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## Public Policy, Legalization of Education and Nation-Building: Perspectives from United States and Malaysia

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**ABSTRACT:** Public policy involves governments making political decisions for implementing programs to achieve societal goals, inter alia, in education, economics, security, public health and public welfare for the people. Thereafter, public policy is translated into enactment and legislation. Nation-building is a process of building a national identity using the authority of the state to form a united citizenry to foster social and political stability and independence. It involves the social engineering of the populace to influence popular development of attitudes, social behaviours, values, language, institutions and public monuments. The governments of United States and Malaysia have endorsed public policies and legislations that enable the nationhood aspiration to become a reality. One of the vehicles to achieve nationhood is via the legalization of education. The evidence of the legalization of education in the United States, Malaysia and elsewhere is irrefutable. The experiences of the United States and Malaysia throughout their history in embracing such public policy, legalization of education and nation-building expose that such process lead to progressive nation-building and nationhood. This study involved library as well as field research, focusing on the legislations relating to education in the United States and Malaysia and where applicable other common law jurisdiction. The approach of the study covered both descriptive and inferential statistical analysis of surveys conducted on educators, educational administrators and educational institutions.

**KEYWORDS:** *(public policy, legalization of education, nation-building, social engineering, educational legislation, United States, Malaysia)*

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### Introduction

The United States and Malaysia, with more than a century of rich political and educational experiences, have translated the legalization of education as public policy agenda to achieve nationhood. Both countries have the experienced in tackling turbulence political and educational upheavals in their quest to achieve nationhood against the demography of multi-ethnicity and multi-culturalism. Nonetheless, both nations have succeeded commendably, with

the United States emerging as a strong and united nation as compared to Malaysia which is still grappling especially with race, religion and vernacular education issues. The perspectives of public policy, legalization of education and nation-building initiatives that the United States displays can provide significant learning experiences and precedents for Malaysia to emulate. This is because both nations share many similarities as well as differences, viz. historically, politically, culturally, socially and educationally. Also given that the United States is a political, educational, economic and military superpower, its superiority in these fields are being studied and emulated by many nations in the world. Thus, Malaysia can learn much from the United States, especially on its public policy initiatives toward nation-building through its legalization of education that resulted in a united American citizenry despite having multi-ethnic, multi-religious and multi-cultural populations and also a decentralized States' educational systems.

### **Definition of Public Policy**

Public policy is a course of action adopted and pursued by a government of a state to address matters of public interests, communicated by a specific political process and adopted, implemented, and enforced by a government agency. It is also defined as a system of courses of action, regulatory measures, laws and funding priorities concerning a given public interest propagated by the government with regard to a class of issues in a manner consistent with the applicable national, constitutional law and enabling legislation. In executing such initiative the government make political decisions for the implementation of national programmes to achieve societal goals, inter alia, in education, economics, security, public health and public welfare against a backdrop of changing educational practices, economic needs, social customs and moral aspirations of the people.

### **Definition of Legalization of Education**

Legalization is a process by which decisions emanating from courts as well as the statutory provisions of the Parliament or other administrative authorities force new regulatory or controlling procedures upon the operation of educational institutions and its infrastructures. The evidence of the legalization of education in the United States and Malaysia and elsewhere is irrefutable as being indicated by the government of a country sanctioning public policies for the common good of the people and the nation which led to the legislatures passing those policies into relevant educational legislations and thereafter, the courts being used to interpret and challenge questionable educational practices and decision-makings.

### **Definition of Nation-Building**

Nation-building is a process of building a national identity using the authority of the state to unify the citizens by fostering social harmony and economic growth so as to achieve political stability and independence well into the future. It involves the social engineering of the populace so as to influence popular development of attitudes, social behaviours, values, language, institutions and public monuments. Nation builders strategically plan and develop the national community

through government programmes, inter alia, organizing mandatory military enlistment for the defence of the nation and standardizing the national system of education, its curriculum and public schooling so as to nurture a united citizenry.

## **Anatomy of the Legal System of United States and Malaysia**

### **Embracing Federalism**

The United States and Malaysia are nations that embraced federalism, separation of power and judicial review; whereas the federal government constitution divides the governmental power between a federal and state government, giving to each substantial function. In a federal system, the constitution is the source of both federal and state authority and each entity has its own jurisdiction. The federal constitutions are the fundamental source for determining the nature and extent of governmental powers, but also provide the fundamental source of the individual rights that guarantees and limit the powers of governments and protect the citizens generally.

### **Federal Level**

The United States and Malaysia comprised of federated states with a written constitution and the power of judicial review. At the federal level, the constitution and its amendments, statutes, rules and regulations of administrative agencies, case law, executive orders, and attorney-general's opinions all constitute sources of law under which educators operate. The federal constitution is the supreme legal authority that exists. No other law, either state or federal, may conflict with its provisions. Although a state constitution is the highest state legal authority, nevertheless, all state statutes and other state laws must be consistent with it. If any of its provisions conflicts with the federal constitution it will be invalidated by the courts.<sup>i</sup> The federal constitutions of the United States and Malaysia are by far the most prominent and important source of civil rights and fundamental liberties that safeguard citizens' rights.

There are several provisions under the United States constitution<sup>ii</sup> that protect fundamental civil rights and individual liberties. The Bill of Rights, the First, Thirteenth, Fourteenth and Fifteenth Amendments have made the federal courts the protectors of the civil rights and liberties against the federal authorities (Amendments I to X)<sup>iii</sup> and the states authorities (Amendments XIII, XIV and XV).<sup>iv</sup> The First Amendment provides for the protection of freedom of speech, press and religion; it is often litigated in major court cases; so as the Fourteenth Amendment which guarantees the due process and equal protection. However, it must be highlighted that these federal constitution provisions apply differently to public and to private institutions under the United States position, as the states in the federation did not relinquish all their legal rights to the federal government, as provided for under Amendment X of the Constitution of the United States of America. Hence, under the federal constitution of the United States, the federal government is granted limited national powers. The Tenth Amendment of the United States Constitution reserves all powers to the states that are not specified in the constitution. The constitution confers certain legislative, executive and judicial powers to the federal government. It makes the federal government supreme. The United States citizens and officers of the state government, who are

also state citizens, owe their primary allegiance to the federal government.<sup>v</sup> It must be highlighted that the constitution does not grant federal authority over education, as no reference is specifically made to education. Thus, the principal responsibility for education is vested with the fifty state governments.

In comparison, under the Malaysian Federal Constitution Article 8 provides for equality, Article 10 provides for freedom of speech, assembly and association, Article 11 provides for religious freedom and Article 12 guarantees the citizen's rights to education. In contrast Articles 11 and Articles 12 constitute the most litigated issues in education; and are becoming common issues with the Malaysian society, as they become more aware of their constitutional rights. The Federal Constitution of Malaysia has reserved exclusive authority to the federal government, which declared that the Federal Constitution is the supreme law of the federation,<sup>vi</sup> while the states are allocated limited power as enshrined in the State List.<sup>vii</sup> Article 12 of the Federal Constitution evidently entrenched that education is the right of all citizens and the Ministry of Education and the Ministry of Higher Education are given wide authority over educational matters, both at the federal and state levels.<sup>viii</sup>

The federal government has power and control over subject matters which can be considered essential and vital to the nation as a whole, and these are enumerated in the Federal List. They include matters such as external affairs, defence, internal security, civil and criminal law procedure and administration of justice, citizenship, finance, trade, commerce and industry, shipping, communications and transport, education, medicine and health, labour and social security. Matters which are included in the State List include Islamic law and personal and family law of persons professing the religion of Islam; Malay custom, the constitution, organization and procedure of *Shariah* courts, libraries, museums, ancient and historical monuments and records and archaeological sites and remains. Matters within the Concurrent List include social welfare, scholarships, protection of wild animals and birds, town and country planning, public health, drainage and irrigation, culture and sports and housing.<sup>ix</sup>

Historically, the United States and Malaysia had experiences political oppressions while under the British colonial rule. The history of the United States had witnessed abuses of governmental power, revolutionary war with the British colonial master and its own civil wars. Therefore, to ensure that a central government would not transgress over individual's civil rights and liberties are entrenched in the Bills of Rights to the constitution. The adoption of the Fourteenth Amendment in 1868, following the Civil War of 1776, led to the extension of the Bill of Rights to the state governments. Thus, while the Bill of Rights was initially addressed only to the national government, the Fourteenth Amendment's Due Process Clause has been read to extend most of the rights embodied in the Bill of Rights to individuals against state governments and their subdivisions.<sup>x</sup>

Conversely, the Malaysian Federal Constitution is a legacy of independence movement through peaceful negotiation with the British government. Consequently, a social contract, as mutually agreed by all diverse racial groups, witnessed the nation's independence from the United Kingdom on the 31<sup>st</sup> of August 1957. The newly established federal constitution entrenched the fundamental liberties and rights under Part II, Fundamental Liberties,<sup>xi</sup> to prevent potential abuses of governmental power.

For the United States, there is little direct federal constitutional authority for education law. Nevertheless, the federal government plays a significant role in education and the federal constitution is the authority for the exercise of this role. Congress has enacted laws providing federal grants-in-aid of various kinds and local education agencies, as well as laws protecting the civil rights of various categories of educators and students. The constitutional authority for Congress to enact grants-in-aid and civil rights statutes are found under the Taxing and Spending Clause, Article I, Section 8, Clause 1 of the Constitution, has been interpreted as permitting Congress to appropriate funds for educational programs and to attach various conditions and mandates to the recipients of those federal funds.<sup>xiii</sup> In addition, Section 5 of the Fourteenth Amendment provides that Congress has the power to enforce, by appropriate legislation, the provision of the Equal Protection and Due Process Clauses. This gives Congress the power to protect the privileges or immunities of United States citizens from both private and state interference.<sup>xiii</sup> As presently interpreted Congress has authority under its interstate-commerce, taxing and spending, and war powers to forbid large areas of discriminatory action, private or governmental. The constitutionality of federal civil rights laws have made it a federal offense for persons acting under the colour of the law to wilfully deprive a person of a right secured to him by the constitution or federal laws.<sup>xiv</sup> These laws apply even to officials who, in the course of their daily duties, commit acts that are unauthorized by the state or local law. Such violations may also lead to civil damage suits in federal courts by those who have been deprived of their rights.<sup>xv</sup>

On the same premise, the Federal Constitution of Malaysia protects the citizen's rights in respects to education<sup>xvi</sup> and the necessary funding under the Financial Provisions, Part VII.<sup>xvii</sup> Article 96 declares that no taxation or rate shall be levied by or for the purpose of the federation except by or the authority of federal law, whereas Article 97 sanctions the formation of a Consolidated Fund where all revenues and moneys, howsoever, raised or received by the federation shall, subject to the provisions of this constitution and of federal law, be paid into and form one fund, to be known as the Federal Consolidated Fund. Article 98 authorizes the government to charge public expenditures on the Federal Consolidated Fund. It is from these provisions that the grant-in-aid and capital grant on federal and state educational matters are raised.<sup>xviii</sup>

Also there are other provisions in the United States Constitution that may constrain the actions of educational authorities and of state legislatures lie under the First Amendment. The United States' First Amendment states that "Congress shall make no law respecting and establishing of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." Each of the phrases emphasized in the foregoing amendment has been the source of extensive litigation concerning the extent to which it constrains the educational activity, on one hand, and, the extent to which the protection afforded teachers, students, or parents is limited by the special characteristics of the school environment.

The United States Constitution does not recognize any special rights of any religion whatsoever in any federal functions. The framers of the constitution concurred that religious matters ought not to fall to the jurisdiction of the national government. This is to ensure that all levels of government must be completely neutral, neither aiding a particular religion nor all religions. A law that supports religious activities is considered to contravene the Establishment Clause<sup>xix</sup> even though

it has no coercive impact. The Establishment Clause forbids states to introduce religious exercises of any variety into public school curriculum, including denominationally neutral prayers, devotional reading of the Bible, or recitation of the Lord's Prayer. School authorities may not permit religious instructors to come into public school buildings during the school day to provide religious instruction, even on a voluntary basis.<sup>xx</sup>

Conversely, Article 3 of the Malaysian Federal Constitution, safeguards the special position of Islam and declares that Islam is the official religion of the federation, but other religions may be practiced in peace and harmony in any part of the federation; while Article 10 provides for freedom of speech, assembly and association, Article 11 does not limit the right to profess and practice of other religions by its citizens. Whereas Article 12 guarantees that every religious group has the right to establish and maintain educational institutions for the education of its children in its own religion without any discrimination, the said provision also make it lawful for the federation or a state to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose. These provisions have made it possible for the funding of religious subjects to be taught in schools and the establishment of the state religious schools within the federation.<sup>xxi</sup>

Under the Malaysian Federal Constitution, Islamic law is a matter falling within the State List; it is a matter over which the state legislature has jurisdiction, and not the federal legislature.<sup>xxii</sup> In this regard, the states have been permitted to make laws over Islamic law, personal and family law of persons professing the religion of Islam, and this includes matters such as, *inter alia*, succession, betrothal, marriage, divorce, maintenance, adoption, guardianship, trusts, Islamic religious revenue and mosques.

In matters of fundamental liberties the constitution of United States and Malaysia preserved the inalienable fundamental rights of their citizens. The United States Fourth Amendment protects persons and their possessions from unreasonable searches and seizures, generally requires warrant that is issued upon finding of probable cause. In general any search without warrant is unreasonable. Prior to entering any premises, police must first appear before a magistrate and under oath prove that they have probable cause to make search, and the warrant issued must specify the premise to be searched and the property to be seized. Litigation has ensued regarding the scope of the rights of teachers, educational administrators and students while on school premises and the constraints on officials in terms of gathering evidence that a crime or a violation of a school rule has occurred.

The Malaysian Federal Constitution also avail the same grounds for unreasonable searches and seizures under Article 5 that provides for liberty of the person; where no person shall be deprived of his life or personal liberty saves in accordance with the law; whereas Article 8 provides for equality before the law and entitled the citizen to the equal protection of the law; and Article 10 provides for freedom of speech, assembly and association. These provisions are supplemented by the Police Act 1967 (Act 344) and Rules and Regulations and the Criminal Procedure Code (Act 593).

The United States' Fifth Amendment provides that "no person shall ...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The first clause is primarily invoked to constrain the federal government from acting to deprive individuals of a liberty or property interest without due process of law and, as to the federal government; it has been interpreted as being analogous to the Equal Protection Clause of the Fourteenth Amendment. The second clause is relevant when states or local school boards attempt to acquire property for school building sites. While the United States' Eight Amendment prohibits the infliction of "cruel and unusual punishments inflicted" has been invoked in legal challenges to corporal punishment.

Although all of the foregoing Amendments under the United States Constitution apply, by their terms, solely to the national government, through a series of court decisions, each has been applied to state and local officials through the due process clause of the Fourteenth Amendment. The provisions of Fourteenth Amendment are particularly relevant to education, which provides, "no state shall ... deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This latter provision, in the context of education, is the basis for claims to equal educational opportunities.

### **Executive Orders and Attorney-General Opinions**

The President of the United States may issue an executive order that applies to education. Once issued, it would be a source of law for educators. In the instance, following the release of a report "*A Nation At Risks: The Imperative for Educational Reform*" by the U.S. Department of Education, 1983, Ronald Reagan, the President of United States declared that the teaching of Mathematics and Science be made compulsory to all American students. A Nation at Risk was a broad-reaching report to critique the United States public school system which sent the message that the public schools were standing in the way of a strong economy, sparking a crisis of confidence in the public school system. Also, in 1998 at the urging of President Bill Clinton a proposal to reduce class size required the government to hire 100,000 new teachers was passed by Congress. Clinton had also pushed for national standards and tests, and had applauded efforts to put an end to social promotion, viz. a policy of advancing students to a higher grade based on their age rather than their achievements.<sup>xxiii</sup>

The attorney-general of the United States may also be asked to provide an official legal opinion pertaining to a constitutional or statutory educational provision or a controversial educational practice. Such an opinion may be thought as advisory and does not represent as compelling a source of law as case law.

Similarly in Malaysia, the Prime Minister and Cabinet may issue directive to the Ministry of Education to adopt certain policy on educational practice. In 2000, the Prime Minister Dr. Mahathir Mohamed declared that Mathematics and Science were to be taught in English to all schools in the federation to propel Malaysian students to be scientifically literate and competent, so that the nation's vision to be a developed country by 2020 can materialize. This initiative was acted upon by the Ministry of Education that issued directive to all public and private schools for the introduction and implementation of the program in Malaysia.

Likewise the Malaysian's attorney-general<sup>xxiv</sup> may interpret a given law and advise any ministry on the point of law so as to remove any ambiguity. In the administration of justice, he is the principal legal adviser to the Cabinet and/or Minister of the Government of Malaysia and the custodian of public interest. It is the duty of the attorney-general to advise the Yang di-Pertuan Agong or the Cabinet or any Minister on legal matters and to perform such other legal duties as may be referred or assigned to him by them. His opinion is much sought after by the government pertaining to matters of constitutional or statutory importance in any legal matters, inclusive of educational provision or a controversial educational practice. In addition, he has a discretionary power to institute, conduct or discontinue any proceedings for an offence other than before a *Shariah* Court, a Native Court or a court-martial. In the performance of his duties, he has the right of audience in and takes precedence over any other person appearing before any court or tribunal. The attorney-general is also the public prosecutor under the Criminal Procedure Code (Amendment) Act 1995, with full power to commence and carry out prosecutions in criminal proceedings. In discharging this function, he is assisted by members of his chambers who are appointed as deputy public prosecutors.<sup>xxv</sup>

## State Level

The sources of law that emanates from the states in the United States include the state's constitution, statutes, case law, and state board of education policy, state department of education directives, rules and regulations of administrative agencies, executive orders, and attorney-general opinions. These state level sources of law may not deprive individuals of the due process or equal protection of the laws as they are protected under the Fourteenth Amendment.

## State Constitution

The United States of America consists of fifty member states. Every state has its own state constitution which forms the basic law of the fifty individual states, although they are subject to the supremacy of the federal constitution and federal statutes. Every state has a constitutional provision covering on education. These constitutional provisions generally confer state legislatures with broad authority over education. They permit the state legislatures to regulate both public and private schools. In addition, every state has a constitutional provision making education compulsory; while the United States federal constitution has no provision that specifically refers to education. State constitutions often have specific provisions establishing state colleges and universities or state college and university systems and occasionally community college systems. The state constitutions may also have provisions establishing a state department of education or other governing authority with some responsibility for educational institutions.

State constitutional provisions may designate constitutional offices for education officials, such as state superintendent of schools and state board members. Its provisions may also specify the creation of local school systems, method of selection and numbers of members for local school



boards, qualifications and selection of local school superintendents, and authority and possibly limitations for local taxation for school purposes. A review of constitutional provisions pertaining to educational matters among the states reveals a wide range of format, from a few general designations in some states to a large number that are rather specific in other states. Many states also have due process and/or equal protection of the law requirements similar to those found in the amendments to the federal constitution. Consequently, state courts are often asked to interpret these in an educational context.<sup>xxvi</sup>

Conversely, in Malaysia the state constitution forms the basic law<sup>xxvii</sup> for the 13 individual states, but they are subject to the supremacy of the federal constitution and federal statutes. Nevertheless, the federal government has exclusive jurisdiction over education.<sup>xxviii</sup> The state government, however, can establish Islamic schools,<sup>xxix</sup> but subject to the supervision and control of the federal authority.<sup>xxx</sup> Article 12(2) of the Federal Constitution sanctioned the establishment of Islamic education; the provision states: "Every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of such law; but it shall be lawful for the federation or the state to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose." Article 12 (b) further provides the extension of public funds for the maintenance or education of pupils or students in any educational institution, whether or not maintained by a public authority and whether within or without the federation.

## **State Statutes**

The United States' state statute represents a significant source of law for educators. They are often more explicit than state constitutional provisions. Their purpose is to bring more specific outline to broad constitutional directives or to codify case law. Statutes may regulate governmental functions such as the method of selection, terms and responsibilities of state level education officials. They may also stipulate the type of local or regional school systems; the method of selections, responsibilities, and terms of local school officials; and the powers of local education units. State statute often deals with financing of the public schools, tax instruments, and the degree to which these instruments may be employed to raise local revenue. Often teacher-pupil ratios are specified, as are the teaching of certain subjects, minimum and maximum ages to compulsory education laws, length of school day and year, and rules regarding suspension and expulsion of students. State statutes also may address areas dealing with personnel, such as tenure, retirement, collective bargaining or professional negotiation, meet-and-confer provisions and fair dismissal procedures. Details pertaining to teaching certificates may be written into law, although these areas are usually covered by the state board of education policies.

## **Role of Governmental Department of Education and Education Officers**

In the United States, the specific roles of the state board of education, the chief state school officer, and the state department of education vary considerably among the states. Nonetheless, these offices collectively and individually provide an important source of law for teachers. Functional diversity among these offices in the various states often originated from different constitutional or statutory provisions and the political dynamism of the officers concerned. The official relationship among the state board of education, the chief state school officer, and the state department of education is rarely detailed in state legislation. In practice, the relationship often depends on the individuals involved. Consequently, teachers at the local level are unaware of the differences in authority among the three divisions. This has led to confusion over the pronouncements from one of these authorities to be viewed mistakenly as policy issued from the state level. Although the duties and responsibilities of state boards of education also vary, their primary function is to adopt the necessary policies, rules and regulations to implement legislation and constitutional requirements; and where they are not in conflict with constitutional decrees, these policies, rules and regulations have the force of law. There is no uniformity among the states' chief state school officer role. This officer administers the state department of education, the agency that deals directly with the local school systems. It is through this department that state policy is transmitted to local systems.<sup>xxxix</sup>

In Malaysia, education is the exclusive responsibility of the federal government.<sup>xxxix</sup> Like the United States position, the structure and organization of educational administration in Malaysia is established based on the historical, socio-political and administrative systems of the country, viz. federal and state. The governmental departments responsible for the nation's education rested with the Ministry of Education <sup>xxxix</sup> and the Ministry of Higher Education.<sup>xxxix</sup> Today, the latter has been merged under one ministry and being headed by the Minister of Education I and II.<sup>xxxix</sup> These organizations are highly structured and are also assisted by the state education department, the Malaysian Qualifications Agency and the public and private lower and higher educational institutions respectively.

The Ministry of Education is vested with the power to implement the various laws relating to education as legislated by the Parliament. The Minister of Education I and II, who are members of the Cabinet, are responsible to their respective ministries and they are to ensure that the provisions of the Education Act 1996 (Act 550)<sup>xxxix</sup> and the Private Higher Educational Institutions Act 1996 (Act 555)<sup>xxxix</sup> are being enforced. As ministers they are answerable to the Parliament over the implementation of the national education policy and administration of the national education system. These ministers can initiate legislations on educational matters and shall be responsible for educational policy; however, the ultimate authority on education is the Parliament. Individual responsibility of a minister means that he is answerable and accountable for all of the ministry's act or omissions.<sup>xxxix</sup> Hence, any policies, directives and circulars from the Ministry of Education and Ministry of Higher Education members of the Cabinet <sup>xxxix</sup> so transmitted become sources of education laws for teachers at all levels.

In the implementation of the national education system, the Ministers are assisted by a Deputy Minister, a Political Secretary, Secretary-General and other Education Officers from the Education

Service.<sup>xi</sup> These Education Officers, *inter alia*, include the Director-General of Education, the State Director of Education and the Education Officers of the District Education Department. The Director-General of Education is the professional head of the education service and is responsible for advising the Minister and the Secretary-General on all professional matters. He is assisted by the Deputy-Director General. In all administrative matters, all heads of divisions in the Ministry are responsible to the Secretary-General through the Deputy Secretary-General; however, in professional matters they are responsible to the Director-General.<sup>xii</sup>

The formal relationship, powers, duties and responsibilities, among these officers are clearly detailed out under the Education Act 1996 (Act 550), the Private Higher Educational Institutions Act 1996 (Act 555) and the relevant Ministry's policies, directives and circulars. The roles and responsibilities of the Director-General of Education, Deputy-Director of Education, the State Director of Education and the District Education Department, *inter alia*, have been clearly spelt out by the respective Ministers to these officers concerned. Although their duties and responsibilities vary, their primary function is to adopt the necessary policies, rules, and regulations to implement legislation and constitutional requirements as directed by the government or the Minister of Education and the Minister of Higher Education.

The State Education Department is a regional agency, an arm of the Ministry of Education of the federal government. The State Director of Education, who heads the education office of the eleven states in Malaysia, is responsible for the administration of education at state level. He is also the Registrar of Schools and the Registrar of Teachers in his state. In larger states, such as Selangor, Penang and Perak, he is assisted by the Deputy-Director of Education. The other officers in an education department are the local Examinations Secretary, executive officers and administration and clerical staff.

At the school level, the proper management and administration of school rested with the school principal. The principal is assisted by vice-principals and at least two clerical officers who are responsible for providing the clerical and administrative support services. In general, the principal is responsible for the successful implementation of the school's academic programs that are directed by the Ministry of Education, monitor and supervise teachers in their teaching duties and obligations, providing guidance and counselling to students in their academic and co-curricular activities and established a harmonious working relationship with the Parent-Teacher Association. The principal also acts the secretary to the school board of governors.<sup>xiii</sup>

## **Development of American Education-The American Renaissance**

Across the Atlantic, on the United States soil saw Benjamin Franklin (1706-1790) leading the nation toward an 'American Renaissance.' The unfolding event of the 17<sup>th</sup> Century had transformed the 18<sup>th</sup> century period into the Age of Enlightenment which produced important changes in education and educational theory. Teachers of this period believed people could improve their lives and society by using their reasons and powers of critical thinking. This period had a significant impact on the American Revolution (1775-1783) and early educational policy in the United States. The American philosopher and scientist, Benjamin Franklin who belief in self-

education for practical utility had emphasized the value of utilitarian and scientific education across schools in the United States. He believed in empirical science and equal educational opportunity for anyone who wanted to learn.

## **Urban-Industrial Nation**

Another great American educator was John Dewey (1859-1952) who was born in 1859 in Burlington, Vermont at a time when the United States was rapidly transforming itself from an agricultural society to an urban-industrial nation. John Dewey, as the most renowned American philosopher and educator, was especially influential in the United States and many countries in the 20th century. He advocated education that fulfil and enrich the lives of students as well as prepare them for the future. The activity program of education, which derived from the theories of Dewey, stressed the educational development of the child in terms of individual needs and interests. It was the major method of instruction for most of the 20th century in elementary schools of the United States and several countries.

## **American Revolution of 1776 - Building National Identity and Unity**

The American Revolution of 1776 ended the British rule in the thirteen rebellious colonies. The revolutionary leaders' immediate task was to build a national identity and unity. The republican established a new government based on the Lockean social contract and the inauguration of a system of checks and balances that distributed power among the executive, legislative and judicial branches. The United State Constitution, ratified in 1789, contained no specific reference to education. Thus, education was reserved to the individual states under the "reserved power" of the Tenth Amendment.<sup>xliii</sup> The states persistence of local control and the apprehension of the federal control contributed to a decentralized school system in the United States. Thus, educational support and control became a state rather than a federal function. This contrasted with the centralization characteristic of education in most continental European nations and also that of Malaysia.

## **Legalization of Education in United Sates**

### **Process of Urbanization-Industrialisation**

In the nineteenth century, due to the nation's development into an industrial nation, much of European and African inheritance was transformed into a new cultural heritage, a transformation that led to legalization of the American education that witnessed denominational religious and ethnic control over schools was gradually replaced by state and local government control, and inherited social class distinctions were replaced by the equalitarianism of the democratic principle. This process replicated itself in the 20<sup>th</sup> century in many newly independent nations in Asia, *inter alia*, especially in Malaysia and Singapore.

## Common School Movements

In the first half of the nineteenth century, the United States experienced several social reforms that produced the system of common schools or public education. The English Sunday School, adopted from England, was introduced to the United States to cultivate basic literacy and morality among working-class children, who attended the school on Sunday when factories were closed. A charitable institution, the Sunday school was privately financed by philanthropists, but due to its limitations, the Sunday school experiment failed as a major educational institution. These failed experiments stimulated the American common school movement by creating a demand for universal public education through public funding. The idea of common schooling as an instrument for integrating diverse ethnic and religious groups was to create a national identity.<sup>xliv</sup> Nonetheless, there was a strong opposition to mass public education coming from various groups. The tax-conscious property owners resisted the idea, claiming that it was unjust to tax one person to educate another's child. While political opposition interpreted mass public education as a plot to secure the dominance of one political party over another. The religious groups and advocates of private religious schools feared that public schools would be secular institutions. While other ethnic groups feared that a common school would eradicate distinctive ethnic customs and languages.<sup>xlv</sup> These same fears are also shared by the ethnic Chinese and Indian communities and educators over the legal issues of their vernacular education in Malaysia.

The proponents of a mass public education supported the "common school" concept as a mechanism of elementary education. This implies the concept of a community institution based on shared ideas, experiences, beliefs, aspirations and values. There were many notable advocates of the common school cause; this includes, *inter alia*, politicians such as Horace Mann<sup>xlvi</sup> and Henry Barnard,<sup>xlvii</sup> who supported the common school legislation.

## Common School Legislation

The legalization of American education began with a series of common school legislations being passed. The Tenth Amendment of the United States Constitution provided that education was among the powers reserved to the states in the Union. Since education was not a federal prerogative, the events connected with enacting common school legislation varied from state to state and so were the degree of support and quality of instruction provided by the schools that were established. The common school education became the foundation of the American public school system. Taxation for public school support was enacted into law by the various state legislatures. With this support public school education was later extended to include secondary and higher institutions. The public secondary school did not emerge until the latter half of the nineteenth century. The concept of the American educational ladder was introduced as a single, articulated, unified and sequential school system, open to all Americans. Its appearance completed an integrated public school system. American children could proceed from the kindergarten, through the common elementary school, to the high school, and eventually complete their education in a state college or university. The high

school was not firmly established as the dominant American secondary educational institution until the second half of the nineteenth century. The transformation of the United States from an agrarian to an urban and industrial society stimulated the rise of the public high school which was also accompanied by knowledge explosion. The basic literacy provided by the common elementary school was inadequate to prepare a student for any task in an industrial society. Thus, the high school attempted to provide relevant education to enable youth to learn and use the knowledge gained.<sup>xlviii</sup>

## **Compulsory Attendance Laws**

Several laws were passed to support public education. The most significant was the child labour legislation which allowed adolescents to attend school. Compulsory attendance laws were enacted to reduce juvenile delinquency and increasing educational opportunities. The late nineteenth-century high school movement was a continuation of the earlier common school movement, which had established the principle of state responsibility for tax-supported elementary education. By the end of the nineteenth century, a concerted effort was made to extend public education to the secondary level.

The *Kalamazoo* case of 1875 was one of several precedents that extended the principle of public tax support to the high school. In this case three taxpayers brought a suit to restrain the school board from collecting and using taxes to support the high school. The case reached the Supreme Court of Michigan which decided in favour of the school authorities in 1874. Justice Thomas C. Cooley of the Michigan State Supreme Court, basing his decision on the right of equality of educational opportunity, upheld the right of the Kalamazoo school district to tax for support of the high school. Justice Cooley stated that it would be inconsistent for the state to fail to provide the means of moving from elementary to higher education since the state had already maintained public elementary schools and colleges. The state was obligated to provide basic elementary education and was also responsible for maintaining equality of educational opportunity.

## **Standardize High School Curriculum**

The consolidation effort to strengthen the high school education was undertaken in 1892 where the National Education Association established the Committee of Ten to standardize the high school curriculum. This committee, headed by Charles W. Eliot, president of Harvard University, included William T. Harris, the United States commissioner of education among its members. This Committee of Ten recommended eight years of elementary and four years of secondary education. Four separate curricula were recommended for the high school: classical, Latin-scientific, modern language, and English. Each curriculum included a foreign language, mathematics, English, science, and history. The modern language curriculum permitted the substitution of modern languages for Latin and Greek, and the Latin-scientific curriculum emphasized mathematics and science. Every high school subject was to be taught in the same way to every student regardless of future career.<sup>xlix</sup>

## **Concept of Educational Ladder - Establishment of Higher Education**

Further extension to the concept of educational ladder included the establishment of colleges for higher education which followed the patterns of prominent English universities, such as Oxford University and University of Cambridge. The English universities emphasized liberal and professional studies. The American colleges<sup>i</sup> of the colonial era had inherited via the English experience, the basic structure of western European higher education, which had originated in the medieval universities of Paris, Salerno and Bologna. Due to the federal land-grant policy, the states were proactively establishing new state colleges and universities as early as in the nineteenth century.<sup>ii</sup> The Morrill Act of 1862 and 1890 provided the impetus for a steady growth of higher education.<sup>iii</sup> The Morrill Acts were responses to the rapid developments in industry and agriculture in the second half of the nineteenth century. The Morrill Acts also contributed towards the land-grant institutions establishments throughout the United States; examples of such universities are Maine, founded in 1865; Illinois and West Virginia, 1867; California, 1868; Nebraska, 1869; Ohio State, 1870; and Arkansas, 1871. Among the agricultural and mechanical colleges are Purdue University, established in 1869; the Agricultural and Mechanical College of Texas, 1871; and the Alaska Agricultural College and School of Mines, 1922. Under the provisions of the second Morrill Act of 1890 the southern states established seventeenth land-grant colleges for African-Americans. Furthermore, the success of the educational ladder concept depended upon ready supply of qualified teachers. The growth of American education and the acceptance of public support and control of schools require a reciprocal development in teacher education. In this respect, Horace Mann and Henry Barnard were responsible for the establishment of institutions for teacher education.

## **Establishment of State Board of Education**

One of the major proponents of teacher education was James G. Carter, a Massachusetts legislator, who urged the establishment of normal schools in Massachusetts and introduced legislation creating the State Board of Education. Horace Mann became the first secretary in 1837. Massachusetts led in establishing normal schools and the offered a curriculum consisting of reading, writing, grammar arithmetic, geography, spelling, composition, vocal music, drawing, physiology, algebra, philosophy, methodology, and scriptural reading. By the turn of the century witnessed increasing high school enrolments.

## **Professionalization of Teaching**

In 1890, the Superintendent of Schools in New York, Andrew Draper, argued for the professionalization of teaching. He outlined a program of professional preparation that included educational psychology, philosophy of education, history of education and instructional methodology. By the twentieth century the basic institutional patterns of American education had been established. The task was to improve the quality of instruction and inter-institutional

articulation. During this period, the major trends in American education were: John Dewey's development of experimentalist educational philosophy; the rise of progressive education; the acceptance of the high school as the major institution of secondary education; the quantitative and qualitative extension of higher education; a movement to achieve racially integrated school and a further development of teacher education.

### **State Teacher Certification**

Teacher education reflected the requirements for state teacher certification. In the eighteenth century, religious and political conformity rather than pedagogical competence was the usual requirement for teaching. As public education developed in the nineteenth century, state agencies began to control teacher certification by issuance of a license to prospective teachers. Districts, towns, townships, and counties were all licensing teachers, and a variety of teacher certificates existed. Some of the licensing agencies administered examinations to determine teaching competency, but, generally, normal school graduates were certified without examination. Applicants for teaching positions without educational preparation or experience were usually certified upon successful completion of an examination. By the end of the nineteenth century, state superintendents or state boards of education began to certify teachers. By certification, a teacher possessed a license to teach. State-wide certification was a more uniform procedure than that of the numerous local districts. However, each state established its own regulations governing the issuing of certificates and the qualifications needed to obtain them. State certification had a very important impact on teacher education, since it established educational standards and shaped programs of teacher preparation.

### **Commission on Teacher Education and Professional Standards**

In order to introduce some professional uniformity into teacher certification, the National Education Association (NEA) established the Commission on Teacher Education and Professional Standards (TEPS Commission) in 1946 to conduct a continuous examination of the selection, recruitment, preparation, certification and in-service training of teachers, and the advancement of educational standards.<sup>liii</sup> The National Council for Accreditation of Teacher Education (NCATE) was established in 1952 to accredit the teacher education programs offered by colleges and universities. Proponents of NCATE view the council as a means of providing national standards for teacher education that would induce the states to license automatically all graduates who have successfully completed the accredited programs.

### **National Defense Education Act 1958**

By the late 1950s, Congress increased federal support for education. The National Defense Education Act,<sup>liv</sup> passed in 1958 and extended in 1964, was designed to improve education in science, foreign languages and mathematics. The said Act supported guidance, counselling, and testing programs and vocational education. It also provided funds for research, student loans, and graduate fellowships. In order to keep teachers aware of recent developments in education, the Act provided funds for summer institutes at colleges and universities. The



passing of the National Defense Education Act 1958 by the federal authority was in response to the Soviet Union successfully launched Sputnik I, the world's first artificial satellite into space. This event marked the start of the U.S.-Soviet Union space race. The Sputnik launch caught the world's attention and the Americans off-guard. Americans feared that the Soviets' ability to launch satellites could translate into the capability to launch ballistic missiles that could carry nuclear weapons from Russia to the United States. The United States Congress reached the conclusion that the American schools and colleges were not producing the quantity and quality of scientific and technical specialists necessary to keep pace with the Soviet Union. This diagnosis drove Congress to pass the National Aeronautics and Space Act (establishing NASA) and the National Defense Education Act (NDEA) in 1958 thereto.

The release of a report "*A Nation At Risks: The Imperative for Educational Reform*" by the U.S. Department of Education in 1983, during the presidency of Ronald Reagan was considered a landmark event in modern American educational history. Among other things, the report contributed to the ever-growing assertion that American schools were failing and it touched off a wave of local, state, and federal reform efforts. *A Nation at Risk* was a broad-reaching report to critique the United States public school system which sent the message that the public schools were standing in the way of a strong economy, sparking a crisis of confidence in the public school system. Also, in 1998 at the urging of President Bill Clinton a proposal to reduce class size required the government to hire 100,000 new teachers was passed by Congress. Clinton had also pushed for national standards and tests, and had applauded efforts to put an end to social promotion, viz. a policy of advancing students to a higher grade based on their age rather than their achievements.<sup>lv</sup>

## **Educational Governance - Unity and Nationhood**

From the late eighteenth century to the present, public policy, educational law and legal system have played a major role in the shaping of public education in America. Beginning the 1860s the law was used to justify public education, to compel attendance, and to establish a structure for its financing and governance. Toward the close of the century, the structure of the state authority became more elaborate, including state superintendents, state boards of education and standardization of textbooks and the curriculum.. Most of the litigation from that period involved finance and governance issues, and existing bodies of private and public law were applied in the school setting.

After the World War II, the government played an increasingly important role in administering social services, including education. With the rise of an administrative, came the state increased legislation and litigation regarding the allocation of authority over educational decision-making. During this time the federal government began to play a significant role in shaping educational policy. It started with the United States Supreme Court's declaration that state-mandated racial segregation was unconstitutional in *Brown v. Board of Education*.<sup>lvi</sup> Congress and the federal courts embarked on efforts to ensure equal opportunity not only for racial and ethnic minorities but also for other groups, such as linguistics minorities, women, and students with disabilities.

In *Brown case*,<sup>lvii</sup> the plaintiff, African-American minors, challenged the judgment of the United States District Court for the District of Kansas that held that segregation in public education had a detrimental effect upon African-American children, but them denied relief on the ground that

the schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. The Court had reviewed four state cases in which African-American minors sought admission to the public schools of their community on a non-segregated basis. In each application, they were denied admission to schools attended by Caucasian children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the minors of the equal protection of the laws under the Fourteenth Amendment. In each case, the district court denied relief to the minors on the "separate but equal" doctrine announced by the Supreme Court in *Plessy v. Ferguson*.<sup>lviii</sup> The minors contended that the public schools were not equal and could not be made equal, thereby denying them equal protection of the law. The issues whether *Plessy* should be held inapplicable to public education and whether segregation of children in public schools based on race factor, even though the physical facilities and other tangible factors were equal, deprived the children of the minority group of equal educational opportunities. The Court held in the affirmative to both issues. The Court overturned *Plessy* and the doctrine of "separate but equal". It held that such doctrine had no place in public education. Segregation was a denial of the equal protection of the laws under the Fourteenth Amendment. Separate educational facilities were inherently unequal.

The United States Supreme Court's decision in *Brown* resulted in a landmark turning point in the history of race relations in the United States. On May 17, 1954, the Court stripped away constitutional sanctions for in the said case, the court overruled the practice of segregation by race in schools, and made equal opportunity in education the law of the land through the fearless efforts of lawyers, community activists, parents, and students. Their struggle to fulfill the American dream set in motion sweeping changes in American society, and redefined the nation's ideals.

The end of the American Civil War promised racial equality, but by 1900 new laws and old customs created a segregated society that condemned coloured Americans to second-class citizenship. The *Brown's* case of 1954, under the leadership of Chief Justice Earl Warren, the Supreme Court produced a unanimous decision to overturn *Plessy vs. Ferguson*.<sup>lix</sup> This decision changed the course of American history. Today, thanks in part to the victorious struggle in the *Brown* case. Most Americans believe that a racially integrated, ethnically diverse society and educational system is a worthy goal that had resulted in American nationhood.

Traditionally, the authority in passing educational policy had been the purview of state and local governments. Nonetheless, Congress created a number of unfunded mandates, so that state legislatures and the board of education had to struggle to pay for programs that satisfied federal requirements. This annoyed the state and local officials for they had to implement policies that deprived them of their discretion to manage the school system. Despite this unhappiness, the federal government involvement has continued to grow, as demonstrated by the controversial passage of the "No Child Left Behind Act 2001"<sup>lx</sup> and "Race to the Top".<sup>lxi</sup>

The "No Child Left Behind Act of 2001" (NCLB) is a United States Act of Congress that is a reauthorization of the Elementary and Secondary Education Act, which included Title I, the government's flagship aid program for disadvantaged students. NCLB supports standards-based education reform based on the premise that setting high standards and establishing measurable

goals can improve individual outcomes in education. The Act requires states to develop assessments in basic skills. In order to receive federal school funding, states must give these assessments to all students at select grade levels. The Act does not assert a national achievement standard. Each individual state develops its own standards. NCLB expanded the federal role in public education through annual testing, annual academic progress, report cards, teacher qualifications, and funding changes. The bill passed in the U.S. Congress had bipartisan support.

While "Race to the Top" marks a historic moment in American education. This initiative offers bold incentives to states willing to spur systemic reform to improve teaching and learning in America's schools. "Race to the Top" has ushered in significant change in our education system, particularly in raising standards and aligning policies and structures to the goal of college and career readiness. It has helped drive states nationwide to pursue higher standards, improve teacher effectiveness, use data effectively in the classroom, and adopt new strategies to help struggling schools. To date, President Obama's Race to the Top initiative has dedicated over \$4 billion to 19 states that have created robust plans that address the four key areas of K-12 education reform as described below. These states serve 22 million students and employ 1.5 million teachers in 42,000 schools, representing 45 percent of all K-12 students and 42 per cent of all low-income students nationwide. The four key areas of reform include: (1.) Development of rigorous standards and better assessments, (2.) Adoption of better data systems to provide schools, teachers, and parents with information about student progress, (3.) Support for teachers and school leaders to become more effective, (4.) Increased emphasis and resources for the rigorous interventions needed to turn around the lowest-performing schools, (5.) Forty-six states and the District of Columbia submitted comprehensive reform plans to compete in the Race to the Top competition. While 19 states have received funding so far, 34 states modified state education laws or policies to facilitate needed change, and 48 states worked together to create a voluntary set of rigorous college and career ready standards. Despite the increased federal involvement, state and local legislators, administrators, and judges have retained important powers and remain active sources of school reform and united American nation-building initiatives.

Base on the foregoing exposition of the United States' experience, the precedent from Brown case is worth studying by the Malaysian citizenry and the government. In our quest to realize truly a nationhood of a united and patriotic citizenry, we need to first see the birth of a single national and uniform education system for the country which can then serve to build a united and patriotic Malaysian nation where our children of different ethnicity can study, play and nurture mutual respect to one another under one school's roof.

## **Development of Malaysian Education - Social Engineering of Malayan Society**

The development in Malaysian education is marked by three distinct stages of development, viz. first, the British period of early education patterned along the lines of the English education system when Malaya, North Borneo and Sarawak, came under the British influence; second, the period of post-World War II reconstruction; and third, the quest for the establishment of a common educational system following the formation of Malaysia in 1963.<sup>lxii</sup> During the British

period, private philanthropists were responsible for the pioneering educational work in British Malaya. Education was organized along racial lines, strongly influenced by the educational and cultural needs of the different ethnicities living in the territories. During this period, the educational policy was organized into the English vernacular education system, the Malay vernacular education, the Chinese vernacular system and the Tamil vernacular system. These schools organized their educational needs and practices based on their concerns to preserve their cultural, customs, religious and traditions which posed a potent force that influenced and shaped the education policy of the period but persist until today.

On the other hand, the post-World-War II period witnessed a reconstruction of education in Malaya. Serious efforts were undertaken by the locals to free themselves from the British rule. They demanded political self-rule with the ultimate agenda of establishing an independent nation. It started with the demand for better education. The implication of such moves path the way for the nationalization of local schools and eventually placed them under the state control. Upon achieving independence the challenges of nation-building became critical and thus, legalization of education became the main national agenda so as to build a united Malaysian citizenry.

Historically, the unfolding political events occurring in the United Kingdom impacted upon its overseas colonies. This can be seen where decisions made on matters involving educational policy and legislations passed by the British parliament crept into Malaya through its Colonial Office in India from 1874-1940. The British had created indelible influence on the development of education in Malaya during the formative stage. This influence brought beneficial as well as detrimental effects on the ethnic communities, especially the Malays. They imposed vernacular educational policies to perpetuate their power in Malaya. By these mandates, the British introduced English and Malay vernacular primary schools to the native Malays, but not to the alien Chinese and Indian migrants. In addition, there also existed independent Islamic school system modelled after Islamic educational philosophy of Arabia, the Chinese school system that emulated the educational philosophy of Confucius China, and the Tamil school system that embraced educational philosophy of India. The establishment of English and the other types of vernacular schools was consistent with the British colonial foreign policy and imperialist mercantilism in their effort to subjugate the local population. By this process the present Malaysian education system inherited a system of vernacular education and dualism in its education<sup>xiii</sup> which the present government finds it hard to dismantle, as it has become a contentious issues among the diverse ethnicity that seek to preserve it as their cultural heritage at the expense of a unified national education system that aims to build a cohesive nation. Due to this mosaic of educational diversity, the government has to resort to legalization of education by passing several Acts of Parliament to regulate these vernacular schools; thus indirectly preserving the legacy of the British educational policy.

Before the arrival of the Europeans, there were no schools in the Straits Settlements except for occasional *Quran* classes and Chinese writing schools. The traditional Malay *Quran* schools were often residential in that the boys studied and live in with some renowned teachers. This was the tradition adopted from the practiced of Islamic education and teachers from Arabia in the past. While for the Chinese boys they had to learn the teachings of Confucius and writing in their own dialects so as to enable them to manage their family's business. Education was informally done

by private individuals who acted as teachers and pupils were taught the precepts of the Chinese classics through constant memorization and repetition. Wherever Chinese immigrants settled, these schools were established usually through the initiative of a former teacher or a local community leader.

## **Vernacular Education**

### **Chinese Vernacular Education**

The first Chinese vernacular school was built by the London Missionary Society in Malacca in 1815 and Singapore in 1819. In 1900, two Chinese Ministers, Kang You Wei and Liang Qi Chau, and educationists from China established Chinese vernacular schools by combining the teaching of Confucius with western science education. The curriculum introduced was oriented towards China's education policy. By 1901, the financial independence of the Chinese school system, relying on the resources of the Chinese community, became an established pattern.

Following China's protest against the outcome of the 1919's Versailles Treaty Peace Conference which handed over to Japan all former German possessions in Shangtung. The British felt that the Chinese school would be used by the Chinese nationalists to propagate anti-British sentiments. Thus, to control the situation the Registration of Schools Enactment 1920 was introduced to the Straits Settlements and the Federated Malay States in 1920. The Registration of Schools Enactment 1920<sup>xiv</sup> was devised as an instrument to curtail and control the politicization of the Chinese school. They also acted by controlling the school's activities and curriculum. It was apparent that its major objective was to give legal powers to British officials to intervene in matters related to the administration and development of Chinese schools. The Chinese community in the Federated Malay States opposed the said Enactment for fear that the government might restrict Chinese education because the law empowered them to exercise control over the teachers employed in their schools. This policy was continued by Guillemard in 1923 and R. O. Winstedt, the Director of Education, was given the task of its subsequent implementation.

Federal grants were given to the Chinese schools. As from 1924, the British provided financial grants to some of these schools. Until 1938, there were 305 grant-in-aid Chinese schools, 18 schools were managed by the Christian missionaries and 331 schools were operated privately by the different Chinese clans. During this period, the Chinese vernacular schools offered elementary up to secondary education.

By 1929, Governor Clementi who succeeded Guillemard, introduced legislation banning the Kuomintang. He also introduced measures for a more stringent supervision of Chinese schools. These included the restriction of employment of teachers for the Chinese schools to those born in Malaya; the appointment of two additional Assistant Directors of Education for the Chinese section and five additional Inspectors of Chinese Schools, and the extension of Federal grants to secondary Chinese education to include schools which used Mandarin as the language of instruction. However, Clementi's restrictive policy alienated the Chinese schools and exacerbated the problem rather than solving it.

In 1935, Shenton Thomas succeeded Clementi. He re-evaluated the situation of the Chinese schools and recommended a policy to provide significant financial assistance towards Chinese education. This was done so as to enable constructive innovations to be undertaken under the supervision of the Education Department. This policy was approved by London and was implemented towards the end of 1935.<sup>lxv</sup>

## **Tamil Vernacular Education**

Similarly, the development of the Tamil vernacular schools started with the introduction of the rubber, coconut, coffee and sugar plantations in Malaya. All the laborers were brought from India to work in these estates. The Indian population in the Federated Malay States during 1901 included some 5,000 Bengalis and 45,000 Tamils from South India. Educationally, the problem confronting the British administration was to provide Tamil schools for the community which had children population of about 7,000 who were mostly below 15 years of age.

The Tamils, like the Chinese community, showed no interest in the Malay school. In 1834, the first Tamil vernacular school, a branch of the Singapore Free School, was established offering instruction in Tamil language. The Christian missionaries were instrumental in establishing this school. In 1900, the provision of state funds for Tamil education was part of British policy. The Tamil estate school typically, around 1920, was housed in a makeshift old building and was run by a part-time teacher whose main work was that of a clerk, a labor supervisor or a dresser of a medical clinic assistant. The curriculum was arbitrary, depending on whatever textbooks could be acquired from India and at the initiative of the teacher. This practice continued until the late 1920s when some minimal order was put into the system by the newly appointed Tamil Assistant Inspectors of Schools, three in Selangor and one in Perak. Tamil schools provided little other than some basic literacy to the children of the Tamil population concentrated largely in the vicinity of rubber plantations.

Grants to Tamil education were provided by the government and this included financial aid for Anglo-Tamil Christian missionary schools which started teaching in Tamil but were expected to become English schools. In 1905, to induce a greater flow of Indian labor into the Federated Malay States, the British Administration decided to establish Tamil schools. The Labor Ordinance of the Federated Malay States 1923 made it mandatory for employers to provide Tamil education to their employees' children, of school age between 7 and 14, for an estate with more than 10 children. Until 1938, there were 13 Tamil government schools, 511 schools in the estates, 23 missionary schools and 60 privately managed Tamil schools throughout the whole of Malaya. However, only elementary schooling was provided using curriculum that was oriented towards India's education policy. Textbooks and teachers were brought from India and Ceylon. Since 1870, several schools were built in Malacca, Seberang Prai and other states in the Federated Malay States.<sup>lxvi</sup>

## Malay Vernacular Education

By 1891, Swettenham being the most senior Resident articulated the aims of British educational policy towards the Malays. He felt that giving instruction in English, or 'higher education' of any kind, was dangerous. This he concluded based on education epidemic which had already caused the British political oppositions from the natives in India with such pathetic results. He was indifferent towards Malay vernacular education and until his death; he remained adamant that Malays should be taught reading, writing and arithmetic in their mother tongue.

Swettenham also social engineered a social order based on class division, where the Malay society consisting of the Malay aristocracy and chiefs; the Malay peasantry and Indian cultivators and laborers; and the urban Chinese business community that performed a 'middle class' role. Swettenham's discussion of educational policy towards the Malay peasantry sound remarkably similar to much contemporary discussion of elementary education in England. In his Annual Report of 1890, he commented on the one danger to be guarded against is to teach English indiscriminately. It could only be taught in a few selected schools. Swettenham's educational policy for the Malays was supported by the British government where strong centralized governments were established in each state. Due to his senior position and forceful personality, his views were seriously heeded than those of any other Malayan administrators during the 1890s and 1900s. His policy was continued by E.W. Birch and other British officials.

E.W. Birch was anxious to see even Malay vernacular education further restricted. Birch's proposal to limit the number of vernacular schools in Selangor in favor of only one good Malay school in Kuala Lumpur, was not taken further. He was satisfied that the Malay schools did not over educate its pupils, thus removing a potential threat to the British establishment. In his Annual Report of 1904, he reported that of 2900 Malay boys who left school during 1903, only 24 had become office or domestic servants, and only 10 had become Malay school teachers while only one had become a policeman and one a clerk. The rest had remained farmers and fishermen.<sup>lxvii</sup> When E.W. Birch was murdered by local Malay chieftains, Richard Winstedt<sup>lxviii</sup> was appointed Assistant Director of Education (Malay) in 1916, a new post approved by the Colonial Office. His responsibilities included the publication of Malay schools books, and the supervision of the Malay training colleges at Malacca and Matang in Perak. In 1917, he put his recommendation for changes in Malay school system based on precedents from Java and Philippines.

The Malay school had the objective of keeping Malays on the farm land. Winstedt recommended the reduction of the schooling from a possible five-year period to a maximum of four years. The curriculum focused on elementary agriculture, the setting up of school gardens for this purpose and the introduction of basket-making. A monolingual four-year primary Malay school was introduced. Winstedt was adamant in rejecting requests from the village headman or *penghulus* to establish schools in Malay villages and petitions for the introduction of English classes in Malay schools. His reluctance to meet this demand reflected a major trend of British colonial policy.

He also recommended that government provisions for *Quranic* instruction be stopped. He argued that this was no longer required as an inducement to make Malay school acceptable to

Muslims parents. His other policy manifestations included the establishment of a better staffed teacher-training institution; the setting up of a Malay School Inspectorate; the preparation of a new series of Malay textbooks and readers; the streamlining of purchase and distribution of school materials to the Malay schools, which were federally financed; and the teaching of English to those who would eventually transfer to English schools.<sup>lxi</sup>

## English Vernacular Education

The British also established schools in the Straits Settlements which comprised of the 'Free' schools, the Branch English schools and vernacular schools and the English and vernacular mission schools. The English education was first introduced in the Straits Settlements and later in the federated and unfederated Malay states following the signing of the Treaty of Pangkor of 1874. A few of these schools were not solely English or vernacular, but were Anglo-vernacular schools in that English was taught together with other vernacular languages such as Malay or Chinese.<sup>lxx</sup> These schools were either established by the Christian missionaries, philanthropists or private organizations which survived only during the lifetime of the founders. Today some of these schools still exist and maintain its tradition.<sup>lxxi</sup>

## Legalization of Malaysian Education

The process of legalization of education that occurred in the United States and United Kingdom had transcended to the British Malaya<sup>lxxii</sup> during the early nineteenth century. The British administrators and missionary societies were responsible for the process of legalization of education which was conducted through various legislative acts and policies decided in England and the Colonial Office in India.

Beginning from a policy of non-intervention to direct intervention, the British administrators using various pretext of unofficial and official policies to gradually annexed Malaya. This was conducted through, viz. imperialist mercantile policy of the East India Company in the early eighteenth century (1824-1867), the introduction of the Residential System of Advisers in the Federated Malay States (1874) and the unfederated Malay States (1909), the formation Malayan Union (1946) and the Federation of Malaya (1948). The role played by the British Resident Advisers; such as Thomas Stamford Raffles, Frank A. Swettenham, E.W. Birch and Richard Winstedt, via the introduction and manipulation of educational policies through various legislative and administrative policies and decisions were instrumental in perpetuating the British policy of subjugation of the locals.

In Malaya, educational policy and administration were conducted by the British administrators; *inter alia*, Raffles, Swettenham, Birch and Winstedt. They discreetly used the Catholic and Protestant Christian missionaries, either the Jesuit priests of the Society of Jesus or the London Missionary Society.<sup>lxxiii</sup> Through various legislative acts and policies decided in England and the Colonial Office in India, the British imposed vernacular educational policies in Malaya from 1874 to 1946.



The process began in 1805 when Raffles was appointed as Assistant Secretary to the Government of Penang by Lord Minto, the Governor-General of India. Raffles represented the new humanitarianism movement that was beginning to influence a large and growing body of public opinion in England, led by Wilberforce,<sup>lxxiv</sup> who advocated the theory that commercial arrangement with the backward races involved not mere exploitation of them, but a moral obligation to help them advance in civilization in accordance with the 'doctrine of trusteeship' that was sanctioned by the Covenant of the League of Nations over colonies and mandated territories.

Raffles believed that education afforded the only means of increasing the intellectual powers of the human mind. His first duty was to educate these people and not just only of commerce but also of literature and art. Throughout his career in the East he maintained harmonious relations with the Christian missionaries, who were mainly responsible for the establishment of vernacular mission schools<sup>lxxv</sup> under his guidance and patronage. He believed that among other measures for the improvement of mankind, the most important and perhaps the most certain of eventual success were the establishment of schools.<sup>lxxvi</sup>

The first clear statement of educational policy in the protected Malay states was made by Frank Swettenham in May 1891. Swettenham had seen the large growth of English education among the peasantry Malays in Perak in mid-1889. This development had caused fear in Swettenham's vision of future British's control on Malaya. In contrast, in 1890, and largely because of Swettenham's attitudes, Selangor had one small English class that was attended by less than a handful of Malays, whereas Perak, after twelve years under Hugh Low, can boast seven English schools with a total enrolment of nearly forty Malays.

## **Isemonger Report of 1869**

### **Improving Educational Opportunities**

In a Legislative Council Proceedings of 1869, a Select Committee under the chairmanship of E. E. Isemonger, was appointed to enquire into and report upon the financial budget estimates of the coming year, for educational purposes. Thereafter, a resolution was passed accepting the recommendation of the Select Committee and the state of education would be enquired so as to increase the educational opportunities among the people by a planned and systematic program.<sup>lxxvii</sup> According to the Isemonger Report of 1869, the introduction of secular Malay studies with the exclusion of the *Quran* was possible only gradually and after considerable difficulty. It also highlighted on the inefficiency of the vernacular schools in the colony. Consequently, they recommended the closing of all schools where the average attendance fell below fifteen. Hence, by the close of the century, the Malay College in Singapore, twenty-two Malay schools and many Malay night schools were closed for financial and economic reasons.<sup>lxxviii</sup>

## Wooley Report of 1871

### Improving Vernacular Education

In 1870, Sir Harry Ord, the first Governor of the newly established colony, appointed Colonel R. Wooley to chair a committee to inquire the state of education, pursuant to the passing of the Forster's Education Act 1870 in the Great Britain. The Wooley Report 1870 concluded that education in the Colony was archaic, lacked of support by the government and the apathy among the various ethnicity, especially the Malays. The Committee recommended the appointment of Inspector of Schools, reforming the existing grants-in-aid system and improving vernacular education, especially of the Malays. They recommended that the children should be educated in their mother tongue, to read and write in native and Roman character. The Committee also made it a condition that all schools receiving grants-in-aid from the government should be open to students of all races and creeds and that the course of education should be purely secular while religious instruction should be confined to voluntary classes only. It was aimed at offering to the people of the colony the benefit of a sound, moral and liberal education.<sup>lxxxix</sup> The period between 1860 and 1870 witnessed an ideological debate between humanists and naturalists in Great Britain that led to a resolution to adopt the importance of teaching of science and increasing secular orientation of British education.<sup>lxxx</sup> This decision was extended to Malaya in 1871 by A.M. Skinner, acting Magistrate in Province Wellesley. In 1872 he was appointed the first Inspector of Schools. He held that position until 1879 and was responsible for establishing an educational system that resisted change throughout the nineteenth century.<sup>lxxxi</sup>

Skinner was aware of the importance of the *Quran* in Malay religion and culture. In 1871, he established the vernacular schools "upon the basis of the Koran classes." A division of secular and religious education was maintained by Skinner, who held the main features of the schools besides regulating studies would be to separate entirely the *Quran* and Malay instruction. This was the beginning of the secularization of Malay education where the learning of Malay was divorced from religion, thus creating educational dualism for the Malays. Additional rules were imposed in every school, *inter alia*, the *Quran* lessons may be taught in school, but it must be kept strictly separate from Malay, the morning lessons must be devoted to instruction in Malay and the *Quran* lessons confined in the afternoon and the government allowance to the teacher was made for the Malay lessons only. Parents were required to pay the teacher for teaching the *Quran*. Skinner's succeeded with his experiment.<sup>lxxxii</sup>

## Nation-Building

### Post World War II Reconstruction

With the ending of the World War II saw the educational reconstruction in Malaya. The government's effort was aimed at unifying the different races, Malay, Chinese and Indians, to become a nation. The main defect of the pre-war educational system was the segregation of children in vernacular types of schools. This served only to foster communalism, which persists till

today. The condition was different for those pupils who studied in the multi-racial English medium schools where interactions among students of different races were common. It was essential to develop a common Malayan outlook if self-government was to succeed. Hence, the need for an educational reform that included content of education to be taught in schools. For this purpose a Central Advisory Committee on Education was set up in 1949 to advise the government on general educational policy and principles to be adopted in education. In 1949 a Committee, headed by L. J. Barnes, Director of Social Training, University of Oxford, was formed to examine the system of Malay vernacular education, the method of selecting students for admission to Malay training colleges, the content of curricula of the Malay colleges, the methods required to raise the scholastic attainments of pupils in Malay schools, the steps necessary to advance the education of Malays in English and any desirable improvement in organization such as the creation of local education authorities or other local bodies with similar functions. In 1950 a committee was set up to enquire into the state of the educational facilities available for Malays, having regard to the proposals contained in Council Paper No. 68 of 1949 and in the First Report of the Central Advisory Committee on Education.<sup>lxxxiii</sup> Evidently, the government realized the necessity of making a thorough study of the position of the Malays via education.

## **Barnes Report of 1951**

### **Policy of Cultural Integration**

The Barnes Report of 1951<sup>lxxxiv</sup> recommended a policy of social integration in that primary schooling should build up a common nationality, and that it should be reorganized on a new inter-racial basis, and that separate vernacular schools should be abolished and replaced by a national primary school common to all. This school should be bilingual, where pupils were taught English and Malay, whereas Chinese and Tamil languages were to be offered as subjects. At the end of the course the best of them would proceed to post-primary schools in which the medium of instruction would be English. Education in the national schools was to be provided over a period of six years, for pupils from the ages of six, and was to be free. Moreover, the national schools would be administered and financed in part by a local education authority working with the local community. This recommendation received fervent opposition from the Chinese community because they perceived it as an attempt to abolish their cultures and languages.

## **Fenn-Wu Report of 1951**

### **Recommendation for Multi-Culturalism**

Subsequently, Henry Gurney, then High Commissioner, appointed a second committee to investigate Chinese education in Malaya in 1951. The Federation of Malaya Secretariat engaged the services of two foreign consultants with considerable experience on Chinese education, Dr. W. P. Fenn, Associate Executive Secretary of the Board of Trustees of institutions of higher learning from China, and Dr. Wu Teh Yao, an official of the United Nations, were invited to

make a preliminary survey of the Chinese education, with particular reference to bridge the gap between the present communal system of schools and the time when education would be on non-communal basis with English or Malay as the medium of instruction and another language as optional subject. They also studied the preparation of text books for local use with a Malayan as distinct from a Chinese background and content.

The Fenn-Wu Report of 1951 was sympathetic towards Chinese vernacular schools and opposed the recommendation in Barnes Report to a cultural integration. It recommended government assistance in improvement of Chinese schools through better curriculum, equipment, facilities and teachers. It attempted to show how vernacular schools could contribute effectively towards building up a Malayan citizenship and fostering national consciousness in a way that would be acceptable to the Chinese community. The report supported the notion of Malay as an official language while English as a *lingua franca*, and that Chinese language as the mother tongue being an important cultural heritage. Therefore, Malayan Chinese should be encouraged to be trilingual. This position was opposed to Barnes' assimilationist position of cultural integration through a national school system contrasted with Fenn-Wu's multi-culturist position that allowed for cultural diversity.<sup>lxxxv</sup>

## **Education Ordinance of 1952**

Consequent to the findings of the Barnes and Fenn-Wu Reports, the government passed the Education Ordinance of 1952.<sup>lxxxvi</sup> The Ordinance sanctioned the promotion of a national school system by the gradual introduction of English into Malay vernacular schools, Malay and English languages into Chinese and Tamil vernacular schools, maintenance of existing English national-type schools. Tamil and Chinese would be taught as a third language but Indian and Chinese vernacular schools were excluded from the national system.<sup>lxxxvii</sup> The compulsory education for all children from the ages of 6 to 12 years was imposed upon all.<sup>lxxxviii</sup> Furthermore, it recommended that religious or moral instruction of each pupil in government school or in a conforming school or in convenient proximity thereto<sup>lxxxix</sup> be provided to pupils either within school premises or in suitable premises close by as part of the school lessons and qualified teachers to be certified by appropriate religious authorities.<sup>xc</sup>

## **Razak Report of 1956**

### **Recommendation for National System of Education**

Further study was undertaken on the status of education in Malaya. The Razak Report of 1956 was released by the education committee chaired by Dato' Abdul Razak Bin Hussein, the then Education Minister, composed of representatives from different communities. The Committee was required to examine the educational policy of the Federation of Malaya and to recommend any alterations or adaptations that are necessary with a view to establishing a national system of education acceptable to the people of the Federation. The idea of a single

'national school system' as advocated by the Barnes Commission was abandoned, and children would continue to receive their education in separate vernacular schools at the primary school level and the establishment of one type of national secondary school open to all races by competitive selection and with a common syllabus. This was done with the intention to satisfy their needs and to promote their cultural, social, economic and political development as a nation, having regarded to establish Malay as the national language of the country whilst preserving and sustaining the growth of the languages and culture of other communities living in the country.

The Razak Report, recommended, *inter alia*, the introduction of common content syllabi and Malay and English to be compulsory subjects in all primary and secondary schools in order to familiarize pupils with a Malayan outlook, to inculcate national consciousness, and to foster mutual understanding among citizens of various races and religions. It also recommended that equal grants be provided to all schools. Thus, it made higher education available to all ethnic groups by the provision of equal opportunities for the promotion to secondary schools. The Razak Report also recommended the conversion of existing primary schools to national schools (Malay medium) and national-type schools (English, Chinese and Tamil).

On religious instruction, the Razak Report recommended that in any assisted school where not less than 15 pupils professed to be Muslims, religious instruction to them may be provided at public expense. This particular recommendation acted as a catalyst to future growth of religious schools in modern Malaysia. The Razak Report also recommended the use of *rumi* (Romanized alphabets) with the provision for learning *jawi* (Arabic alphabets) for Muslim pupils. Nevertheless, other religions were not denied of their rights to public instruction except that it may be provided on their own expense and not dependent upon the public funds; and that no child shall be required to attend classes in religious instruction without their parents' consent.<sup>xcvi</sup>

## Education Ordinance of 1957

### Passage of National Education Policy

The Razak Report of 1956 led to the enactment of Education Ordinance of 1957<sup>xcvii</sup> which formed the foundation of the National Education Policy. The main provisions of the Education Ordinance of 1957 were: (a) parents have the option to choose the type of education for their children,<sup>xcviii</sup> (b) the Minister of Education was responsible to oversee the implementation of the educational policy and also to ensure that secondary education and teacher's training were established,<sup>xcix</sup> (c) the formation of the Ministry of Education to administer a centralized education authority at federal level,<sup>xcv</sup> (d) elementary education was offered to primary school, commercial school and centre of continuing education,<sup>xcvi</sup> (e) instruments of management and instruments of government for the management of schools,<sup>xcvii</sup> (f) mandatory registration of all schools,<sup>xcviii</sup> and the teaching of Islam in assisted schools for at least two hours each week within school hours by teachers approved by the state or settlement authority.<sup>xcix</sup>

The legalization of Malaysian education began during the early nineteenth century were further enhanced when the nation achieved independence from the British on the 31<sup>st</sup> August 1957. An Education Review Committee was formed to review the implementation of the National Education Policy in 1960. The Rahman Talib Report of 1960 recommendations upheld the effectiveness of the policy and affirmed its general acceptance by the public.<sup>c</sup> The Rahman Talib Report recommended universal free education and automatic promotion up to Form Three. Free primary education led to an increased demand for English education.

## **Rahman Talib Report of 1960**

### **Towards National Integration**

The Rahman Talib Report endorsed the continuance of the two types of schools (Malay) and the national-type of schools (English, Chinese and Tamil). It required, however, that examinations in secondary schools be given only in the two official languages, namely, Malay and English. The Rahman Talib Report proposed to reconcile the existing basic objectives of education policy which were to create a national consciousness and at the same time it sought to preserve and sustain the various cultures of the country. The conduct of education at primary level in the mother tongue of the respective races was sanctioned, and thereafter to reduce the language and racial differences in the nation education system. In order to ensure national integration, the objective must be to eliminate communal secondary schools from the national system of assisted schools and to ensure pupils of all races attend both national and national-type secondary schools.<sup>ci</sup>

## **Education Ordinance of 1957**

### **Provision for Islamic Religious Instruction**

Under the Education Ordinance of 1957,<sup>cii</sup> religious instruction<sup>ciii</sup> was provided for but the Rahman Talib Report concluded that it was unsatisfactory as its implementation was hindered by a legislative ambiguity. This was because the said Education Ordinance of 1957 did not specify whether the state or federal government should bear the cost of instruction, thus leading to inconsistency in its implementation. Under the Federal Constitution,<sup>civ</sup> matters' pertaining to Muslim religion rest with the state government, but the authority on educational matters rests with the federal government.<sup>cv</sup>

The report made several recommendations. It proposed that the federal government contribute partially to the payment of teachers for religious instruction in assisted schools on per capita grant, the cost for religious instruction in assisted secondary schools be met by the federal government and that the Ministry of Education should arrange for the teachers training. The Rahman Talib Report, thus, ensured that Islamic religious instruction, which was made compulsory for all Muslim students in assisted schools, as laid out in the Education Ordinance of 1957, be fully implemented. The Rahman Talib Report also proposed that more attention be

given to moral education. It suggested that arrangements be made for non-Muslim students to receive some form of moral education. The recommendations of the Razak Report and Rahman Talib Report became the major components of the Education Act of 1961.

## **Education Act of 1961**

### **Establishment of National Education System**

The Education Act of 1961<sup>cv</sup> was legislated with the aim to establish a national education system that would satisfy the needs of the nation and promote its cultural, social, economic and political development. The Education Act of 1961 also sanctioned that pupils would be educated according to the wishes of their parents; and the Malay language, being the national language,<sup>cvii</sup> shall be the main medium of instruction. Among the provisions of the said Act include: (a) to strengthen the Administration with the appointment of Chief Education Officers,<sup>cviii</sup> (b) to establish a Statutory Education System,<sup>cxix</sup> (c) to impose a mandatory Registration of Schools and other Educational Institutions<sup>cx</sup> and Registration of Teachers<sup>cx</sup> and (d) to establish the authority of the Inspectorate of Schools<sup>cxii</sup>

The Minister of Education was vested with exclusive authority to decide on the national educational philosophy and policy. He is also solely responsible for the implementation of the national education policy and has to table his annual report in Parliament. His responsibility included the supervision of the Director-General of Education for each state, the registrar of schools and inspectors of schools.

The survival of Malaysia depends on successful unification of various races of the country to form one united citizenry and to create Malaysian-consciousness among the various races living in the country. This need became urgent because of the rapid increase in population and its diverse ethnicity and the inclusion of Sabah and Sarawak in the new Federation. It was agreed that in the interest of national unity it is necessary to design a national system of education common and acceptable to all in deration which allow for special conditions to reign. As agreed *Bahasa Malaysia*, as a common denominator, should be the National Language. According to the Federal Government, the three basic concepts from which the national system can evolved require a common curriculum and syllabus, common language and common public examinations.

For Malaysia, the unification of the various races was more urgent if the nation were to succeed politically, economically and socially.<sup>cxiii</sup> In order to achieve this national agenda, the government strives to work for a common national education system that would include common language,<sup>cxiv</sup> curriculum and syllabus<sup>cxv</sup> and common public examinations.<sup>cxvi</sup> The common content syllabus, a common language and public examinations would play a vital role in the future evolution of a national unity.

### **Review of National Education Policy**

## **New Primary School Curriculum (Kurikulum Baru Sekolah Rendah or KBSR)**

In 1974, a Cabinet Committee chaired by the then Minister of Education, Dr Mahathir Mohamad, was formed to review the aims and effects of the National Education Policy, especially in ensuring adequate manpower for the national development and in achieving a united, disciplined and skilled Malaysian citizenry.<sup>cxvii</sup> In 1979, this Committee submitted its Cabinet Committee Report with its major recommendations for primary and secondary education based on its findings. The Committee found that the curriculum of the primary school was compartmentalized, crammed and disintegrated across subjects. A large proportion of the pupils lagged and mastered few skills.<sup>cxviii</sup> The Committee recommended that the primary education should emphasize the basic skills of reading, writing and arithmetic.<sup>cxix</sup> As a consequence of this report, the New Primary School Curriculum (*Kurikulum Baru Sekolah Rendah* or KBSR) was formulated and implemented in 1983. Under the KBSR the time allocated for Islamic religious education for Muslim students was increased to 13 per cent of the total time for all subjects and a similar amount of time was set aside for general moral education for non-Muslims.

For secondary education, the Cabinet Committee called for the abolishing of streaming students into arts, sciences and technical education at the upper secondary level and for the extension of general education from nine to eleven years. The Cabinet Committee asserted that the ethical and moral values formed an integral part of the curriculum, the Committee advocated for the inclusion of Islamic religious education and moral education subjects in the national examinations and the teaching of practical Islamic religious studies be improved.

## **Malaysia Plans (*Rancangan Malaysia*)**

### **Human Capital and Economic Development**

The Malaysian government commitment towards developing education was evidenced from the various Malaysia Plans (*Rancangan Malaysia*). The stated objectives of education were to: (a) consolidate the education system and to promote national integration and unity,<sup>cxx</sup> (b) expand education and training programs towards meeting the nation's economic and manpower needs,<sup>cxxi</sup> (c) improve the quality of education to create a conducive teaching and learning environment,<sup>cxxii</sup> and (e) to develop the human capital and transform the economy to a knowledge-based economy.<sup>cxxiii</sup>

In order to accelerate the process of national integration and unity *Bahasa Malaysia* is used as the main medium of instruction in schools; and in order to build a progressive society oriented towards science and technology the English language is made mandatory in the teaching of Science and Mathematics in schools, to be implemented in stages and attempts are made to close the gap in educational opportunities among regions and races.<sup>cxxiv</sup>

## **Educational Governance**



Malaysian Parliament has passed numerous statutes relating to laws of education to safeguard national interests, ensure due diligence, quality assurance and educational governance. The specific legislations on education, *inter alia*, are the Education Act 1996 (Act 550) which establishes and regulates the national education system for public and private educational institutions; the Private Higher Educational Institutions Act 1996 (Act 555) which establishes and regulates the national education system for public and private higher educational institutions; Universities and University Colleges Act 1971 (Act 30) which establishes and regulates the conduct and discipline of lecturers and students at public and private higher educational institutions; the Malaysian Qualifications Agency Act 2007 (Act 679) which establishes and regulates the educational standards for quality assurance of public and private higher educational institutions and Perintah-Perintah Am 1980 (General Orders) which establishes and regulates particularly the conduct of public servants and also educators and administrators from the lower and higher public educational institutions.

In the instance, in *Merdeka University Berhad v Government of Malaysia*<sup>cxxv</sup> the plaintiff submitted a petition to the Yang di-Pertuan Agong for an incorporation order for Merdeka University under section 6 of the Universities and University Colleges Act, 1971. The court rejected the petition. The Minister of Education gave the reasons that Merdeka University would use Chinese as the medium of instruction to cater for students from Chinese independent secondary schools and the university would be set up by the private sector. Thus, its establishment would be contrary to the national education policy. The court held that if the Merdeka University were established, it would be a public authority within the definition in Article 160 of the Federal Constitution and that the proposal to use Chinese as the medium of instruction would be contrary to the national education policy. The plaintiff cannot rely on the provisions of Article 8(2) of the Federal Constitution to argue that the rejection of the petition would result in discrimination and the Article 26 of the Universal Declaration of Human Rights do not arise in this case and in any event the pertinent provisions for consideration are those contained in municipal legislation. The Yang di-Pertuan Agong has acted properly, reasonably, fairly and in accordance with the law in the exercise of his broad discretion in the matter under section 6(1) of the Universities and University Colleges Act, 1971. There was sufficient basis and justification for the Yang di-Pertuan Agong to be satisfied that it was not expedient in the national interest for Merdeka University to be established."

It is noteworthy to ponder that the *Merdeka University* case when compared to *Brown* case showed a contrasting effects regarding a fight against racial discrimination and a fight for equality and united citizenry for the sake of nation-building. Thus, it is submitted that the educational of governance undertaken by the government is judiciously sound and legally correct.

### **Education Act 1996 (Act 550)**

The Education Act 1996<sup>cxxvi</sup> highlights the philosophy of education being "... an educational programme that includes curriculum and co-curricular activities which encompasses all the knowledge, skills, norms, values, cultural elements and beliefs to help develop a pupil fully with

respect to the physical, spiritual, mental and emotional aspects as well as to inculcate and develop desirable moral values and to transmit knowledge". In addition, to further bolster the effective implementation of education, the Education Act 1996 which regulates and control the operations of the public and private educational institutions, from kindergarten to secondary schools, was introduced and the Private Higher Educational Institutions Act 1996 (Act 555)<sup>cxxvii</sup> which regulates and controls the operations of the private higher educational institutions was also passed.

### **Private Higher Educational Institutions Act 1996**

Whereas the Private Higher Educational Institutions Act 1996 (Act 555) provides a comprehensive administrative structure and regulatory control specifically for the management and operations of the National Private Higher Educational Institutions, from college to university, and is applicable throughout the federal and state levels to all private higher educational institutions. It is an extension of the Education Act 1996 (Act 550) which also emphasizes that national educational policy based on the national philosophy of education as specified above.

### **Towards Vision 2020**

#### **National Aspirations and the Education Philosophy**

The National Mission as announced in the Ninth Malaysia Plan (9th MP) on 31 March 2006, emphasized the second phase of the government's effort to achieve Vision 2020. The MOHE has the main role of initiating the mission to raise the capacity for knowledge and innovation, as well as encouraging a first class mind set to the nation. In line with the second thrust of the National Mission, Malaysia needs to produce human capital with a first class mind set in order to face developmental challenges in knowledge and innovation based economy. The desired human capital should be knowledgeable, skilful and possess a superior personality. In relation to these needs, the National Higher Education Strategic Plan (NHESP)<sup>cxxviii</sup> was formulated with the vision to transform higher education within the context of establishing Malaysia as an international hub of excellence for higher education. This transformation is the foundation towards attaining merit and sustainability for the higher education system beyond 2020.

### **Malaysia Education Blueprint 2013-2025**

#### **Preschool to Post- Secondary Education**

In October 2011, the Ministry of Education launched a comprehensive review of the education system in Malaysia in order to develop a new Malaysia Education Blueprint 2013-2025.<sup>cxxix</sup> The decision was made in the context of raising international education standards, the Government's aspiration of better preparing Malaysia's children for the needs of the 21st century, and increased public and parental expectations of education policy. Over the course of 15 months (October 2011 to December 2012), the Ministry drew on many sources of input, from education experts at UNESCO, World Bank, OECD, and six local universities, to principals, teachers, parents, students, and other members of the public from every state in Malaysia. The result is a Malaysia Education Blueprint that evaluates the performance of current Malaysia's education system with considerations of historical starting points against international benchmarks. The Blueprint also offers a vision of the education system and student aspirations that Malaysia both needs and deserves, and suggests 11 strategic and operational shifts that

would be required to achieve that vision. As commented aptly commented by Malaysian Prime Minister, Dato' Sri Mohd Najib Tun Abdul Razak:

"Education is a major contributor to the development of our social and economic capital. It inspires creativity and fosters innovation; provides our youth with the necessary skills to be able to compete in the modern labour market; and is a key driver of growth in the economy. And as this Government puts in place measures under the New Economic Model, Economic Transformation Plan and Government Transformation Plan to place Malaysia firmly on the path to development, we must ensure that our education system continues to progress in tandem. By doing so, our country will continue to keep pace in an increasingly competitive global economy."

In support of the government national transformation programme, the Deputy Prime Minister and Minister of Education I, Tan Sri Dato' Muhyiddin Mohd Yassin complemented:

"This government is committed to transforming Malaysia's education system over the next one-and-a-half decades. Our goal and the purpose of the education system, is to equip our students holistically to allow them to succeed in the 21<sup>st</sup> century, with all of the opportunities and challenges that this new era presents. In order to compete with the best in the world, our education system must develop young Malaysians who are knowledgeable, think critically and creatively, have leadership skills and are able to communicate with the rest of the world. Just as importantly, our students must be imbued with values, ethics and a sense of nationhood, enabling them to make the right choices for themselves, their families and the country with a view towards enduring and overcoming life's inevitable challenges."

The Malaysia Education Blueprint 2013-2025 being the initiatives undertaken by the government mirrored many similarities in the education vision, mission and objectives that United States government had undertaken to realise its nation-building and nationhood aspirations. If diligently executed, Malaysia could realise the same as to what the United States have already done and achieved.

## **Conclusion**

The legalization of education as public policy initiated by the United States and Malaysia governments as political decisions for implementing programs to achieve societal goals especially in education, economics, security, public health and public welfare have been translated by the respective legislatures into various legislations. The primary objective of nation-building is to establish a united citizenry via social engineering of the populace so as to enable the nationhood aspiration become a reality. These initiatives demonstrate matters of great importance to the public interests and the country. The legalization of education as a process to establish national system of education, set new regulatory procedures and policies on the education of the population, operation of educational institutions and educational standards has been judiciously executed for the purpose thereto. The experiences of the United States and Malaysia throughout their history in embracing such public policy and legalization of education had truly established that such process lead to progressive nation-building and nationhood.

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<sup>i</sup>Article VI: The Supremacy Article, The Constitution of the United States; Article 4: Supreme Law of the Federation, Federal Constitution of Malaysia.

<sup>ii</sup>See The Constitution of United States of American.

<sup>iii</sup>Amendments to the Constitution of the United States of America: Amendment I – Religion, Speech, Assembly and Petition, Amendment II - Militia and the Right to Bear Arms, Amendment III- Quartering of Soldiers, Amendment IV- Searches and Seizures, Amendment V- Grand Juries, Double Jeopardy, Self-Incrimination, Due Process, and Eminent Domain, Amendment VI - Federal Criminal Court Procedures, Amendment VII - Bail and Cruel and Unusual Punishments, Amendment X- Reserved Powers of the States.

<sup>iv</sup>Amendments XIII- Slavery, Amendments XIV - Privileges and Immunities of United States Citizenship, Due Process, and Equal Protection of the Laws, Amendments XV- The Right to Vote.

<sup>v</sup>Edward S. Corwin & Jack W. Peltason, *Understanding the Constitution*, 3<sup>rd</sup> Ed., New York: Holt, Rhinehart and Winston, Inc., 1966, at 2-3.

<sup>vi</sup>Federal Constitution, Article 4 (1).

<sup>vii</sup>*Ibid.*, State List – List II (Article 95B(1)(a))

<sup>viii</sup>See Education Act 1996 (Act 550) and Private Higher Educational Institutions Act 1996 (555).

<sup>ix</sup>Sharifah Suhanah Ahmad, *Malaysian legal system*, 2nd Ed., Kuala Lumpur: Malayan Law Journal, 1990, at 14.

<sup>x</sup>Michael La Morte, *School law – Cases and concepts*, 5<sup>th</sup> Ed., Boston: Allyn and Bacon, 1996, at 3-4.

<sup>xi</sup>Federal Constitution, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13.

<sup>xii</sup>The said clause states that "Congress shall have power to collect Taxes, Duties, Imports and Excises, to pay the Debts and provide for the common defense and general welfare of the United States."

<sup>xiii</sup>Corwin & Peltason, n. 9, at 158.

<sup>xiv</sup>42 U.S.C. Section 1983, a section of the Civil Rights Act 1871 provides for liability if a "person" operating under the color of the state violates another person's civil rights.

<sup>xv</sup>In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), a civilian employee of the Department of the Air Force was terminated from his position. He sued for civil damages in the United States District Court for the District of Columbia against two senior aides and advisers of the President of the United States, alleging that they participated in a conspiracy to violate his constitutional and statutory rights in their official capacities, to effect his unlawful dismissal. On certiorari, the United States Supreme Court held that in a suit for civil damages based upon their official acts, senior aides and advisers of the President of the United States are not entitled to a blanket protection of absolute immunity and that government officials performing discretionary functions generally being shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

In *Anderson v. Creighton*, 483 U.S. 635 (1987) the doctrine of immunity in favor of government officials was upheld. An FBI agent conducted a forcible, warrantless search of a home in the mistaken belief that a bank robbery suspect might be found there. The homeowners filed suit against the agent in a Minnesota State Court, asserting a claim for money damages under the Fourth Amendment. On certiorari, the United States Supreme Court held that a federal law enforcement officer who conducts a warrantless search in violation of the Fourth Amendment will not be held personally liable for money damages if it is found that a reasonable officer could have believed the search to be lawful under the Fourth Amendment in light of clearly established law and the information possessed by the searching officer.

<sup>xvi</sup>Federal Constitution, Article 12.

<sup>xvii</sup>*Ibid.*, Article 96, Article 97, Article 98.

<sup>xviii</sup>Education Act 1996 (Act 550), Section 123 and 124.

<sup>xix</sup>In *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1, 15 (1947), the United States Supreme Court states: The "establishment clause of religion" clause of the First Amendment means neither the state nor the Federal Government can set up a church, aid one religion, aid all religions, or prefer one religion over the another ..... No tax in any amount large or small can be levied to support any religious activities

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or institutions, whatever they may be called, or whatever form they may be adopt to teach or practice religion. Neither, a state nor the federal government can, openly or secretly, participate in the affairs of any religious organizations or groups or vice-versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between the Church and State."

<sup>xx</sup>Corwin, & Peltason, n. 9, at 117- 118.

<sup>xxi</sup>Federal Constitution, Article 12.

<sup>xxii</sup>*Ibid.*, Article 74, Ninth Schedule.

<sup>xxiii</sup>La Morte, n. 14, at 11.

<sup>xxiv</sup>Article 145 of the Federal Constitution provides for the position of the Attorney-General. He is a public servant appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister and such person must have the qualification of a judge of the Federal Court. He holds office at the pleasure of the Yang di-Pertuan Agong, but may resign his office at any time.

<sup>xxv</sup>Wu Min Aun, n. 2, at 403.

<sup>xxvi</sup>Jan Birch & Ingo Richter, *Comparative School Law*, Pergamon Press, Exeter, 1990, at 4.

<sup>xxvii</sup>Federal Constitution, List II- State List: Article 95B (1) (a).

<sup>xxviii</sup>Education Act 1996 (Act 550), Section 15, Section 16, Section 18, Section 21, Section 27, Section 30, Section 40, Section 45, Section 53, Section 54, Section 55, .

<sup>xxix</sup>*Sekolah Agama Rakyat (SAR) and Sekolah Agama Kerajaan Negeri (SAN)*.

<sup>xxx</sup>Education Act 1996 (Act 550), Section 34 (1) (b), Section 34 (2), 52, Section 79.

<sup>xxxi</sup>*Ibid.*, at 9-11.

<sup>xxxii</sup>Federal Constitution, Ninth Schedule, Item 13 (a): Elementary, secondary, and university education; vocational and technical education; training of teachers; registration and control of teachers; managers and schools; promotion of special studies and research; scientific and literary societies.

<sup>xxxiii</sup>The Ministry of Education is organized into fifteen divisions and departments: 1. Schools: Director of Schools; 2. Educational Planning and Research: Director, Educational Planning and Research; 3. Educational Media Services: Director, Educational Media Services; 4. Teacher Training: Director, Teacher Training; 5. Inspectorate of Schools- Chief Inspector of Schools; 6. Examinations Syndicate- Director of Examinations; 7. Technical and Vocational Education: Director, Technical and Vocational Education Division; 8. Registration of Schools and Teachers: Deputy Registrar-General of Schools and Teachers; 9. Establishment and Services: Secretary, Establishment and Service; 10. Finance and Accounts: Secretary Finance; 11. Higher Education: Secretary, Higher Education; 12. Administration: Principal Assistant Secretary, Administration; 13. Islamic Religion: Director, Islamic Religion; 14. Overseas Students Department: Director, Overseas Students Department; 15. Statutory Bodies: Head, Statutory Bodies.

<sup>xxxiv</sup>The Ministry of Higher Education was established on 27<sup>th</sup> March 2004 comprised of the IPT Management Department (JIPIPT) and the Polytechnic and Community College Management Sector and the IPTS Management Sector. The agencies under the Ministry of Higher Education are Malaysian Qualifications Agency, PTPTN, Yayasan TAR and Public Institutions of Higher Education (IPTA), which include: Universiti Malaya, Universiti Sains Malaysia, Universiti Kebangsaan Malaysia, Universiti Putra Malaysia, Universiti Teknologi Malaysia, Universiti Utara Malaysia, Universiti Malaysia Sarawak, Universiti Malaysia Sabah, Universiti Pendidikan Sultan Idris, Universiti Teknologi MARA, Universiti Islam Antarabangsa Malaysia, Universiti Darul Iman, Universiti Malaysia Kelantan, Universiti Malaysia Pahang, Universiti Malaysia Perlis, Universiti Malaysia Terengganu, Universiti Pertahanan Nasional Malaysia, Universiti Sains Islam Malaysia, Universiti Teknikal Malaysia Melaka and Universiti Tun Hussein Onn Malaysia.

<sup>xxxv</sup>Tan Sri Dato' Muhyiddin Mohd Yassin as Deputy Prime Minister and Minister of Education I and Dato' Seri Idris Jusoh as Minister of Education II.

<sup>xxxvi</sup>Education Act 1996 has the following the components:

- a) Administration- Part II, Section 3 to Section 9.
- b) National Education Advisory Council- Part III, Section 10 to 14.
- c) National Education System- Part IV, Section 15- 49.
- d) Religious Teaching in Educational Institutions- Section 50 to Section 52.
- e) Management of Educational Institutions- Section 53 to Section 66.
- f) Assessment and Examination, Part V, Section 67 to 69.
- g) High Education- Part VI- Section 70 to Section 72.

- h) Private Educational Institutions- Part VII, Sections 73 to Section 78.
- i) Registration of Educational Institutions – Part VIII, Section 79 to Section 86.
- j) Cancellation of Registration - Section 87.
- k) Registration of Governors and Employees – Section 88 to Section 97.
- l) Registration of Pupils- Section 98.
- m) Inspections of Educational Institutions by Registrar General- Sections 99 to Sections 102.
- n) Registration of Teachers- Part IX, Section 103 to Section 113.
- o) Permit to Teach- Section 114 to Section 116.
- p) The Inspectorate of Schools- Part X, Section 117 to Section 122.
- q) Finance- Part XI, Section 123 to Section 125.
- r) Appeals- Part XII, Section 126 to Section 129.
- s) Regulations- Part XIII, Section 130 to 131.
- t) Offences and Penalties- Part XIV, Section 132 to 139.
- u) Miscellaneous- Part XV, Section 140 to Section 145.
- v) Transitional and Repeal- Part XVI, Section 146 to 156.

xxxvii Private Higher Educational Institutions Act 1996 (555) has the following components:

- a) Administration - Part II, Section 3 to Section 5.
- b) Establishment of Higher Educational Institutions - Part III, Section 6 to 20.
- c) Establishment of Private Higher Educational Institutions with the status of a University, University College and Branch Campus - Part IV, Section 21 - 23.
- d) Registration of Private Higher Educational Institutions – Part V, Section 24 to Section 29.
- e) Management of Private Higher Educational Institutions – Part VI, Section 30 to Section 37.
- f) Conduct of Courses of Study at Private Higher Educational Institutions – Part VII, Section 38 to Section 45.
- g) Discipline and Conduct of Students- Part VIII, Section 46 to 50.
- h) Permits to Teach – Part IX, Section 51 to Section 53.
- i) Revocation of Approval and Cancellation of Registration- Part X, Section 54 to Section 57.
- j) Closing Down of Private Higher Educational Institutions- Part XI, Section 58- 62.
- k) Inspection of Private Higher Educational Institutions– Part XII, Section 63 to Section 71.
- l) Offences and Penalties – Part XIV, Section 72 to Section 87.
- m) Regulations – Part XV, Section 88.
- n) General – Part XVI, Section 89 to Section 95.
- o) Saving and Transitional Provisions - Part XVII, Section 96 to Section 99.

xxxviii See Abdul Aziz Bari, *Cabinet principles In Malaysia - The law and practice*, Kuala Lumpur, Unvision Press Sdn Bhd., 1999, at 59.

xxxix *Jabatan Pelajaran Swasta Malaysia, Surat-Surat Pekeliling Jabatan Pelajaran Swasta Kementerian Pelajaran Malaysia 1972-2006*, Kementerian Pelajaran Malaysia, 2006, Putrajaya.

xl "Education Officer " in relation to a district or an area, means an education officer appointed under paragraph 4 (b) of Education (Act 550) ; "Education Service" means a public service under paragraph (1) (h) of Article 132 of the Federal Constitution.

xli Wong, H.K, *Readings In Malaysian Education: History, structure, administration and objectives*, Kuala Lumpur: University Malaya Press, 1977, at 8-14.

xlii Syed Ibrahim, *Penilaian Tahap Kecekapan (PTK)*, Kuala Lumpur: International Law Book Services, 2006, at 133.

xliiii The Amendment X (1791) states that the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

xliv John D. Pulliam and James Van Patten, n. 63 at 53.

xlv Gutek, n.1 at 453-454.

xlvi Horace Mann (1796-1859) was prominent among the advocates of the common school in the United States. Born in Massachusetts, Mann was reared as a Calvinist but later became a Unitarian. He was educated as a lawyer, graduated from Brown University, and, in 1827, was elected to the Massachusetts legislature, where he supported school reform. In 1838, he was named secretary of the Massachusetts Board of Education. His Annual Reports and editorship of the Common School Journal furthered the

movement toward public education in Massachusetts. See *Encyclopaedia Britannica Library* (Ultimate Reference Suite, CD 2008). "Horace Mann."

<sup>xlvii</sup>Henry Barnard (1811-1900) was secretary of the State Board of Commissioners of Common Schools in Connecticut. He also served as state commissioner of public schools in Rhode Island (1845-1849), chancellor of the University of Wisconsin (1858-1860) and United States Commissioner of Education. (1867-1870). See *Encyclopaedia Britannica Library* (Ultimate Reference Suite, CD 2008). "Henry Barnard."

<sup>xlviii</sup>*Ibid.*, at 66 to 67.

<sup>xlix</sup>*Ibid.*, at 91.

<sup>l</sup>*Ibid.*, 67-68. On October 28, 1636, the Massachusetts Puritans through the Massachusetts General Court created Harvard College. The entire program of studies rested on the foundation of Calvinist theology. Orthodox Congregationalists established Yale in 1701 to preserve established religious doctrines. In 1693, Virginia established the College of William and Mary. Princeton was chartered in 1746 in New Jersey as a Presbyterian institution of higher education King's College became Columbia was chartered in 1754 to serve New York's Anglicans. The University of Pennsylvania was chartered in 1779. The proposal for the establishment of a national university, under federal auspices in the Constitutional Convention, was defeated. President Washington's first inaugural address again urged that one be established. Jefferson, too, as president, unsuccessfully recommended a national university. Although a national university was not established in the early national period, many colleges were founded. The Dartmouth College case of 1819 established a precedent that guaranteed the independence, of the private college from state control. Chief Justice John Marshall, basing his decision on the contract clause of the federal constitution, held that the original charter granted by King George III was contractual and could not be impaired. The college was restored to the board of trustees and returned to its earlier status as a private educational institution. The Dartmouth College case strongly sanctioned the system of higher education in the United States, which produced both a private and a state-supported system of colleges.

<sup>li</sup>*Ibid.*, at 69. The military academies at West Point and Annapolis are examples. In 1856, Columbia Institute for the Deaf, later named Gallaudet College, was established. After the Civil War, Howard University was established to educate African-Americans.

<sup>lii</sup>*Ibid.* The Morrill Act granted each state thirty thousand acres of public land for each senator and representative in Congress, based on the apportionment of 1860. In 1890, the second Morrill Act provided direct grants of USD \$15,000 to be increased annually to a maximum of USD \$25,000 to support land-grant colleges and universities. This act also created similar institutions for African-Americans in states that prohibited their enrollment in existing land-grant institutions. The federal government specifically required that land-grant colleges provide instruction in military training as well as agricultural and mechanical subjects. The United States, emergent as a world power; needed more trained military officers than could be supplied by the military academies and came to rely more on the Reserve Officers' Training Corps.

<sup>liii</sup>John D. Pulliam and James Van Patten, n. 63 at 144-146.

<sup>liv</sup>The National Defense Education Act of 1958 (P.L. 85-864; 72 Stat. 1580) became law on September 2, 1958. This federal policy largely targeted collegiate education, authorizing both National Defence Fellowships and loans for students. The National Defence Education Act (NDEA) also provided funds to state educational agencies for the purposes of improving the teaching of science, mathematics, and "modern foreign languages" (e.g., Russian, not Latin). Thus, the NDEA was the first major federal foray into K-12 curricula since the Smith-Hughes Vocational Education Act of 1917. At the same time, the NDEA's Section 2 forbade "Federal Control of Education": Nothing contained in this Act shall be construed to authorize any department, agency, officer or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system.

<sup>lv</sup>La Morte, n. 14, at 11.

<sup>lvi</sup>163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896).

<sup>lvii</sup>Ibid.

<sup>lviii</sup>Ibid.

<sup>lix</sup>Ibid.

<sup>lx</sup>The No Child Left Behind Act of 2001 (NCLB) is a United States Act of Congress that is a reauthorization of the Elementary and Secondary Education Act, which included Title I, the government's flagship aid program for disadvantaged students. NCLB supports standards-based education reform based on the premise that setting high standards and establishing measurable goals can improve individual outcomes in education. The Act requires states to develop assessments in basic skills. To receive federal school funding, states must give these assessments to all students at select grade levels. The Act does not assert a national achievement standard. Each individual state develops its own standards. NCLB expanded the federal role in public education through annual testing, annual academic progress, report cards, teacher qualifications, and funding changes. The bill passed in the U.S. Congress with bipartisan support.

<sup>lxi</sup>Race to the Top, abbreviated R2T, RTT or RTT, is a \$4.35 billion United States Department of Education contest created to spur innovation and reforms in state and local district K-12 education. It is funded by the ED Recovery Act as part of the American Recovery and Reinvestment Act of 2009 and was announced by President Barack Obama and Secretary of Education Arne Duncan on July 24, 2009. States were awarded points for satisfying certain educational policies, such as performance-based standards (often referred to as an Annual professional performance review) for teachers and principals, complying with Common Core standards, lifting caps on charter schools, turning around the lowest-performing schools, and building data systems.

<sup>lxii</sup>Francis Wong H.K., *Education in Malaysia*, Kuala Lumpur, Heinemann Educational Books (Asia) Ltd., 1977.

<sup>lxiii</sup>See Rosnani Hashim, *Educational Dualism in Malaysia: Implications for Theory and Practice*, Kuala Lumpur: Oxford University Press, 1996.

<sup>lxiv</sup>Enactment No. 27 of 1920, Part II: Registration of School (Section 6-8), Part III: Registration of Managers and Teachers (Section 9), Part IV: Control and Supervision of Schools (Section 10-15).

<sup>lxv</sup>Philip Loh Fook Seng, *Seeds of separatism: Educational policy in Malaya 1874 -1940*, Kuala Lumpur: Oxford University Press, 1975, at 35-43.

<sup>lxvi</sup>Philip Loh Fook Seng, n. 115, at 44-46.

<sup>lxvii</sup>Rex Stevenson, *Cultivators and administrators: British educational policy towards the Malays 1875- 1906*, Kuala Lumpur: Oxford University Press, 1975, at 56-67.

<sup>lxviii</sup>Ibid. Winstedt spent nearly thirty-three years in the Malay States. During that time he played a major role in the development of educational policy as Assistant Director from 1916 to 1921 and subsequently Director from 1924 to 1931, simultaneously holding the appointment of President of Raffles College from 1921 to 1931. After his retirement from Malaya in 1935, he became Reader in Malay at the School of Oriental and African Studies at the University of London, during which period he also served until 1939 as a member of the Colonial Office Advisory Committee on Education.

<sup>lix</sup>Philip Loh Fook Seng, n. 115, at 27- 30.

<sup>lxx</sup>Chelliah D.D., *A History of Educational Policy of the Straits Settlements*, Kuala Lumpur: Government Press, 1947, at 36-57.

<sup>lxxi</sup>"Musa: No change in identity, character of vernacular schools," *The Star*, 24 November, 2007, at 1.

<sup>lxxii</sup>British Malaya loosely described a set of states on the Malay Peninsula that were colonized by the British from the 18th and the 19th until the 20th century. Before the formation of Malayan Union in 1946, the colonies were not placed under a single unified administration. Instead, British Malaya composed of the Straits Settlements, the Federated Malay States and the Unfederated Malay States. Malaya was one of the most profitable British protectorates, being the world's largest producer of tin and later rubber. Malayan Union was dissolved and replaced with Federation of Malaya in 1948. It became independent on August 31, 1957. On September 16, 1963, the federation, along with Sabah, Sarawak and Singapore formed a larger federation called Malaysia. See *Encyclopaedia Britannica Library* (Ultimate Reference Suite, CD 2008). "British Malaya."

<sup>lxxiii</sup>The London Missionary Society was a non-denominational missionary society formed in England in 1795 by evangelical Anglicans and Nonconformists, largely Congregationalist in outlook, with missions in the islands of the South Pacific and Africa. Proposals for the Missionary Society began in 1794 after a Baptist



minister, John Ryland, received word from William Carey, considered the 'Father' of modern missions, about the need to spread Christianity. The society aimed to be more successful by creating a forum where evangelists could work together, giving overseas missions more lines of financial support and better co-ordination, including firm support against their fierce opponents who wanted unrestricted commercial and military relations with native peoples throughout the world. The aim was to enable longer-term and more successful missions to be established. Despite facing many difficulties, the society prevailed and sent Christian missionaries all over the world. The society eventually disbanded, but not until the late 1970s. The London Missionary Society missionaries had a huge influence on the spread of their largely non-denominational approach to Christianity, throughout the world. It now forms part of the Council for World Mission (CWM). See *Encyclopaedia Britannica Library* (Ultimate Reference Suite, CD 2008). "London Missionary Society."

<sup>lxxiv</sup>William Wilberforce (August 24, 1759–July 29, 1833) was a British politician and philanthropist. A native of Hull, Yorkshire, he began his political career in 1780 and became Member of Parliament for Yorkshire (1784–1812), and independent supporter of the Tory party. A close friend of Prime Minister William Pitt, in 1785 he underwent a conversion experience and became an evangelical Christian. In 1787 he came into contact with Thomas Clarkson and a group of anti-slave trade activists, including Granville Sharp, Beilby Porteus, Hannah More, and Lord Middleton. At their suggestion, Wilberforce was persuaded to take on the cause. He became one of the leading English abolitionists, heading the parliamentary campaign against the British slave trade, which he saw through to the eventual passage of the Slave Trade Act in 1807. Wilberforce also championed many other causes and campaigns, including the Society for Suppression of Vice, Charity schools, the introduction of Christianity to India, the foundation of the Church Mission Society, and the Society for the Prevention of Cruelty to Animals. In later years, he supported the campaign for complete abolition, which eventually led to the Slavery Abolition Act in 1833. This Act paved the way for the complete abolition of slavery in the British Empire. See *Encyclopaedia Britannica Library* (Ultimate Reference Suite, CD 2008). "William Wilberforce ."

<sup>lxxv</sup>These mission schools remain to this present day as a legacy and become part of the national education system of Malaysia. See news report in: "Bishop lauds cross assurance," *The Star*, 8 December, 2007, at 30.

<sup>lxxvi</sup>Chelliah D.D., n. 111, at 11–12.

<sup>lxxvii</sup>This effort was an adoption and extension of the Public School Act of 1868 passed in Britain that provided some government scrutiny over public school endowments.

<sup>lxxviii</sup>Philip Loh Fook Seng, n. 115, at 71.

<sup>lxxix</sup>Stevenson, n. 124, at 12-15.

<sup>lxxx</sup>Willysine Goodsell, *The conflict of naturalism and humanism*, New York: Columbia University Press, 1910, at 158-160.

<sup>lxxxi</sup>Stevenson, n. 123, at 11.

<sup>lxxxii</sup>Chelliah, n. 111, at 64.

<sup>lxxxiii</sup>*Ibid.* The proposals highlighted on the need to address: (1) the system of Malay vernacular education, (2) the method of selection of students for admission to Malay Training Colleges, (3) the means of raising the scholastic attainment and improving the pedagogic training of college students, (4) the content of curricula of Malay Teacher Training Colleges (5) the steps necessary to advance the education of Malays in English and (6) any desirable improvement to the organization such as the creation of local education authorities or other local bodies with similar functions and to make recommendations.

<sup>lxxxiv</sup>L.J. Barnes, *Federation of Malaya, Report of the Committee on Malay Education Federation of Malaya 1951*, Kuala Lumpur: Government Press, 1951.

<sup>lxxxv</sup>William P. Fenn & Wu Teh Yao, *Chinese schools and the education of Chinese Malaysians*, Kuala Lumpur: Government Press, 1951.

<sup>lxxxvi</sup>Federation of Malaya, No. 63 of 1952.

<sup>lxxxvii</sup>*Ibid.*, Part III: Section 21.

<sup>lxxxviii</sup>*Ibid.*, Part VI: Section 71-74.

<sup>lxxxix</sup>*Ibid.*, Part V: Section 70.

<sup>xc</sup>*Ibid.*, Part IX: Section 85-86.

<sup>xc</sup>Wong Hoy Kee, *Readings in Malaysian Education: History, Structure, Administration and Objectives*, Kuala Lumpur: University Malaya Press, 1977, at 1-27.

<sup>xcii</sup>Federation of Malaya, No.2 of 1957.

<sup>xciii</sup>*Ibid.*, Section 4.

<sup>xciv</sup>*Ibid.*, Section 5.

<sup>xcv</sup>Ibid., Section 10.

<sup>xcvi</sup>Ibid., Section 26.

<sup>xcvii</sup>Ibid., Section 43.

<sup>xcviii</sup>Ibid., Section 61.

<sup>xcix</sup>Ibid., Section 49.

<sup>c</sup>Abdul Rahman Bin Haji Talib, *Report of the Education Review Committee 1960*, Kuala Lumpur: Government Printer, 1960: Para. 62.

<sup>c</sup>Ibid., Para 175.

<sup>cii</sup>Federation of Malaya, No. 2 of 1957.

<sup>ciii</sup>Ibid., Section 49-50.

<sup>civ</sup>Federal Constitution, Article 95B (1) List II - State List.

<sup>cv</sup> Ibid., Article 12.

<sup>cv</sup> Education Act 1961 (No. 43) has the following components:

- a) Administration- Part II, Section 3 to Section 12.
- b) Education Advisory Board- Part III, Section 13 to 18.
- c) Statutory Education System- Part IV, Section 19- 26.
- d) Management of Schools and Educational Institutions- Section 27 to Section 32.
- e) Provision of Services- Section 33 to Section 35.
- f) Religious Instructions in Schools- Section 36 to Section 38.
- g) General- Section 39 to 43.
- h) Registration of Schools and Other Educational Institutions – Part V, Section 44 to Section 52.
- i) Cancellation of Registration- Section 53 to Section 58.
- j) Registration of Manager- Section 59- 69.
- k) Registration of Pupils – Section 70 to Section 73.
- l) Registration of Teachers- Part VI, Section 74 to Section 88.
- m) Permits to Teach- Section 89.
- n) Miscellaneous- Section 90 to Section 91.
- o) The Central Board- Part VII, Section 92 to Section 95.
- p) The Inspectorate of Schools- Part VIII, Section 96 to Section 99.
- q) The Local Inspectorate- Section 100 to Section 103.
- r) Finance- Part IX, Section 104.
- s) Local Education Authorities- Part X, Section 106 to Section 112.
- t) Appeals- Part XI, Section 113- Section 115.
- u) Rules, Regulations and By- Laws- Part XII, Section 116 to Section 120.
  
- v) Offences and Penalties- Part XIII, Section 121 to Section 123.
  
- w) Miscellaneous- Part XIV, Section 124 to Section 129.
  
- x) Transitional and Repeal, Part XV, Section 130 to 140.

<sup>cvii</sup> Federal Constitution, Article 152.

<sup>cviii</sup> Education Act 1961 (Act 43), Part II: Section 3- 8.

<sup>cix</sup> Ibid., Part IV, Section 19-24.

<sup>cx</sup> Ibid., Part V, Section 44-45.

<sup>cx</sup> Ibid., Part VI, Section 74- 88.

<sup>cxii</sup> Ibid., Part VIII, Section 96-103.

<sup>cxiii</sup>The Malaysian government introduced a new concept of education order to achieve national unity. One such effort was the "Vision School" or "Sekolah Wawasan". See "Support for Vision Schools," *The New Straits Times*, 15 August, 2000, at 4.

<sup>cxiv</sup>Abdul Rahman Bin Haji Talib, n. 150.

<sup>cxvi</sup>Ibid. The first element in an education policy aimed at achieving national unity relates to a common curriculum and syllabus. This is particularly important for Malaysia where in the past there were diverse systems of education with their varied curricula. Prior to independence, there existed English-medium schools with a western bias, a Chinese schools system that was largely imported from China, and a Tamil school system that looked to India for inspiration. If Malaysia is to have a national consciousness and if it looks to education as one of the main factors in bringing this about, it is imperative to have a common syllabus. The Education Committee 1956 emphasized the importance of establishing a common curriculum and syllabus for all primary schools.

<sup>cxvii</sup>Ibid. The Razak Report 1956 recommended that the Federal Examinations Syndicate should be responsible for public examinations, especially those that select children for promotion beyond Form Three (the Lower Certificate of Education) and award the national Certificate of Education (the Malayan equivalent of the Overseas Cambridge School Certificate). Since these are official public examinations for the national secondary system of education, they should be conducted in the nation's official language. The educational implication is that the teaching of the National Language has been made compulsory for all school children throughout the country. It was also made a compulsory subject in the national local examinations, namely, the Lower Certificate of Education, and the teacher training college examinations.

<sup>cxviii</sup>Mahathir Mohamad, *Report on the Cabinet Committee Review on the Implementation of the Educational Policy, 1979*, 4<sup>th</sup> Ed., Kuala Lumpur, 1984, at 1.

<sup>cxviii</sup> Ibid. Para. 193.

<sup>cxix</sup> Ibid. Recommendation 2a.

<sup>cxix</sup>Under the First Malaysia Plan (1966-1970), the objectives of the education programs were to consolidate the national educational system in order to promote social, cultural and political unity; to provide educational facilities, particularly at secondary level, to meet the needs of the increasing school-age population; to improve the quality of education and to spread education opportunities more evenly throughout the country so as to correct imbalances between the urban and rural areas; to diversify in vital fields, especially those relating to agricultural and industrial science and technology; and to accelerate teacher training in order to produce the necessary number of qualified and skilled teachers. While under the Second Malaysia Plan (1971-1975), the four major areas of concentration were: to consolidate the education system to promote national integration and unity; orientation and expansion of education and training programs towards meeting the manpower needs of the country; improvement of the quality of education for the building of a progressive society oriented towards modern science and technology; and improvement of the research, planning and implementation capability to meet the above objectives.

<sup>cxix</sup>The growth focus under the Third Malaysia Plan (1976-1980) was related to the nation's New Economic Policy. The objectives of this plan was on the development of education to further spur economic growth and producing skilled labor force for the implementation of the New Economic Policy. *Bahasa Malaysia* would be continued to be implemented to strengthen the basis for national integration unity among the people of Malaysia, while English would be extended as a second language. Curricular and extra-curricular activities would be developed to inculcate discipline and social responsibility as well as to promote a national identity and unity among all Malaysians. The education and training system of Sabah and Sarawak would be progressively integrated with the national system. While under the Fourth Malaysia Plan (1981-1985), the emphasis of education and training programs would be to expand and increase their efficiency as an important instrument in meeting manpower requirements and achieving the New Economic Policy (NEP) objectives. Measures aimed at improving the teaching and learning process, such as class size, class-teacher ratio and curriculum, and the implementation of education

support programs such as remedial education and consolidation of small schools in the rural areas, will be given priority.

<sup>cxviii</sup> Under the Fifth Malaysian Plan (1986-1990), the strengthening of the education system was to improve quality and accessibility in order to promote national unity. The use of *Bahasa Malaysia* as the main medium of instruction at all levels of education would be improved. The teaching and learning of *Bahasa Malaysia*, Chinese, Tamil and English languages were improved through the provision of more trained teacher. Curriculum and co-curricular activities was used as the means to inculcate good qualities, leadership capabilities, and strong moral values, while efforts continued to be made to narrow the gap in educational opportunities among income groups and regions by extending and improving educational facilities throughout the country. While under the Sixth Malaysia Plan (1991-1995) called for further expansion to provide greater accessibility and more equitable opportunities in order to achieve national unity and integration. The quality of education and training were improved and oriented towards meeting the needs of national development. The use of *Bahasa Malaysia* as a medium of instruction at all levels of education continued to be given priority and upgraded with improvements in its teaching and learning processes. The teaching of English as a second language was given greater importance in order to stem the decline in the standard. And under the Seventh Malaysia Plan (1996-2000), the objective of education and skill training programs was to produce an adequate number of skilled and quality work-force to meet the manpower requirements of the country as well as to produce citizens who were disciplined and possess high moral values and good work ethics.

<sup>cxviii</sup> Under the Eight Malaysia Plan (2001-2005), the thrusts of the education programs were to increase accessibility, strengthen the delivery system and improve the quality of education so as to create a conducive teaching and learning environment. While under the Ninth Malaysia Plan (2006- 2010), efforts will be intensified to develop the country's human capital in order to drive the transformation to a knowledge-based economy. Programs and projects will be undertaken to deliver the National Mission's priorities of improving the education system, increasing innovation and ensuring holistic human capital development.

<sup>cxviii</sup> 9<sup>th</sup> Malaysia Plan, Economic Planning Unit, Prime Minister's Department, Putrajaya, Malaysia, 2006.

<sup>cxv</sup> [1981] 2 MLJ 356.

<sup>cxvi</sup> Education Act 1996 (Act 550) has the following the components:

- a) Administration- Part II, Section 3 to Section 9.
- b) National Education Advisory Council- Part III, Section 10 to 14.
- c) National Education System- Part IV, Section 15- 49.
- d) Religious Teaching in Educational Institutions- Section 50 to Section 52.
- e) Management of Educational Institutions- Section 53 to Section 66.
- f) Assessment and Examination, Part V, Section 67 to 69.
- g) High Education- Part VI- Section 70 to Section 72.
- h) Private Educational Institutions- Part VII, Sections 73 to Section 78.
- i) Registration of Educational Institutions – Part VIII, Section 79 to Section 86.
- j) Cancellation of Registration - Section 87.
- k) Registration of Governors and Employees – Section 88 to Section 97.
- l) Registration of Teachers- Part VI, Section 74 to Section 91.
- m) Registration of Pupils- Section 98.
- n) Inspections of Educational Institutions by Registrar General- Sections 99 to Sections 102.
- o) Registration of Teachers- Part IX, Section 103 to Section 113.
- p) Permit to Teach- Section 114 to Section 116.
- q) The Inspectorate of Schools- Part X, Section 117 to Section 122.
- r) Finance- Part XI, Section 123 to Section 125.

- s) Appeals- Part XII, Section 126 to Section 129.
- t) Regulations- Part XIII, Section 130 to 131.
- u) Offences and Penalties- Part XIV, Section 132 to 139.
- v) Miscellaneous- Part XV, Section 140 to Section 145.
- w) Transitional and Repeal- Part XVI, Section 146 to 156.

cxvii Private Higher Educational Institutional Act 1996 (555) has the following components:

- a) Administration - Part II, Section 3 to Section 5.
- b) Establishment of Higher Educational Institutions - Part III, Section 6 to 20.
- c) Establishment of Private Higher Educational Institution with the Status of a University, University College and Branch Campus - Part IV, Section 21 - 23.
- d) Registration of Private Higher Educational Institutions – Part V, Section 24 to Section 29.
- e) Management of Private Higher Educational Institutions – Part VI, Section 30 to Section 37.
- f) Conduct of Courses of Study at Private Higher Educational Institutions – Part VII, Section 38 to Section 45.
- g) Discipline and Conduct of Students- Part VIII, Section 46 to 50.
- h) Permits to Teach – Part IX, Section 51 to Section 53.
- i) Revocation of Approval and Cancellation of Registration- Part X, Section 54 to Section 57.
- j) Closing Down of Private Higher Educational Institutions- Part XI, Section 58- 62.
- k) Inspection of Private Higher Educational Institutions– Part XII, Section 63 to Section 71.
- l) Offences and Penalties – Part XIV, Section 72 to Section 87.
- m) Regulations – Part XV, Section 88.
- n) General – Part XVI, Section 89 to Section 95.
- o) Saving and Transitional Provisions - Part XVII, Section 96 to Section 99. Administration - Part II, Section 3 to Section 5.
- p) Establishment of Higher Educational Institutions - Part III, Section 6 to 20.
- q) Establishment of Private Higher Educational Institution with the Status of a University, University College and Branch Campus - Part IV, Section 21 - 23.
- r) Registration of Private Higher Educational Institutions – Part V, Section 24 to Section 29.
- s) Management of Private Higher Educational Institutions – Part VI, Section 30 to Section 37.
- t) Conduct of Courses of Study at Private Higher Educational Institutions – Part VII, Section 38 to Section 45.
- u) Discipline and Conduct of Students- Part VIII, Section 46 to 50.
- v) Permits to Teach – Part IX, Section 51 to Section 53.
- w) Revocation of Approval and Cancellation of Registration- Part X, Section 54 to Section 57.
- x) Closing Down of Private Higher Educational Institutions- Part XI, Section 58- 62.
- y) Inspection of Private Higher Educational Institutions– Part XII, Section 63 to Section 71.
- z) Offences and Penalties – Part XIV, Section 72 to Section 87.
- aa) Regulations – Part XV, Section 88.
- bb) General – Part XVI, Section 89 to Section 95.
- cc) Saving and Transitional Provisions - Part XVII, Section 96 to Section 99.

cxviii **Thrust 1: Widening of Access and Increasing Equity:** democratization through diversified meritocracy (50% of the population with access to tertiary education; 33% of the workforce with tertiary qualification) and the higher education human capital development fund- prestigious scholarships (for outstanding students) and special scholarships (for specific groups).

**Thrust 2: Improving the Quality of Teaching and Learning:** a national policy on industrial internship for students and industry attachment for lecturers; periodical improvement of the curriculum, an interactive learning methodology and the widening usage of the English Language; versatility and marketable graduates; 100,000 PhD holders or equivalent.

**Thrust 3: Enhancing Research and Innovation** : to develop a critical mass of researchers (100 researchers per 10,000 workforce); 6 Research Universities; 20 world class Centres of Excellence (CoE); innovation culture among students; 10% of research findings to be commercialised.

**Thrust 4: Empowering the Institutions of Higher Education (IHE)**: one or two APEX Universities among existing IHEs; three IHEs among the top 100 and one in the top 50 of world renowned universities; autonomy based on Key Performance Indicator under (KPIs); 75% of the lecturers with PhD qualifications; rating of IHE based on KPIs.

**Thrust 5: Intensifying Internationalisation** ; collaborative networking with foreign IHE; an average 10% of overall enrolment consists of international students, especially in private IHE; 5% international students in competitive courses; sending students for post-doctoral studies in renowned international universities; 15% of the teaching staff to be from foreign countries for research Universities; student mobility with credit transfer; Malaysia International Scholarship.

**Thrust 6: Enculturation Lifelong Learning**: recognition of lifelong learning through MQF; recognition of Prior Learning Experience; increase participation of lifelong learning by adults; alternative pathways and programme mobility.

**Thrust 7: Reinforcing Delivery Systems of MOHE**: the MOHE as a facilitator; best delivery system; effective implementation and monitoring; KPI performance-based; prudent spending of government allocation; appointment to top management of Public IHE based on merit.

<sup>cxix</sup> See National Education Blueprint 2013-2025 (Preschool to Post- Secondary Education), Ministry of Education 2013, Published by Kementerian Pendidikan Malaysia, Putrajaya, Malaysia.