make any reference to these remarks in their final report, but both bodies differed on the amount of federally appointed senators to be added to the existing composition. While the Commission recommended the addition of 8 appointed Senators²⁸, the IGC eventually settled on 6 appointed Senators with no further explanation²⁹. This, along with 2 State Senators for Singapore, was incorporated into the Constitution on the 16th of September 1963, the day the Federation of Malaysia was constituted. The initial Malaysian *Dewan Negara* therefore featured 28 State Senators and 22 appointed Senators-making a total of 50 Senators in the *Dewan Negara*, an increase of 12 from the Malayan *Dewan Negara*.

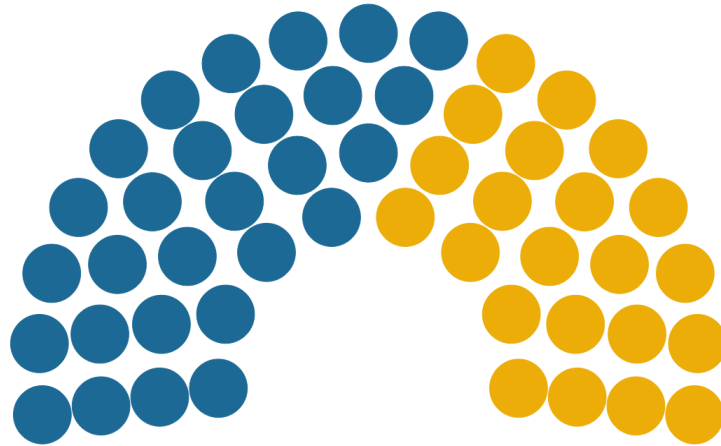


Figure 4: Graphic illustrating the expanded Dewan Negara at the formation of Malaysia. Blue represents State Senators while the yellow represents the Yang di-Pertuan Agong appointed Senators.

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- 23 Commission of Enquiry, North Borneo and Sarawak, Report of the Commission of Enquiry (1962).
- 24 Ibid para 190(g).
- 25 Intergovernmental Committee on the proposed Federation of Malaysia, Report of the Committee (1963) para 19(1).
- 26 Commission of Enquiry, North Borneo and Sarawak, Report of the Commission of Enquiry (1962) para 190(g).
- 27 Ibid.
- 28 Ibid.
- 29 Intergovernmental Committee on the proposed Federation of Malaysia, Report of the Committee (1963) para 19(1).

Post-1963 Evolution

The dominance of State Senators in the Malaysian *Dewan Negara* did not last long. A constitutional amendment in 1964 increased the number of appointed Senators to 32³⁰, versus 26 State Senators. Singapore's expulsion from the Federation in 1965 subsequently saw the *Dewan Negara* lose 2 State Senators with no change to the appointed Senators. Further amendments in 1978³¹ added 2 Senators for the newly created Federal Territory of Kuala Lumpur, together with 10 federally appointed Senators, bringing the 1978 composition to 28 State Senators and 40 federally appointed Senators. The number of federally appointed Senators remained unchanged at 40 from then onwards; Years 1984³² and 2001³³ saw the further addition of 1 State Senator each for the new Federal Territories of Labuan and Putrajaya respectively.

Presently, the *Dewan Negara's* composition has remained at 30 State Senators and 40 appointed Senators, a total of 70. This is a notable departure from the original composition of the Malayan (as well as the first Malaysian) *Dewan Negara*, that was reflected in the Reid Commission's proposals.

Year	State & Federal Territory Senators	Yang di-Pertuan Agong Appointed Senators
<u>MALAYA</u>	<u>22</u>	<u>16</u>
16/09/1963	28	22
30/07/1964	28	32
09/08/1965	26	32
31/12/1978	28	40
16/04/1984	29	40
01/02/2001	30	40
Present	30	40

Table 1: Evolution of the Dewan Negara's composition

30 S.6 Act 19/1964.

31 Para 2(1)(b) Act A442.

32 S.13 Act A585.

33 S.15 Act A1095.

Critically Examining the *Dewan Negara*

States Representation

The easy conclusion from the analysis of the *Dewan Negara*'s historical composition would be that the balance of power in the *Dewan Negara* now favours the federally appointed Senators. The line of reasoning that follows is that the federal Senators would be able to outvote the State Senators in the event of a conflict between the federal government and the states over the former's legislative agenda.

This reasoning is sound on the basis of numerical composition, but as is the case for institutions exposed to political dynamics, there are many other factors that have also contributed to the decline of the *Dewan Negara*.

Arguably, the dominance of the Barisan Nasional (BN) coalition in both state and federal governments for over 60 years has contributed to a dilution of states' representation. This was easily done as State Senators are elected by their states' legislative assemblies, which if dominated by the ruling federal coalition could ensure the election of a compliant party member as Senator. State Senators would thus be less inclined to act independently as representatives of their respective states in the chamber, even if State Senators were to form the majority in the *Dewan Negara*.

Yet the *Dewan Negara* rarely sees the manifestation of state-federal conflict, as these are usually solved by way of direct discussions between both the federal and state governments instead. Rather, it is arguably easier to divide the *Dewan Negara* along party lines rather than on the basis of federal and State Senators. While partisanship in the *Dewan Negara* is less prominent than in the *Dewan Rakyat*, the prior dominance of the BN at all levels of governance essentially entrenched the coalition's power as a means to ensure its survival and relevance in Parliamentary decision making in the *Dewan Negara*.

Quality of the Dewan Negara's Work

By virtue of the Reid Commission's vision of the *Dewan Negara*, it was to occupy an apolitical position of high esteem above the partisan tendencies of the *Dewan Rakyat*, in order to perform technocratic review of legislation to ensure that legislation would be produced at a high quality. The Reid Commission's consideration of the partisan nature of the *Dewan Rakyat* would have potentially detrimental effects on Parliament's legislative work. The *Dewan Negara*, being an apolitical body, was intended to mitigate the often volatile nature of partisan politics. The limitations on the *Dewan Negara*'s powers, on the other hand, also meant that the *Dewan Negara* was at the same time measured against democratic principles, as legislative powers equal to the *Dewan Rakyat* would have been inappropriate for the unelected *Dewan Negara*.

Despite this, the *Dewan Negara* does not enjoy an esteemed reputation. The chamber is largely perceived as being a rubber stamp, functioning only to pass Bills without much debate and amendments. The debates held in the *Dewan Negara* debates are not necessarily of higher quality than the *Dewan Rakyat* with many of their proposals being similar to the proposals mooted in the *Dewan Rakyat*. The *Dewan Negara* can initiate legislation on its accord, but to the knowledge of the author it has not done so before. It is arguable that the lack of any *Dewan Negara* initiated legislation is done in order to reflect the power and standing of the *Dewan Rakyat*, and by implication, the Prime Minister who is constitutionally mandated to be a Member of.

It can be argued that, however, that by taking the initiative to introduce its own legislation, it will be seen as an act of independence that is inconsistent with the Federal Government's trend towards centralisation, which in turn has also impacted upon Parliament's independence. For instance, the duration of Parliament sittings were previously decided upon by the de-facto Minister in charge of Parliament³⁴, a ministerial position that existed during the tenure of the previous BN federal government. This portfolio ceased to exist during the tenure of the Pakatan Harapan (PH) government, but was later resurrected and merged with the Law portfolio³⁵ when the Perikatan Nasional (PN) coalition came into power, thus formally bringing Parliament under the control of the Executive once more.

On the same note, the *Dewan Negara* sits for a far shorter time period than the *Dewan Rakyat*, with a grand total of 25 days³⁶ in 2019 versus 68³⁷ for the *Dewan Rakyat*. This severely limits the amount of time allocated for legislative work. In essence, there is simply not enough time for the *Dewan Negara* to introduce its own legislation, and also to debate government legislation at the same time. Given that *Dewan Negara* sittings typically begin during the last week of *Dewan Rakyat* sittings or the week immediately after its end, the role of the *Dewan Negara* is limited to debating and passing Bills that were passed by the *Dewan Rakyat* not too long ago, making it hard to conduct any in-depth review of legislation.

Quality of Senators and the Democratic Deficit

The quality of Senators also affects the *Dewan Negara's* reputation as a forum of debate and discussion. If the *Dewan Negara* were to be an influential forum, it must be composed of members whose professional qualifications and experience render them able to contribute valuable insight to debates and legislative work. This would allow the *Dewan Negara* to delve into the technicalities of a certain legislative area in a professional and objective manner. This is not an alien concept, as many legislatures worldwide also implement certain processes to ensure the quality of a policy being translated into legislation. These usually takes place in the form of select committees that scrutinise an assigned area of government policy, and committees that form part of a "committee stage" in the legislative process, and undertake detailed discussion and consideration of a particular Bill.

Combined with the targeted class of persons for Senator-ship and the intended high esteem of the chamber, it would be reasonable to expect the quality and qualifications of any incoming Senators to be subject to stringent review. An ideal situation would be where the *Dewan Negara* is populated by highly qualified, professional persons, who are competent enough in their respective fields to delve into the technical issues of policy while also remaining above partisanship.

34 Tunku Abidin Muhriz, *A New Dawn for the Dewan Negara?* (2012) para 6, 14.

35 The current Minister for Parliament and Law under the PN government is Dato' Takiyuddin bin Haji Hassan from PAS. The position is a portfolio under the Prime Minister's Department.

36 Takwim Dewan Negara <<https://www.parlimen.gov.my/takwim-dewan-negara.html?uweb=dn&>> accessed 20 December 2019.

37 Takwim Dewan Rakyat <<https://www.parlimen.gov.my/takwim-dewan-rakyat.html?uweb=dr&>> accessed 20 December 2019.

This is not reflected in the composition of the *Dewan Negara*. In the case of State Senators, the candidates for State Senatorship are proposed and then voted on by members of the respective state legislative assemblies (*Dewan Undangan Negeri*, DUN) without public input. In assemblies with a dominant party or coalition it is a simple matter to propose a single name with the guarantee of a majority vote for that person, thus rendering the election of State Senators a mere formality. This indirect election is evidently undemocratic, with the lack of public engagement disallowing public appraisal of the candidates, which also results in a general lack of knowledge of the identities of State Senators. This has the wider implication of diminishing the opportunities to hold State Senators to public account.

On the other hand, federally appointed Senators and Federal Territory Senators are appointed by the *Yang di-Pertuan Agong* on the advice of the Prime Minister. This also gives the Prime Minister a hugely prominent role in the appointment of this class of Senators. Granted, the Prime Minister is technically restricted by the constitutional requirement that the appointed Senators:

*"...have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service or are representative of racial minorities or are capable of representing the interests of aborigines"*³⁸

However, the lack of any specificities or scrutiny surrounding the elements of "distinguished public service" or "achieving distinction" means that appointments are made based on a superficial appreciation of a candidate's skills and qualifications on paper, without a total comprehensive appraisal of one's merits for the position. Without an oversight or accountability mechanism these parameters do not have any real effect, and the Prime Minister has a wide latitude of discretion for their nominations. This has led to the appointment of Senators with uncertain merits, sometimes defeated general election candidates (usually senior party members), for the purpose of appointing them as Ministers.

Conversely, this method also allows deliberate ignorance over an appointee's public reputation, regardless of their wealth of experience and length of service. This issue also applies to State Senators: An example is the 2013 election of Tan Sri Mohd. Ali Rustam as a Senator representing the state of Melaka, who despite his long experience in politics as Chief Minister, was also allegedly found guilty by his own party of being involved in money politics³⁹ and was noted for making racially charged remarks⁴⁰ following his defeat in the 2013 General Election-characteristics that would have been at odds with an esteemed Dewan Negara.

38 Federal Constitution of Malaysia, Article 45(2).

39 The Editor, 'Mohd Ali Rustam barred from DP race, KJ given warning' The Edge Markets (Kuala Lumpur, 17 March 2009) < <http://english.astroawani.com/election-news/ali-rustam-chinese-didnt-appreciate-me-13481>> accessed 14 June 2020.

40 Unknown writer, 'Ali Rustam: Chinese didn't appreciate me' Astro Awani (Kuala Lumpur, 6 May 2013) < <https://www.theedgemarkets.com/article/updated-mohd-ali-rustam-barred-dp-race-kj-given-warning> > accessed 14 June 2020.

Political Entrenchment in the Dewan Negara

The shift in focus away from the quality of Senators to rewarding political loyalty and patronage has led to a detrimental effect to the overall quality of the *Dewan Negara* by entrenching the power and the influence of the government of the day. Historically, that meant that the *Dewan Negara* was dominated by BN affiliated Senators, which effectively guaranteed the smooth passage of legislation through the *Dewan Negara*, serving to entrench BN's power and dominance even further.

The *Dewan Negara's* composition being unchanged following PH's election victory at GE-14 meant that the *Dewan Negara* remained BN dominated despite PH's majority in the *Dewan Rakyat* (at the time). This meant that the *Dewan Negara* could vote down legislation passed by the PH dominated *Dewan Rakyat*. This happened when the *Dewan Negara's* voted down the Bill to repeal the Anti-Fake News Act. The Act was a much criticised BN era legislation and its repeal formed part of the PH manifesto. In the absence of a Malaysian version of the Salisbury convention⁴¹, the *Dewan Negara* thus saw fit to vote against the Bill.

Why is Reform of the Dewan Negara Important?

A functioning *Dewan Negara* is important to the functioning of our parliamentary democracy. As Bills passed by the *Dewan Rakyat* are immediately sent to the *Dewan Negara*, the chamber is a second opportunity to debate government legislation in a more holistic manner. Ideally, the *Dewan Negara* is to act as a filter for legislation and is also intended to be another opportunity to hold the government to account, in keeping with Parliament's role as a check and balance on the Executive. Given that it is also possible to appoint professional individuals as Senators, the *Dewan Negara* further represents an opportunity to ensure greater details on policy is not overlooked or lost in the political machinations of the elected *Dewan Rakyat*. This will in turn allow for the relevant amendments to be made, which will no doubt ensure that our legislation is all rounded, fair, and of higher quality.

There is also the simple fact that the *Dewan Rakyat's* partisan atmosphere may interfere with the law making process. Many are familiar with the highly charged scenes being broadcast live from the *Dewan Rakyat*, and many more have certainly felt dismay at the conduct of Malaysian MPs from both sides of the aisle. Partisan sentiments dictate that each political bloc guard and advance their own interests respectively. It is therefore not inconceivable that legislation passed by the *Dewan Rakyat* may be lacking at the expense of the MP's own political interests. The *Dewan Negara's* potential as an apolitical chamber will then be readily helpful, as it can closely scrutinise and examine legislation in an objective manner free from partisan and scheduling pressures.

41 The Salisbury Convention is a UK constitutional convention under which the House of Lords will not oppose the second or third reading of government legislation promised in its election manifesto.

Conclusion

The *Dewan Negara* is far from being the esteemed institution initially envisioned by the Reid Commission. It is both undemocratic and un-technocratic, completely lacking in quality legislative work and debates. Although attention to proposed reform of the *Dewan Rakyat* should be commended, the *Dewan Negara* arguably deserves the same attention too. Serious reforms efforts, rather than token ones, will have to be undertaken in order to restore the founding intentions of the *Dewan Negara*. In conceptualising the desired nature of a quality *Dewan Negara*, comparisons with other Commonwealth Senates must be drawn. This, as well as an exploration of options for reform, will be considered in the second part of this essay series.

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