

LAND LAWS AND THE ECONOMIC IMPERATIVE: MOTIVATIONS FOR POLITICAL SURVIVAL IN THE FORMATIVE STATE OF BRUNEI

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ABSTRACT

*Law and public policy are two intertwined, yet fundamentally distinct, categories continuously shaping all aspects of social relations. The degree to which they arbitrate daily life demands better understanding of their relational dynamics, being essential for effective governance and decision-making, but more importantly, to also better understand how their nuances, sometimes unintended, can impact society. This paper employs critical juncture theory to examine the intersection between public policy and the law, focussing on the 1907 Land Enactment and the 1909 Land Code, backdropped against a period when Brunei was in the midst of transforming from a traditional *negara* system of governance to a modern state. The broader context within which policy decisions are made, together with its accompanying law(s), is essential for understanding the two categories' symbiotic processes. This study is further deepened by an additional analytical dimension posed by the early State of Brunei's fluid socio-political state of affairs, bringing the relationship between public policy and the law into sharper focus. This study finds Brunei's 1907 Land Enactment and 1909 Land Code was impelled by a political imperative in the guise of economic policy, while laying the critical foundations for constructing a yet-to-emerge concept of national identity that will forever change Brunei's socio-political landscape.*

Keywords: Public Policy, Law, Brunei, Socio-political Identity, the Resident Period

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The intimate relational dynamics between public policy and the law cannot be fully understood without the other. Their relations are amalgamated by the ‘state’; it being the primary formal body for initiating policy and socio-political action, and the only promulgator of law. And second, the law is an instrument of public policy that is not objectivised unto itself. The assumptive formula is that a political imperative impels a policy response, and the resultant policy, in turn, is enforced by the law. Thus, the consequences of contravening a law are analogous to the political imperative, and its policy response. The more important the policy is to the government, the greater is the gravity of its offence. However, oftentimes, the impact of a particular law on society does not necessarily correspond to its political imperative only. The policy indeed responds to its perceived political imperative, and its accompanying legislated law is intended for effecting the policy solution, but it may also inflict some unintended implications. To demonstrate this principle, we delve into the symbiotic relationship between public policy and the law, during a critical juncture in Brunei’s socio-political history, brought about by the 1905/1906¹ Supplementary Agreement between Brunei and Great Britain.

This paper examines the British’s land reform policies, enforced by the 1907 Land Enactment and the 1909 Land Code, when Brunei was in the midst of transforming from a traditional *negara* system of governance to a modern state; shedding light, and henceforth explain, the relational dynamics between the political imperative, the policy response, the Land Laws, and their overall implications to the general trajectory of the country. Indeed, the years 1905/1906 was a poignant point in Brunei history; marking the ancient *negara*’s total collapse. Brunei’s demise was caused by internal structural weaknesses, the economic and the political; rendering the

¹ The Treaty was signed by Sultan Hashim and his *wazirs* on 3 December 1905, and by Sir John Anderson representing the British Crown, on 2 January 1906. A copy of the Agreement text and its subsidiary terms can be found in B. A. Hussainmiya, “Sultan Omar Ali Saifuddin III”, *The Making of Brunei Darussalam*. Oxford University Press, 1996, Appendices 5, 6, and 7

negara susceptible to Brookean Sarawak's avarice. Sarawak duly procured Brunei territories until none remained except two small enclaves, separated by the Sarawak-annexed district of Limbang¹. A British Resident was imposed on Brunei, as part of the Supplementary Agreement, who effectively ruled the country by dictating Brunei's policies and governance. But the Resident was also a necessary symbol of Brunei's continued sovereignty and to safeguard Brunei's territorial integrity from Brookean ambitions. For the British, their pre-War strategy of Empire was "...collaboration with indigenous monarchies. Secure on their thrones, they legitimated British rule as assisting it in practical ways."²

The most "practical ways" the British assisted Brunei with was re-building the *negara* into a 'state.' It began with a flurry of new legislations⁴, but none more critical to initiate this re-building process than reforming the land laws. These legislations were central to the political and economic rationale for the British's direct involvement in Brunei.⁵ Control of land are pivotal questions shaping a society's socio-economic and political landscapes. Land rights, whether in terms of outright ownership or its permitted usufruct, has direct bearing on economic productivity and opportunities for wealth creation. Equally crucial, the right to own land, or not, defines the ardour of a people's affiliation and sense of belonging to the land upon which they live. Brunei's ruling elite, perhaps aware of the implications of these legislations, opposed the Resident's plans and initially refused to sign the proposed land reform policy into law. The situation

¹ From 1842, when James Brooke was appointed the Raja of Sarawak, till the annexation of Limbang by Charles Brooke in 1890.

² A. J. Stockwell, "Britain and Brunei, 1945-1963: Imperial Retreat and Royal Ascendancy" in *Modern Asian Studies*, vol. 38, no. 4, 2004, pp. 785-819

⁴ The British Residential system was introduced by virtue of the Courts Enactment of 1906. Another Enactment was later introduced, known as the 1908 Enactment, repealing the 1906 Enactment. This latter Enactment amended the law relating to the constitution and powers of the Civil and Criminal Courts and the law and procedures to be administered in Brunei, which henceforth was called the 'State'.

⁵ Iik A. Mansurnoor, "Re-Establishing Order in Brunei: The Introduction of the British Legal System during the Early Residential Period" in *Islamic Studies*, vol. 52, no. 2, 2013, pp. 155-82

agitated much uncertainty, pivoted upon a range of factors, such as the policymakers' actions, the stakeholders' reactions, and the potential emergence of new actors into the political scene. And there is the additional uncertainty of possible changes to existing policies, laws, and institutions that could disrupt the status quo.

The political imperative at that critical point in time was, as Ranjit Singh puts it, 'survival', and yet somehow the Residents' land reforms was crucial to that imperative. During their second attempt to further institute land reforms in 1909, "...Brunei's nobility had awakened to the hazards of such legislation when it directly affected their last source of income..."⁶. But what piques our curiosity is whether the stakeholders were also aware of the wider socio-political implications of those reforms, other than monetary? Namely, the Resident, members of the State Council, and the Kedayans who revolted against the proposed legislation. We ask this question because socio-political and economic change during the formative period of the State of Brunei may have been directed by seemingly ambiguous policy preferences, but from the benefit of hindsight, we know that Brunei would later become a fully-fledged 'state'⁷ with a 'government' defined by law through the promulgation of the Brunei Constitution in 1959. Would it be too cynical to wonder if the Residents were laying the foundations to engineer the country's socio-political and economic path to a pre-desired future outcome?

This study is motivated by a desire to understand how the symbiotic relations between public policy and the law can induce societal reorientation onto a different trajectory, and how policy intent, enforced by law, can have unintended long-term consequences. To assuage our curiosities, we locate ourselves on the intersection between public policy (land reform) and the law (the 1907 Enactment and the 1909 Land Code), during the formative years of the State of Brunei. Our undertaking requires untangling these

⁶ B. A. Hussainmiya, "Sultan Omar Ali Saifuddin III: The Making of Brunei Darussalam"

⁷ On what constitutes a 'state', see Chandran Kukathas, "A Definition of the State" in *University of Queensland Law Journal*, 33(2), 2014, pp. 357-366

polycentric policy-legal problems, contrasted against elements of historio-cultural considerations, in order to analyse the genesis for change. Our first task then is to explain the methodological framework, the Critical Juncture Theory (CJT), and the methods for extracting answers to our enquiries. Section two expounds the CJT by proposing an analytical equation composed of (1) the political imperative, (2) the policy intent in response to that imperative, (3) the legislative process, (4) the outcome legal framework, and (5) the policy impact. Next, we survey, briefly, the salient literature on the early Residential Period, particularly on matters of law. The critical features of ancient *negara* and of the nascent ‘State of Brunei’ are described in sections four and five, and contrasted to expose the critical juncture. Section six analyses the land laws, its intent, and scope of application.

SECTION ONE: RESEARCH METHODOLOGY AND METHOD

Critical juncture theory (CJT) focusses on “...a major event or confluence of factors disrupting the existing economic or political balance”⁸ in society. These disruptions are caused by the choices made by the actors involved in those events, or circumstances that significantly impact the long-term trajectory of a societal system. The theory thus emphasises the importance of agency and the choices they make that embark societies onto pathways that lead to significant changes in socio-political patterns, or the degeneration of new structures or institutions, or the emergence of new ones. For instance, the State of Brunei’s formative years, during the period of the Residents’ rule (1905 till 1959), was a series of events that gradually reoriented Brunei society onto an alternative socio-political trajectory. The period’s events, actors, and the choices they made, altered the course of Brunei’s institutional development and social structures. Critical events may also be brief, such as James Brooke’s appointment as governor of

⁸ Daron Acemoglu and James Robinson, “Why Nations Fail: The Origins of Power, Prosperity and Poverty”, New York: Crown Business, 2012, cited in Giovanni Capoccia, “Critical Junctures” in *The Oxford Handbook of Historical Institutionalism*, (Eds. O Fioretos, T. Falleti, A. Sheingate), Oxford University Press, 2016

Sarawak in 1841⁹ or it may constitute an extended period of time, like Brunei's period of Residential rule (1909–1959) or the events of the Arab Spring¹⁰, both of which were a series of actions and events that resulted in significant societal reorientation.

Although James Brooke's appointment as governor of Sarawak tempted him to conquer Brunei, there was, at that critical juncture, still a high degree of uncertainty as to the outcome of that appointment¹¹. This uncertainty, or contingency, arose at a crossroad that could bring about possible significant change or crisis, or not. The event's actors were faced with multiple options – to allow the local rebellion to fester, bring James Brooke into the equation, to appoint or not to appoint him as governor, etc., and the events' stakeholders' decisions at that crossroad could have lasting and significant future consequences. But such consequences were part of a range of possibilities, but could not, at that point in time, be predicted with certainty. The utility of CJT is in identifying reorienting events, its actors, their decisions, or policies, and the contexts that shape enduring societal changes. CJT focuses on understanding the roots leading to the transformation of societies and its institutions by analysing the impact of pivotal moments that inflicted lasting change. The assumption is that subsequent decisions thereafter are constrained by the initial choices, creating 'path dependence', that make it difficult to alter the now embarked upon trajectory.

These critical junctures were also decision crossroads, which posed contingencies invoked from numerous conceivable factors, such as the actors' actions or inactions, the stakeholders' possible reactions, the possible intervention of third-party actors, the possible emergence of new institutions, and possible changes in societal patterns. What is important,

⁹ James Brooke's appointment as governor of Sarawak instigated a series of events that eventually led to the demise of the Brunei *Negara*. For further details, see Nicholas Tarling, "Britain, the Brookes, and Brunei", Oxford University Press, 1971

¹⁰ From December 2010 till December 2012

¹¹ Pengiran Shahbandar Muhammad Salleh ibnu Pengiran Sharmayuda, "Sha'er Rakis", arranged by Muhammad Jamil Umar, *Dewan Bahasa dan Pustaka*, Brunei, 1965

whatever decision(s) made by the events' actors, it must have instigated significant change to existing policies, institutions, laws, or other societal patterns, with a lasting impact on the societal trajectory that imposes certain pathways for future developments. Thus, any event considered as 'disruptive' to the societal status quo, must, from hindsight, have lead society to arrive at a critical juncture. Events that did not instigate significant change, as is obvious, cannot be considered as a critical juncture. CJT is, therefore, dependent on historicity in order to determine whether an event inflicted significant change. In addition, just as the outcome of critical junctures are not duration-dependent, it can be relatively brief, path dependency is also not defined by duration. Once a society embarks upon a path-dependent trajectory, such a trajectory may also later be punctuated by further critical junctures, during which may then embark society onto a different trajectory.

CJT is useful for studying the "...genetic moments"¹² of a society's critical junctures, but this utility, as Cappocia and Kelemen point out, diverts attention from the outcome of those junctures; the embarked upon societal trajectory after a path-dependent process has been initiated.¹³ Microhistorical analyses, they go on, often explain the consequence of the critical juncture, but does not explain the actions and directions occurring *during* the critical juncture itself.¹⁴ In similar vein, we are well aware of the socio-political outcome of the Residents' policies and actions – the literature on Brunei's socio-political history are copious – but little has been done, as far as I am aware, to examine the genesis of that outcome. This study seeks to redress this paucity by looking at the intersection between public policy and the law, particularly, the Land Laws. My assumption is that after this critical juncture, Brunei launched onto a path-dependent trajectory that yielded the country into a process of national identity

¹² Giovanni Capocchia, and Daniel Kelemen, "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism", in *World Politics* 59, April 2007, pp. 342

¹³ Ibid.

¹⁴ Ibid.

formulation and the concept of citizen. We also know the next critical juncture Brunei encounters comes in the form of its 1959 Constitution. But as just mentioned, it is the genesis of this process remains unstudied.

To meet the aim of this study, I propose an analytical model built upon Hogan and Doyle's theory¹⁵ that a critical juncture consists of a (1) crisis, (2) ideational change, and (3) radical policy. I direct our focus on the events between (1) crisis and (2) ideational change, which outcomed the (3) radical policy. I thus construct an analytical equation composed of (a) the political imperative, that was instigated by the (1) crisis. The (a) political imperative led to (b) the policy intent as a response to that imperative, which led to (c) the legislative process, and finally, to (d) the legal framework that enforced the policy, leading to the (2) ideational change. See Figure A below.

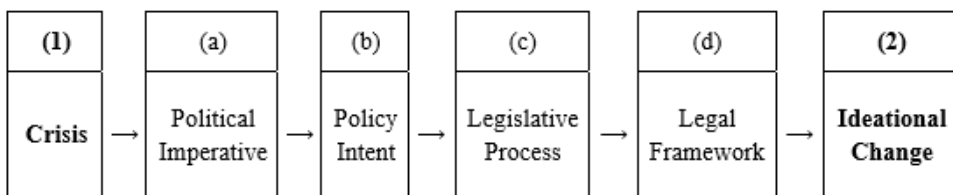


Figure A

The multifaceted relationships between each element on the analytical equation influences the other in profound ways; composing the critical juncture in Brunei's socio-political landscape. But the active elements that set Brunei on a different path-dependence trajectory remains to be determined. To give 'flesh' to the methodology, I have opted to employ conceptual analysis by deconstructing above elements into its critical constituents, and explain how those constituents relate to each other. Common constituent themes can then be identified in both concepts to order to be able to make a like-for-like comparison.

¹⁵ John Hogan and David Doyle, "The Importance of Ideas: An A Priori Critical Juncture Framework", in *Canadian Journal of Political Science*, Vol. 40, No. 4, Dec., 2007

SECTION TWO: POLITICAL IMPERATIVE, POLICY AND THE LAW

A short discussion at this point is useful to clarify some of the premises framing the analysis of this study. I have mentioned previously that the political and policy contexts are closely intertwined. Indeed, changes in one can significantly affect the other. A change in government, for instance, can lead to new policies, which oftentimes impact upon the country's socio-economic dynamics¹⁶. This much is clear and demands little rationalisation. However, at the dawn of the Resident Period, it was not simply a change in government, but a wholesale change in the way the *Negara* is to be governed. A new form of government and system of administration, based on British lines, was established. New power structures were introduced with the British Resident in almost total control of the country. All these events were instigated by a crisis in the form of the *Negara*'s collapse. Faced with this crisis, several 'political imperatives' presented themselves, the critical issues demanding the nascent State's response – which was sheer survival. And it was clear for the first British Resident, Malcolm McArthur, that whatever policies needed to be formulated, it had to respond to the most critical political imperative.

Thomas Dye is widely quoted as defining public policy simply as “anything a government chooses to do or not to do”¹⁷. Dye's direct, yet broad, definition paints a clear mental picture of what is 'policy'¹⁸, but it does not

¹⁶ The term 'dynamics' is used to indicate that whatever policies and laws implemented by the 'state' will impact upon the overall societal 'balance' that is constructed upon multiple inter-related themes. Any change to one or more of those themes will also impact on the other themes.

¹⁷ Thomas R. Dye, “Understanding Public Policy”, 14th Edition, *Pearson Education*, 1972, pp. 3

¹⁸ The term 'public policy' is an established concept only in the English language; later diffusing into other linguistic spaces by the need to translate American public policy. Even in the United States, the idea of public policy is relatively recent. The term 'policy' did not even have a place in the US Constitution, all that was, was 'law'. For further

offer a framework for analysis. Proceeding from Dye's definition, I venture to define 'policy', specifically public policy, as a government's expression of a broad course of action or inaction, in response to the political imperative. We can now link public policy, typically pertaining to what a government seeks to prevent, promote, or achieve, as a response to a political imperative. During the early days of the State of Brunei, numerous policies were propagated, primarily economic¹⁹, health,²⁰ and infrastructural development policies²¹. All these policies, though not overtly articulated, were responding to Brunei's political imperatives at that critical juncture, conceived from the 'crisis'. Thus, policy can be seen in action from the legislations, programs, initiatives, or directives performed by certain by governmental bodies, like ministries or departments – even without overt policy articulation. These programs and initiatives, in turn, are regulated and guided by their own internal administrative policies, which serve to support and operationalise the said public policies.

In some cases, administrative policies require legal sanction before it can be implemented. For example, the 1909 Land Code enforced the administration of the land reform policy to better facilitate claims and its legal registration. In contemporary terms, these types of laws are categorised as administrative or public laws. A third type of policy is management policies: these are also regulations and guidelines, but pertain more to the organisation's internal decision-making processes, to facilitate administrative policies. Also worth mentioning is the sub-categorisation of policies into 'hard' and 'soft' policies. In simple terms, a policy is considered a 'hard', if it requires legal instruments to enforce it, with certain consequences if transgressed. As mentioned earlier, the consequence of contravening a policy-tied law is analogous to the gravity of the political imperative. For instance, the anti-narcotic societal threat is a weighty

details, see Lowi, Theodore J., "Law vs. Public Policy: A Critical Exploration", *Cornell Journal of Law and Public Policy*, 2003, Vol. 12, Issue 3, Article 2, pp. 493

¹⁹ BAR 1906, pp. 7-12

²⁰ BAR 1906, pp. 13, BAR 1908, pp. 8

²¹ BAR 1906, pp. 14

political imperative, and the seriousness of the Government's policy in confronting this narcotic threat is reflected in the consequences of contravening the anti-narcotics laws.

Policy Type	Policy Imperative		Level of Applicative Force
Public Policy	Hard	→	Enforced by law with punitive consequence
	Soft	→	Pursued via encouragement or persuasion
Administrative Policy	Hard	→	Enforced by law with punitive consequence
	Soft	→	Pursued via encouragement or persuasion
Management Policy	Internal processes	→	Operating guidelines or Standard Operating Procedures

Table B

On the other hand, while the political imperative can still be weighty, not all policies require the imposing power of the law, but instead requiring only guiding principles or regulations, or even simply 'encouragement' and socialisation. See Table B above. These are soft policies, like the Brunei education policy during the Residential Period. Education was undoubtedly a weighty political imperative, but attending school was not enforced by law. The first school in Brunei was established in 1914.²² To give effect to the Government's education policy at the time, a soft policy was engaged through socialisation and encouragement as to the advantages of (free) institutional education was engaged.²³ By 1929, an

²² BAR 1914, pp. 5

²³ The Resident reported, "Public opinion in Brunei is not ready for universal or compulsory education. All efforts are concentrated on providing opportunities of training for children whose parents have sufficient prevision to appreciate its value." – BAR 1920, pp. 5 and BAR 1921, pp. 7

enhanced ('hard') education policy with its allied legislation made school attendance compulsory.²⁴

The legislative process is usually performed by a formal body, like a parliament, to formulate and promulgate laws, to then be interpreted by the judiciary, and enforced by the executive²⁵. While the law is but an instrument of policy, the legislative process forms an intermediate category, between policy and law. This renders legislative processes susceptible to competing interests to try sway policy direction by interfering in the formulation of the law(s) needed to give policy its applicative force. The dichotomy between public policy and the law also presents two further problems. First, the differences between the ends and purposes of policy, and the ends and purposes of the law. Public policy encompasses a wide range of domains, such as healthcare, education, communication etc. Policy formulation processes is often the result of a collaborative and iterative process involving policymakers, legislators, stakeholders, and the public, allowing for the consideration of diverse perspectives and the balancing of competing interests. Second, there can be conflicts within the system charged with making decisions regarding law and decisions regarding policy.²⁶

While the law is primarily concerned with the application of specific rules and regulations, policy addresses broad, complex, multifaceted issues not easily resolved through legal means alone. Since the law is an instrument of policy, and policy effectiveness is dependent on the effectiveness of the law, political imperatives can be located in a certain domain, with its legal framework in another. Furthermore, the interpretation of law is primarily

²⁴ Enactment No. 3 of 1929. See BAR 1929, pp. 20

²⁵ Woodrow Wilson insisted on differentiating politics from administration, and was hence formalised as "two functions of government," with politics as "policies or expressions of state will" and administration taken as "the execution of these policies.". Goodnow, Frank. "Politics and Administration: A Study in Government", 1900, as cited in Lowi, Theodore J.. "Law vs. Public Policy: A Critical Exploration", in *Cornell Journal of Law and Public Policy*, 2003, vol. 12, Issue 3, Article 2, pp. 496

²⁶ Joseph P. Tomain, "Institutionalised Conflicts between Law and Policy", in *Houston Law Review*, Vol. 22, No. 3, May 1985

shaped by judges and courts, interpreting and applying legal principles to specific cases. These different process domains make it crucial to recognise the interplay, and interdependence, between public policy, the legislature, and the judiciary. As we shall see later, the Brunei State Council formulated policies, as well as, legislated laws, thus eliminating possible discrepancies between policy intent and the objectives of the law. In fact, there was also a Resident's Court established, in addition to the executive and administrative functions of Government dominated and controlled by the British Resident.

SECTION THREE: A BRIEF SURVEY OF BRUNEI STUDIES

Much has already been written about the events surrounding the Residents' rule in Brunei, and no further indulgence is required. But a brief discussion is needed to set this study's context: the traditional *negara* and the early British Resident's era, and the events surrounding the 1907 Land Enactment and the 1909 Land Code. In reviewing the prevailing literature, I trace the intellectual and scholarship development and the major contributions made to the field, with particular regards to the aforementioned laws. I begin with the progenitor of modern scholarship in the study of Brunei, the American anthropologist, Donald Brown, who mapped out the contours of Brunei's entire socio-political and economic landscape.²⁷ Brown's seminal work, based on his 1969 doctoral thesis²⁸, provides important data and insights on Brunei society, economy, and political system as it transitioned from the traditional legal system to the British one. Despite Brown's detailed study, the specifics of the 1907 Land Enactment and 1909 Land Code remain elusive, other than mentioning a dispute between the Sultan and the Resident over the proposed 1909 legislation.²⁹ Question remains as to the contents of the 1907 Enactment, and how McArthur managed to convince the State Council to sign off the legislation.

²⁷ Donald E. Brown, "Socio-Political History of Brunei, A Bornean Malay Sultanate", *PhD. Thesis*, Cornell University 1967, pp. 122

²⁸ *Ibid.*

²⁹ *Ibid.*

Horton's 1985 doctoral thesis³⁰ offers arguably the richest source of references for this period of Brunei history. Likewise, Horton did not provide the information surrounding the 1907 Land Enactment. An edited version of Malcom MacArthur's pivotal report recommending Brunei's protection from Sarawak has been edited and reproduced by A. V. M. Horton³¹. However, McArthur's Report, and others like the Brunei Annual Reports (BAR) 1906 till 1910, still does not shed much light on what happened to the 1907 Land Enactment. Nevertheless, Horton has meticulously unearthed, and making available, numerous historical resources from the Colonial Office archives in London. Brown and Horton were no doubt pioneers in establishing the informational groundwork from which other studies emerged. Others like Ranjit Singh³², examined Brunei's strategy for navigating the often-tempestuous diplomatic waters to eventually achieve a political 'victory' with independence in 1984. In similar vein, Hussainmiya focussed on the reign of Sultan Omar Ali Saifuddin III; primarily tracing Brunei's journey from 1905/1906 till independence in 1984. His 1996 book³³ is arguably the most comprehensive study of the events leading to Brunei regaining independence. Both Ranjit Singh and Hussainmiya gave due attention to the events surrounding the 1905/1906 Supplementary Agreement, but they did not offer beyond what can be gleaned what Brown and Horton has already provided.

Where this paper is concerned, studies by Mansurnoor³⁴ and Mahmud Saedon³⁵, offer important 'meaning' to the events, but their analysis were

³⁰ A. V. M. Horton, "The Development of Brunei During the British Residential Era 1905–1959: A Sultanate Regenerated", *PhD. Thesis*, University of Hull, 1985

³¹ M. S. H. McArthur, "Report on Brunei in 1904", Introduced and Annotated by A. V. M. Horton, in *Monographs in International Studies*, Ohio University, 1987

³² Ranjit Singh, "Brunei 1839-1983: The Problems of Political Survival", *Oxford University Press*, 1984

³³ B. A. Hussainmiya, "Sultan Omar Ali Saifuddin III and the Making of Brunei Darussalam", *Oxford University Press*, 1996

³⁴ Iik A. Mansurnoor, "Re-Establishing Order in Brunei: The Introduction of the British Legal System during the Early Residential Period."

³⁵ Mahmud Saedon Awang Othman, "Perlaksanaan dan Pentadbiran Undang-Undang Islam di Negara Brunei Darussalam: Satu Tinjauan", *Dewan Bahasa dan Pustaka*, Brunei, 1996

also mostly grounded in the information provided by Brown and Horton. What we require is the Brunei State Council records pertaining to the land laws, which are not readily accessible or perhaps forgotten on the shelves of libraries and archives. This informational paucity is also contributed to by the infrequent State Council meetings, which were less formal than modern legislatures, so discussions were probably not diligently recorded and archived as expected. In addition, the contents of State Council discussions would have been contingent on the Sultan's and the British Resident's discretion, so some matters may have been left unrecorded. The State Council's infrequent meetings also suggest the token local involvement in the country's policy direction, further exacerbating the paucity of information. More astonishing, Horton revealed, in regards to the British Colonial documents, "It is clear that a vast amount of material has been weeded out; and the researcher cannot but regret the loss of these papers. Some of the destruction was pure vandalism."³⁶

The main point of contention is the claim that Brunei's traditional land rights were abolished according to the terms of the 1905/1906 Supplementary Agreement.³⁷ As far as I am aware, no such terms exist. Hence, the need to 'find' the 1907 Land Enactment to ascertain whether it was indeed the legal basis for abolishing Brunei's traditional land tenure system. It might not. But the BAR 1908 explains that the 1907 Land Enactment is "...in the main based on the one in force in the Federated Malay States"³⁸. At this moment of writing, I am unable to locate in time the FMS Land Enactment,³⁹ to at least gain some semblance of what the

³⁶ A. V. M. Horton, "Colonial Office Correspondence Relating to Brunei 'Destroyed Under Statute' 1906-1934", in *International Journal of Asia Pacific Studies*, vol. 1, Inaugural Issue, 2005

³⁷ BAR 1907, pp. 3

³⁸ BAR 1907, pp. 8

³⁹ For some indication to the FMS Land Laws, see Innes, J. R. "Registration of Title in the Federated Malay States." *Journal of the Society of Comparative Legislation* 14, no. 2 (1914): 386-89. And also Wilson, H. E. "The Evolution Of Land Administration in the Malay States: A Survey of British-Inspired Changes" in *Journal of the Malaysian Branch of the Royal Asiatic Society*, 1975, 48, no. 1 (227), pp. 120-33

elusive legislation was about. Adding to the intrigue, a Colonial correspondence, kindly pointed out and shared by Mr. Simon Francis, states that the 1907 Land Enactment was never officially printed because it was repealed too soon in favour of the 1909 Land Code.⁴⁰ Nevertheless, despite the situation's investigative appeal, it is important to retain in mind that this paper is not about Brunei studies *per se*, but rather the context for examining the policy-legal nexus at a critical juncture that eventually led to irreversible socio-political change.

SECTION FOUR: THE ANCIENT *NEGARA*

The way a society organises itself reveals much about their societal relations. The traditional Brunei *negara*'s societal configuration emulated the Indic *mandala*; the heavenly kingdom ruled by the god-king Indra. There, in the heavenly realm, Indra was encircled by four demi-gods, who in turn were surrounded by a further eight demi-gods of lower 'divinity'.⁴¹ As the earthly expression of the heavenly *mandala*, the *negara* instinctively mimicked the same configuration – 1, 4, 8 – at the centre of which was the *dewaraja*, as the earthly representative of the god-king, Indra.⁴² The *dewaraja*, now Islamised with the Arabic title, *sultan*, is supported by his four principals, the similarly Arabised, *wazirs*, namely the Pengiran Bendahara, who served as the Sultan's chief counsel, the Pengiran Temenggong, the Pengiran Pemancha, and the Pengiran Di-Gadong. These four principal officers of 'state' are similarly supported by eight *cheterias*.⁴³ The conceptual parallels between the *mandala* and the *negara* positions the earthly kingdom as a receptacle for the projection of heavenly power through the performance of pomp and spectacle. To consolidate this idea,

⁴⁰ From Library of the Institute of Advanced Legal Studies of the University of London. Courtesy of the collection of Mr. Simon Francis, London.

⁴¹ Stanley Jeyaraja Tambiah, "The Galactic Polity in Southeast Asia", in *Culture, Thought, and Social Action*, Harvard University Press, 1973, pp. 3–31.

⁴² Ibid.

⁴³ Donald E. Brown, "Socio-Political History of Brunei, A Bornean Malay Sultanate", *PhD Thesis*

the Brunei *rajas* were believed to have descended to earth from the heavenly kingdom, Kayangan.⁴⁴

In pre-modern societies, myths of divine origins form ideational frameworks crucial for formulating the people's conceptions of what constitutes legitimate authority. When reinforced by perceived supernatural powers of retribution (*sakhti*⁴⁵ and *tulah*⁴⁶) and of endowment (*daulat*⁴⁷), the rulers' authority coerces from the masses their loyalty and obedience. Operationally, however, the Brunei sultan's power was based on a participative form of authority, shared with the four principal *wazirs*, who, similarly divine, were also legitimate contenders to the throne. The sultan was essentially first among equals,⁴⁸ rendering his power structurally fragmented. But the mundane reality was that the *rajas*' power depended on the land tenure system; giving them control over resources and the *hambas*, or serfs, who lived on them. Composed of three categories, they were: the '*kerajaan*', which was the riverine regions from which the sitting sultan derived his income as ruler. The second, was '*kuripan*', a similar

⁴⁴ Haji Mahadi Haji Matarsat, "Syair Awang Semaun: Satu Kajian Teks", *Dewan Bahasa dan Pustaka*, Brunei, 2011

⁴⁵ *Sakhti* is a Sanskrit term, meaning 'power', 'ability', 'strength', or 'energy'. It is a central concept in Hinduism, where it represents the dynamic, primordial cosmic energy, and power. It also refers to the power of coercion or compulsion. The conceptual crossover into Malay culture is very close, where '*sakhti*' is conveyed in Malay as '*sakti*', or 'magic', or supernatural power. See J. M. Gullick, "Indigenous Political Systems of Western Malaya", in *Monographs on Social Anthropology*, London School of Economics, 1958, pp. xiv

⁴⁶ *Tulah*, while the *raja*'s power was held to be evident in his command of the creative energy of *sakhti* it was complemented by the retributive force of *tulah*. See Mohammad Taib Osman, "The Malay Sultanate: Past and Present Functions with Particular Reference to Negara Brunei Darussalam", in *International Seminar on Brunei Malay Sultanate in Nusantara Proceedings*, Vol. 2, Universiti Brunei Darussalam, November 1994, Pg. 473-474

⁴⁷ *Daulat* is a Malay-ised term derived from the Arabic '*daulah*' to mean 'state', where it culturally conveys the power of the sovereign; that mystical aura of power surrounding the rulers, and their sacred royal regalia. See Mohd Muzhafar Idrus, Ruzy Suliza Hashim, and Raihanah, M. M, "Malay Cultural Identities: A Review", in *Humanities and Social Sciences Letters*, 2015 Vol. 3, No. 1, 1-9.

⁴⁸ B. A. Hussainmiya, "Brunei Revival of 1906: A Popular History", *Brunei Press*, 2006, pp. 35

arrangement as *kerajaan*, which were appanages for the *negara*'s principal officers for the posts they held. The third was *tulin* 'rights'; these were inheritable personal properties.⁴⁹ In addition, the ethnic Bruneis also controlled the country's main mode of communication, the waterways, by strategically positioning themselves on the estuaries and river junctions to tax the passage of trade.

The *hambas* were bound to the land they lived on and subject to their overlord's authority, and were not considered property like slaves, who could be individually bought or sold. But if the lands they were bound to were alienated, their 'ownership' would be also transferred with the land. The Brunei *negara* was, as McArthur described it, "...a system of ownership"⁵⁰. Everybody was a *serf*, bar the ethnic Bruneis and the Chinese.⁵¹ On the eve of the Residency, there were several ethnic groups who predominantly lived within Brunei's areas of control: the ethnic Bruneis, the Belaits, the Bisayas, the Dusuns, the Kedayans, the Muruts, the Punans, and the Tutongs.⁵² And from among them, only the ethnic Bruneis and the Kedayans were Muslims. Others were indigenous animists.⁵³ This is intriguing. Considering the Bruneis used to propogate Islam as far as Mindanao to the point it provoked colonialist Spain to attack Brunei proper,⁵⁴ it is ironic the Bruneis did not proselytise closer to home. This sustained societal divide along religious lines may suggest how the ruling Bruneis and their ally, the Kedayans, morally justified their domination of others through serfdom.

⁴⁹ Donald Brown, "Socio-Political History of Brunei, A Bornean Malay Sultanate", *PhD Thesis*, pp. 79-85

⁵⁰ M. S. H. McArthur, "Report on Brunei in 1904", Introduced and Annotated by A. V. M. Horton, *Monographs in International Studies*, Ohio University, 1987

⁵¹ A. V. M. Horton, "British Administration in Brunei 1906-1959", *Modern Asian Studies* 20, no. 2 (1986): 353-74. pp. 360

⁵² Donald E. Brown, "Socio-Political History of Brunei, A Bornean Malay Sultanate", *PhD Thesis*, pp. 17

⁵³ *Ibid.*

⁵⁴ Brunei was attacked and its capital captured in 1578 in retaliation for Brunei's refusal to cease proselyting in the Philippines.

Furthermore, despite Brunei's distinct Indic socio-political organisation, it purportedly adopted an Islamic legal code, the *Hukum Kanun Berunai*.⁵⁵ It was a legal code compiled by a Court official, a certain *Khatib* Abdul Latif, on the orders of Sultan Hassan, though the Code is believed to have been adopted even earlier than that. This is entirely plausible since Islam first came into Brunei with the conversion of its first ruler, Awang Alak Betatar, who became known as Sultan Muhammad. The Code was completed and adopted during the reign of Sultan Jalilul Akbar and continued to be in force during the reign of his son, Sultan Jalilul Jabbar. However, the *Hukum Kanun Berunai* conveys at least four major legal references: indigenous traditions (*adat*), Indic legal elements, the ruler's prerogatives, and Islamic jurisprudence.⁵⁶ Thus, behind its Islamic veneer, the legal Code was also a conduit for the imposition, and maintenance, of Indic-inspired social norms in the form of customary law, or *adat*, and Indic conceptions of legitimate authority and power. Since society was split into Muslims versus non-Muslims, Brunei culture versus others, this Code probably only applied to the Bruneis and the Kedayans, being its primary consumers as Muslims.

In reality, Brunei was composed of semi-independent fiefdoms acknowledging one head, the sultan, similar to the feudal system of medieval Europe.⁵⁷ As international trade began to decline, diverted to rival trading centres like Malacca and Kuching, so did Brunei's power and sphere of influence. Sultan Abdul Mumin's plea to the British to preserve the *Negara's* land tenure system, was less about the country's sovereign survival, but to preserve their last remaining sources of power, the land and the *hambas*, which essentially was the country. Two premises becomes gradually clear: first is that the Bruneis' political culture, beliefs, conceptions of power and authority, and what legitimises them, were primarily manufactured for their own constituency, and to serve their own

⁵⁵ Haji Asri Haji Puteh, "Hukum Kanun", *Dewan Bahasa dan Pustaka*, Brunei, 2003

⁵⁶ Iik A. Mansurnoor, "Re-Establishing Order in Brunei: The Introduction of the British Legal System during the Early Residential Period."

⁵⁷ B. A. Hussainmiya, "Brunei Revival of 1906: A Popular History", *Brunei Press*, 2006, pg. 39

socio-political purposes. It was their initial wealth and numbers that allowed them to dominate the other ethnic groups. But to conflate the other ethnic groups, who possessed their own distinct culture, language, and belief systems, as part of the dominant Brunei culture would distort our understanding of the *Negara*. And second, the land tenure system was the critical framework constructing the country. The serfs were bound to the lands they lived on, and the lands, in turn, were owned by the *rajas*.

SECTION FIVE: THE NASCENT STATE

The 1905/1906 Supplementary Agreement between Brunei and Great Britain was a critical juncture in Brunei socio-political history; ushering the ancient *Negara* into the modern (Western-defined) world. Borders were drawn, demarcating its sovereign boundaries, and a modern government based on British ideas of governance and administration were established. This formal demarcation of borders was only made possible by an enhanced⁵⁸ recognition and protection provided by the British Government, and hence prevent further annexations of Brunei territories by Brookean Sarawak. Charles Brooke did not explicitly acquiesce his recognition of Brunei's territorial sovereignty, his covetous eyes still desiring the ancient *Negara*,⁵⁹ but British political sanction induced the *Negara* into evolving into a 'state'. This crucial change in political status, achieved simply with the recognition of a more powerful state, and more imperatively, with the physical presence of a British Resident in Brunei, allowed for the establishment of a new form of government, a new system of administration, new policy-making and legislative processes, and subsequently, the corresponding new laws to enforce those policies. Brunei

⁵⁸ 'Formal' recognition was given by virtue of the 1888 Treaty of Friendship, which to Brunei's detriment, did not stop Sarawakian devouring of Brunei territories nor its interference in Brunei affairs. In fact, the 'Treat of Friendship' emboldened Sarawak actions against Brunei with the complicit connivance of British officials. See Brunei Annual Report 1906

⁵⁹ A. V. M. Horton, "British Administration in Brunei 1906-1959." *Modern Asian Studies* 20, no. 2 (1986): 353-74, pps. 358-359

and its people were entered into a whole new political culture that would embark the country onto a different socio-political trajectory.

The first British Resident, McArthur, was faced with two critical political imperatives. The first imperative was protecting Brunei's sovereign integrity, in particular, from the still envious Charles Brooke. As late as 1924, Charles Brooke still campaigned to assimilate Brunei, which he saw as a 'natural' part of Sarawak.⁶⁰ It was important that Sarawak's purported motivations to annex Brunei be dealt with. From the outset, the British strategy was to create a sound administrative and legal foundation for Brunei. The imposition of a British Resident brought much-needed socio-political stability to the country, but it also stirred uncertainties among the people, perhaps even fear, over what could disrupt the familiar. The Resident's authority, unlike those perceived of the sultan, was not inherent unto himself or to his office. The Resident's authority was institutional, conveyed by the State Council, which he controlled through his mandatory 'advice'. The Supplementary Agreement insisted the Resident's advice was incumbent upon the sultan and to be "...taken and acted upon on all questions in Brunei, other than those affecting the Mohammeden religion"⁶¹. In the past, in Brunei's traditional participatory form of authority, members could well influence policy, and consensus was the order of the day.

This pervasive 'advice' clause enabled the British to intervene deep into the very foundations of Brunei's political culture, that of *adat* – the customary laws governing all aspects of Brunei society, both the public and the private. The Resident thus wielded, always in the Sultan's name, a coercive form of authority, a sort of benevolent 'king', with the "...the power of enforcement"⁶². This pervasive form of power allowed for the emergence

⁶⁰ A. V. M. Horton, "The Development of Brunei During the British Residential Era 1905–1959: A Sultanate Regenerated", *PhD. Thesis*, pp. 119

⁶¹ A. V. M. Horton, "The Development of Brunei During the British Residential Era 1905–1959: A Sultanate Regenerated", *PhD. Thesis*, pp. 119

⁶² *Ibid.*, pp. 120

of three junctives, which served as the institutional conduits to transition Brunei from traditional *negara* to state. The **first junctive** was the State Council, which only served, as Hussainmiya puts it, to “manufacture consensus”⁶³. But it was a shrewd strategy to piggyback on an authority form the masses culturally recognised, in order to maintain the people’s loyalty and obedience. At that transitional period in time, local perceptions of authority and legitimacy still prevailed, and it was important to retain indigenous authority structures in the exercise of power. Though now equipped with near-absolute power, the Residents could have ruled by decree. Instead, they insisted on due process and the rule of law, and institutionalised the State Council as a policy-making and legislative body. The new State Council first met on 29 June 1907, among others, to approve a list of members who had a “constitutional right to participate its proceedings”⁶⁴.

Despite the British’s democratic political culture, the State Council’s legislative processes were not in any way reminiscent of popular-rule. Instead, the Residents implemented a bureaucratic legislative process where, “...all legislation was drafted by the Resident, and the texts, based usually on enactments already passed in Malaya, were then scrutinised by the legal officers of the Straits Settlements. All questions pertaining to Brunei from the Resident was referred to the Secretary to the High Commissioner, in Singapore:

“His office is the High Commissioner's Secretariat for the Unfederated Malay States (UMS) and conducts any correspondence with the Colony (i. e. the Straits Settlements), the Federated Malay States (FMS) or any particular UMS in matters affecting the UMS as a whole or as a part”.⁶⁵

⁶³ B. A. Hussainmiya, “Manufacturing Consensus: The Role of the State Council in Brunei Darussalam” in *Journal of Southeast Asian Studies*, vol. 31, no. 2, 2003

⁶⁴ Ibid., pp. 326

⁶⁵ A. V. M. Horton, “The Development of Brunei During the British Residential Era 1905–1959: A Sultanate Regenerated”, *PhD. Thesis*, pp. 119

The establishment of bureaucratic rule formed the **second junctive**, where all major decisions were made by civil servants, which extended to policy implementation, through the newly established administrative body called '*Kerajaan*'; literally meaning, the 'condition of being monarchical'. Thus, *Kerajaan*, or government, always conducted its functions in the name of the Sultan, but it was also headed by the bureaucratic Resident. The result, was considerable power, consolidated in the office of the British Resident. He controlled policy-making, its legislative functions, the implementation of policy, the enforcement of laws, and the courts, while also being the head of government.

The **third junctive** was the legal system. The *Hukum Kanun Brunei* was swiftly swept away by the tidal changes Residences imposed. In 1908, the adjudication of the Islamic judiciary was reduced, as what happened in Malayan protectorates. In fairness, the points of contention against the *Hukum Kanun Brunei* were less due the legal code *per se*, but rather the administration of law and lack of due process. Grievances against Brunei rule, centred upon accusations of miscarriages of justice, became a bone of contention amongst the ordinary people, and was one of the main excuses made by Sarawak to annex the whole country. Generally, the higher one's status, the lesser the penalty imposed; with every likelihood a high person of high status could escape punishment. The *Kanun*'s renouncement suggests the British viewed Brunei's indigenous laws as a component of *adat*, and not of religion. The Sultan protested McArthur's intervention in local customs, or *adat*, in particular, the abolishment of the land tenure system. The Sultan also petitioned for the Government to assist in the recovery of escaped slaves, and that the Sultan and State Council be consulted before issuing warrants against prominent people. Both three requests were rejected outright.⁶⁶

⁶⁶ A. V. M. Horton, "The Development of Brunei During the British Residential Era 1905–1959: A Sultanate Regenerated", pp. 145-146

<div>Political Imperative</div> <div>Power</div> <div>Junctive</div>	Political Culture	
	The <i>Negara</i>	The State
	Projections of Power and Authority ↓ Perceived Divinity ↓	Survival ↓ The British Resident’s Mandatory “Advice Clause” ↓
	1 Political Authority	Royal Consultative Council → State Council
2 Governance System	Syncretic: Indic & Islamic	→ Bureaucratic
3 Legal System	Syncretic: Indic & Islamic: Hukum Kanun Brunei	→ English-based Law

Figure C

After overcoming these initial challenges, Resident rule ushered a new socio-political dawn upon the people. There would be new ways of doing things and also new ways of thinking. There was a new centralised system of administration, and later, schools would be introduced⁶⁷. But these change-inducing institutions could not have been imposed without a new all-powerful authoritative posture. The bureaucratic system of rule was also new for the people, but it gave the British full control to steer the country’s

⁶⁷ BAR 1914, pp. 5

socio-political direction. But at that critical juncture, absolute power, it seems, was necessary. Over time, the Bruneians would realise the utility of ‘absolute’ power, and would themselves embrace the British’s administrative culture and reinforce the bureaucratic system of rule. What we see then, is that through the State Council, and in the name of the Sultan, the British inflicted discontinuity within continuity. Discontinuity, by dismantling the *Negara*’s socio-political structures, its conceptions of authority, what constitutes legitimacy and power, while maintaining the facade of socio-political continuity. It was the Residents’ authoritative power that animated the critical juncture, without which Brunei would probably have simply survived, suspended in its own inertia.

SECTION SIX: THE 1909 LAND CODE

The second political imperative was fiscal. Brunei at that point in time was “...practically bankrupt”⁶⁸. Brunei’s political condition was dire enough, but the country’s survival also depended on its economic health.⁶⁹ Revenues from taxation were the only source of income and the lease-payments from Sarawak were no longer forthcoming. The Resident’s immediate policy concern was therefore focussed on the socio-political aspects of *adat* that defined the country’s economic structures – those being the factors that instigated the ancient *negara*’s demise. Brunei’s weak and fractured economic structures and consequential fiscal penury exposed the country to the Brookes’ purchasing power, who bought their way into gaining control of Brunei territory. McArthur reported,

“Customs Regulations were framed in April 1906 to provide for the collection of reduced import duties by abolishing certain monopolies. These tentative and temporary regulations were repealed at the end of

⁶⁸ BAR 1906, pp. 7

⁶⁹ See Nani Suryani, “A Historical Overview of Brunei’s Economy before the Discovery of Oil and Some Subsequent Issues”, in *Southeast Asia: A Multidisciplinary Journal*, 7(1), 2006/2007, FASS UBD.

the year when a new Customs Enactment was passed applicable to the whole State”.⁷⁰

The Government strategy was to consolidate State revenues by buying back the monopoly rights from the Chinese businessmen. In 1906, Brunei's revenue came mainly from licences, customs duties, land and mining, poll-tax, postal revenue, launch fares and freight, market boat tax, interests, court fines and fees, and over issues refunded. Brunei's revenue for the year 1906 was St\$28,174.

In 1907, revenue increased to St\$51,777, but the State's accounts remained in deficit. A St\$200,000 loan was obtained from the Federated Malay States to help the Government tide State expenses over while the monopolies were being redeemed.⁷¹ Now, having stemmed Brunei's fiscal haemorrhage, the Government embarked on an economic development strategy, following the Malayan model of agricultural development to raise for Brunei cash crops, principally rubber.^{72, 73} But all lands were controlled or owned by the socio-political elites, including the peoples who lived on them. In 1906, McArthur reported that *kerajaan* and *kuripan* lands had been acquired as State lands “under the terms of the Treaty of 1906”⁷⁴. Though I have found no evidence of these “terms”, its policy outcomes are, nevertheless, demonstrable. A land law based, in the main, on that in force in the Federated Malay States, was passed by the Sultan-in-Council in April 1907.⁷⁵ It was necessary, McArthur explained, to pass such a law, “...to provide some means of ascertaining and verifying claims to land put forward by natives [*sic*].”⁷⁶ The policy agenda shifted to the reparation of the *tulin* rights. The Resident reported:

⁷⁰ BAR 1906, pp. 9

⁷¹ BAR 1906, pp. 4

⁷² BAR 1908, pp. 6

⁷³ By 1926, the Resident reported that, “... the profit of one European Rubber Estate for the year was nearly equal to the half the total revenue of the State.” – BAR 1926, pp. 7

⁷⁴ BAR 1906, pp. 15

⁷⁵ BAR 1907, pp. 8

⁷⁶ Ibid.

“The only legislation during the year was a Land Code, passed by the Sultan in Council in April. The Code is based in the main on that in force in the Federated Malay States. It was necessary to pass a Code to provide some means of ascertaining and verifying claims to land put forward by natives of the State. The result of the passing of a Land Code, containing provisions for a system of land settlement and registration of titles, was that the Land Office was inundated with an extraordinary number of claims, most of them extremely vague and many of them apparently fraudulent, to all easily accessible land in the State. The process of weeding out these claims and settling disputed ownership will occupy a great deal of time.”⁷⁷

The land reform exercise incited a number of claims to agricultural land, spurred by speculative motives among Brunei’s aristocracy that land before long would bear great value.⁷⁸ As fraudulent claims began to rise, the 1907 Land Enactment was soon repealed in favour of a new Land Code in 1909.⁷⁹ Under this latest enactment, all personal income earned through payments on territories as well as revenues from farms or trading monopolies became State revenue. But equally important, the 1909 Land Code contained provisions for a system of land settlement and registration of titles. Land ownership would be transferred systematically with proper land grants and titles. The Land Office was inundated with an extraordinary number of claims, most of them extremely vague and many of them apparently fraudulent, seeking to claim all easily accessible land. Weeding out these claims and settling disputed ownership “...will take a great deal of time”⁸⁰ But this new Land Code, prepared in 1908 and passed in 1909, intended “...for a simpler method of title than that at present in force”⁸¹ became occasion for a stand-off between the Sultan and the Resident. Some State

⁷⁷ BAR 1907, pp. 8

⁷⁸ BAR 1907, pp. 17

⁷⁹ BAR 1909, pp. 6

⁸⁰ BAR 1907, pp. 8

⁸¹ BAR 1908, pp. 7

Council members claimed the Sultan's seal was never affixed to the 1907 version.⁸²

Brunei's rulers had awoken to the financial jeopardy that they have been put in. The land tenure system completely undermined the elites' sources of power. Only after threats to cut off his stipends, did Sultan Jamalul Alam agreed to sign the new legislation into law. Thus, proceeding from this critical juncture, an idiosyncratic political culture began to emerge towards socio-economic egalitarianism, imposed by an autocratic political authority. When we recall, laws are but a reflection of society's prevailing values and norms, the British intervention was in fact a reflection of British norms and values, imposed on Brunei society. The promulgation of the 1909 Land Code set off what was essentially a massive political-cultural change. Legally-binding proof of ownership reinforces the people's sense of identity and belonging to the lands they now owned; planting initial ideational seeds of social justice and equality. But for the Residents, they understood the fiscal strategies they imposed could only consolidate Brunei's revenues and be applied with strict fiscal discipline. A tight fiscal policy, however, is unsustainable unless the economy grows and develop. Yet, always bound by the rule of law, the Resident did not simply confiscate and nationalise all lands in the name of the State Council.

Brunei's economic imperative was impelled by the dual need to recover the State from the very reasons that precipitated its demise, as well as, the fiscal in order to pay for a functioning government. The Resident's land reform policy demonstrated that political considerations, such as the need for consensus, even if 'manufactured', the potential for backlash, and the influence of interest groups, all shaped their policy approaches. The 1909 Land Code paved the way for a new system for the administration of land law and the importance of due process. It was more efficient to introduce a new set of laws, already well-developed, based on the principles of English

⁸² See Hussainmiya, "Sultan Omar Ali Saifuddin III", pp. 18-19

Law, and already implemented in Malaya⁸³ and in British India, and not, it should be noted, from those that were enforced in England. In addition, the British were not prepared to support religious-based laws in contradiction to their own secular worldview and that they would have been unable to grasp enough to offer an improved version. These events paved the way for a shift from indigenous law, based on the syncretic formulation of Indic and Islamic Law, to the principles of English Law. But it would be over 50 years before the people would find legal articulation for their part in the new *Negara* in the form of the 1959 Constitution. But the genesis had begun.

CONCLUSION

This study sought to understand the symbiotic relations between policy and the law, and how it can reorient society onto a different trajectory, with the assumption that policy intent, enforced by law, can have unintended long-term consequences. In this regard, we find the 1905/1906 Supplementary Agreement was essentially the critical legal framework governing the Residents' authority, legitimacy, and power. It was an unofficial 'constitution' that sanctioned the Residents control over all processes of governance: policy, legislation, government, and even, the courts. Despite this rather 'despotic' posture, the British still adhered to English legal principles, while maintaining an authoritarian legislative prerogative, in contrast to the democratic ethos of Westminster. Their rationalisation was a practical one: to be able to respond promptly to the country's political imperatives and mitigate any departures of strategic intent between any of the processes.⁸⁴ When they exercised that power, the British exploited three junctives: (1) an institutional political authority, in the form of the State Council, (2) a bureaucratic system of governance, called 'government', and one that was bound by a robust (3) legal system. But putting these three, intuitively separate, junctives, demanded a level of authority and power to

⁸³ See Innes, J. R. "Some Notes on the Constitution and Legislation of the Federated Malay States", *Journal of the Society of Comparative Legislation* 16, no. 1, 24–29, 1916

⁸⁴ Tomain, Joseph P., "Institutionalised Conflicts between Law and Policy", *Houston Law Review*, Vol. 22, No. 3, May 1985

induce a new socio-economic structure to stimulate economic development and growth. At the confluence of these three junctives was the abolition of the land tenure system.⁸⁵

For certain, abolishing the traditional land tenure system was critical to instigate the *Negara*'s evolution into a state, as it facilitated opportunities for private ownership, emancipated the serfs from their owners, thus stimulating profound societal, economic, and political change. The role of the elusive 1907 Land Enactment in this episode remains uncertain. Did it embark Brunei onto new socio-political trajectories? Probably not. Neither was the 1909 Land Code pivotal to this cause, but it did reinforce the proposition of economic justice through the administration of land rights through demarcation and its registration. Whatever legal basis the British used to abolish the traditional land tenure system, simultaneously emancipating the serfs, did. Yes, the 1905/1906 Supplementary Agreement impelled Brunei upon a critical juncture, where it encountered a confluence of three junctives; forging the genesis of path-dependency through the abolishment of the traditional land tenure system, and one that was administratively facilitated by the Land Laws. It set the people onto an unreturning path to the idea of citizenship, and inculcating a sense of belonging to the 'state'.

But it would only be after decades of institutional reinforcement by the British's bureaucratic system of administration, then infused by the passions of nationalism, that the *Negara*'s evolution into a state become a reality. The outcome, as Fanselow observed, was that the people did not see the anachronism of a system of law purposed for preserving the ruler's right to rule, and not the people. And that the people, on the whole, appear quite content with their circumstances and find no contradiction between being the Sultan's subjects, and them as participants in the political process.⁸⁶ On

⁸⁵ Horton, A. V. M. "British Administration in Brunei 1906-1959" in *Modern Asian Studies* 20, no. 2, 1986

⁸⁶ Frank Fanselow, "The Anthropology of the State and the State of Anthropology in Brunei" in *Journal of Southeast Asian Studies* 45, no. 1, 2014, pp. 90

closer analysis, the British's strategy was to impose new political-cultural patterns, enabled and reinforced, by the rule of law. It was the economic imperative that motivated the agricultural policy, which conceived the legislation of the Land Laws. These policies and laws essentially effected a shift from a system of ownership to the institution of rulership, in the guise of economic development. And by always implementing policies and laws in the Sultan's name, the continuity of the *Negara*, as a political concept, was forged by discontinuing conceptualisations of authority, legitimacy, and power in esoteric terms, and replacing them in terms of law.

Our primary interest, of course, is in the symbiotic relations between policy and the law, but in doing so we cannot ignore the fact after discussing the Brunei experience on their critical juncture, that the genesis for change could not have proceeded without powerful catalysts. And that the genesis of change, at least in the Brunei context, was part of a larger overall plan. The British's autocratic strategy was already in play in Malaya and India, and they performed the same in Brunei. As already mentioned, the Residents combined their policy-making prerogatives with law-making authority to mitigate any variances between the two domains, policy and law. Of providence, the autocratic Residents, for good and for worse, were admittedly, 'benevolent autocrats.' British bureaucratic rule conceived, for the people, more economic benefits and social justice. But did the Brunei 1905/1906 critical juncture result in the imposition, or transition, into a democratic culture? The British probably laid the foundations for such. It transpired in Malaya and India, but not in Brunei. Stockwell commented that,

"In Malaya and Brunei, they survived: the rulers of the peninsular Malay states did so by adjusting to political change, whereas the Sultan of Brunei flourished by preventing it."⁸⁷

⁸⁷ A. J. Stockwell, "Britain and Brunei, 1945-1963: Imperial Retreat and Royal Ascendancy" in *Modern Asian Studies* 38, 4, 2004, pp. 785

But the truth of the matter was that the Malayan rulers *adopted* the ideational changes the British imposed on them, whereas Brunei *adapted* them for their own social-political purposes.

The British's grand plan for imposing socio-political change in Brunei, mired in the complexity of human affairs, inflicted a significant number of unintended social, political, and economic consequences from what was initially conceived as economic policy. Core political concepts like authority and legitimacy, the interplay of which determine the levels of power, were acculturated as the rule of law, adding further complexity to the symbiotic relations between policy and the law. The 1905/1906 Supplementary Agreement was intended, as a matter of policy, to transform the elitist *Negara* into a participatory socio-political form, but ironically instead strengthened the monarchical system by legal authority, and participatory in terms of civil society. The economic policy intent, with its associated Land Laws, also changed the meaning of 'Brunei' from an ethnic marker to 'Bruneian', as an association of peoples, of possibly different ethnicities and religions, belonging to the same socio-political entity called state. Finally, it seems the stakeholders at that critical juncture are not conscious of the wider, and long-term, socio-political implications of those land reforms.