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Special issue: Myanmar`s political transformation since 2011

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Taking Stock of Myanmar's Political Transformation since 2011

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Myanmar's Political Transformation: A Bird's Eye View

For the most time since independence in 1948, Myanmar had been ruled by a ruthless military junta which also controlled large swathes of the economy. In 2008, the military promulgated, as part of its so-called "roadmap to democracy" process, a new constitution which foresaw the holding of free and fair elections for the country's new bicameral parliament. Notably, the military retained a de facto veto over future constitutional changes by reserving a quarter of the seats in both houses of parliament for military appointees. The new constitution also stipulated that the ministries for defence, home, and border affairs needed to be headed by military appointees, thus enshrining prerogatives for the military and paving the way for a system of hybrid governance.

2011 marked the beginning of a process of political transformation, with Senior General Than Shwe stepping down as head of the armed forces and as head of state. His hand-picked successor in the latter office, Thein Sein, became the first democratically elected president of Myanmar. Thein Sein proved willing to work with Aung San Suu Kyi, the leader of the oppositional National League for Democracy (NLD) which successfully registered for national elections later in the year. In the parliamentary by-elections of 2012, the NLD won forty-three of the available forty-five seats, with

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Aung San Suu Kyi becoming a member of the House of Representatives. The 2015 general elections, the first openly contested elections since 1990, then saw the NLD win a sizeable majority in both houses of parliament, making it not only the governing party but also ensuring the 2016 election of its candidate Htin Kyaw as the first civilian president of Myanmar. Being constitutionally barred from the presidency herself, Aung San Suu Kyi was elected in 2016 to a newly created office, the State Counsellor of Myanmar, making her the de facto head of government. These developments created high expectations inside and outside the country and led optimistic observers to believe that the country had now embarked on a genuine transition to democracy. In any case, the unexpected, quickly evolving political opening meant that Myanmar was now more democratic than at any point in the past half century (Simpson et al., 2018: 433).

However, the following three years were marked not only by a lack of further deep-going political – or, for that matter, economic – reforms and a lacklustre peace process but also by a most brutal ethnic-cleansing campaign carried out by the army against Muslim Rohingya in Rakhine province as well as the general deterioration of political freedoms and civil rights (cf. Chambers and McCarthy, 2018: 3–8; Walton, 2018: 312–318). Aung San Suu Kyi's refusal to criticise the atrocities committed by the military in Rakhine province led to the seventy-four-year old, who has once been hailed as a beacon of democracy, falling from grace in the "West" and beyond. Questions were also raised as to whether the NLD really stood for the whole of Myanmar or only for its Bamar ethnic majority. Myanmar's political development path in recent years serves as a useful reminder – if any was needed – that political liberalisation does not necessarily mean transition to democracy.

Going to press less than a year before the 2020 general elections in Myanmar, this special issue explores the state of political transformation in Myanmar since 2011. In this introduction, we first place Myanmar's political transformation in global and regional context. We then sketch the issues facing the country's political transformation process and finally provide an overview of the contributions to the special issue. The special issue originated from the conference "Shaping Past, Present, and Future: Political Parties and State Transformation in Myanmar" which was held in November 2018 in Yangon and organised by the GIGA German Institute of Global and Area Studies in cooperation with Initiative Austausch and the Myanmar Office of the Friedrich Ebert Foundation (FES). The guest editors of the special issue would like to thank the Goethe Institute in Yangon for providing an excellent conference venue, the former country director of the FES in Myanmar, Alexey Yusupov, for his unflagging support, and last, but certainly not least, our colleagues in academia who either responded enthusiastically to our call for additional papers or who agreed to serve as anonymous reviewers for the papers submitted for this special issue. A separate bilingual (Burmese/English) publication, edited by Richard Roewer, U Myat Thu and Han Htoo Khant Paing, featuring short versions of a selected number of conference papers, is scheduled to be published in Myanmar in cooperation with the Yangon office of the FES in spring 2020.

Myanmar's Political Transformation in Global and Regional Perspective

How does Myanmar's political transformation fit into the broader picture of political transformation at the global and regional levels? Whereas closed autocracies still accounted for around half of the world's countries in 1980, by 2017 their share had dropped to around 12 per cent of regimes in the world. Half of the world's countries qualified in 2017 as either liberal or electoral democracies while electoral autocracies were the most common form of dictatorship (Lührmann and Lindberg, 2019: 1097). Yet, while the world today is more democratic than at any point in the twentieth century, almost one-third of the world's population lives in countries undergoing what the authors of a recent report on global democracy call "autocratisation." Autocratisation is an umbrella term that covers erosion in democratic countries ("democratic backsliding"), the breakdown of democracy, and the worsening of conditions in electoral authoritarian countries (V-Dem Institute, 2019: 14, 15).

More specifically, Anna Lührmann and Staffan I. Lindberg (2019: 1102) argue that a "third wave of autocratization" – following on the first and second reverse wave occurring, respectively, 1922–1942 and 1960–1975 – has been underway since 1994. It gained momentum in recent years, affecting populous countries such as Brazil, India, Turkey, and the United States as well as several Eastern European countries. According to Lührmann and Lindberg (2019: 1103), "[b]y 2017, the third wave of autocratization dominated with the reversals outnumbering the countries making progress. This has not occurred since 1940." Notably, the number of liberal democracies has declined from forty-four in 2008 to thirty-nine in 2018 (V-Dem Institute, 2019: 15) while "[f]reedom of expression and the media, as well as the freedom of civil society, and to some extent the rule of law, are the areas under most severe attack by governments over the last ten years of the current third wave of autocratization" (V-Dem Institute, 2019: 17).

Christian Haerpfer and his co-authors concur that the reverse wave of democratisation, coupled with rising authoritarianism and electoral triumphs of right-wing populism, "has nourished a new pessimism about the prospects of democracy and a general sense of democracy in crisis" (Haerpfer et al., 2019: xii). More optimistically inclined observers may point to the fact that over the past ten years more than twenty countries have become more democratic, testifying to the continued appeal of democratic values (V-Dem Institute, 2019: 25). The list includes countries as diverse as Armenia, Burkina Faso, Georgia, Kyrgyzstan, Tunisia, and Myanmar. Myanmar also stands out as one of the very few countries in Asia that have become more democratic in recent years. Whereas the 1980s and 1990s witnessed no less than seven countries in East Asia experiencing democratic openings – the Philippines in 1986, South Korea in 1986, Mongolia in 1990, Cambodia in 1991, Taiwan and Thailand in 1992, and Indonesia in 1998 – by the end of second decade of the twenty-first century two of these, Cambodia and Thailand, had reverted to authoritarianism, another one, the Philippines, saw a democratically elected leader engaging in authoritarian populism while inclusive democracy was under strain in other democracies in the region such as India, Indonesia, and Japan (cf. Grugel and Bishop, 2014: 308–337; Shin and Tusalem, 2019). With even mainland China having

turned more authoritarian again under President Xi Jinping, Larry Diamond's suggestion that the region might be on the cusp of the next wave of democratisation (Diamond, 2012) had not borne out, at least not in the short term. As Doh Chull Shin and Rollin F. Tusalem (2019: 417) conclude, "East Asia remains a region markedly resistant to the global wave of democratization. Overall, democratization in East Asia has been more like an ebb-and-flow tide rather than a surging wave." Against the background of these trends at the regional level as well troubling trends at the global level, it was no surprise that, at least for some time, so much hope was invested in Myanmar's political transformation process.

How has Myanmar's political transformation in recent years been reflected in some well-known democracy indexes? Whereas the country's political liberalisation since the beginning of the twenty-first century's second decade has seen Myanmar go up in all global and regional rankings, the characterisation of Myanmar's current political regime differs depending on the typologies, criteria, and operationalisations used in the respective indexes and sub-indexes. To start with, the Democracy sub-index of the biannual Bertelsmann Transformation Index (BTI) makes use of a fivefold typology of political regimes, ranging from "democracy in consolidation" to "hard-line autocracy." The BTI assesses the state of democracy in currently 129 countries – established democracies are covered in a separate index – in terms of stateness, political participation, the rule of law, the stability of democratic institutions as well as political and social integration. The index saw Myanmar going up from second-last position, behind only Somalia, in the 2012 BTI (which reflected developments until early 2011) to 104th out of 129 countries assessed in the 2018 BTI, placing Myanmar, in regional terms, between Cambodia and Vietnam. Yet, the 2018 edition of the BTI still considered Myanmar a "hard-line autocracy," not quite passing the bar set for a "moderate autocracy" (Bertelsmann Stiftung, n.d.).

Myanmar is also still considered an authoritarian regime in the 2018 edition of the annually updated Economist Democracy Index (EDI, each edition covering the year in question). The index uses a fourfold typology of political regimes (full democracy, flawed democracy, hybrid regimes, authoritarian regime) and is based on measurements in five categories: electoral process and pluralism, civil liberties, the functioning of government, political participation, and political culture. Whereas only three countries ranked below Myanmar in the 2010 edition of the EDI, namely, Uzbekistan, Turkmenistan, and North Korea, Myanmar moved up in the 2018 edition to 118th position out of the then 167 countries examined in total, and to 22nd position out of the 28 countries examined in Asia where it sat between Pakistan, still considered a hybrid regime, and Cambodia (Economist Intelligence Unit, 2019). In the annual assessments of Freedom House, which uses a simple trifold classification of political regimes (free, partly free, not free), Myanmar moved up from "not free" in the 2011 report (covering the preceding year) to "partly free" in the most recent 2019 report (Freedom House, n.d., 2019).

Finally, the V-Dem Institute and its V-Dem data set, which in recent years has become a go-to resource for political scientists, employs a fourfold typology of political regimes (liberal democracies, electoral democracies, electoral autocracies, closed autocracies). According to data presented in the V-Dem Institute Annual Democracy

Report 2019, Myanmar was considered a closed autocracy in 2008 but had moved by 2018 to electoral autocracy status. Out of the 179 countries assessed, Myanmar stood at 119th position in V-Dem's Liberal Democracy Index in 2018 (V-Dem Institute, 2019: 55). Whereas the 2019 report noted "fragile improvement" in Myanmar between 2008 and 2018 in terms of clean elections, freedom of association, freedom of expression, judicial constraints on the executive, legislative constraints on the executive, participatory and deliberative components, and in term of state fragility, significant weaknesses were noted in terms of equality before the law, egalitarian components, the polarisation of society, and last, but not least, in terms of military interference (V-Dem Institute, 2019: 24). In sum, all these indexes indicate that, despite the progress made in recent years, Myanmar continues to face serious issues in terms of political governance, being still far away from genuine democratisation. In the next section, we change perspective and take a closer look at Myanmar's political liberalisation since 2011.

Myanmar's Political Liberalisation Close Up: Why, How and With What Effect?

Myanmar's political opening after 2011 caught most observers by surprise. Until the late 2000s, the dominant topic had been the extraordinary resilience of the military regime which did not liberalise despite domestic pressures and external sanctions (Hlaing, 2009). While there had been assessments of the possibilities for democratisation, few observers predicted the political opening that followed the 2008 Constitution, the 2010 parliamentary elections and the 2011 change of government. Today, there is considerable disagreement among scholars about the possible causes, pathways, and ultimate outcomes of Myanmar's liberalisation process (Cheesman et al., 2014; Lall, 2016). With structuralist explanations referring to class formations or socio-economic conditions being of rather limited value to explain the political opening, scholars quickly turned to agential factors instead. This approach to democratisation, which links the bargaining between soft-liners within the authoritarian regime and moderate democrats to the nature of the evolving regime, has been particularly useful for explaining Myanmar's trajectory and the character of the evolving polity.

   We can identify two rivalling scholarly camps with competing explanations and expectations (Stokke and Aung, 2019). One camp, which we might call optimists, sees the transformation since 2011 as caused by changes at the apex of the military regime, providing a rare opportunity for democratic reforms. The retirement of Senior General Than Shwe in March 2011 and the rise of Thein Sein and other reformist actors within the military regime provided room for a more constructive role of civil society and international actors who abandoned their former confrontative strategies towards the military regime (Lall, 2016; Pederson, 2014). While the international community suspended their sanction policy, moderate civil society organisations such as Myanmar Egress, Vahu Development Institute or the Euro-Burma Office – known as the "Third Force" – lobbied for continued political reforms within the country and for more development aid from outside (Camroux and Egreteau, 2010; Hlaing, 2014). The reforms eventually ushered in legislative changes that allowed Aung San Suu Kyi and

the NLD to participate in the 2012 by-elections and the 2015 general elections, leading to the electoral landslide of the NLD and the first civilian government in half a century (Lidauer, 2012; Maung, 2016). The informal alliance between military reformers and civil society also paved the way for a new peace initiative which culminated in the National Ceasefire Agreement (NCA) signed by eight of the fifteen ethnic armed organisations in October 2015. "Optimists" consequently see the political transition caused by a split within the military itself, providing a unique window of opportunity for reforms and finally leading to a pact between military reformers and democracy icon Aung San Suu Kyi. This gave way to a weakly institutionalised electoral democracy, which remains a work in progress until this day. Despite these reforms, peace remains elusive since some of the most powerful ethnic armed organisations, including the Kachin Independence Organisation, the Myanmar National Democratic Alliance Army, the Taang National Liberation Army, the United Wa State Army, and the Arakan Army, did not sign the NCA.

Scholars in the second camp see Myanmar's reform era in a much more negative light. They interpret Myanmar's reforms as a survival strategy of the quasi-military regime to overcome the danger of factionalism and to increase regime durability by creating power-sharing institutions (Bünte, 2014; Croissant and Kamerling, 2013; Egreteau, 2016). These scholars interpret the reforms as a long-term strategy of the military, already starting in the early 2000s. Following a decade of massive modernisation, the army embarked on a top-down reform policy which aimed at enhancing regime stability and gaining international legitimacy (Callahan, 2014; Chow and Easley, 2016; Egreteau, 2016; Huang, 2013). This interpretation assumes that the Tatmadaw are the dominant, coherent, and, above all, unified force, which have been controlling Myanmar's politics – directly or indirectly – since independence (Callahan, 2003; Nakanishi, 2013; Selth, 2001). The military's self-proclaimed leading role in national affairs is rooted in the Tatmadaw's contributions to state-building, in the rising instability of the early postcolonial period and the rising ethnic rebellions which led to tensions with the civilian government, culminating in the 1958–1960 military caretaker government and the 1962 military coup. The military ruled the country from 1962 to 2011. It reorganised after the 1988 pro-democracy uprising, with the Burma Socialist Programme Party getting replaced by the State Law and Order Restoration Council (renamed State Peace and Development Council in 1995). Ethnic rebellions at the periphery and the pro-democracy movement in the centre challenged military rule but also contributed to its coherence until the retreat from direct military rule in 2011 (Bünte, 2018a; Callahan, 2014). The liberalisation since 2011 was consequently more imposed than pacted and reflected the military's changing (security) interests (Stokke and Aung, 2019). Lee Jones (2014) sees the liberalisation driven by gains in state-building in the 1990s and the vested interests of the military in the borderlands. Since the 1990s, the military has become the dominant actor both in politics and the economy with its own business conglomerates and crony companies, providing benefits in terms of health, education, and access to welfare for military personnel and their families. The opening up consequently also served the purpose of securing the personal and corporate interests of the praetorian elite (Bünte, 2018a; Ford et al., 2014; McCarthy, 2019).

While these two competing interpretations of Myanmar's transition are not necessarily mutually exclusive, they differ in their analysis of the main causes and drivers of change. What is even more important: they infer different possibilities for change and chances for further democratisation. While optimists see peace and democracy as a work in progress (and ongoing duty of democrats and political parties), the second viewpoint emphasises that change is primarily shaped by the Tatmadaw's commitment to peace and security. What kind of polity is evolving? As noted above, Myanmar's liberalisation has not yet passed the threshold to full democratisation. Scholars unanimously agree that it is a hybrid regime combining authoritarian and democratic elements. Myanmar is at best an electoral democracy heavily skewed towards praetorianism (Bünte, 2018a; Egreteau, 2016; Huang, 2017; Stokke and Aung, 2019). Even since political liberalisation in 2011, there have been serious shortcomings inhibiting the democratic process:

1. A high degree of militarisation and reserved domains for the military: Key areas are exempted from the control of elected representatives. In certain matters of state security, the Tatmadaw are solely in charge. According to the 2008 Constitution, the military holds key ministries in the government: the Ministry of Defence, the Ministry of Home Affairs, and the Ministry of Border Affairs, with all ministers being nominated by the Commander-in-Chief of the Armed Forces. The military also controls the National Defence and Security Council (NDSC), a powerful institution responsible for state security – although this body so far has not been convened by Aung San Suu Kyi (Bünte, 2018a). The Tatmadaw also had an immense influence on local affairs since the General Administration Department (GAD), which formed the backbone of the country's administration, had been placed under the Ministry of Home Affairs. The GAD was moved to the Ministry of the Union Government (and thus put under civilian control) only in January 2019. Additionally, the Tatmadaw have the right to administer their own affairs independently; the Commander-in-Chief is the highest arbiter of military justice[1] and can assume control of the state in case of an emergency. The high degree of military power shows that the military's mode of operation has only shifted from ruler to guardian and that a reform of civil–military relations remains a top priority. However, in her first term in office the NLD has not prioritised reforming civil–military relations and the restructuring of the GAD remained the only step towards a demilitarisation of the state (Bünte, 2018a; Myoe, 2017). Kristian Stokke and Soe Myint Aung (2019) also highlight the lack of government control over key areas of economic and social development in the periphery. These are under the control of powerful non-state actors such as ethnic armed organisations, militias, or border guard forces. We also find various forms of mixed authority and hybrid governance arrangements that raise critical questions about control and legitimacy (South, 2018).

2. Weak political representation: Myanmar's electoral democracy allows for democratic elections for both national and regional parliaments. However, only 75 per cent of the country's parliamentary seats are elected, while 25 per cent are appointed by the Commander-in-Chief. While the November 2010 elections had

been widely regarded as deeply flawed, the 2015 elections were generally considered fair and representing the will of the people. However, the definition of the demos was based on the 1982 citizenship law and, consequently, thousands of Rohingyas and members of other minorities (and many Chinese and Indians) were disenfranchised. This raises serious questions about political equality in the country (South and Lall, 2018). The first-past-the-post electoral system also prevents adequate proportional parliamentary representation in ethnically diverse areas (Lemargie et al., 2014). Consequently, we can conclude that parliamentary representation is heavily distorted – favouring the military over civilians and Bamar over ethnic minorities. Also, men are heavily over-represented in parliamentary realms – female representatives make up only 13.7 per cent of all elected MPs in 2016 (Egreteau, 2017; Sein Latt et al., 2016: ii; Stokke and Aung, 2019). Moreover, political parties display deficits in terms of representation: they are often poorly institutionalised and highly centralised. They are built around powerful patrons and exhibit weak links to the general population (Stokke et al., 2017). While political representation through intermediary party channels has its limitations, they cannot be substituted through civil society organisations either. Most of the NGOs lack access and influence – though particularly under the Thein Sein government some NGOs were invited to provide inputs – there are only few examples of substantive civil society impact on government policy. Although they have important roles to play in Myanmar's society, civil society actors cannot provide alternative channels for political representation. Myanmar consequently lacks substantive representation (Stokke and Aung, 2019).

3. Limited freedoms, civil liberties, and a weak rule of law: Whereas the extent of political freedoms widened before the 2015 elections, it is generally acknowledged that under the NLD government the political spaces for certain forms of political action have narrowed again (Bünte, 2018b). While human rights groups, journalists, and NGOs complain about lacking spaces and overt government (and military) repression, ultranationalist groups and ultraconservative monks have used the liberalisation for increased mobilisation – with devastating consequences for the multi-religious society (Walton and Hayward, 2014). Civil society groups have pointed to the rise in defamation cases brought against journalists and activists under the NLD, which has used section 66(d) of the Telecommunication law to silence and intimidate critics. From 2013 to January 2020, more than 250 lawsuits were filed, most of them for online defamation by military officers, government officials, lawmakers, and businessmen close to the military (Aung, 2020). Press freedom is increasingly under threat – restrictions on media have been exacerbated; journalists are not allowed to criticise or cover military affairs nor report from areas of ethnic conflict (Brooten et al., 2019; HRW, 2019). Myanmar's political liberalisation has also seen an increasing mobilisation of ultranationalist Buddhist groups contributing to the outbreak of intercommunal violence and anti-Muslim sentiments. Hate speech increased, particularly via new social media communities (Walton and Hayward, 2014). Sectarian violence and military clearance operations have driven hundreds of thousands of Rohingya

into neighbouring Bangladesh. Myanmar's justice system is failing to provide necessary justice – in the absence of the rule of law (Cheesman, 2015; Prasse-Freeman, 2015), the international community has called for an independent investigation resulting in accusations of crimes against humanity (UN Human Rights Council, 2018). In December 2019, Aung San Suu Kyi had to defend her country from accusations of genocide at the International Court of Justice in The Hague. Domestically, both the government and the military are using the increasing international criticism to rally their supporters behind them and to forge a unity, which is otherwise lacking in the multi-ethnic and multi-religious country.

4. Institutional weaknesses – centralism and poor separation of powers: The 2008 Constitution provides for elections for both national and regional parliaments. However, there is no direct democratic link connecting regional parliaments to regional executives – the chief ministers are appointed by the president. Under the NLD government, the president even appointed chief ministers from the NLD in those regions, where the party could not win a majority (e.g. in Rakhine State and Shan State). Since there is no direct link between regional legislatures and executives, the current regional parliaments do not have significant powers and are often not involved in any discussion of policies of the centre (Stokke and Aung, 2019). This has further alienated ethnic groups that have been demanding a federal system for decades. Although there have been discussions to introduce federalism, both the government and the military have refrained from reforming central–local relations so far. While some argue that the constitution lays a foundation for federalism – the constitution gives regional governments powers to legislate on resource extraction and collect some minor taxes – others opine that federalism is superficial at best (Holliday et al., 2015; Kramer, 2015). A reform of central–local relations is thus a necessary reform for substantial democratisation and conflict resolution.

5. Another institutional weakness refers to the system of presidentialism: The president and the two vice presidents are not directly elected by the people but by an electoral college comprised of both chambers of parliament. Since the military can appoint one candidate as well, at least one vice president is from the military. Aung San Suu Kyi herself was barred from the presidency due to the nationality of her sons. After the 2015 election, the NLD decided to create the position of state counsellor which is similar to the position of prime minister and gives Aung San Suu Kyi the possibility to coordinate government policies. This law, which has the same validity as the term of the president but places her above the president, centralised power in Aung San Suu Kyi's hands. Checks and balances eroded (Bünte, 2018c; Crouch, 2019). Apart from the position of state counsellor, Aung San Suu Kyi assumed four ministerial positions – foreign affairs (to be included in the NDSC), minister of the president's office, electricity and energy, and education.[2] A sizeable part of the civilian administration was consequently under her control – aside from the three ministries remaining under the control of the military. This concentration of power in Aung San Suu Kyi's hands did not have positive effects on Myanmar's transition: to the contrary, we have

practically seen some of the same repressive policies as under the military governments. Consequently, Kristian Stokke and Soe Myint Aung (2019) argue that there is a convergence in the understanding of the democratic opening between the NLD and the Tatmadaw.

6. Authoritarian values and traditional political culture: While there is a lacking commitment towards democracy at the elite level, we find some clashing attitudes towards democracy in the general population as well. According to the findings from the 2015 Asia Barometer Survey, Myanmar's citizens expressed some of Asia's highest support for democracy. However, at the same time we find the lowest support for liberal political values that undergird democratic processes (Chu et al., 2015: 134). The vast majority of people in Myanmar still adheres to authoritarian values and beliefs, and the legacy of authoritarianism is deeply embedded. Over 80 per cent of the respondents expressed support for the idea that religious authorities should have a say in lawmaking, nearly two-thirds oppose checks on the executive. Traditional values are still strong: 68 per cent agree that students should not question the authority of teachers, 81 per cent reject any form of pluralism (Chu et al., 2015: 136). All this shows that Myanmar's current political culture conflicts with the norms of equality, accountability, and pluralism, which is another explanation why the transition after 2015 got stuck and full democratisation has eluded the country.

The Contributions to this Special Issue

To illuminate some of the many issues surrounding Myanmar's political transformation process, the contributors to this special issue provide and employ institutional analysis, political theory, and legal perspectives. They analyse the development of important representative institutions as well as the choice and lack of certain public policies in the NLD era, and they explore why transitional justice did not figure in Myanmar's recent political transformation. In the first article, Renaud Egreteau investigates how Myanmar's parliament has changed since 2011 and whether it is undergoing a process of institutionalisation. Egreteau argues that a parliamentary culture has re-emerged despite capacity and efficiency problems and the continued dominance of the armed forces. He attributes this trend in part to the institutional development of the parliament itself, which now employs about 1,500 permanent staff playing a crucial role in the consolidation of norms. Routinisation has come to shape an institution that partly develops in line with democratic practices. For example, the wish for transparency has led to the recording and publishing of all legislative proceedings. Yet, Egreteau does not simply illustrate the development of rules, regulations, and proceedings, he also illustrates the differences and similarities of the Union Solidarity and Development Party (USDP) and NLD eras. Egreteau argues that the perception of the USDP era as a time of more open and active parliamentary debate (when compared to the NLD era) was not due to stronger checks and balances but rather to the public display of personal rivalries, which was more common in the USDP. Egreteau's analysis of the similarities is striking too: contrary to

expectations in 2015, NLD lawmakers have not engaged in more robust government oversight than their USDP colleagues of the previous term. Indeed, cursory vetting of government policy remains the norm. These new insights into Myanmar's re-emerging parliamentary culture are interesting signposts for Myanmar's transition. Egreteau describes the former as "constrained" but "evolving," the same could be said for the latter.

The focus on institutional aspects of Myanmar's political transformation continues in the second article in which Richard Roewer analyses the organisational structure of the NLD and its implications for the agency of the party and its role in the transformation process. With a view to the three faces of party organisation, Roewer illustrates the relationship between the party in public office, the party in central office, and the party on the ground. He observes that the organisation of the party has evolved comparatively little. Indeed, the party's current constitution resembles its precursor from over thirty years ago in important ways. This is not without repercussions: whereas the party constitution generally suggests the democratic election of important party posts, such as the positions in the party's central executive committee, it also allows for top-down appointments. Consequently, and contrary to pre-2015 expectations, the party continues to become ever more centralised. The party considers this increased centralisation necessary for retrenching the military's influence but the approach is unpopular with NLD members across the party's three faces. MPs have grown increasingly frustrated with what they perceive as a lack of political agency. In fact, Roewer argues that the high degree of centralisation is only possible because of the authority of Aung San Suu Kyi and might well set the party up for future split. Roewer's analysis underlines that Myanmar's transformation process remains prone to authoritarian backsliding.

While Roewer notes how the institutionalisation of the governing party's particular structure is potentially harmful to the political transformation process, Kristian Stokke examines in his article low levels of institutionalisation in ethnic parties. Myanmar's political opening has created new but constrained opportunities for representation, confronting ethnic political parties with the need to find a place for themselves in this new political reality. Stokke addresses existing hypotheses accounting for the weak electoral performance of ethnic parties and their struggle to ensure formal, descriptive, and substantive representation. He shows how party fragmentation, vote-splitting, low levels of institutionalisation, capacity limitations, and unclear boundaries of represen-tation account for the issues that ethnic parties continue to face in a first-past-the-post system dominated by the NLD and the USDP. Stokke draws parallels between 1988 and 2010, pointing to the proliferation of political parties and issues arising from overlapping representation claims. He contextualises systemic disadvantages faced by ethnic parties such as the electoral system and shows that the number of parliamentary seats affected by vote-splitting is smaller than often assumed. Indeed, developing party platforms that move beyond ethnic symbolic politics proves to be the more important but also difficult step towards achieving greater representation. Although many smaller ethnic parties have merged to counteract vote-splitting, they have so far not been able to revise their party platforms in meaningful ways. Competing with the NLD and USDP will require them to create a stronger political narrative. Stokke notes, however, that ethnic parties

might still improve their standing in the 2020 elections – if not due to their institutional changes then because of rising dissatisfaction with the NLD government in ethnic minority areas.

In his article, Matthew Walton explores prevalent negative perceptions of political parties in Myanmar grounded in Theravāda Buddhist conceptions of human nature as inherently self-centred, biased, and morally ignorant. Walton shows how moral scepticism of political parties shapes narratives around the legitimacy of political contestants. He illustrates how major political actors like the military and the NLD have sought to use moralistic accounts referencing the figure of *pu htu zin*, a morally deficient being that encapsulates many of the characteristics of a self-centred political actor. Walton argues that political parties are understood to promote egoism, effectively channelling or augmenting the self-centred nature of the *pu htu zin*. Parties thus stand accused of promoting narrow, personalistic interests. Walton shows how this critique has appeared – in various ways – in the writings of U Ba Khaing, a series of military leaders, and Aung San Suu Kyi. Whereas the interpretations used differ, their purpose is similar as dominant political actors seek to use the critique to elevate their own political legitimacy while devaluing the legitimacy of others. For example, Walton shows how the perils of the *pu htu zin* in politics fed into the military narrative that maturity is necessary to practice democracy, a move used to discredit the NLD following the 1990 election. Yet, the notion also shaped the NLD's desire to present itself as a "Union" party ahead of the 2020 election. The NLD argues that the party works for a "greater goal" rather than for political objectives of a specific group, thus criticising smaller ethnic parties. Importantly, Walton's response to the critique of political parties is not to supplant Burmese concepts with Western ideas but rather to draw on alternative interpretations evident in the writings of General Aung San and the nineteenth-century minister U Hpo Hlaing who present collective, participatory political action as the necessary response to human moral deficiencies.

In his article, Gerard McCarthy shifts the focus from the development and perception of institutional aspects of the political transformation to government policy, exploring how the NLD government has (not) been addressing deep-seated economic inequality in Myanmar. McCarthy provides a fascinating case study showing how programmatic political preferences have been shaped by the political developments and authoritarian legacies of the past thirty years. He notes that although economic justice was a catch-all theme during Burma's independence struggle and a defining subject for postcolonial party politics, matters of class and inequality are now notably absent from the ideology and policy platform of the NLD. McCarthy traces how the dissembling of Ne Win's dysfunctional welfare state, limited market reforms, and the selective suppression of civil society by the junta in the 1990s and 2000s benefited economic elites and religious philanthropic networks. More importantly, McCarthy explains why and how the NLD has come to embrace commercial elites and market liberalisation policies rather than class-based concerns and redistributive policies. He illustrates how the NLD's dependence on donations from economic elites has affected some of its political objectives, importantly the party's pledge to solve disputes over land grabs, for fear of alienating donors who the party portrays as integral actors of the democratisation process.

Consequently, McCarthy argues that structural reforms are necessary if the nascent elements of democracy are to endure in Myanmar.

Whereas McCarthy explores the lack of economic justice, Catherine Renshaw addresses in the final contribution to this special issue the absence of transitional justice mechanisms in Myanmar's political transformation since 2011. Renshaw shows how an argument that pitied justice against peace and gave preference to the latter came to be embraced not only by the military and the opposition in Myanmar but also by Western states and the United Nations. Renshaw also shows how the NLD government tried to strengthen the rule of law through investigations into allegations of misconduct by the military but ultimately failed. Against the backdrop of the atrocities committed against the Rohingya, Renshaw is sceptical about the deterrent effect of international law to protect minority groups in Myanmar. Renshaw evokes Helen Fein's "More Murder in the Middle" thesis to show that partly free states have the highest risk of committing wide-scale atrocities. Consequently, Renshaw is not optimistic about the further course of justice in Myanmar, contending that the country's current state is characterised by uncertainty and confusion – the very circumstances in which extreme violence becomes a viable means for achieving political goals. The article, therefore, also calls to abandon a line of political thinking that values a (fake) peace over transitional justice.

Declaration of conflicting interests

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Notes

1. This can have disastrous effects on human rights, as we have witnessed in the case of the soldiers who were found guilty of the execution of 10 Rohingya villagers in Inn Din in Rakhine State and sentenced to ten years in jail by a military court. After the intervention of the Commander-in-Chief, the soldiers have been released early (Thant, 2019). This not only high-lights the lacking accountability for severe human rights violations in the country, but also the ongoing military influence on the justice system.
2. She gave up two of these portfolios shortly after her inauguration (education and energy).

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Towards Legislative Institutionalisation? Emerging Patterns of Routinisation in Myanmar's Parliament

Renaud Egreteau

Abstract

This article investigates the patterns of parliamentary change observed in Myanmar since a constitutionally sanctioned, partially elected legislature was revived in January 2011. In particular, it poses the question as to whether processes of legislative institutionalisation have taken place in the course of the 2010s. Grounded on ethnographic work carried out between 2013 and 2018 in Myanmar's Union parliament, established in Naypyitaw, the article explores how in the two post-junta legislatures elected in 2010 and 2015 a number of institutional legacies and parliamentary procedures and functions have been both reintroduced and also reappropriated. The findings point to emerging patterns of routinisation of some legislative tasks and duties performed by neophyte lawmakers and parliamentary staff alike. It is argued that, despite persistent capacity and efficiency problems, and a continuing dominance of the executive and the armed forces in the post-junta context, a parliamentary culture has re-emerged in Myanmar. The article concludes by drawing attention to how a process of legislative institutionalisation has been developed, albeit cursorily.

Keywords

Myanmar, parliament, legislative institutionalisation, routinised behaviour, democratisation

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Introduction

The architecture of Myanmar's new parliamentary buildings speaks of commanding power. The vast legislative complex built in Naypyitaw, the country's capital city since 2005, sprawls over 800 acres. Surrounded with barbed wire, it appears insulated from the outside world. Yet, it has proved to be one of the most celebrated institutions of Myanmar's post-junta, constitution-based political system shaped after fraudulent elections were held in November 2010. Scholars have praised the activism of the new legislative branch initially under the auspices of the Union Solidarity and Development Party (USDP), the movement backed by the armed forces, or *Tatmadaw* (Fink, 2015; Kean, 2014; Moe Thuzar, 2013). The USDP controlled the inaugural post-junta legislature between January 2011 and January 2016. Others have highlighted how the 664-member bicameral parliament, or *Pyidaungsu Hluttaw*, attempted to exert meaningful checks on the first post-junta executive branch and the presidency of retired General Thein Sein during this period (Farrelly and Chit Win, 2018; Chit Win, 2016). After the second round of post-junta elections organised in 2015, a number of studies have also elucidated how the Myanmar parliament has morphed into a startling site for increased public debate and representation of the people following the landslide victory of Aung San Suu Kyi's National League for Democracy (NLD) (Egreteau, 2017a).

Legislatures tend to play crucial roles in the processes of democratic transition and consolidation (di Palma, 1990). Post-authoritarian parliaments typically emerge to regulate nascent popular mobilisation, channel what is ostensibly the people's will, while attempting to oversee post-transition state institutions, and monitor new policymaking elites (Leston-Bandeira, 2004; Remington, 1994; Whitmore, 2004). Although they have not been immune from occasional backsliding and the resilience of authoritarianism, several Asian polities have witnessed since the turn of the twenty-first century the consolidation of legislative and representative institutions (Zheng et al., 2014; Ziegenhain, 2008).

Starting with the premise that a functioning legislature is central to Myanmar's democratisation, this article investigates the patterns of parliamentary change observed in the country since 2011. In particular, it aims to identify whether elements of legislative institutionalisation have emerged in the course of the 2010s and if so, what does this development mean for Myanmar's current situation and future political trajectory. Legislative institutionalisation has different facets, but it is generally construed as the process by which a parliament acquires a definite, autonomous, and highly complex way of performing its core functions (Hibbing, 1988; Polsby, 1968). These encompass representation, government oversight, budgetary control, and, of course, lawmaking. Although the relationship between democratisation and institutionalisation remains complex, if not contested, scholars have posited that the routinisation (or "normalisation" in Weberian terms) of legislative norms and daily business is key to the institutionalisation of post-authoritarian legislatures and an indication of successful democratisation (Barkan, 2009; Hahn, 1996; Kopecky, 2001).

This study is grounded on ethnographic research conducted in Naypyitaw between 2013 and 2018. A number of caveats need to be made. By no means can the 100-odd

interviews I carried out with Union-level legislators and parliamentary staff form a representative sample. Nor can the observations of plenary debates or the focus groups I organised in the parliamentary compound, and in the guesthouse where civilian MPs reside, be considered to provide a complete overview. Yet, the original data collected over this five-year period provide significant insights as to how neophyte members of parliament and newly appointed permanent staff in Myanmar's resurgent legislature have performed their legislative duties and functions since 2011.

The article begins with an examination of the institutional legacies of the post-junta Union legislature and identifies a number of startling continuities with Myanmar's parliamentary past. It analyses how erstwhile parliamentary principles and procedures, but also age-old functions and rituals, have been reintroduced in the 2010s. From a comparative perspective, it then examines how key legislative mechanisms, processes, and tasks pertaining to government oversight, budgetary control, representation, and lawmaking – among the most vital functions of parliament – have been learned, (re)appropriated, and regularly executed by Myanmar's new breed of legislators and parliamentary staff. The findings of the research indicate that, despite a persistent lack of capacity and legislative efficiency, as well as a continuing dominance of the speakers, the executive branch, and the armed forces, a parliamentary culture and several routinised forms of legislative behaviour have re-emerged in Myanmar's post-junta context. However, this is not to suggest that the growing vitality observed in the Union legislature in the course of the 2010s has turned the novel national assembly into a fully independent arena characterised by vibrant and open debates and a well-oiled legislative process. Far from it. Yet parliament has asserted itself as a necessary, increasingly routinised – if still weak and reactive – institution of Myanmar's post-junta political life.

Reintroducing Legislative Bodies in Post-Junta Myanmar

As David Olson (1994: 117) has argued a revived legislature can seldom ignore institutional and political legacies. The new parliament in Myanmar was not established ex nihilo after the general elections held by the junta in 2010. The country has an understudied history of consultative and representative institutions tasked with a more or less meaningful debate of national legislation and the annual budget. The resurgence of parliamentary affairs and the shaping of a new legislative assembly were key components of the post-junta transition outlined by Myanmar's military establishment itself in the 2000s (Taylor, 2014: 140–142). In 2005, the relocation of the national capital from Yangon to Naypyitaw helped design a new site for the future representation of the "discipline-flourishing democracy," which was purported to emerge after the disbanding of the military regime borne out of the 1988 coup d'état. Among the many official buildings constructed in the new capital, the parliamentary complex was to form the centrepiece of this ambitious and transformational post-junta agenda, eventually codified by the 2008 Constitution.

The design by the military-drafted constitution of a partially elected parliamentary body has proved to be politically significant. There is a large body of research on the institutions of post-junta Myanmar, including on the limitations imposed by the

constitutional text and the role of the national legislature (Harding and Khin Khin Oo, 2017; Taylor, 2014; Williams, 2014). Chapter 4 of the 2008 Constitution focuses, in particular, on the structures of the post-junta legislative branch (Egreteau and Joelene, 2018). Legislative power is vested at the Union level in a bicameral parliament, or *Pyidaungsu Hluttaw*, comprised of a 440-seat House of Representatives (*Pyithu Hluttaw*) and a 224-seat House of Nationalities (*Amyotha Hluttaw*). The country has therefore returned to a bicameral design outlined by the colonial Government of Burma Act, 1935 and the first constitution of independent Myanmar, adopted in 1947.[1] The rationale for the reintroduction of bicameralism in the post-junta context of the 2010s – after fourteen years of unicameralism under General Ne Win's socialist regime between 1974 and 1988 – seemed to have been the need to satisfy political demands for a federal system and to offer restive ethnic minorities a voice in the new legislative organs.[2]

The 2008 Constitution has, however, imposed an institutional novelty unknown under Myanmar's previous parliament-based regimes: that only three quarters of all Union-level parliamentary seats be elected by universal suffrage (330 seats in the *Pyithu Hluttaw*, and 168 in the *Amyotha Hluttaw*, or a combined 498 legislators). The country has remained committed to single-member constituencies and the first-past-the-post electoral system, a legacy of British colonial rule. In the *Pyithu Hluttaw*, the 330 elected constituencies are based on Myanmar's existing 330 townships. In the *Amyotha Hluttaw*, each of the seven states and seven regions of the country has an equal number of twelve elected seats, for a total of 168 seats. The remaining quarter of Union-level parliamentary seats is constitutionally reserved for non-elected parliamentarians drawn from the armed forces. There is a maximum ("not more than," or *ma po thaw*) of 110 military legislators in the *Pyithu Hluttaw* according to Articles 109[b] and 56 in the *Amyotha Hluttaw* (Article 141[b]). The commander-in-chief of the armed forces directly appoints the military MPs, without civilian oversight. While military appointees can be substituted at will during the term of the legislature, the civilian representatives from both chambers are elected for a fixed five-year term.

The 2010 elections resulted in a quite predictable "inaugural" post-junta legislature. Heavily flawed, these first national polls in two decades brought in a cohort of transitory lawmakers. Many of the latter (though not all) boasted a long association with the old guard of the junta bureaucracy, the armed forces, and its clusters of cronies (Egreteau, 2014). Yet, whether elected or appointed by the armed forces, these new members of parliament and the leadership in the house soon bolstered – in startling ways – the role of the revived parliamentary institution (Fink, 2015; Kean, 2014). The by-elections held in April 2012, although focused on only a handful of constituencies, further built a momentum for the shaping of parliament as a central site for post-junta policy debate and representation. During these by-elections, the landslide victory of the NLD not only enabled the return of Aung San Suu Kyi who was, for the first time, elected by the people, but it also spawned considerable admiration for, and a focus on, the country's resurgent legislative branch. In particular, international donors started to develop parliamentary strengthening programmes while providing extensive capacity-building training to both new staff and members of parliament (Egreteau, 2017a).

Then, the second post-junta elections organised in November 2015 generated an almost complete renewal of Myanmar's legislative landscape. Only 13 per cent of incumbent MPs were returned to the Union parliament. Most opposition politicians who had played by the constitutional rule between 2011 and 2016 lost their seats. According to the literature on democratisation, a high legislative turnover is needed in the early years of a post-authoritarian transition, for this helps foster rapid political change at the highest levels of government. The turnover generated by NLD's momentous victory in 2015 was widely construed as a crucial step towards transformational change in the country (Tin Maung Maung Than, 2016). Subsequent by-elections conducted in April 2017 and November 2018 further highlighted the viability of Myanmar's nascent electoral process, while preventing the old authoritarian guard from retaining too much sway over the post-junta legislative institutions.[3]

The Re-Emergence of Parliamentary Rituals and Procedures

A startling phenomenon for long-time observers of Myanmar's politics has been to see how a vibrant parliamentary life has emerged. This involves not only the ritualistic discussion of draft bills but also the vetting of government budget papers and the questioning of ministerial staff and officials. To start with, a number of political traditions and legislative rituals have been rediscovered and further developed within the post-junta parliamentary bodies. A former British colony, modern Myanmar owes much to Westminster's parliamentary canons. Its late colonial and early postcolonial legislatures initially followed many of the rituals observed in the parliaments of the United Kingdom and other Commonwealth countries. A handful of these legislative rituals were re-established in the 2010s. They include the oath-taking ceremony that MPs must attend before joining the house, the highly symbolic mace-bearing spectacle marking the opening of the daily session, the particular dress code imposed on members of parliament, or the way MPs must address the house speakers and other fellow representatives (Egreteau, 2019, 2020). It has been argued that the introduction of reimagined parliamentary traditions and ritualistic activities in Myanmar's new legislative bodies is designed to demonstrate a certain institutional continuity after many years without recourse to parliament.[4] The systematic performance of age-old rituals can also facilitate the socialisation of novice MPs into particular, unfamiliar legislative roles and functions. "This is how we learn the rope," stressed one member of the International Relations Committee in the *Pyithu Hluttaw*.[5] Repeated rituals in an institution indeed tend to help its members familiarise themselves with what is expected from them.

Beside this set of rituals, legislative procedures and a regular, if flawed, legislative process have also resurfaced. The 2008 Constitution had outlined rules for organising the plenary sessions of the joint legislature and its two chambers. For the *Pyidaungsu Hluttaw*, there shall be at least one regular session a year to discuss and pass the Union budget and national tax bills, and no more than twelve months should pass between each session (Article 79). Besides, the first session of the *Pyithu Hluttaw* should convene within ninety days after the first day of the general elections (Article 123). It must also must meet at least once a year and no more than twelve months should pass in-between

two plenary sessions (Article 126). The first session of the *Amyotha Hluttaw* must be held within seven days of the commencement of the *Pyithu Hluttaw* session (Article 154[b]). In the inaugural legislature dominated by the USDP (2011–2016), one extraordinary session and thirteen plenary sessions were held. Their duration ranged from a mere few weeks to a staggering eight months for the twelfth session (January–August 2015). Since the NLD took control of parliament after its landslide victory in 2015, sessions have been staged in a more systematic and routinised way. Fourteen plenary sessions have already been convened (as of November 2019) based on a more consistent legislative calendar.[6]

The identification and understanding of procedural rules (and their roots) are central to elucidating Myanmar's post-junta legislative behaviour and practice. After years without recourse to parliament, there are now procedural opportunities for individual representatives – including those from the opposition – to be heard, ask questions to officials from the executive branch, and take initiatives in submitting motions or private bills. Backbenchers can perform oversight activities by engaging in the budgetary process and monitoring public expenditure. Rules for summoning members of the government and conducting budgetary control are indeed defined; they have often been painstakingly followed since 2011.[7] More significantly, parliamentarians can expect to influence policy discussions while sitting in committees and engaging in tentative pre-legislative scrutiny.

The set of legislative procedures was first adopted into law in 2010 but later revised in 2012, and then again in 2015.[8] In the early sessions of the USDP-controlled parliament, senior parliamentary staff as well as the speakers of the two houses realised that they faced considerable difficulties in implementing them. The rules of procedures were thus modified following a "learning by doing" process examined by Nicholas Farrelly and Chit Win (2018: 96). The senior leadership in the *Hluttaw* Office held substantial sway over the process.[9] The very fact that an extant set of parliamentary regulations and mechanisms has been frequently reviewed and amended by parliament itself since its restoration, in a clear attempt to achieve international standards and operate effectively, is often construed as a tentative sign of institutionalisation. This, according to Nelson Polsby (1968: 145), implies a transition to "universalistic and automatic norms" by a nascent political body. Another illustration of the considerable efforts made to respect democratic practices is that the legislative proceedings of Myanmar's parliament have been since 2011 systematically recorded and made available (in hardcopies and, since 2016, online) to the (seasoned) public in order to encourage transparency.[10]

Far from being only anecdotal, the research for this article has pointed to the beginning of a process of "routinisation" in Myanmar's two successive post-junta legislatures. Routinisation is the mechanism by which patterns of behaviour, internal rules, and procedures become regularised and entrenched (even if contested) in an institution. Moments of routinisation or "normalisation" of political and legislative life are central to the institutionalisation and consolidation of democratic bodies. A heavily routinised – if not bureaucratised – approach to the adherence to legislature procedures, rules, and rituals tend to result in a growing institutionalisation of a parliament – a process necessary to the sustainability of post-authoritarian democratic practices (di Palma, 1990).

What my ethnographic observation of Myanmar's Union legislature has revealed over the years is some hidden, yet remarkable, efforts at routinising some – not all – parliamentary mechanisms and creating novel norms of behaviour among the new breed of post-junta legislative practitioners, whether they be elected MPs, military appointees, or parliamentary staff. This has been up to the point of rapidly giving way to a sense of boredom and indifference – a key element of routinisation – among freshly elected, neophyte legislators.[11] The next two sections identify and investigate some of these emerging patterns of routinised behaviour observed among both Union legislators and parliamentary staff.

Behind the Scenes: The Pivotal Role of Parliamentary Staff

Parliaments around the world function effectively thanks to professional staffers. In Westminster-inspired bodies, legislative staff are generally (but not always) members of the public service and intended to be politically impartial. When Myanmar's Union parliament was resurrected in January 2011, a "*Hluttaw* Office" was founded and put under the leadership of a single Director General (DG) – the highest rank for a civil servant in the country's public administration (Egreteau, 2017a: 11–14). As the parliament's activities dramatically increased after a couple of hesitant sessions, three separate administrative units were then designed in 2012 to oversee the increasingly complex functioning of each chamber and the joint assembly.[12] Their respective workforce has been strengthened and greatly enlarged: as of 2019, the *Hluttaw* offices employed about 1,500 permanent staff.

This legislative staff have played a crucial role in the incremental forms of institutional and procedural learning. Permanent staff are assigned to the parliament's general offices and speakers' desk, the financial department, research and library wings, and public relations bureaus of each house. They are also assigned to the forty-odd committees in both chambers. Each committee has typically assigned to it a half-a-dozen staff, including a director and one deputy and several clerks – depending on the functions the committee is purported to perform. Staff are the legislative experts who handle technical, non-political matters when committees meet but also break for recess. They advise often ill-informed committee members on complex, procedural issues. They manage the hearings and daily functioning of these committees and liaise with other public agencies. Above all, they record and classify the minutes of each committee meeting. Myanmar has long been, and remains, a paper-based bureaucracy. Parliamentary services are no exception and despite an increased digitalisation, they continue to thrive as paper-based organisations that require a compliant workforce.

Furthermore, relations between MPs on the one hand, and senior parliamentary and committee staff on the other hand, have evolved quite considerably since 2011. Generally, these interactions have appeared rather grounded on personalities, characters, and administrative ranks rather than strict professionalism.[13] At the highest administrative level, retired army officers have dominated key leadership posts. Visibly committed to the success of their institution, these former colonels and majors have routinely

imposed a top-down, command-and-control, approach to the daily workings of parliament not always welcomed by civilian MPs or rank-and-file staff. At the lower end, some MPs have often considered staff as mere personal secretaries and odd-jobbers helping them to type reports, collect documents, send emails, and bring cups of sweetened milk tea. Others, in contrast, have viewed them as a needed source of information on parliamentary protocol and regulations.

The work and knowledge acquired by legislative staff through capacity-building training provided by the local and international good governance community has helped establish some forms of routinised behaviour, and administrative mechanisms in the two houses of parliament. This is particularly obvious when parliament is in recess, and its massive corridors emptied of its elected and appointed legislators. Legislative business indeed continues thanks to the daily activities performed by staff working in the legislative compound. As much as MPs themselves, *Hluttaw* employees are key agents of the institutionalisation process that the nascent legislature needs in order to consolidate its activities and assert its role. Their increasing value has not been left ignored in recent years. The parliamentary office in Naypyitaw has indeed struggled to retain its best elements.[14] The more expertise and skills they acquire – particularly in English, data-processing, office management, or research methods – the more competitive they become in Myanmar's changing job market. There are several examples of newly trained staff promptly leaving Naypyitaw – and even the public sector – to find a well-paid job in an international NGO or a foreign embassy in Yangon.[15]

Yet, an institutional memory of the rules and practices of parliament has long ago disappeared in Myanmar. There is thus a need to rebuild a public administration focused on, and expert in, legislative procedures and the formal workings of parliament. Given the high turnover of elected MPs already observed in the 2015 polls – a pattern which may be reproduced in the upcoming elections of 2020 – the institutional continuity and memory on which Myanmar's future legislatures will be built will have to rely on permanent, bureaucratised staff, one expert in routinised parliamentary administrative mechanisms and daily functions. The capacity and expertise of legislative staff will be key to the consolidation and institutionalisation of the post-junta legislative branch.

Legislative Business and Its Tentative Routinisation

Beside parliamentary staff, elected and appointed MPs also play an essential role in the still uncertain routinisation of legislative business. Three aspects of the latter process in Myanmar's two successive post-junta legislatures are examined below taking into consideration the core functions a democratic legislature is expected to perform (Olson, 1994), namely lawmaking, budgetary control and oversight of the government, and representation. As intimated previously, ethnographic observations for this article carried out since 2013 indicate an increasingly routinised, if flawed and superficial, performance of some key legislative functions by backbenchers and parliamentary leaders of all stripes and party affiliations soon after joining parliament.

Complexification of the Legislative Process

Lawmaking is one of the defining activities of a legislator (Olson, 1994: 145–151). The degree of control a legislature has over the formulation of a legislative proposal (a draft bill), its deliberation in committee or during the plenary session, indicates the degree of autonomy the legislative organ and its members have gained vis-à-vis other branches of government, in particular, in relation to the executive (Mezey, 1979). Differences in the origins of legislative outputs also reveal the relative strengths of backbenchers and the opposition vis-à-vis the ruling majority and government. This is the key to understanding how legislatures can influence democratisation processes that are often orchestrated by post-authoritarian executives and dominant political parties (di Palma, 1990).

In the case of Myanmar, both successive post-junta legislatures have developed quite different lawmaking patterns. Legislative hyperactivity characterised the first USDP-led legislature with the government, parliamentary leaders, and backbenchers from both the ruling party and the opposition enthralled by the limitless discussion of a large number of bills introduced in parliament. However, since 2016, the NLD-controlled legislature has proved far more cautious in the production of new texts and the revision of extant legislation in parliament. The submitting, reading, and amending of bills not only appears to have been carried out in a more prudent way, also but opposition parties and individual MPs have also proved less active than in the previous legislature.

However, it is not surprising that the executive branch dominates the legislative process in the post-junta context. The 2008 Constitution has allowed for such an arrangement common to most parliamentary systems. Myanmar's new legislature has been constitutionally designed to meet the criteria of a group of "reactive legislatures" characterised by modest policymaking influence (Mezey, 1979). Throughout the USDP-controlled legislature, it was indeed the government and its various agencies that prepared the substantial majority of bills submitted to both chambers (Egreteau, 2017a). The presidential term of President Thein Sein epitomised an era of lawmaking hyperactivity. Not only did the executive branch develop an active, far-reaching legislative agenda of reforms and wanted to legislate rapidly in order to quickly move the post-junta transition forward. A record number of 232 pieces of legislation – prepared mainly by the executive – were adopted during the thirteen sessions of the USDP dominated parliament. Only a handful of individual MPs – the most prominent ones – submitted their own proposals and drafted private bills without seeking guidance from their own party or coordinating with the government.[16] But the legislative branch under the dual speakerships of Shwe Mann and Khin Aung Myint also sought to hold sway over the lawmaking process, attempting to counter the hyperactivity of the presidential entourage and seeking to impose an increasingly thorough pre-legislative scrutiny of all bills submitted (Fink, 2015). In particular, halfway through the USDP legislature, both speakers introduced a fundamental change.[17] They redirected the core of the discussion on each bill introduced in parliament from the plenary session (where an increasingly unmanageable number of MPs proved eager to give their personal ideas on each draft considered) to legislative committees. Although the Bill Committees of each chamber soon became

overload with work, this has enabled more in-depth investigation of the value and relevance of all bills proposed.

In the following NLD-dominated legislature from 2016, backbenchers have seldom taken the initiative in drafting and submitting bills on their own. The Union government has continued to initiate, and thus control, the legislative process. The new ruling party had very early on created an internal vetting committee tasked with assessing all proposals envisioned by its own representatives. In practice, this strategy has streamlined the pre-legislative scrutiny procedure, while disciplining NLD backbenchers. By routinising the legislative process and controlling it from above, NLD whips in both chambers have successfully managed to rein in their troops.[18] Moreover, the creation and increasingly frequent use after 2016 of "coordination meetings" led by the Bill Committees in each chamber – which are constitutionally mandated to examine draft bills – has tended to rationalise further the legislative review process.[19] On the one hand, it has enabled a broader involvement of civil society, government agencies, and outside legislative experts in the drafting of bills. On the other, coordination meetings have also allowed for a greater influence of the Union parliament over the different stages of the legislative process (Htin Kyaw Aye et al., 2017b). These new procedures have therefore complexified – and lengthened – the in-house scrutiny of draft bills, pointing to the collective attempts at institutionalising the process of (re)making laws. Yet, by creating new sub-legislative bodies – coordination meeting groups – the NLD initiative has incidentally stripped ad hoc committees in each house from their central role in pre-legislative scrutiny. Both successive post-junta legislatures, in their own ways, have thus developed their own series of routinised stages through which bills have been introduced, debated, and adopted. Despite many, a clumsy experimental step having been taken – by speakers with commanding authority over their respective house – the legislative process seems to have been incrementally streamlined and regularised since 2011.

Emerging Patterns of Parliamentary Oversight

In theory, democratic parliaments are empowered to control the spending, decisions, and activities of the executive branch and the wider public administration (Pelizzo and Stapenhurst, 2012). Effective parliamentary oversight, however, cannot depend alone on the institutional design of oversight mechanisms and procedures in legislative bodies. The readiness and ability of legislators to participate in thorough budgetary control procedures and to actively participate in routine question time, or committee work, during which they can seek information, explanations, or clarifications from the executive, are essential to the effectiveness and regularity of legislative scrutiny.

The oversight function exerted since 2011 by Myanmar's Union parliament has proved rather weak, generally superficial, and often unproductive. During the USDP-dominated parliament, oversight has generally been left to individual initiatives carried out, first and foremost, by the two speakers, Shwe Mann and Khin Aung Myint. Some backbenchers and parliamentary committee chairs also participated, occasionally boosted with inputs from committee staff and external consultants. Between 2011 and 2016, rather than seeking to thoroughly scrutinise and oversee, the USDP-led legislature

instead superficially "vetted" the work of the central administration and Union government. Moreover, parliamentarians openly and regularly confronted the executive branch on political and personal grounds (Fink, 2015). This pattern of cursory legislative scrutiny grounded on individual initiatives has appeared to endure in the post 2016 NLD-controlled legislature.

Newly empowered opposition backbenchers and ambitious top-tier officials of the revived parliament under the USDP (re)discovered legislative jousting. They also learnt that important role an autonomous representative body can have in a regime based (even if only nominally) on the separation of powers. Nevertheless, the institutional and personal rivalries between the leaderships of the first post-junta legislative and executive branches – both drawn from the same USDP ranks – created a false impression of a meaningful system "checks and balances" being shaped within the modus operandi of the post-junta regime.[20] Senior MPs and Union ministers tended to oppose each other rather for personal motives and ambitious politicking, than in the spirit of reciprocal scrutiny.[21] It should be noted that the top-ranking members of the USDP executive had only reluctantly accepted the principle of legislative oversight. More often than not, to avoid embarrassing moments whilst summoned to the floor, Union ministers preferred sending the Permanent Secretary or DG of their administration for parliamentary hearings instead of being "grilled" themselves (Kean, 2014: 52). As the Deputy Speaker of the USDP-led *Pyithu Hluttaw*, Nanda Kyaw Zwa once confessed during an interview: "Yes, we check and balance, but [there are] more balances than checks."[22]

During the political, communal, and humanitarian crisis that affected several Muslim and Buddhist communities in Rakhine State and Central Myanmar in 2012 and 2013, several backbenchers attempted to bolster the oversight function of the legislature. Proposals and motions urging the prosecution of perpetrators of the violence – particularly the state security forces – were discussed (Kean and Chit Win, 2017; Chit Win, 2016). But this occurred to little avail. A good deal of the scholarship on the resurgence of parliament in post-authoritarian contexts has highlighted similar processes of initially fruitless but ultimately more fruitful scrutiny efforts from legislatures in southern (Leston-Bandeira, 2004) and post-communist Europe (Kopecky, 2001; Whitmore, 2004).

The oversight and administrative review function has, however, had the merit of not only existing and being tentatively performed by legislative committees and individual MPs alike. This itself is an achievement after decades without recourse to such processes in Myanmar, especially as the oversight and administrative review function has also proved incrementally consolidated since 2011. A vast array of local and international assistance schemes set up after the lifting of sanctions in 2012 have helped, particularly in the areas of budgetary control and administrative review (Egreteau, 2017a: 41–42). New mechanisms to force ministries to justify the gaps between actual expenditure and initially approved budgets have been designed.[23] Focused training sessions have boosted the capacity of parliamentary staff and legislators to perform a more regular and valuable vetting of the budgetary documents sent by various governmental and administrative agencies.[24] Still, only a limited number of backbenchers have proved daring – or interested – enough to seek greater oversight power and push for more meticulous and

thorough budgetary auditing (Htin Kyaw Aye et al., 2017a). The process seems still characterised as cursory financial "scrutiny," rather than thorough "oversight." Nevertheless, as in Westminster-type parliaments, the Public Accounts Committees (mandated by the 2008 Constitution) have proved to be the most powerful bodies. They can approve, reject, or take items out of the annual budget bills.[25]

This pattern of a weak legislative scrutiny, taking the form of a cursory vetting process rather than a detailed oversight, has appeared to endure under the NLD-controlled parliament. The days of open rivalry between the two houses of parliament and the presidency are in the past. Since 2016, the sense of competition between the two branches of government has indeed proved far less tangible. The presence of a single charismatic figure – Aung San Suu Kyi – at the helm of the new civilian leadership has helped diffuse intra-party tensions. Unlike their predecessors between 2011 and 2016, the two first NLD parliamentary speakers – Win Myint in the *Pyithu Hluttaw* and Mahn Win Khaing Than in the *Amyotha Hluttaw* – have acted as loyal legislators-in-chief engaged in enacting the NLD's (rather broad and vague) policy agenda. In particular, Win Myint has rapidly earned a commanding authority over backbenchers in the Pyithu Hluttaw. Under his aegis, parliament has tended to refocus its activities on more meticulous administrative review and budgetary control, rather than on the public – and highly political – scrutiny of governmental activities and open questions to the powers-that-be. T. Khun Myatt, who replaced Win Myint in March 2018, has pursued the same quiet efforts of routinisation of budgetary processes and the (discreet) exposure of government wrongdoing.[26]

Parliamentary question time has, nonetheless, proved a key instrument for performing a tentative scrutiny of the public sector and its officials under both legislatures.[27] Despite criticism about the lengthy notice period needed before tabling a question (ten days), several MPs in the first post-junta parliament – particularly ethnic lawmakers – rapidly learnt how to make the most of their question time slot (Farrelly and Chit Win, 2018). Contrary to initial expectations, the USDP-dominated parliament indeed proved an increasingly open arena, with many backbenchers delighted to publicly show what they stood for, or against, during plenary sessions. A quantitative approach to examining question time is not by itself sufficient to study the effects of parliamentary questions on executive–legislative relations and the oversight powers of a legislature. Yet, many an MP have boasted about the relentless pressure he or she has applied on the first post-junta government. Hla Swe, one of the most active MPs in the *Amyotha Hluttaw* elected in 2010, crowed when I first met him that he had already "asked one hundred questions."[28] An ex-infantry lieutenant colonel, he was a blunt, vocal, and outspoken USDP representative eager to reveal government misconduct and malpractice in his Magwe constituency.

Since it took control of the bicameral parliament in 2016, the NLD has imposed a stricter discipline on its MPs. Through training sessions, party meetings, and daily guidance by party whips, NLD legislators have been expressly told that awkward questions to the NLD government could hamper the country's progress.[29] Both NLD speakers told MPs[30] that the custom of asking "tough questions" to ministers had therefore to cease. Likewise, motions that would "reflect poorly on government" were to

be avoided.[31] The new parliamentary leadership seemed to have opted for a con-solidation of the hidden tools of legislative oversight – work in parliamentary com-mittees especially – and the technical vetting of budgetary papers, rather than on more visible performances of oversight through (frequently thwarting) questions and (poten-tially) humiliating public hearings. This strategy has evidently been aimed at preventing dissent among the ranks of previously outspoken civil society actors who had become NLD lawmakers after the 2015 elections.[32] Nevertheless, parliamentary questions remain a tool of choice, particularly for MPs from minority parties and less visible political forces, in the NLD-led parliament.

The tasks required in order to fulfil the oversight function remain huge. Parlia-mentarians elected in both the 2010 and 2015 elections have all proved novice in par-liamentary business. So have the military appointees. The power relations between neophyte backbenchers, on the one hand, and powerful political party leaders, Union ministers, senior bureaucrats, or military officials, on the other, have also continued to remain highly unbalanced. Lastly, the two speakers under both post-junta legislatures have developed considerable sway over the way legislative oversight has been construed and performed (or not). Even if parliamentary questions and the tabling of motions seems more codified in the late 2010s, negotiating effective, routinised legislative control of government, but also of Myanmar's powerful defence sector, will thus certainly remain a work in progress beyond 2020.

New Modes of Representation

In democratic theory, the representatives of a modern, democratic assembly are tasked to deal with the many concerns and problems expressed by those who have elected them. A sizeable body of research on legislative institutions has argued that MPs are indeed expected to act as "agents," and even sometimes "servants," of their constituents (Mezey, 1979: 145; Pitkin, 1967: 209–210). Drawing on Rosenthal's analysis of state legislators in the United States (Rosenthal, 1998: 11–22), I have identified three main representational activities that Union-level MPs have performed with regard to their constituency since 2011. These have been examined in the light of the first two post-junta legislatures and the dozens of interviews and focus groups with backbenchers I have conducted since 2013. The core argument defended hereafter is that the revived Union legislature, despite its elite-based social makeup and perceived seclusion in Naypyitaw, has acted as a key site of popular representation since 2011. And, this in ways unknown even in the early years of Myanmar's postcolonial democratic experi-ment in the 1950s. Under both the USDP- and NLD-led parliaments elected legislators – particularly those residing in constituencies easily accessible from Naypyitaw – have attempted to undertake regular, even routinised, legislative activities in, and for, their home electoral districts.

First, representatives must establish regular, direct linkages with their constituents, listen to their grievances and suggestions, dialogue with them, and report to them on the activities they have carried out in their name. Interviews I carried out between 2013 and 2018 have revealed a general pattern in the perceptions which Myanmar's post-junta

civilian legislators have developed about the connections they must maintain with their own constituents. The eagerness of the first post-junta cohort of parliamentarians to "work for the nation" and "represent the country" was both tangible and sincere. In the following NLD-led legislature, narratives have more increasingly been articulated around the wish to act and serve the "constituency" (me sanda nay), instead of the "nation" (taing pyi) or even the symbolic "people" (ludu). Most interviewees have proved, or at least have given the impression that they have been, conscious of the necessary bonds an elected legislator must build with his or her constituents. Even high-profile, wealthy members of the USDP long described as being out-of-touch, ivory tower-type politicians, have developed a rhetoric structured around their readiness to devote time, money, and labour for their constituents, including those who did not vote for them.[33] Many have taken great care to burnish their credentials as "good listeners" to the concerns of their voters.

One of the main avenues for public contact and direct interaction with one's constituents is the setting up of a local branch office in one's home district. MPs from Myanmar's two major political parties of the 2010s, the NLD and the USDP, have routinely used their own local party offices for that purpose. However, setting up an office has proved an unaffordable luxury for many low-profile backbenchers as well as representatives of remote constituencies or from small, ill-equipped parties. A handful of savvy MPs have thus ventured into modern, even high-tech avenues to reach out and create links with their electorate. Public figures, political parties, and local politicians have increasingly turned to platforms such as the instant messaging application Viber and, above all, Facebook.[34] The first *Pyithu Hluttaw* Speaker, Shwe Mann, stands out among the most prominent and avid users of Myanmar's burgeoning social media.[35] Local government officials have sometimes monitored comments and complaints posted by constituents on the Facebook wall of their respective legislators and on occasion even tried to address a grievance directly, thus avoiding having the issue publicly debated in the Parliament.[36] Nevertheless, social media has been more commonly employed as a channel of communication between elected representatives and outside observers, particularly civil society groups and the domestic and international media scene.

Second, legislators are expected to provide their constituents with a voice at the upper, more visible levels of government, and make their concerns known to the commanding heights of the state. Ethnic politicians and representatives of ethnic-based parties seem to have much enjoyed their presence in the new parliament for that very reason. They have construed the *Pyidaungsu Hluttaw* as a venue to make the voices of ignored, if not forgotten, ethnic groups heard again in the country's core centres of power. While the USDP and NLD have grounded their electoral programmes in 2010 and 2015 on broader political change and developmental issues, ethnic parliamentary forces have clearly structured their political agendas around the safeguarding and recognition of their own ethnic identities. For instance, campaigning and canvassing votes in the Rakhine state before going on to promote Rakhine culture and political views in Naypyitaw was a way for the Rakhine Buddhist elites, as Alexandra de Mersan has demonstrated, to "regain control" of their own land and political space (de Mersan, 2016: 62–63).

Acting as the representative of one's constituents and voicing their concerns in a national assembly is one thing. Being seen publicly performing that representational role is even better. N'Hpoung San, an ethnic Rawang MP, appeared quite content with limiting his activities in the *Pyithu Hluttaw,* where he sat between 2011 and 2016, to posing the occasional question to cabinet ministers regarding his Machanbaw constituency, in northern Kachin state. Although he never drafted a proposal and seldom joined discussions held in the committees he was assigned to, his party bosses could nevertheless watch televised proof of his devotion to his constituents in the form of the daily question time sessions.[37]

Third, representatives are supposed to acquire new resources or prevent existing resources from being taken away from a constituency and more generally provide a vast array of services to its members. Myanmar seems to have recently rediscovered the practicality and value of such programmes often labelled "pork barrelling." Several laws enacted to establish constituency-based development funds have been outlined or redefined since 2011 (Egreteau, 2017b). Of these, the constituency development fund, first introduced in the *Pyidaungsu Hluttaw* in 2013, has proved the most popular among recently elected MPs.[38] Thanks to this new legislation, civilian backbenchers – not army-appointed legislators – have been in position to provide tangible, visible benefits to their own constituencies on an annual basis. The programme was criticised right from its inception by a handful of parliamentarians and good governance organisations for its potential for corruption, embezzlement, and electoral clientelism.[39] As well as being negatively perceived as "pork providers," MPs have also gradually been considered more positively as potential service facilitators.

But with only two general elections held since the start of the post-junta transition, conclusions on the linkages between "pork allocation," patronage, distributive politics, and political representation are difficult to draw. With its own legacies of weak party institutionalisation, a high degree of personalisation of power, and traditional clientelist-type ties of social and political dependence, Myanmar nonetheless has intrinsically a high potential for ever more entrenched patronage and further "pork barrel" legislative politics, in ways observed in the Philippines, India, or Indonesia (Baskin and Mezey, 2014). Nevertheless, these schemes have the virtue of connecting lawmakers and their constituents through annual, publicly funded, visible development projects. These reinforce the opportunities for channelling hitherto unheard voices in the upper levels of the post-junta state institutions on a regular basis. Combined they indicate that new modes of legislative representation and routinised interactions between MPs and their constituents have appeared in the course of the 2010s.

Conclusion: The Limits to Parliamentary Institutionalisation

Myanmar's recently revived national legislature has offered a fascinating case for the study of parliamentary resurgence in a post-authoritarian context. Although constrained by a military-drafted constitution and initially designed to develop as a "reactive" legislature – to use Michael Mezey's typology – Myanmar's Union parliament has evolved into a significant political body in the post-junta political order in the 2010s. Legislative

rituals and functions long forgotten have been reappropriated. Parliamentary procedures and rules for conduct have been re-established and learned – if not always understood. Elected and appointed members of parliament of the two successive post-junta parliaments elected in 2010 and 2015 have rediscovered legislative mechanisms and practices, while, at the same time, being socialised into performing novel representational functions and oversight duties. Legislative staff have also incrementally participated in the strengthening of the parliament's daily work and its routinised, bureaucracy-based functioning. Even if democratic development cannot be evaluated only in terms of institutional arrangements or parliamentary routinisation, all these elements that came to the fore in the 2010s are, and will continue to be, essential for the success and the strengthened autonomy of Myanmar's post-junta legislative bodies. This will be the case regardless of who dominates them.

Because of limited public engagement and continuing top-down approaches to political debate and policy decision in the country's post-junta context, popular perceptions of Myanmar's parliament have occasionally become negative. Party discipline has been more strictly enforced in the NLD-controlled legislature since 2016, conveying an impression of a towering, yet incapacitating, dominance by the new ruling party and its charismatic leader Aung San Suu Kyi. After the initial euphoria observed under the hyperactive USDP-led parliament elected in January 2011, civil society groups have increasingly questioned the autonomy of the legislative branch. But it would be churlish to blame the parliament itself, as an emerging, partially elected post-authoritarian institution. Rather, decades without democratic participation, meaningful legislative debate, and accountable government have taken their toll. Moreover, the country's highly disciplined and personalised political culture – one shared even among pro-democracy forces – has also had a strong impact on the way the novel post-junta legislative institution has evolved in the 2010s.

Further research will be needed to assess their respective long-term impact on the potential slowdown of institutional progress in the Union parliament. However, initially, I would suggest that here are two core limitations to a further institutionalisation of Myanmar's parliament and the routinisation of its functioning – if not a risk of "legislative de-institutionalisation" (Hibbing, 1988). First, Myanmar's new legislative bodies will certainly continue to suffer from fundamental capacity issues and amateurism in the years to come. As shown above, it is the case that some key parliamentary functions and legislative procedures (questions, motions, reports, and representational activities) have effectively been reappropriated – if not reinvented – in the course of the 2010s. Beyond mere elements of bureaucratic repetition carried out by legislative staff, aspects of a Weberian routinisation of budgetary control, routinised parliamentary questions, and normalised representation performance have emerged and been strengthened in both successive post-junta parliaments. However, these indicators of legislative institutionalisation have so far only been cursorily observed. It remains to be seen whether an effective turning of nominal and procedural rules into routinised and valued legislative processes can occur in the country, beyond the whims and fancies of speakers, party whips, and savvy MPs.

Second, the continuing isolation and state of immunity in which Myanmar's military institution continues to operate represents a daunting challenge to the country's parliament strengthening its role. Despite progress recently observed – a superficial budgetary oversight of the defence services and the frequent summoning of top military officials to the house – the Tatmadaw and its affiliate agencies remain largely unaccountable, autonomous institutions. The armed forces, who hold a quarter of all parliamentary seats, have firmly refused since 2011 to convene the constitutionally mandated security and defence legislative committees of both chambers of the Union parliament (Articles 115b and 147b of the 2008 Constitution), resisted parliamentary inquiries into their own affairs (and misconduct), and have rarely accepted public criticism. There is a significant risk, therefore, for the legislative branch to develop into a two-tier system, where the military side would enjoy legislative immunity and considerable lawmaking influence, while the civilian side would struggle to routinely exert its constitutional duties and mandated control over the entire state apparatus.

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Declaration of conflicting interests

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Notes

1. After Myanmar gained its independence in 1948, parliament was dissolved twice: after the *coups d'état* of March 1962 (ending a fifteen-year-long experiment with constitutional and legislative assemblies) and September 1988 (disbanding the one-party legislature established by the 1974 Constitution). Parliament was thus not convened in the country for a total of thirty-five years (1962–1974 and 1988–2011).
2. Interview with Khin Aung Myint, Speaker of the *Amyotha Hluttaw*, Naypyitaw, 15 August 2013. It should be noted that the administration of parliament is three-headed, not two-headed: one autonomous office for *Pyithu Hluttaw*, one for *Amyotha Hluttaw*, and one for *Pyidaungsu Hluttaw*.
3. With three caveats though: an extremely low voter turnout during by-elections, the massive disenfranchisement of the Rohingya population from Northern Rakhine state in 2015, and the continuing presence of military appointees in parliament where men in uniform also vote concomitantly for civilian representatives.
4. Interview with a Deputy Director General of the *Amyotha Hluttaw*, Naypyitaw, 23 November 2016.
5. Interview, Naypyitaw, 18 November 2016.
6. Interview, Deputy Speaker of the *Amyotha Hluttaw*, Naypyitaw, 14 March 2017.

7. Interview with Secretary of the Rights and Privileges Committee in the *Amyotha Hluttaw*, Naypyitaw, 14 March 2017.

8. *Procedures of the Pyithu Hluttaw Law* No. 23/2012 and *Procedures of the Amyotha Hluttaw Law* No. 23/2012 (both adopted on 26 November 2012) as well as the *Law Amending the Procedures of the Amyotha Hluttaw Law* No. 35/2015 (25 June 2015) and *Law Amending the Procedures of the Amyotha Hluttaw Law* No. 56/2015 (7 September 2015).

9. Interview with Director General of the *Pyidaungsu Hluttaw*, Naypyitaw, 25 November 2016.

10. Interview with the Deputy Director General in charge of research and public relations in the *Pyithu Hluttaw*, Naypyitaw, 25 November 2016.

11. Interview with a National League for Democracy (NLD) legislator from the *Pyithu Hluttaw*, Naypyitaw, 8 June 2016.

12. Interview with Director General of the *Pyidaungsu Hluttaw*, Naypyitaw, 25 November 2016.

13. Interview with an NLD member of the Public Affairs Committee in the Pyithu Hluttaw, Naypyitaw, 16 March 2017.

14. Interview with Director General of the *Amyotha Hluttaw*, Naypyitaw, 23 November 2016.

15. Interview with an international parliamentary consultant, Naypyitaw, 21 November 2016.

16. Interview with the Chair of the *Pyithu Hluttaw* Bill Committee, Naypyitaw, 17 July 2014.

17. I thank one of the anonymous reviewers for pointing that point out.

18. Interview with NLD legislator from the *Amyotha Hluttaw*, Naypyitaw, 14 March 2017.

19. Focus group with members of the Joint-Bill Committee of the NLD-led legislature, Naypyitaw, 22 November 2016.

20. See Tha Lun Zaung Htet (2013).

21. Interview with a legislator from the Shan Nationalities Democratic Party in the *Pyithu Hluttaw*, Naypyitaw, 3 July 2014.

22. Interview, Naypyitaw, 17 July 2014.

23. Interview with a member of the NLD-dominated Joint-Public Accounts Committee (PAC), Naypyitaw, 14 March 2017.

24. Interview with a Myanmar consultant providing budget oversight training in Naypyitaw, Yangon, 4 November 2018.

25. Interview with an ethnic opposition MP, member of the Union Solidarity and Development Party (USDP)-led *Pyithu Hluttaw* PAC, Naypyitaw, 18 February 2015. PACs, however, cannot add any new budget item nor sanction the government for misappropriation. See also Article 103[c] of the 2008 Constitution. The Defence budget has also long seemed unalterable.

26. See for instance: Htet Naing Zaw (2018).

27. Interview with the Secretary of *Pyithu Hluttaw's* International Relations Committee, Naypyitaw, 18 November 2016.

28. The figure was close to thirty, though: interview with author, Naypyitaw, 18 July 2014.

29. *The Economist*, Democracy has muzzled Myanmar's parliament, 1 June 2017.

30. See Ei Ei Toe Lwin (2016).

31. See Pyae Thet Phyo (2016).

32. See Egreteau (2018).

33. Interview with a retired university rector and USDP legislator from a Yangon constituency, Naypyitaw, 20 February 2015.

34. Interview with a renowned blogger elected regional MP (Yangon) from the NLD in 2015, Naypyitaw, 15 February 2018.

35. See his personal Facebook page at https://www.facebook.com/HEThuraUShweMann.

36. As personally experienced by Soe Thura Tun, an NLD representative from a rural constituency in the Irrawaddy delta; interview with author, Naypyitaw 15 March 2017.
37. He was a member of the National Unity Party: interview, Naypyitaw, 3 July 2014. The Hluttaw TV channel broadcasting daily proceedings and summaries was set up in 2013.
38. Interview with a member of the PAC in the *Amyotha Hluttaw*, Naypyitaw, 14 March 2017. PACs in both chambers are tasked with the annual vetting of constituency development funds.
39. See Kean (2013).

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Three Faces of Party Organisation in the National League for Democracy

Richard Roewer[1,2]

Abstract

The National League for Democracy (NLD) is a decisive actor in Myanmar's ongoing political transformation process and yet a clear understanding of its structure is absent from the discourse on the party. This article analyses the NLD based on Richard Katz's and Peter Mair's "three faces of party organisation." It examines the relationship between the NLD in public office, the NLD on the ground, and the NLD central office. The findings characterise the NLD as a highly centralised party in which most decision-making power is concentrated at the party's central office. Select layers of the party's network retain the power to influence important decisions, such as the nomination of candidates for elections. Yet, their ability to do so is due to the lack of rules and regulations. This article argues that the structure of the NLD is the product of the dynamics that governed the formation and development of the party under authoritarian rule. Fears of a partial authoritarian resurgence at the hands of Myanmar's armed forces (Tatmadaw) and the perception that its authoritarian structures constitute a competitive advantage within Myanmar's hybrid regime inform the NLD's decision to refrain from reforming and democratising its structure. Yet, leaving the party's structure unchanged stands to negatively impact the party's political profile and its role in Myanmar's political transformation process. In the long term, it might endanger the party's stability and contravene the party's political principles. The article draws on interviews with NLD politicians conducted during an extensive research stay in Myanmar from 2018 to 2019.

Keywords

National League for democracy, political parties, hybrid regimes, Myanmar

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Introduction

Until the National League for Democracy (NLD) assumed government following a landslide victory at the 2015 general elections, the party had largely been perceived as democratic. As such, the party was portrayed as the "good" democratic actor that stood opposed to the "evil" Tatmadaw (Zöllner, 2012). However, since the party formed a government in 2016, it has failed to stand up for minority rights (Weng, 2018), has supported the military's scorched-earth response to the attack on border police posts in Myanmar's western state Rakhine (Naing and Lee Yimou, 2017) that led to the renewed persecution and exodus of the Rohingya minority, has decided not to repeal repressive legislation such as Article 66(d) of the Telecommunications Law (The Irrawaddy, 2017) which is frequently used to silence critics, has made little progress in the country's peace process (O'Connor, 2018), has seen a string of senior party leaders been tied up in corruption scandals (Frontier, 2019), and has been criticised for the increased centralisation of party structures (David and Holliday, 2018; Roewer, 2016).

For someone assessing the NLD without prior knowledge, based on its performance since 2016 alone, the party might seem akin to a façade-party: a party that purports to be democratic while harbouring authoritarian sentiments and using authoritarian tactics to increase its power for the sake of power and rent seeking abilities. However, such a categorisation would be misplaced. In some ways, the NLD is committed to furthering democratic reform, importantly the retrenchment of the military's political influence. The NLD continues to pursue constitutional reform that might – in the best possible and very unlikely scenario – do away with the 25 per cent of parliament seats that are allocated to the military by default and its supervision of the ministries of home affairs, border affairs, and defence (Ye Mon, 2019). Moreover, in 2019, the NLD government took over the General Administration Department, formerly under the military's oversight as part of the Ministry of Home Affairs, thus signalling that it can retrench the influence of the military.

There is, however, strikingly little research on the NLD. Only two English-language publications have focused specifically on political parties in Myanmar, explaining general party dynamics at the national and local level (Kempel et al., 2015) and providing insights on the classification of political parties in Myanmar (Stokke et al., 2015). Both make valuable contributions but neither focused on the structure and processes that characterise the NLD. Apart from the two aforementioned publications, research on the NLD has largely been published in the frame of broader questions (Aung Myoe, 2018; McCarthy, this issue; Walton, 2018). Moreover, a sizeable volume in Burmese chronicles the history of the NLD (Aung Shin, 2016). Yet, the latter focuses on the historical unfolding of the party's development rather than an analysis thereof. It is also important to note that the author is a prominent member of the party, at times assuming the role of unofficial spokesperson. Nonetheless, U Aung Shin's chronology is perhaps the only piece of writing that aims to provide a broad overview of the NLD and its history.

This article establishes a detailed account of the NLD's structure and analyses the relationship of three key party faces: the party in public office, the party on the ground, and the party central office. This loose framework helps to establish where

decision-making power is concentrated and will illustrate how the structure of the NLD shapes the way the party works. The findings show that the NLD is highly centralised with most of the power resting at the party's central office but with a gradual shift towards the party in public office. It also shows that individual layers of the party's structure so far retain the ability to influence important party decisions, such as the selection of candidates for elections, but that this power comes from a lack for regulation rather than an effort to decentralise the NLD. In effect, the NLD's structure makes the party more authoritarian as it focuses decision-making power in the hand of very few senior party politicians and leaves little room for democratic practices. Interviews with such senior party politicians show that the decision to retain authoritarian structures within the party stem from a perception that such structures are advantageous for the NLD as long as it operates in a hybrid regime. Yet, these structures shape the party's understanding of democracy and thus ultimately stand to influence the party's actions in Myanmar's political transformation process. Lastly, a better understanding of the party also aids the classification of the NLD as a mass party with catch-all elements.

The data presented in this article are the product of extensive field research conducted in Myanmar over the course of twelve months, the analysis of party documents and fifty-five semi-structured interviews with NLD politicians in Nay Pyi Taw, Yangon, Mandalay, and Hpa-An.

Three Faces of Party Organisation based on Katz and Mair

In their paper "The Evolution of Party Organizations in Europe: The Three Faces of Party Organization," Katz and Mair set out to explain the organisational change of parties by establishing three units of party organisation and exploring their relationship to one another. Doing so, they extend the disaggregation of parties beyond dichotomous categories such as "the party in government" and "the party in the electorate" or "the parliamentary party" and the "extra-parliamentary party" (Katz and Mair, 1993: 593). The idea of utilising more nuanced sub-categories in the analysis of parties was not entirely new at this point – V. O. Key (1964) distinguished between "the party in the electorate," "the party organization," and "the party in office" – but Katz's and Mair's categories are more differentiated and, despite their broad character, are more closely defined. Importantly, while Katz and Mair ultimately venture to apply their categories to examine the evolution of party organisations in Europe, their framework is not intrinsically tied to specific types of parties as is the case with other seminal accounts of political parties (Duverger, 1951). Thus, their approach lends itself to the application to parties that emerge in settings fundamentally different from those in Europe and the United States.

Analysis of these party sub-categories and an exploration of their relationship has merit in itself in so far as that it aids the description of important party characteristics, thereby exploring facets of the NLD that have thus far received little attention. Ultimately, however, the analysis of the party's faces must also aid its categorisation, that is, an assessment of the party's type. Here, it becomes apparent how the party types Katz and Mair produce (based on Duverger, Panebianco, and others) are also products of

Western political development and don't travel easily to cases with drastically different historical trajectories. Yet, engaging with these ideal party types is a first step towards coming up with better suited categorisations in the future.

Katz's and Mair's approach suggests that we should "consider parties as being comprised of a number of different elements, or faces, each of which potentially interacts with all of the others" (Katz and Mair, 1993: 594). Katz and Mair suggest three faces: the party in public office (i.e. in parliament or government), the party on the ground (i.e. its members and activists), and the party central office (i.e. its national leadership, in theory organisationally distinct from the party in public office) (1993: 594). Analysing the different faces allows us to explore the "resources and constraints of each face" (Katz and Mair, 1993: 601), the relationship between different faces, and the question of whether there is a degree of overlap between the faces. Katz and Mair's approach lends itself to an explorative analysis of the NLD precisely because it is general. Its scope is not limited to particular types of parties and its use is not restricted to consolidated parties or parties in the global north. Indeed, the only elements that parties are expected to have are the three faces. Katz and Mair do have more nuanced ideas about what the different faces ought to be and do. However, before exploring where the NLD conforms to general expectations and where it diverges from these, we need to establish an understanding of the party's structure which has so far remained vague.

The Organisational Structure of the NLD

The vague understanding of the party doesn't stem from the lack of research alone but also from the misleading and inconclusive information provided by the NLD itself. The constitution of the party states that

> The National League for Democracy is constituted as follows.
>   A. The National Convention of the League
>   B. The Central Committee
>   C. The Central Executive Committee elected by the Central Committee
>   AA. Within the Central Executive Committee there shall be the Chairperson, the Secretariat, and the Central Executive Committee Members.
>   BB. There will be a Patron Team which is elected by the Central Executive Committee. The team shall be led by the Senior Patron.
>   CC. Regional/State Executive Committees
>   DD. District Executive Committees
>   EE. Township Executive Committees
>   FF. Ward/Village Executive Committees
>   GG. Central Women Working Committee
>   HH. Central Youth Working Committee

However, it does not provide much information on the relationships between the different levels of the party structure. The Central Executive Committee (CEC) is the most important organ of the party and currently has twenty-one members although the number may vary. Up to five people from the CEC belong to the Secretariat,

a separate grouping within the CEC but "these days, the functions and performance of the Secretariat are not clear anymore" even to NLD MPs (U Myint Lwin, 2019). It is generally presumed to fulfil a ceremonial role rather than bear responsibility for particular party domains. The CEC is advised by a team of party patrons, formerly influential party leaders and elders who are now exercising a reduced role in the party due to their advanced age and poor health or because other party leaders wanted to curtail their influence. While the patron team is tasked with providing counsel to the CEC, this process is not formalised.

The CEC itself is led by the Chairperson (a role currently assumed by State Counsellor Daw Aung San Suu Kyi), a Vice-Chairman, currently U Win Myint, the President of Myanmar, and a second Vice-Chairman, currently U Zaw Myint Maung, the Chief Minister of the Mandalay Region. The central office of the party further includes eleven committees and two networks (see Figure 1). Each of the committees and the departments are chaired by a CEC member. Most CEC members are also members of the executive and legislative branches. This causes significant overlap between the party central office and the party in office. However, the interplay is somewhat regulated by Article 64 in Chapter 3 of the constitution that reads:

> If the President or the Vice-Presidents are members of a political party, they shall not take part in its party activities during their term of office from the day of their election. (Constitution of the Republic of the Union of Myanmar, 2008, Chapter 3, Article 64)

Generally, members of the union level executive must refrain from involvement in party business. The constitution makes no mention of the State Counsellor since the position did not exist in 2008. Yet, since the State Counsellor is the de-facto head of state, it applies to the position regardless. However, Chief Ministers of the states and regions can freely influence their party's business. Since the Chief Ministers are accountable to the union government, that is, the President and the State Counsellor, they also receive recommendations and instructions from them that they may pass on to the party. CEC member and Upper House MP U Aung Kyi Nyunt explained that "the union level executive party leaders don't have the right to engage in party business and party management, but they can influence the party through the Chief Ministers, thus influencing the party passively" (U Aung Kyi Nyunt, 2019). Thus, they influence the decisions made at the party's monthly CEC meetings although they are never in attendance. "In a way, he [Dr. Zaw Myint Maung, Chief Minister of the Mandalay Region, CEC Member and 2nd Vice-Chairperson of the CEC] is the most powerful and critical man in the party" (U Aung Kyi Nyunt, 2019).

This creates a juxtaposition of power in which the highest functionaries of the party's central office serve as the highest executives of the party in public office but influence party business through the proxy of the Chief Ministers, who are themselves members of the party in public office, only on the state and region level. This might suggest that the true source of power in the NLD lies with the party in public office, but U Zaw Myint Maung begs to differ, stating that
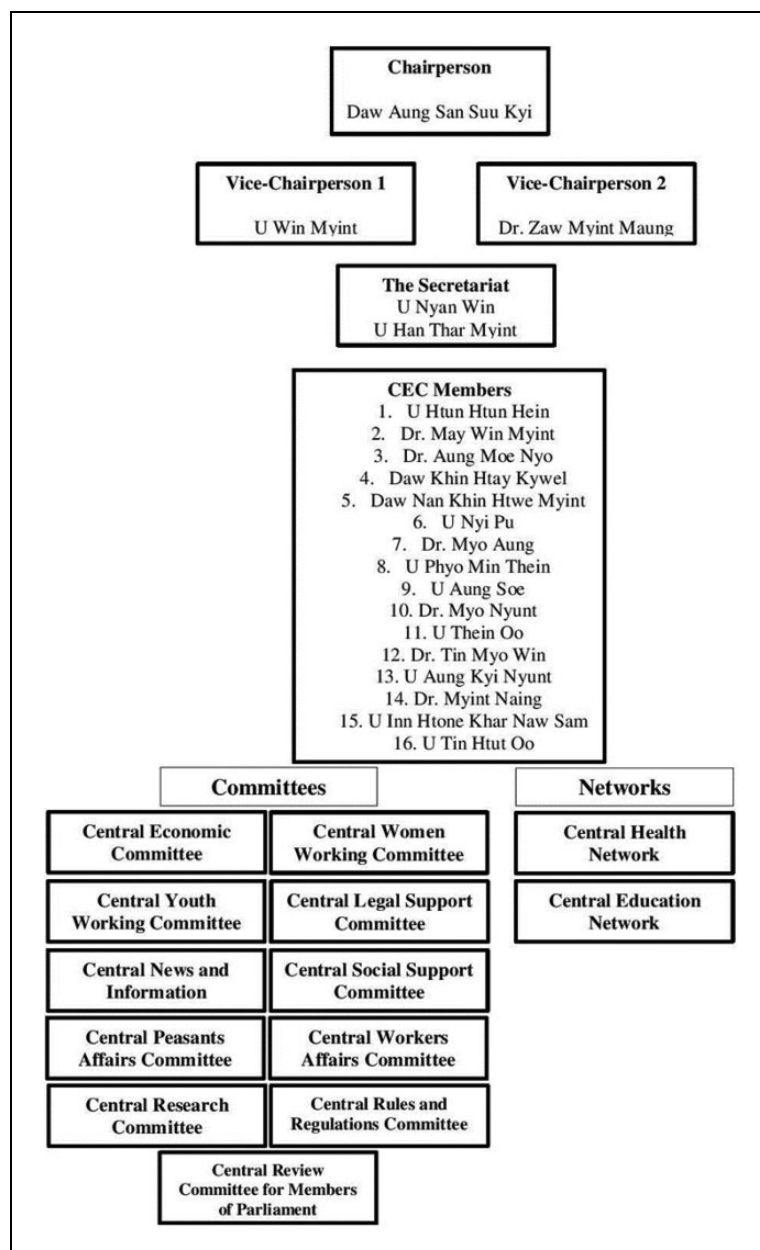
Figure 1. The organisational structure of the NLD's central party office. *Source:* own compilation.
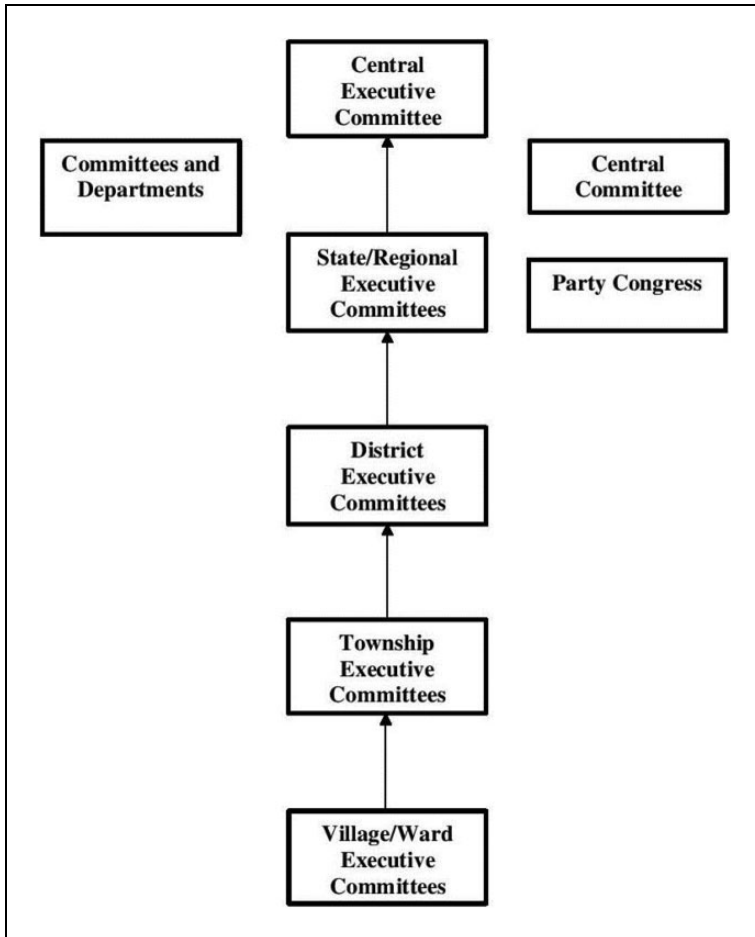
Figure 2. The general party structure of the NLD. *Source:* own compilation.

> both the parliament and the government are below the party. I am in this position [Chief Minister of the Mandalay Region] because the party assigned me in this way. Who assigned me? The party. So, the party is above all of us. Below the party is the parliament. Below the party is the government. (U Zaw Myint Maung in M Bwe, 2019)

The notion that most of the party's power is concentrated at the party's central office is also reinforced by the communication channels that the party uses to guide its MPs. CEC member U Aung Kyi Nyunt explains:

> We have party whips, three for each house. Since we have two houses we have six party whips. Then we have state and regional deputies for the union parliament. We have 14 states and regions and we have two houses, so we get 28 state and regional deputies. In the

> CEC we have five members who are also in the Hluttaw – U Aung Kyi Nyunt, Daw May Win Myint, U Inn Htone Khar Naw Sam, U Htun Htun Hein and U Aung Soe. Those five CEC MPs meet with the 6 party whips and the 28 state and regional deputies every Monday to deliver the party leadership's line. The 28 deputies meet with their respective state and regional MPs [and inform them]. We [also] have a Motion Review Committee. It reviews the questions and proposals of the NLD MPs and influences the agenda of the Hluttaw. The six party whips advise the Motion Review Committee and make sure that they are in line with the decisions of the party leadership, although they are not in this committee. (Aung Kyi Nyunt, 2019)

Thus, most of the power is concentrated in the party's central office and specifically within the CEC. This becomes clearer still when assessing the role of the National Convention of the League (NCL) and the Central Committee (CC). The NCL is the NLD's party convention and takes place every five years. It first came together in 2013 and then again in 2018. In 2018, every township was allocated two seats at the NCL while each township had been allocated three seats in 2013. The selection of the delegates is made by the Township Executive Committee (TEC) and every member of the TEC can nominate themselves. If there are more than two nominees, the TEC will vote on the delegate. By way of an example, the Yangon Region, comprised of forty-five townships, could be expected to have sent 135 delegates to the party convention in 2013 and 90 to the party convention in 2018. Prior to the NCL, each township is asked to contribute suggestions for input. The townships can present these suggestions at a preliminary state and region meeting at which up to six representatives from each township can be present. If the suggestions are deemed important, they are compiled in a letter that is submitted to the NCL as the input of the respective region. More importantly, CC Members are elected at the NCL. In 2013, 120 CC Members were elected but rather than repeating the procedure in 2018 the party's leadership decided to avoid a full-fledged election and instead simply filled seats that had become vacant due to party expulsions, resignations, or because a CC member had passed away. The problem is that "there is no regulation and no term limit, you could say that once you are a CC member you could remain in the position indefinitely, if you are not expelled from the party" (U Myint Lwin, 2019).

This change in practice is significant because both the CC and the CEC must attend the NCL where the CC can vote on changes to the party's constitution and its rules and regulation, although this has not occurred so far. More importantly, the CC should suggest Central Executive Members and elect them. However, even in 2013, when all the then fifteen CEC positions were to be filled, the candidates for seven of the fifteen positions were suggested by Daw Aung San Suu Kyi and it was generally accepted that these nominations were to be confirmed by the CC, which did happen. Since then all new CEC members have been selected and approved rather than elected.

The party, which is already highly centralised by design, suffers from the absence of a proper party constitution. "The party constitution was drafted in haste. It only has a thickness of half of my little finger. We started with this constitution. The leaders also knew that the constitution was not comprehensive and sufficient by any means.

However, circumstances did not allow drafting a systematic constitution and the systematic formation of the party based on such a constitution until 2011 when the party re-registered" (U Myint Lwin, 2019). But almost no changes have been made to the constitution since 2011, and thus many provisions about the organisation of the party and the responsibilities of its various parts remain vague or are not addressed at all. This ultimately strengthens the power of the members of the CEC and the Chairperson of the party.

The party's organisation below its central organs, the CEC, the CC, and the NCL, unfolds like a tree in which the same structure is replicated at different levels. At the bottom are the Ward and Village Executive Committees of the NLD with 7–11 members, including a Committee Chair, Vice Chair, Secretary, Associate Secretary, Treasurer, and the News and Information Officer. The next branch up is the TEC with twenty-one members, including the aforementioned positions as well as two additional Youth Officers and a greater number of ordinary Executive Committee members (a set-up that remains the same for the higher instances of the party). The TECs report to the District Executive Committees, which in turn report to the Region and State Executive Committees. Thematic committees on a range of topics may be formed at all levels but there is too little information to provide a conclusive overview. In an idealised setting, they could be expected to replicate the committees of the central level, but it is not clear whether this is consistently the case.

Theoretically, all elements within this structure should be elected democratically. Yet the party's constitution includes a remark noting that "although the elements of this hierarchy must be elected democratically in principle, if required by the circumstances, they shall be formed through democratic negotiation" (Constitution of the NLD). The remark serves to centralise the decision-making power yet again, effectively affording senior party officials the possibility of appointing party members to executive committee positions at the various party levels.

While junior NLD members and MPs sometimes try to pass off the party's structures and practices as democratic, senior leaders within the party are well aware that the party is not operating according to democratic principles. The current modus operandi is rooted in the party's development under authoritarian rule.

> We have been practicing democratic practices since the party was founded, but it was never a good environment to exercise full democratic practices, so we never succeeded to the full extent. Since the party was founded, there was a need for the executive committees at the different levels and at the central level. In some states and regions, we were able to have meaningful democratic elections at all the levels but in some regions and states, with repressive governance surveillance we could not even have a comprehensive plenary party meeting or conference. So, we used to gather some people who were really active and they decided through semi-democratic voting, electing the people with the most prominent history of activism and the most sacrifices. Hence, we have different names for the party leaders – depending on the way in which they were elected. We only call those *executives* (အလုပ်အမှုဆောင်) who were elected democratically but for the people who were selected because they were the right man in the right place, we only call them *members of organisation committee* (စည်းရုံးရေးကော်မတီ).

Although we are improving a great degree, this practice remains until now. There are still not so democratic practices and procedures in the party – selection or election – mostly relating to the way in which executive committee members assume their places.

To answer your question on how the party leadership will decide when the time has come to fix the party constitution to secure rigid democratic procedures, there are three factors. Firstly, we are not an isolated organisation, we have interactions with politics outside of our party and the party is influenced by outer politics, which is not fully democratic in all of Myanmar, we still have 25% of military personnel in the Hluttaw. I call it a competitive advantage to still retain that kind [undemocratic] element in the party. Secondly, we need to consider the maturity of the organisation, how familiar it is with democratic norms and to what degree party members at all different levels share democratic values. Third, we have to consider the democratic literacy, the maturity of the understanding of democracy by all the people in Myanmar. (Aung Kyi Nyunt, 2019)

These observations suggest that most of the power is concentrated at the party central office and yet there are important differentiations to be made that become clear when analysing the party through the lens of Katz and Mair's "three faces of party organisation."

The Central Office of the NLD

The NLD's central office conforms to many of the expectations that Katz and Mair outline. It consists of two overlapping groups, the national executive committee (in this case the CEC) and the central party staff. Indeed, members of the first group "may be recruited in a variety of ways. Some may be elected by the party congress, or in some other way appear to represent the party on the ground, others may be representatives or leaders of the party in public office; still other may be representatives of ancillary or affiliated organizations. In many cases, not only will the top party bureaucrat be an ex-officio member of the national executive, but (s)he may appoint several other officials who become ex-officio members as well. In other words, despite appearances, the national executive of a party may be less a representative body than a self-perpetuating and autonomous element of the overall party structure" (Katz and Mair, 1993: 599).

The central party bureaucracy is clearly under the control of the national executive, which is the dominant force in the party central office. However, the power of the national executive is curtailed by the power of the chairperson of the executive, who has significantly more influence than ordinary CEC members. Katz and Mair further note that key resources of the party in central office are its "centrality, expertise, and formal position at the apex of the party organisation. To these might be added that many of its members are leaders of other faces of the party" (1993: 599). The latter remark is especially relevant in the case of the NLD whose three highest party bureaucrats also occupy some of the most important positions of the party in public office, namely State Counsellor, President, and Chief Minister.

Katz and Mair suggest that this dynamic can also become the weakness of the party's central office, if the leadership is divided. Specifically, Katz and Mair imagine that such divisions might occur because "members of the party executive are likely to owe their position to different faces of the party, and have to maintain the support of their

individual constituencies if they are to remain in the central office" (1993: 599). This notion, however, does not apply to the NLD since members of the party executive are selected by the executive itself rather than on the basis of support in the party on the ground. Yet, working in this way without significant political and personal tensions is only possible due to the unparalleled authority of Daw Aung San Suu Kyi. It is not far fetched to assume that divisions might be caused by the selection of party executive members once the party has a chairperson that commands less respect. Katz and Mair further note that another possible constraint of the party central office is that it can neither make not implement policy on its own. While this is theoretically true in the case of the NLD, the practice of the party proves otherwise with the motions of its MPs and the general questions of party policy being decided by the CEC.

The NLD's central office does perform further functions that are identified to be primary by Katz and Mair, albeit to varying degrees. According to Katz and Mair, "the party central office may be the core of the initial party activists who go out into the country and organize a party on the ground that eventually fields candidates who win elections and become the party in public office" (1993: 600). This dynamic holds true for the NLD in so far as that the party central office does supervise the work of the party on the ground through rules and regulations. However, it does so passively rather than actively, offering specific guidance only in cases where party offices in the country are of particular relevance (e.g. due to a large-scale infrastructure development), and allocating resources only for the resolution of the most pressing (and widely publicised) issues.

The NLD has established rules and regulation for executive committee members at the various levels that further illuminate their responsibilities. These rules and regulations commonly include a section on the objectives of the work of the executive committee member, most importantly the cooperation with executive committee members at the higher and lower levels. The documents also contain a code of conduct that reminds executive committee members to be respectful and to abstain from corruption, among other things. The duty and responsibility section of these briefs focuses on the importance of organising regular executive committee meetings, the reading of the reports of the higher and lower levels, assistance in fundraising, regular office opening hours, oversight of party membership procedures, and the monthly budget plans. Furthermore, the executive committees at the district level and the township level must aid the work of the NLD representative for the respective region and carry out organisational tasks during elections.

The party central office does coordinate the national campaigns of the party although it does not have the capacity to supervise the campaigns of individual candidates. Moreover, the party central office supervises the party in public office but not on behalf of the party on the ground, like Katz and Mair suggest, but because the party's decision-making power is centralised at the party's central office. Katz and Mair further suggest that the party central office may provide services such as media relations, policy research, and fundraising support. But while the NLD's central office theoretically provides these services, the party's capacity is so limited that few party offices will be able to benefit from them.

The NLD on the Ground

Following Katz and Mair, the party on the ground includes members, "but more loosely it can be taken to include the core of regular activists, financial supporters, and even loyal voters" (1993: 597). At the national level, the party on the ground is manifested by the party congress with "established rules to fix the number and types of officials, their competence and terms, etc." (1993: 596). Yet, although such rules exist in theory, they are not implemented in practice and the NLD's party congress, the NCL, has little influence over the party's course.

Katz and Mair note that "there may be some individual incentives for membership and activity in the party on the ground – the local party office may serve various social functions for its members, local leadership positions may confer some status, activity may put the member in line for rewards of patronage or nomination to office (and thus, if successful, membership in the party in public office) – the primary incentives for members of the party on the ground are public purposive (policy), symbolic, and solidaristic" (1993: 596).

Indeed, the promises of status, patronage, and power have been informing an influx of members to the NLD on the ground. While membership had predominantly been symbolic and solidaristic in the past, the party is struggling to cope with a new type of member, who – without much ideological affiliation to the party – seeks to utilise it for the maximisation of power and status. Like few others, this issue illustrates the fragmented power dynamics in the NLD. On the one hand, the party's central office can and does nominate candidates for seats in the two houses of the union parliament and the houses of the state and region parliament. On the other hand, the central office's selection is dependent on suggestions from the party on the ground due to the immense numbers of candidates the party fields and due to its unparalleled electoral success. At the same time, the central office's capacity for oversight and control is limited, with the office often remaining unresponsive even when complaints are filed at the local level. This semi-guided and semi-controlled space leaves much room for political manoeuvring that breeds a diverse range of possible paths from ordinary NLD member to member of the party in public office. As is common practice for parties everywhere in the world, the party central office might select candidates for constituencies outside of their previous political domain. However, the NLD takes this to the extreme and candidates might sometimes only visit their constituency after they have been elected. This is possible because voters chiefly vote for Aung San Suu Kyi and the NLD rather than a particular candidate or policy agenda. Since the resources of MPs are limited by a comparatively small salary and there are no additional funds available for maintaining an office in the constituency, the relationship of the MP and the constituency can be minimal. Thus, MPs will have to rely on the support of the local NLD office, the township and region and state executive levels and their own financial resources. As could be expected, the quality of interest representation through MPs thus varies significantly.

Yet, often the party's central office has no fixed suggestion for the nomination of a candidate. In such cases, it might ask the Regional and State Executive Committees, who in turn act on recommendations from the TEC. Moreover, the chairman of a TEC can

lobby the party's central office for the candidature effectively. Firstly, because the position serves as a reference that signals the support of the local electorate since the chairman is elected by the committee. Secondly, because only a handful of people at the central office are responsible for the vetting and selection of candidates, thus elevating the effect of intelligently designed interpersonal relationships.

In the run-up to the 2015 general elections, the NLD's central office placed much importance on the increase in membership numbers. Being able to sign up many new members in a township became a reference that could aid one's ambitions to join the party in public office. Consequently, there were cases where local NLD officials went through villages and towns, signing people up for the party and offering to pay for their membership fees (100 Kyat for the application form and 300 Kyat for the photograph, a total of USD 0.26). Although the membership fee is small, being able to pay the fee for a multitude of new members suggests a financial advantage that might be considerable, especially in rural areas. The NLD has since diverted from the idea to increase its member-base by all means possible but not without damage done. Local NLD members who were able to support the mass sign-up financially also commanded a basic form of support from the people they signed up, meaning that they had an easy way to becoming local party officials. Moreover, party members who signed up because they were persuaded rather than due to their political stance might be more easily swayed by material incentives from candidates in the future.

This dynamic was exacerbated by the fact that Village and Ward as well as TECs work almost without supervision. In theory they should be supervised by the next level instance of the party bureaucracy, but in practice this is seldom the case. Thus, TECs might have fewer than the prescribed number of members, might only meet irregularly or otherwise fail to act in accordance with party regulations. This made "hostile" takeovers of local committees easier, ultimately affecting the selection of candidates for the party in public office and eliciting a reaction from the CEC that is likely going to centralise the party further in the future.

> This is our weak point. We let the township CEC nominate the representatives. Some people who participate out of self-interest made alliances in the party. Some township was selected by the vote. Let's say if a township party has 16 or 17 working members, and if a person can make 10 alliances within the group then that person can be a representative. Another weakness is the funding of the party. If a person in the township level can support someone within the group, this person will be popular among them. Then he can be selected at the township level, then again at the regional level. This is not the weakness of the central working committee, but the weakness of the township level. This is the weakness of the bottom-up selection. We need to change the process. (Daw May Win Myint, 2019)

Katz and Mair note that the party on the ground may at times conflict with the party in public office because "adhering to formal statements of party policy and identity are likely to be of a great significance" (1993: 598). While this is true in the case of the NLD, it is also largely insignificant because the party does not have the capacity to follow up on violations of its party line or its regulations unless they have a significance that is uncharacteristic for most offices of the party on the ground. Katz and Mair also

point out that "members of the party on the ground will certainly see winning elections as preferable to losing [but], the sacrifices they are prepared to make for that end may be quite limited" (1993: 598). Again the observation only applies in a limited sense to the NLD in Myanmar's present political landscape. While being an NLD member or activist could lead to hardship in the form of oppressive measures by the military in the past, members today have to sacrifice little to nothing for being members and since the NLD's popularity is unparalleled, the party is an effective vehicle for assuming office, whether locally, regionally, or nationally.

As described by Katz and Mair, the party on the ground's most effective tools are its own labour and its local patronage abilities. Its ability to mobilize is another important factor, specifically for the NLD whose central office may at times use the party on the ground to drum up support for the political undertakings of the party in public office. For example, if local economic elites oppose an infrastructure development that the party has put forward, it will urge the party on the ground to instigate protests in favour of the project. Doing this effectively is one of the key strengths of the NLD vis-à-vis other parties and provides the party on the ground with an opportunity to make a significant contribution to the implementation of political projects of the party in public office.

The NLD in Public Office

The NLD's time in public office started with the party's landslide victory in the 2012 by-elections, when it won forty-three of forty-four constituencies in which it competed (of a total forty-eight vacant parliamentary seats). The party won four seats in the Amyotha Hluttaw (House of Nationalities), thirty-seven seats in the Pyithu Hluttaw (House of Representatives), and two seats in State and Regional Hluttaws. Importantly, Aung San Suu Kyi won a Lower House seat and three other members of the party's CEC were able to secure seats (Tin Maung Maung Than, 2013: 210). The by-elections made the NLD the third largest group in parliament, after the Union Solidarity and Development Party (USDP) and the group of military representatives, constituting 6 per cent of all parliamentary seats and 11 per cent of the seats in the Pyithu Hluttaw (Tin Maung Maung Than, 2013: 213). Interestingly, the comparatively weak position as the opposition in parliament only formed one side of the party in public office at the time. As would be expected, it was difficult to remain true to the party's campaign promises of establishing rule of law and making Myanmar more democratic through the common tool of the legislator, that is, through the making (and un-making) of legislation. Aung San Suu Kyi was appointed chairman of the then newly formed Committee for Rule of Law and Peace and Stability (Tin Maung Maung Than, 2013: 214) and came to chair an investigative commission for the Letpadaungtaung Copper Mining Project, but overall the formal influence of the party in public office was limited. Yet, at the same time the party's victory at the polls had far-reaching implications for the country that consolidated a positive view of the NLD as a force for democracy. Firstly, the sheer fact that the elections were mostly free and fair, that the party had been allowed to contest, and that the result had been accepted was an indication that Myanmar was indeed on its way to democracy. Secondly, economic sanctions imposed by Western nations were first

suspended and later lifted, leading to accelerated economic growth in the subsequent years. Third, the NLD's victory, in general, and Aung San Suu Kyi's victory, in particular, served as starting points for increased communication and cooperation between Myanmar and the western nations who had imposed sanctions before. Heads of state from European Union (EU) member states and the United States were eager to visit Myanmar and to endorse the work of the NLD, which seemed to provide a confirmation that democracy was still the most desirable form of government. Thus, the NLD in public office won significant influence not through its actions in parliament but rather through the broader political developments that took place in the wake of the party's victory. Fourthly and importantly, Aung San Suu Kyi enjoyed the attention of President U Thein Sein and senior officials in his administration, and due to her role as a political icon in Myanmar had significant influence over the public discourse.

The combination of these factors meant that the NLD had a virtually untarnished image when it started campaigning for the 2015 general elections, even though it had little formal influence on the government. Thus, the landslide victory of the NLD at the 2015 polls came without much surprise. The party won 79 per cent of the elected seats, affording it a majority of 59 per cent – 60 per cent in the Amyotha Hluttaw and 59 per cent in the Pyithu Hluttaw (ICG, 2015: 3). Moreover, the NLD won three-quarters of all elected seats in Myanmar's seven Burman-majority regions and the seven ethnic states (ICG, 2015: 4).

The electoral victory, despite the insignificant formal role of the NLD in public office, exemplifies a dynamic that remains virtually unchanged today, namely that the NLD is not elected based on its party platform or campaign promises but because of Daw Aung San Suu Kyi's saint-like image and the party's profile as the opposition to the former military regime. According to Katz and Mair, "the key feature of the party in public office is that, at least in democratic countries, it is dominated by those who have themselves been successful in elections" (Katz and Mair, 1993: 595). The statement is true for the NLD, but its implications are different. The NLD in public office is not constituted by members whose main quality lies in being able to win elections in the sense that they have a compelling election campaign but rather by members whose main quality is their membership in, and loyalty to, a party that is widely popular due to the role it played in Myanmar politics prior to it assuming public office. Similarly, Katz and Mair's notion that members of the party in public office might seek power and status or wish to pursue particular policy objectives is only true in a very broad sense. Some members, especially newer ones, might have joined because they sought to improve their social status and it could be said that all members pursue a particular policy objective. But the NLD's raison d'être is the further limitation of military influence over the political domain in Myanmar. The single policy objective that unites the NLD in public office is its wish to retrench the influence of the military, and not a programmatic policy.

Yet, since political practice in Myanmar is impossible without cooperation with the armed forces, members of the NLD in public office are "more likely to see compromise as incremental movement toward a desired goal rather than as partial retreat from a correct position" (Katz and Mair, 1993: 596). Indeed, this notion is the single major source of tension between the NLD in public office, the NLD central office, and the

NLD on the ground. Moreover, the NLD in public office is thought to be constrained by the need to win elections as "this means that they must be attentive not only to the electorate, but as well to those who control the resources necessary for a successful election campaign" (Katz and Mair, 1993: 594). Unfortunately, the lack of transparency around political donations makes it impossible to outline the ways in which the party is constrained but since the party has few sources of funding it can be assumed that it must engage with donors who might expect political returns for their support. For Katz and Mair, the party in public office is further constrained by its obligation in government, that is, by a sense of responsibility towards the electorate. Once more the statement applies to the NLD only in a limited sense. The party has been criticized heavily for its failure to deliver any of its campaign promises, and its political decisions have alienated some of its key foreign supporters such as the EU and the United States. Yet, within Myanmar the failure to live up to its campaign promises only has a limited effect because many voters did not vote for the party based on its party platform in the first place. Therefore, the NLD so far only needs to retain its image as the only viable opponent to the military and the military-backed Union Solidarity and Development Party to enjoy the continued support of the electorate.

The NLD in public office benefits less from its ability to make governmental decisions and instead focuses on political manoeuvres that have little chance of succeeding, like its bid to reform the 2008 constitution, but that have high symbolic value. However, this approach will not remain successful indefinitely and party will need to place more emphasis on the development of its party platform to remain competitive in the future.

The NLD – A Mass Party with Catch-All Characteristics

Katz and Mair apply the characterisation of the three faces of political parties to their trajectory of organisational change and adaptation. Doing so, they highlight three questions. Firstly, the extent of resources and constraints of each face. Secondly, the independence versus interdependence or, more generally, exchange versus autonomy. Third, the question of the degree of distinction or overlap between the three faces.

Yet, explaining organisational change within the NLD is not the purpose of this article. Indeed, it might be argued that one aspect that characterises the NLD is the lack of organisational change in the party. After all, the NLD is still governed by a party constitution that has seen few amendments or elaboration since the party's foundation. The lack of organisational change – for better or worse – is not entirely unjustified because decades of repression robbed the party of the possibility of institutionalising further.

Yet, Katz' and Mair's question prompts are not necessarily tied to the question of organisational change. Rather, they can help explore the dynamics shaping the party in even greater detail, thus, allowing us to assess whether and how the NLD corresponds with different party types. Because of the scope of this article I will focus on the party types suggested by Katz and Mair: the cadre party, the mass party of integration, and the catch-all party.

Traditionally, these party types present a sequential party development. Political parties have either adapted and transformed from one type of party to the next or have

been replaced by parties of the "next type in line." The NLD, having been founded in 1988, is, however, neither a particularly old party nor was it founded within the frame of an existing party system. The party's foundation and its development are intrinsically tied to the political upheaval that took hold of Myanmar in the late 1980s. The NLD's development therefore was not simply shaped by its political agenda and its ability to secure support for it, but also by its relationship with authoritarian incumbents. Therefore, it is hardly surprising that aspects of the NLD correspond to multiple ideal party types at the same time. The NLD, like any other party, is not a unitary actor that remains fixed to a certain type throughout its development. Considering the party's trajectory, it could be argued that the early NLD was founded as a mass party of integration with catch-all party elements.

The early NLD fits the mass party type so well because the following is true for the party: "an initial group of organizers forms a 'central office' which then goes about creating the other two faces of the party" (Katz and Mair, 1993: 603). Thus, "the intervention of central leadership is always a necessary catalyst in turning a mass into a movement or party (…)" (Katz and Mair, 1993: 603). Not only did the NLD form the CEC early on, the party's founders also set out to recruit a figurehead that would enable them to accrue public support – Aung San Suu Kyi. However, the NLD was born out of the 8888 Uprising and many of its earliest members and candidates had participated in the protests or had a role in organising them. Thus, the early NLD – growing rapidly – recruited people who were already politically active, and expected a higher degree of participation in the management of the party's affairs. The party had a wider appeal to constituents because it served as the opposition to an unpopular authoritarian regime that had led the country to economic disaster. In the political context of Myanmar in the late 1980s and early 1990s, it would be too simplistic to assert that the party "arose primarily among the newly activated, and often unenfranchised, elements of society in their (ultimately successful) struggle to gain a voice in, and eventually control over, the ruling structures of the state" (Katz and Mair, 1993: 603). The NLD didn't cater to a specific group of constituents that had been disenfranchised politically but rather to a broad electorate that was alienated from the existing government and wanted change above anything else. By way of its appeal to voters, the NLD always has tried to present itself as a catch-all party that defines its constituency through the shared goal of the removal of the Tatmadaw from the political sphere rather than socially or culturally.[1] The political situation had other effects too: the NLD's constitution highlighted the important role of the National Convention – the party's congress – but the party did not operate in the way that was stipulated by the constitution. Competition with the authoritarian incumbents led to increased surveillance and repression of the party, ultimately rendering top-down decision-making through the party's executive the method of choice.

In theory, the mass party has a party executive that supervises the party, and which is elected by the party congress. In the case of the NLD, however, the executive of the party was not (and is not) elected. Moreover, the executive of the party also made up the party that was supposed to become the party in public office, that is, those who successfully ran as candidates in the 1990 elections. Prior to the 1990 elections, there was a high degree of overlap between the party's faces. Many MP elects first had a strong rooting in the party

on the ground, having supported the foundation of the NLD from the bottom up. While the party was coordinated through its central office, the party on the ground was of paramount importance because of its sheer capacity to mobilise voters in high numbers.

The dynamics in the NLD changed in the aftermath of the annulment of the 1990 elections. As the State Law and Order Restoration Council (SLORC) refused to let the NLD form a government, many of the MP elects argued that the party should proceed to form a government regardless. For a brief period, it was unclear which way the party would lean but the party's leadership ultimately opted for a more conciliatory approach, thus asserting the strength of the party's executive. Since the party's leadership was not in favour of large-scale protests against SLORC, the party on the ground lost a significant amount of its relevance. More importantly, the repression of the party in subsequent years – throughout much of the 1990s and 2000s – essentially deprived the party of two of its faces. Its leaders could not be elected and the party on the ground could only operate within limits. The party central office was the only face that remained operational for most of the time, although it too went through periods of "hibernation."

When the party declared its intention to re-register in 2011 and to contest the by-elections in 2012, it was clear that it retained wide-spread support in the electorate and that the party would be "revived" through the central office. By virtue of the nature of by-elections, the party's success in 2012 only gave way to a small party in public office that had little formal influence. Only the aftermath of the 2015 general elections has seen a shift of power within the NLD and a greater distinction between the party's faces as the party in public office has become significantly more powerful. So far, the high degree of overlap between the party in public office and the party central office preserves the power of the latter and ensures a relatively high degree of exchange between the party faces. At the same time, the party central office has far fewer resources and depends on the party in public office. One clear example of this is the NLD policy requiring MPs to donate 25 per cent of their salary to the party. The party on the ground is largely controlled by the party central office and its importance for organising rallies and support for NLD policies ensures its relevance. Moreover, the limited ability of the party central office to effectively control whether the party on the ground complies with party policies renders the party on the ground freer than it ought to be in the eyes of the party's executive.

Conclusion

In their account of the organisational development of political parties in Europe, Katz and Mair indicate that the central offices of parties would become increasingly less powerful. Their suggestion proved to be well founded. The NLD however is far from retrenching the power of the central office. In theory, this might seem counter-intuitive: a party in public office as large as that of the NLD is expected to lessen the influence of the central office over party affairs. However, several reasons make this trajectory unlikely in the case of the NLD.

Firstly, the particular political setting of Myanmar as a hybrid regime in which the military still wields significant political power compels the party's executive to favour a highly centralised party because it increases the possibility of control.

Secondly, overlap between the party in public office and the party central office is extensive and many senior NLD politicians are members of both. The party's CEC supervises the party in public office in many instances, except for the most senior members of the party in public office, that is, the State Counsellor and the President.

Third, the NLD has so far not formulated a clear party platform. The defining political goal of the party remains the removal of the military from political power. Yet, because this is a broad ambition the NLD is host to a vast variety of political beliefs and perspectives. Acting as a unified party across the board thus necessitates increased control of its politicians, bolstering the relevance of the party's central office. Aung San Suu Kyi's role as the unifier of the party strengthens this dynamic: members might disagree on policy but comply because of her leadership. Thus, having a central party organ that acts on her behalf increases the coherence of the party.

In the political sphere of Myanmar, the NLD so far remains one of only two parties who try to appeal to constituents across the board, regardless of their ethnicity and social status (the other being the USDP). Yet it remains to be seen whether this catch-all characteristic of the party will remain in place in light of the party's new role in public office. While the NLD initially had strong support in ethnic minority areas, the relationship with ethnic political parties and voters in ethnic minority areas has deteriorated since 2015 (Paing and Roewer, 2018). Moreover, while the party effectively offsets its own political fragility due to the lack of a clear party platform with increased centralisation, it is questionable whether this will keep the party competitive in future elections.

The rigidity of a highly centralised party will likely not remain without internal consequences either. Many MPs are frustrated with their lack of political agency and it is expected that a sizeable number will not run for election again in 2020. A high turnover in the party in public office might in turn strengthen the centralised executive of the party even further because newly recruited members are less likely to challenge and reform existing structures. There is also a feeling within the NLD that the party's current organisation only works because of the exceptionally high level of unity that is inspired by its leader Daw Aung San Suu Kyi. Senior NLD executives understand there is little else that binds the party together in its current form and are increasingly worried about the party's fate in a post-Daw Aung San Suu Kyi era.

Consequently, the NLD's structure and its increased centralisation might have far-reaching consequences. For the time being, it is unimaginable that the party will lose the support of the majority of voters in Myanmar. But the party's favour of centralisation over the development of a party structure that affords its members more political agency and fosters unity based on clearly defined political ambitions risks a party split that might endanger the future of the party and significantly change Myanmar's political landscape.

Declaration of Conflicting Interests

Funding

Note

1. While the NLD has tried to present itself as a party of all people in Myanmar who seek political change, it nonetheless is defined by being – to a large extent – a party of the Bamar majority. Especially since the 2015 general election, the party has increasing difficulty to appeal to ethnic minority voters.

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Political Representation by Ethnic Parties? Electoral Performance and Party-Building Processes among Ethnic Parties in Myanmar

Kristian Stokke

Abstract
What is the role of political representation by ethnic parties in a multi-ethnic state that has undergone a transition from military rule, and is seeking to resolve protracted intrastate conflicts? The present article examines this question through a contextual case study of ethnic parties in Myanmar – a state that is characterised by unresolved ethnic grievances and conflicts; a political transition that has created new opportunities for ethnic representation; and multiple ethnic parties making representative claims on behalf of ethnic groups. Based on a mixed methods approach, the article documents that ethnic parties have been relatively ineffective in ensuring formal and descriptive representation and have had limited possibilities for substantive representation of ethnic interests. The article also identifies key explanations for the weak electoral performance of ethnic parties, emphasising party fragmentation and vote-splitting as well as weak party insti-tutionalisation and limited capacity to make representative claims. Finally, the article analyses strategies for party-building, in preparation for the 2020 election. Based on the common emphasis on vote-splitting, most ethnic states have seen initiatives to merge parties, while a few parties have also sought to develop their political platform and sector policies. The article concludes that ethnic parties may gain improved formal represen-tation after the next election but questions about the parties' capacity for substantive representation remains. The 2020 election will thus be a new test for how ethnic voters see themselves best represented, in the light of competing representative claims and past experiences: by ethnic parties or non-ethnic democracy parties?

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Introduction

What is the role of political representation by ethnic parties in a multi-ethnic state that has undergone a transition from military rule, and is seeking to resolve protracted conflicts against ethnic armed organisations? Can ethnic parties provide effective political representation and forge transformations towards substantive democracy and conflict transformation? The aim of this article is to address these questions through a contextual case study of electoral performance and party-building processes among ethnic parties in Myanmar. This choice of case is justified with reference to Myanmar's multiple armed conflicts and recent democratic opening, which means that there are both deep-seated ethnic grievances and new opportunities for ethnic political representation.

The Myanmar case may add new insight and nuance to comparative and theoretical debates on ethnic parties and democratisation. There are, however, also limits to the theory-testing utility of this case, since the transition from military rule and armed conflicts is ongoing and open-ended and there is little prior research on ethnic parties in Myanmar. In this situation, the article pursues the more modest ambition of an analytical mapping of political representation by ethnic parties, as a basis for further comparative and theoretical analyses of the role of ethnic parties in conflict-ridden transition states.

The analytical focus of the article is based on three contextual conditions. *First, political representation is a long-standing ethnic grievance that is at the centre of Myanmar's intrastate conflicts.* Myanmar is a multi-ethnic country that has been marked by protracted military rule and intrastate conflicts between the military and the ethnic armed organisations (Smith, 1991, 2018). The roots of the conflicts date back to the colonial period and especially the 1947 Panglong Agreement that established the principles of ethnic self-determination, political representation and economic equality as the basis for an independent Union of Burma in 1948 (Sakhong, 2014). Subsequent failures to implement these principles have been the root causes of multiple and persistent armed conflicts. Protracted military rule, large-scale human rights violations, military dynamics and war economies have become additional drivers of war, but the Panglong principles remain the essential benchmarks for conflict resolution (Smith, 1991, 2018). It can thus be observed that ethnic political representation is both an aim and a means for conflict resolution in Myanmar.

Second, Myanmar's democratic opening has created new but constrained opportunities for ethnic political representation. Following five decades of direct military rule, the ruling State Peace and Development Council (SPDC) crafted a new constitution in 2008, held fraudulent elections in 2010, and transferred power to a nominally civilian government in 2011. This military-imposed transition produced a hybrid form of rule

that includes competitive elections, parliamentary politics and civilian government but also constitutionally guaranteed positions of powers for the Myanmar Army (Bünte, 2017; Egreteau, 2016; Huang, 2016; Stokke and Soe Myint Aung, 2019). The 2008 Constitution introduced elected parliaments at the union and state/region levels, as a framework for general elections in 2010 and 2015, and by-elections in 2012, 2017, and 2018 (Tin Maung Maung Than, 2013). However, the constitution also contains provisions that means that the military continues to control key public affairs – especially those related to state security – and exerts strong influence in parliament, government, and public administration. Myanmar's transition from military rule thus raises critical questions about the substance of political representation, amidst formal institutional arrangements for electoral democracy.

Third, the democratic opening has been followed by a proliferation of political parties making representative claims within these new political spaces. Contemporary Myanmar has a broad diversity of parties, including a large number of ethnic parties, but most of the parties are small and few have been successful at winning seats or have the capacity to provide substantive representation in parliamentary politics. The 2015 election demonstrated that the plurality of parties and their weak institutionalisation mean that they face a high risk of electoral defeat and under-representation of ethnic nationalities. The period since 2015 has also raised questions about the substance of ethnic representation, despite a democratically elected pro-democracy and pro-federalism National League of Democracy (NLD) government. It can thus be observed that although there are new political spaces and numerous ethnic parties, critical concerns remain about the capacities and strategies of ethnic parties to provide political representation.

Against this background, the present article examines the role of ethnic parties in political representation of ethnic nationalities in Myanmar. Given the limited research that has been done on ethnic parties earlier, the primary focus is on formal representation in union and state/region parliaments. More specifically, the article aims to address the following research questions: First, what characterises and explains the electoral performance of ethnic parties in Myanmar since 2010? Second, what are the strategies of ethnic parties to strengthen their electoral competitiveness before the 2020 election?

The empirical analysis is based on a mixed methods approach. The electoral performance of ethnic parties is analysed on the basis of descriptive statistics from the 2010 and 2015 general elections and the 2012, 2017, and 2018 by-elections. Such quantitative election data are combined with information from qualitative interview with leaders and activists in ethnic political parties since 2013; discussions in capacity building workshops with ethnic parties in 2013–2014; participatory observation in party development processes during 2017–2018 (especially in Kachin and Shan states); and continuous following of media and scholarly reports on ethnic politics since 2013. As the purpose of the article is to address general patterns of ethnic representation, and due to confidentiality concerns, direct quotes from interviews and ethnographic fieldwork are not included in this article.

The article starts out with two brief sections that contextualise the analysis with reference to scholarship on political representation and ethnic parties and to Myanmar's ethnic diversity and democratic opening. Thereafter follows three analytical sections that

examine the electoral performance of ethnic parties, the explanations behind the relatively poor performance of most ethnic parties, and their strategic responses to these experiences. First, election results data are used to identify persistent problems of weak descriptive representation by ethnic parties. Based on this empirical analysis, the second section provides an analytical discussion of the mechanisms behind the weak electoral performance. While party fragmentation and vote-splitting are often foregrounded as primary explanations, the discussion also points to weaknesses in party institutionalisation and the limited competitiveness of ethnic parties in the context of polarised rivalry between two dominant national parties.

Third, the final section provides a brief discussion of contemporary initiatives to develop stronger ethnic parties, in preparation for the 2020 election. Based on the common emphasis on vote-splitting, most ethnic states have seen attempts to merge ethnic parties, while some parties have also sought to develop their political platform and specific sector policies. While many ethnic political leaders seem confident that the combination of ethnic identity politics and merged ethnic parties will yield electoral gains in the 2020 election, persistent problems of weak party development mean that there is continued uncertainty about the capacity of ethnic parties to provide both formal and substantive representation.

Conceptualising Representation and Ethnic Parties

Myanmar's military-imposed transition raises critical questions about the form and substance of political representation, in other words, how representatives are authorised, provide representation, and are held accountable by those being represented (Stokke and Soe Myint Aung, 2019; Törnquist et al., 2009). In her classical study of representation, Pitkin (1967) distinguishes between four principal meanings of the concept: *formalistic representation* (authorisation of representatives), *descriptive representation* (correspondence between representatives and the represented), *symbolic representation* (symbolisation of the represented) and *substantive representation* (practices of representing) (Dovi, 2015). This typology has provided a vocabulary for studying institutional procedures for selecting and authorising representatives; the descriptive resemblance between representatives and the represented; the citizens' feelings of being symbolically represented; and the representatives' acts of substantially promoting the interests of their constituencies. Pitkin also demonstrates that representation can be passive or active: while descriptive and symbolic representation mean that the representative is "standing for" a constituency, substantive representation means that representatives are "acting for" those being represented. This provides a conceptual basis for critical attention to the links and tensions between formal, descriptive, and symbolic representation, on the one hand, and substantive representation, on the other (Törnquist et al., 2009).

The starting point for Pitkin's analysis of representation is the represented rather than the representatives, in other words, the identities, interests, and preferences of constituencies. This analytical logic, which is exemplified by cleavage models of party systems and electoral politics (Lipset and Rokkan, 1967; Ufen, 2012), stands in contrast to scholars that foreground the role of representatives in constructing constituencies

and making representative claims. Saward (2010), for example, criticises Pitkin for portraying the represented as fixed and prior to the process of representation. He advocates instead an understanding of representation as a performative process, whereby the represented and their interests are constituted: "Would-be political representatives . . . *make claims* about themselves and their constituents and the links between the two; they argue or imply that they are the best representatives of the constituency *so understood*" (Saward, 2006: 302, italics in original).

Saward's conception foregrounds the framing of social groups and representative claims on their behalf and thus downplays objectivist conceptions of representation (Bourdieu, 1991; Stokke and Selboe, 2009). It also shifts the understanding of agency from political cleavages and forces in society to political actors that compete for positions as legitimate representatives (Severs, 2010). The notion of representative claims thus builds on Pitkin's typology of representation but retheorises both the meaning of representation and the relationship between representatives and the represented.

This constructivist turn has brought renewed attention and debates on democratic representation but has also been the target of criticism (Disch, 2015). Severs, for example, argues that the focus on claims-making has "drawn attention away from normative issues regarding good, or democratic, representation, which were previously central to scholarship" (2012: 170). This leads her to the conclusion that there is a need for critical attention to substantive claims – claims that not only speak for the represented but also substantially about their interests – and to responsiveness between representatives and those being represented (Severs, 2010, 2012).

These positions and debates are highly relevant for studies of ethnic parties. Chandra defines an ethnic party as "a party that is the champion of the particular interests of one ethnic category or set of categories" (2011: 155). By extension, multi-ethnic parties champion the interests of all significant ethnic categories, while non-ethnic parties do not advocate ethnic interests per se. This general definition can be operationalised through different indicators, such as ethnic party name, ethnic categories, and issues that are emphasised in party platforms and electoral campaigns, the ethnic composition of the vote base and party leadership, and so on. In agreement with Pitkin's understanding of the relationship between representatives and the represented, studies of ethnic parties have typically seen ethnic groups as pre-given, internally homogenous, and relatively unchangeable. Ethnic identities are hence conceived as a fixed basis for ethnic parties and exogenous to political institutions and competition (Chandra, 2005). Such primordial views of ethnicity have been defended as a pragmatic way of depicting ethnic cleavages and conflicts in ethnically divided societies (Horowitz, 1985; Ishiyama, 2009).

Primordialism has, however, been widely discredited and largely replaced by constructivist approaches to ethnicity, which argue that "ethnic groups can be fluid, internally fragmented, multidimensional, and endogenous to institutional structures and political competition" (Chandra, 2005: 238). The latter perspective is in agreement with the constructivist turn in representation but has in turn been criticised for creating an image of ethnic groups as artificial constructions and seeing ethnic politics as instrumental manipulation of ethnic identities. While the primordialist approach is seen as

supporting deterministic understanding of ethnic groups and politics, the constructivist approach is criticised for its inability to acknowledge that ethnic cleavages and injustices are experienced as real among ethnic constituencies and parties.

Responding to this dilemma, Chandra (2012) proposes a constructivist perspective on ethnicity and ethnic politics, which acknowledges the existence of descent-based ethnic attributes while insisting that ethnic categories based on such attributes are constructed, contextual, and changeable. This conception puts ethnic groups on par with other categories that may be the focal point for representative claims, for example, social class or gender. Likewise, Severs' (2010, 2012) call for attention to substantive claims and responsiveness also applies to representation of ethnic groups. Successful political representation by ethnic parties is thus contingent both on their ability to construct ethnic categories, make representative claims, and substantially represent their interests.

Myanmar's Ethnic Diversity and Formal Democracy

Myanmar is a multi-ethnic state that officially recognises 135 ethnic groups, as sub-divisions of eight "major national ethnic races": Bamar, Shan, Mon, Kayin (Karen), Kayah (Karenni), Kachin, Rakhine (Arakan), and Chin (Transnational Institute, 2014). The ethnic race categories are the basis for the territorial organisation of the union, with seven regions that are dominated by the Bamar majority in the centre of the country and seven states dominated by non-Bamar ethnic nationalities along Myanmar's external borders (Figure 1). The list of 135 recognised ethnic groups (*taingyintha*) also forms the basis for Myanmar's citizenship law (South and Lall, 2018). Self-reported ethnic identity was included in the 2014 census, but the ethnic population figures are politically contentious and have not been released (Ferguson, 2015; Transnational Institute, 2014). A common estimate is that the Bamar majority makes up approximately two-third and non-Bamar nationalities roughly one-third of the total population (Egreteau, 2017).

Myanmar's ethnic classification scheme is controversial for a number of reasons, including its core primordialist assumptions. While anthropological and historical studies have demonstrated that these categories should be understood as social and political constructions rather than pre-defined and fixed groups (see e.g. Leach, 1954; Sadan, 2013), political discourse in Myanmar is imbued with essentialist and exclusionary notions of ethnic groups and boundaries. This reflects both how colonial and post-colonial governmentality have contributed to institutionalising ethnic categories and how they have been solidified and politicised during the post-colonial period (Smith, 1991, 2018; Transnational Institute, 2014). Consequently, majority–minority relations and centre–periphery relations have become the pivot of state-building and contestation of state authority (Smith, 1991; Taylor, 2009). Ethnic areas have been affected by multiple and protracted conflicts between ethnic armed organisations demanding ethnic equality, representation, and self-determination and the Myanmar Army claiming to defend the unity, stability, and sovereignty of the Union of Myanmar. Against this background of military rule and intrastate conflicts, the democratic opening since 2010 has brought new possibilities for political inclusion, while there are also clear limitations on ethnic representation.
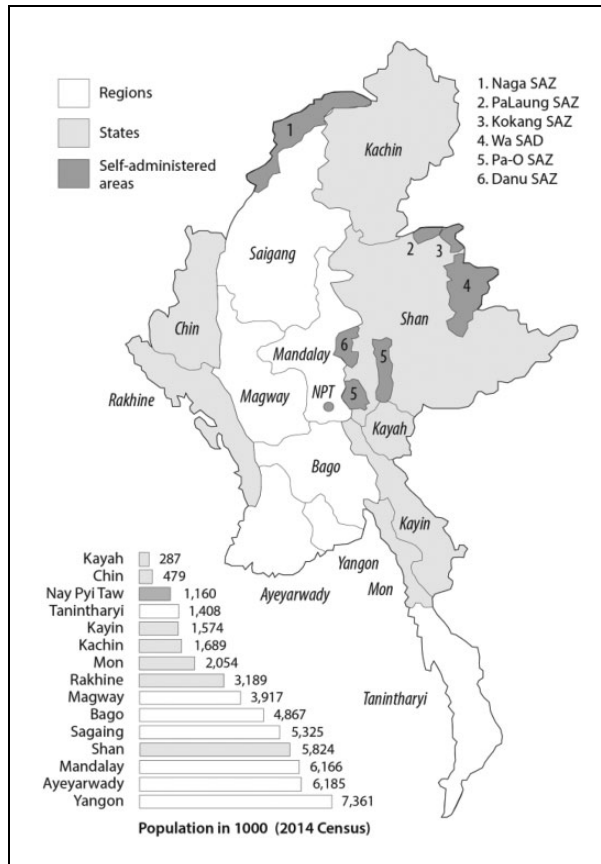
Figure 1. Administrative Divisions of Myanmar.
Source: Kraas et al. (2017) and Ministry of Planning and Finance (2016).

Myanmar's military-imposed transition has introduced an institutional framework for electoral democracy, parliamentary politics, and civilian government, but the democratic substance is constrained by constitutional regulations that grant the military (*Tatmadaw*) authority over national security and strong military influence in parliament, government, and public administration (Crouch, 2019; Egreteau, 2016; Stokke and Soe Myint Aung, 2019; Williams, 2014). The roots of the opening can be traced back to 1988, when a combination of governance failure, socio-economic crisis, and popular protests led to the collapse of the Burma Socialist Programme Party (BSPP), and the subsequent formation of a new military regime, the State Law and Order Restoration Council (SLORC), which was renamed as SPDC in 1997.

SLORC held multi-party elections in 1990 that yielded a landslide victory for newly formed democracy and ethnic movement parties, but the election results were rejected

and the military rulers claimed that the election had only been for a National Convention to draft a replacement for the annulled 1974 Constitution. This was later used as a basis for unilateral constitution-making by the military, which brought formal political liberalisation in combination with secured positions of power for the military under the new 2008 constitution (Crouch, 2019; Huang, 2016; Williams, 2014). The state and politics in contemporary Myanmar are thus to a large degree shaped by the changing continuity of military domination (Selth, 2018).

The 2008 Constitution established the Pyidaungsu Hluttaw (Union Parliament) as a bicameral legislative body consisting of the Pyithu Hluttaw (House of Representatives) and the Amyotha Hluttaw (House of Nationalities) (Egreteau, 2017; Kean, 2014; Union of Myanmar, 2008). The Parliament is assigned formal roles in lawmaking, oversight of the government, and public representation, and is the basis for the election of the President. The 2008 Constitution also creates state/region parliaments and governments (Nixon et al., 2015), but these do not have the power to elect or oversee state/region governments.

The parliaments at union and state/region levels are the foremost arenas for ethnic political representation, authorised through ordinary elections in 2010 and 2015, and by-elections in 2012, 2017, and 2018. The 2010 elections were neither free nor fair but was used to transfer power to a nominally civilian government led by President Thein Sein and the military's Union Solidarity and Development Party (USDP). The 2015 election was, in contrast, reported to be free but not fully fair, due to the disenfranchisement of the Rohingya population in Rakhine State, cancelled elections in parts of Shan State, and a first-past-the-post electoral system that creates discrepancies between the popular votes and the composition of the legislatures (Huang, 2016; Transnational Institute, 2015). The election returned a landslide victory for the National League for Democracy and was followed by a peaceful transfer of power to a government led by State Counsellor Aung San Suu Kyi, the first democratically elected government since 1960 (Ardeth, 2016; Huang, 2016; McCarthy, 2016). Myanmar's next ordinary election is scheduled for late 2020.

Formal Representation by Ethnic Parties

The three elections in 1990, 2010, and 2015 provide a basis for assessing the degree of formal and descriptive representation by ethnic parties. Myanmar has a large number of political parties, more than 90 were registered and contested the 2015 election. Approximately two-third of these can be classified as ethnic parties in the sense that they make explicit reference to an ethnic group in their party name, make ethnic representative claims, and get electoral support from ethnic constituencies. There are, however, only a few parties that have been successful in winning seats in union and state/region legislatures. A total of sixteen parties were represented in the union parliament after the 2010 election, while thirteen parties won seats in 2015 (Table 1). Only four parties won more than five seats in 2015: NLD, USDP, Arakan National Party (ANP), and Shan Nationalities League for Democracy (SNLD).

Table 1. Distribution of Parliamentary Seats at Union Level, 1990, 2010, and 2015 Elections.

Party type	Party name	Founded	1990 Election	2010 Election		2015 Election	
				Pyidaungsu Hluttaw		Pyidaungsu Hluttaw	
			National Assembly	Pyithu Hluttaw	Amyotha Hluttaw	Pyithu Hluttaw	Amy Hlut
			Number of elected Members of Parliament				
Military parties	National Unity Party (NUP)	1988	10	12	5	30	1
	Union Solidarity and Development Party (USDP)	2010		259	129	255	13
Democracy parties	National League for Democracy (NLD)	1988	392				
	Other democracy parties	1988–1990	7				
	National Democratic Front (NDF)	2010		8	4		
Chin State ethnic parties	Chin National League for Democracy (CNLD)	1989	3				
	Zomi Congress for Democracy (ZCD)	1988	2			2	
	Mro or Khami National Solidarity Organisation (MKNSO)	1989	1				
	Mara People's Party (MPP)	1990	1				
	Chin Progressive Party (CPP)	2010		2	4		
	Chin National Party (CNP)	2010		2	2		
Kachin State ethnic parties	Kachin State National Congress for Democracy (KNCD)	1990	3				
	Unity and Democracy Party of Kachin State (UDPKS)	2010		1	1		
	Kachin State Democracy Party (KSDP)	2013				1	
	Lisu National Development Party (LNDP)	2013				2	
Kayah State ethnic parties	Democratic Organisation for Kayan National Unity (DOKNU)	1989	2				
	Kayah State Nationalities League for Democracy (KSNLD)	1990	2				
Kayin State ethnic parties	Karen State National Organisation (KSNA)	1990	1				
	Kayin People's Party (KPP)	2010		1	1		
	Kayin State Democracy and Development Party (KSDDP)	2010			1		
	Phalon-Sawaw Democratic Party (PSDP)	2010		2	3		

Table 1. (continued)

Party type	Party name	Founded	1990 Election	2010 Election		2015 Election	
			National Assembly	Pyidaungsu Hluttaw		Pyidaungsu Hluttaw	
				Pyithu Hluttaw	Amyotha Hluttaw	Pyithu Hluttaw	Amy Hlut
			Number of elected Members of Parliament				
Mon State ethnic parties	Mon National Party (MNP)	1988	5				
	All Mon Region Democracy Party (AMRDP)	2010		3	4		
Rakhine State ethnic parties	Arakan League for Democracy (ALD)	1989	11				
	National Democratic Party for Human Rights	1989	4				
	Kamans National League for Democracy (KNLD)	1990	1				
	Rakhine Nationalities Development Party (RNDP)	2010		9	7		
	Arakan National Party (ANP)	2014				12	1
Shan State ethnic parties	Shan Nationalities League for Democracy (SNLD)	1988	23			12	3
	Pa-O National Organization (PNO)	1949	3	3	1	3	
	Ta'ang National League for Democracy (TNLD)	1989	2				
	Union Danu League for Democracy Party (UDLD)	1989	1				
	Lahu National Development Party (LHNDP)	1990	1				
	Shan State Kokang Democratic Party (SSKDP)	1990	1				
	Kokang Democracy and Unity Party (KDUP)	1990					
	Shan Nationalities Democratic Party (SNDP)	2010		18	3	1	
	Inn National Development Party (INDP)	2010		1			
	Ta'ang (Palaung) National Party (TNP)	2010		1	1	3	
	Wa Democratic Party (WDP)	2010		2	1	1	
Other	Other ethnic parties	1988–1990	3				
	Independent		6	1	1	1	
	Vacant		7	5		7	
Total	Elected Members of Parliament		492	330	168	330	16
	Military-appointed Members of Parliament			110	56	110	5

A prominent feature of Myanmar's party system is that the plurality of political parties is not organised around class or religion, despite strong social and religious cleavages. The party system revolves instead around two cleavages centred on contentious state- and nation-building processes. On the one hand, there is a divide between territorial (union-wide) and ethnic definitions of demos, and hence between Burman and ethnic nationalisms. This cleavage dates back to the 1947 Panglong Conference and the early period of democratic politics in the 1940s and 1950s and has been reinforced during the long history of intrastate conflicts. On the other hand, there is also a political divide between the emphasis on sovereignty, unity, and stability that is closely associated with the military and demands for democracy and human rights that are linked to pro-democracy popular movements. The foremost critical junctures that have shaped this cleavage are the 1962 military coup and the 1988 democracy uprising.

Scholarly analyses and political discourse in Myanmar thus revolve around three party clusters: non-ethnic parties that originate from and maintain close links to the military; non-ethnic parties that stem from the pro-democracy movement; and ethnic parties representing non-Bamar nationalities (Kempel et al., 2015; Stokke et al., 2015). The group of ethnic parties is highly diverse but shares the common presumption that the interests of ethnic groups are best represented by ethnic parties. There are no major multi-ethnic parties at the union scale, but SNLD has announced its intention to become a multi-ethnic party aimed at representing all ethnic communities within Shan State.

The clusters of military and democracy parties are each dominated by a major party (USDP and NLD) that have union-wide organisational structures and electoral support. Minor military and democracy parties include the National Unity Party (NUP) – the successor to the BSPP – and the National Democratic Front (NDF), which was formed as a splinter group from NLD for the purpose of contesting the 2010 election. Among the ethnic parties, there is a divide between old movement parties founded in 1988–1990 and new electoralist parties that were formed before the 2010 election, when the old parties were prevented from re-registering or refused to participate in elections under the 2008 Constitution. This has been the basis for two alliances of ethnic parties – the United Nationalities Alliance (UNA) and the Nationalities Brotherhood Federation (NBF) – that have organised the old movement parties and the new electoralist parties, respectively (Burma Partnership, 2015; Keenan, 2013; Stokke et al., 2015). Whereas the 1990-era ethnic parties have had strong links to NLD, the 2010-era ethnic parties engaged pragmatically with the USDP-government from 2011 to 2015. Many of the NBF-affiliated parties that were represented in the union parliament from 2010 to 2015 performed poorly in 2015, when the UNA parties also contested the election (Table 1). Prominent examples of such 2010-era ethnic parties include All Mon Region Democracy Party (AMRDP), Chin Progressive Party (CPP), Chin National Party (CNP), Phalon-Sawaw Democratic Party (PSDP), and Shan Nationalities Democratic Party (SNDP).

Figure 2 presents a simplified visualisation of the election results since 1990, showing the share of seats won by military parties, democracy parties, and ethnic parties. While military parties (USDP and NUP) performed well in the military-controlled and fraudulent 2010 election, they were strongly defeated by NLD in the free 2015 election, mirroring both the 1990 election and the 2012 by-election when NLD won forty-three of

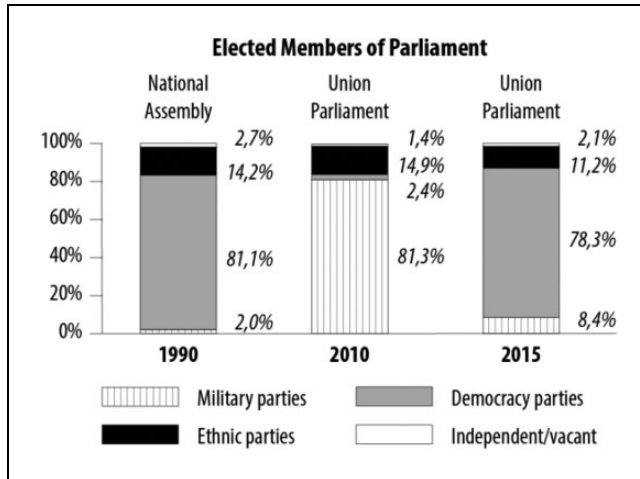**Figure 2.** Distribution of parliamentary seats by party type at union level, 1990, 2010, and 2015 elections.
Source: Burma Fund UN Office (2011), Khin Kyaw Han (2000), and Myanmar Information Management Unit (2016).

forty-five available seats (Tin Maung Maung Than, 2013). Since 2015, representation of military interests has to a larger extent relied on the 25 per cent of parliamentary seats that is reserved for military appointees. Likewise, new democracy and ethnic parties such as NDF and SNDP, which were established for the purpose of electoral participation and won a number of seats in 2010, were defeated by older movement parties such as NLD and SNDP in the 2015 election. Rakhine State represents an anomaly in this regard, as the 1990-era ALD and the new Rakhine National Development Party (RNDP) successfully merged into ANP and became the third largest party at the 2015 election.

Apart from these major parties (and a few NUP representatives), all other members of the current union parliament come from minor ethnic parties. They typically represent small ethnic groups that are spatially concentrated in a few electoral districts within ethnic states, in other words, they are parties that pursue ethnic identity politics of "minorities within minorities," some of which also have special administrative zones (Figure 1). Such parties include Zomi Congress for Democracy (ZCD) in Chin State; Kokang Democracy and Unity Party, Lahu National Development Party, Pa-O National Organization, Ta'arng (Palaung) National Party, and Wa Democratic Party in Shan State; and Lisu National Development Party (LNDP) in Kachin State (Transnational Institute, 2015).

At the union level, Figure 2 shows that ethnic parties have won 11–15 per cent of the seats in the 1990, 2010, and 2015 elections, which is well below the estimated one-third share of non-Bamar ethnic groups in the population. Ethnic parties have thus not managed to provide fair descriptive representation of ethnic constituencies. This disproportionality is, however, nuanced by the number of ethnic representatives from military and democracy parties. Egreteau (2017), for example, examines the self-reported ethnic belonging of all

members of the union parliament and finds that 64 per cent of the elected representatives identified as ethnic Bamar or half-Bamar during the 2011–2015 period. After the 2015 election, this share was found to be 64.3 per cent. Although Egreteau observes that the typical legislator in the 2010s fits the conventional image of a Burmese postcolonial leader – "a man, in his fifties or sixties, ethnically Bamar, Buddhist, and with a professional career in public service, either in the civilian bureaucracy and education sector or the armed forces" (2017: 19) – the composition of the legislature has come closer to mirroring the proportional share of Bamar and non-Bamar groups in the population. Beyond this simple majority/minority dichotomy, there are important variations in how well different ethnic groups are represented in union and state parliaments. While some ethnic nationalities have a sizeable presence in the union and state parliaments, other ethnic groups are largely unrepresented by both ethnic and non-ethnic parties.

Further empirical insights on political representation by ethnic parties can be gained from election results at the state/region level. Table 2 and Figure 3 provide information about the party affiliation of elected legislators from ethnic states in union and state parliaments in 2010 and 2015, showing that ethnic parties won few seats in most ethnic states and fewer seats in 2015 than in 2010. The two exceptions to this pattern are found in Rakhine State where ANP became the largest party in 2015 and in Shan State where SNLD won the second largest number of seats at both the union and state levels. SNLD's electoral results were still below expectations, especially in conflict-affected areas where local security factors and military presence seem to have benefitted USDP (Myanmar Information Management Unit, 2016; Transnational Institute, 2015).

In marked contrast, ethnic parties did not win any seats at all in Kayah State and Kayin State, and only a few seats were won in Kachin, Chin, and Mon states. Apart from SNLD and ANP, the seats won by ethnic parties were primarily taken by parties representing small but geographically concentrated ethnic groups, such as Zomi, Lisu, Phalon-Sawaw, Kokang, Pa-O, Palaung, and Wa communities. Most strikingly, no ethnic parties making representative claims on behalf of the major ethnic groups of Chin, Kachin, Kayah, Kayin, and Mon won significant numbers of seats at either union or state level. Outside the ethnic states, none of the ethnic parties won any seats in Bamar-dominated regions. It is also notable that out of a total of twenty-nine Ethnic Affairs Ministers, which are reserved positions designed to ensure representations of specific minorities within a state or region, only five were won by ethnic parties (Ardeth Maung Thawnghmung and Yadana, 2018; Transnational Institute, 2015).

This means that although the proportion of Bamar/non-Bamar legislators at the union level may reflect the general composition of the population, the representation of ethnic constituencies by ethnic parties is generally weak. The main exceptions are ANP and SNLD in Rakhine and Shan states. Similarly, there is a handful of smaller ethnic groups that have gained some political representation. In sharp contrast, the major ethnic communities of Chin, Kachin, Kayin, Kayah, and Mon appear to be strongly under-represented. In general terms, it can thus be observed that most ethnic parties have demonstrated limited ability to secure formal representation through elections and have thus been poorly positioned to provide substantive representation of ethnic interests in parliamentary politics.

Table 2. Distribution of Parliamentary Seats in Ethnic States, 1990, 2010, and 2015.

Type	Party Name	2010 Election			2015 Election		
		Pyidaungsu Hluttaw		State Hluttaw	Pyidaungsu Hluttaw		State Hlutt
		Pyithu Hluttaw	Amyotha Hluttaw		Pyithu Hluttaw	Amyotha Hluttaw	
		Number of elected members of Parliament			Number of elected members of Parliam		
Chin State		9	12	18	9	12	18
MP	Union Solidarity and Development Party (USDP)	5	6	7		1	4
DP	National League for Democracy (NLD)				7	9	12
EP	Chin National Party (CNP)	2	2	5			
	Chin Progressive Party (CPP)	2	4	5			
	Ethnic National Development Party (ENDP)			1			
	Zomi Congress for Democracy (ZCP)				2	2	2
Kachin State		18	12	38	18	12	36
MP	National Unity Party (NUP)	2	3	11	3	1	7
	Union Solidarity and Development Party (USDP)	14	6	20	12	10	22
DP	National League for Democracy (NLD)				1		3
EP	Kachin State Democracy Party (KSDP)				2		2
	Lisu National Development Party (LNDP)						
	Shan Nationalities Democratic Party (SNDP)	1	1	4			
	Shan Nationalities League for Democracy (SNLD)						
	Unity and Democracy Party (Kachin State) (UDPKS)		1	2			1
	Independent	1	1	1		1	1

Table 2. (continued)

Type	Party Name	2010 Election Pyithu Hluttaw	2010 Election Amyotha Hluttaw	2010 Election State Hluttaw	2015 Election Pyithu Hluttaw	2015 Election Amyotha Hluttaw	2015 Election State Hluttaw
		Number of elected members of Parliament			Number of elected members of Parliam		
Kayah State		7	12	15	7	12	14
MP	Union Solidarity and Development Party (USDP)	7	12	15	1	2	3
DP	National League for Democracy (NLD)				6	9	11
N/A	Independent					1	
Kayin State		7	12	17	7	12	14
MP	Union Solidarity and Development Party (USDP)	4	6	7	1	2	3
DP	National League for Democracy (NLD)				6	10	10
EP	All Mon Region Democracy Party (AMRDP)		1	2			
	Kayin People's Party (KPP)	1	1	2			
	Kayin State Democracy and Development Party (KSDD)		1	1			
	Phalon-Sawaw Democratic Party (PSDP)	2	3	4			1
	Independent			1			
Mon State		10	12	23	10	12	20
MP	National Unity Party (NUP)	1	1	2			
	Union Solidarity and Development Party (USDP)	6	8	14			1
DP	National League for Democracy (NLD)				10	11	16
EP	All Mon Region Democracy Party (AMRDP)	3	3	7			
	Mon National Party (MNP)					1	1

(contin

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Table 2. (continued)

Type	Party Name	2010 Election			2015 Election		
		Pyithu Hluttaw	Amyotha Hluttaw	State Hluttaw	Pyithu Hluttaw	Amyotha Hluttaw	State Hlutt
		Number of elected members of Parliament			Number of elected members of Parliam		
	Rakhine State	17	12	35	17	12	34
MP	National Unity Party (NUP)			—			
	Union Solidarity and Development Party (USDP)	8	5	14	1	1	3
DP	National League for Democracy (NLD)				4	1	8
EP	Arakan National Party (ANP)				12	10	22
	National Democratic Party for Development (NDPD)			2			
	Rakhine Nationalities Development Party (RNDP)	9	7	18			
	Independent						1
	Shan State	50	12	107	55	12	110
MP	National Unity Party (NUP)	2		—			
	Union Solidarity and Development Party (USDP)	23	7	54	15	3	32
DP	National League for Democracy (NLD)				12	3	21
EP	Inn-tha National Development Party (INDP)	1		3			
	Kayan National Party (KNP)			2	1		
	Kokang Democracy and Unity Party (KDUP)						1
	Lahu National Development Party (LHNDP)			—			1
	Pa-O National Organisation (PNO)	3	1	6	3	1	6
	Shan Nationalities Democratic Party (SNDP)	17	2	31			1

Table 2. (continued)

Type	Party Name	2010 Election			2015 Election		
		Pyidaungsu Hluttaw		State Hluttaw	Pyidaungsu Hluttaw		State Hlutt
		Pyithu Hluttaw	Amyotha Hluttaw		Pyithu Hluttaw	Amyotha Hluttaw	
		Number of elected members of Parliament			Number of elected members of Parliam		
	Shan Nationalities League for Democracy (SNLD)	1	1		12	3	24
	Ta'Arng (Palaung) National Party (TNP)	2	1	4	3	2	7
	Wa Democratic Party (WDP)			3	1		2
	Wa National Unity Party (WNUP)	1		2			1
	Independent				1		
	Cancelled				7		

Source: Burma Fund UN Office (2011), Khin Kyaw Han (2000), and Myanmar Information Management Unit (2016).
Note: MP = Military Parties; DP = Democracy Parties; EP = Ethnic parties.
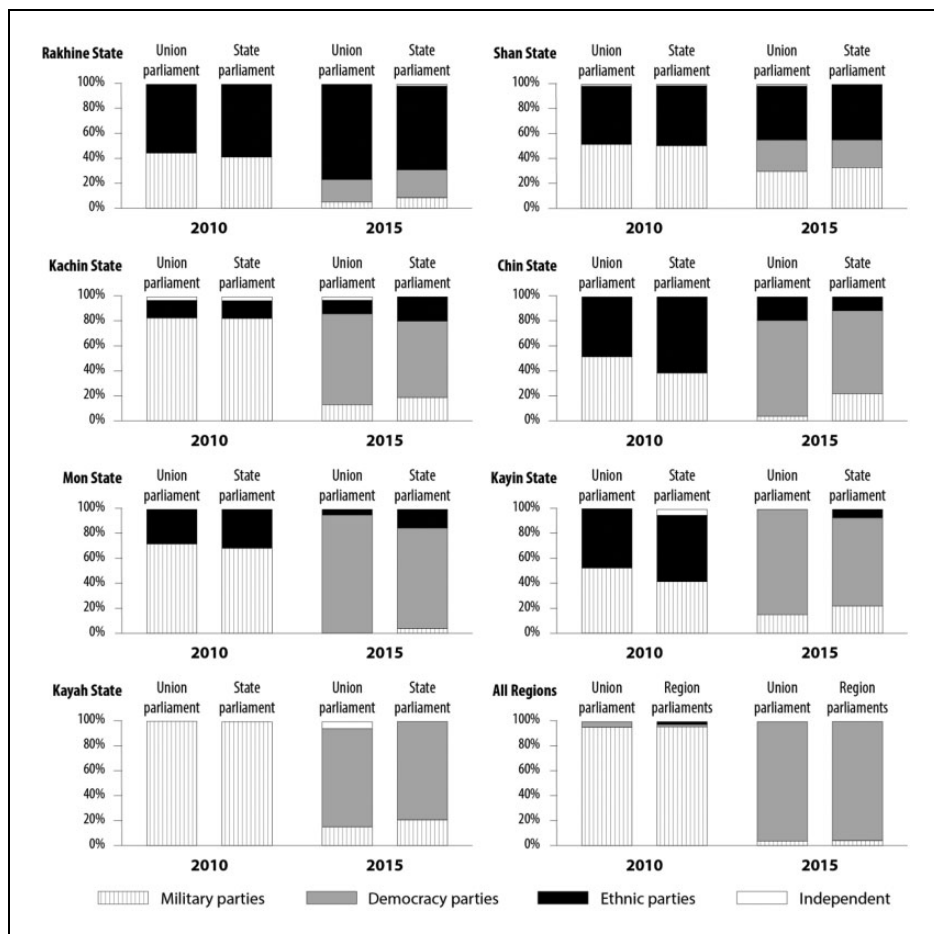
Figure 3. Distribution of parliamentary seats by party type in states and regions, 2010 and 2015 elections.
Source: Burma Fund UN Office (2011), Khin Kyaw Han (2000), and Myanmar Information Management Unit (2016).

Explaining the Electoral Performance of Ethnic Parties

The challenges of weak representation by ethnic parties raise further questions about the causal mechanisms behind the election results and about the ethnic parties' responses and strategies for the upcoming election in 2020. While various explanations have been offered for the poor electoral performance in 2015, respondents and observers converge around two sets of challenges for ethnic parties: (1) fragmented ethnic parties and vote-splitting and (2) weak party institutionalisation and ineffective representative claims. These alternative interpretations are complementary rather than mutually exclusive but

have supported different party-building strategies in preparation for the 2020 election, as will be discussed in the next section.

On the one hand, many respondents from ethnic parties and civil society organisations emphasise the fragmentation and divisive competition among ethnic parties (Ardeth, 2016). It is a common perception that vote-splitting played a decisive role in the context of a first-past-the-post electoral system and single-member electoral districts (Ardeth, 2016; Lemargie et al., 2014; Marston, 2013; Sai Wansai, 2015). The large number of ethnic parties, reflecting both the plurality of ethnic groups and the personal ambitions of political leaders, is thus seen as a source of electoral defeat in the 2015 election. With the exception of ANP in Rakhine State, pre-election efforts to merge parties or form no-contest agreements failed. There were, for example, five ethnic parties that competed against each other in the small Kayah State, creating a situation where "the result was not only a split ethnic vote, leaving space for the NLD to prosper, but also limited public enthusiasm over local parties that appeared small and weak" (Burke, 2015: 5). As shown in Table 2 and Figure 3, no ethnic parties won any of the Kayah seats in the union and state hluttaws.

The fragmentation among ethnic parties is also shaped by dynamics in the political field. Most importantly, the military-imposed transition has forged a divide between old movement parties that were founded in 1988–1990 but abstained from the 2010 election and new electoralist parties that were formed for the purpose of contesting the 2010 election (Stokke et al., 2015). Shan State, for example, saw a polarised competition in 2015 between SNLD and SNDP, resulting in a clear shift from SNDP to SNLD as the dominant Shan party. In Chin and Mon states, it is notable that both the 1990-era movement parties (Chin National League for Democracy and Mon National Party) and the 2010-era electoralist parties (CPP, CNP, and AMRDP) performed poorly at the 2015 election (Table 1). Similar patterns are also found in Kachin, Kayin, and Kayah states. In Rakhine State, in contrast, a merger of the old Arakan League for Democracy (ALD) and the new Rakhine Nationalities Development Party produced an electoral victory for the ANP in 2015. The ANP has subsequently split over political differences, but the stark contrast between Rakhine and other ethnic states is often taken as evidence that the failure to merge was a decisive factor behind the poor electoral performance of most ethnic parties in 2015 (Burke, 2015).

Vote splitting has thus become a popular explanation, especially among party representatives, for the failure of ethnic parties to provide formal and descriptive representation for ethnic groups. Transnational Institute (2015) adds important empirical nuance to this thesis by analysing electoral data to check whether the sum of votes for competing ethnic parties outnumbers the votes for the winning non-ethnic party (USDP or NLD). This calculation is based on the assumption that the voters for ethnic parties would also vote for a combined party, that is, that ethnic identity takes precedence over representative claims by non-ethnic parties. Based on this assumption, they find that vote-splitting was a factor in some electoral districts, but the actual number of seats that were affected by vote-splitting is relatively small. In fact, the calculation shows that only an additional 17 seats would have been won in union, state, and region parliaments if competing ethnic parties had merged prior to the election. Although vote-splitting

undoubtedly played a role, it is not a sufficient explanation for the low number of seats won by ethnic parties in 2015.

On the other hand, party respondents and observers also emphasise that ethnic parties were outcompeted in the polarised contest between USDP and NLD. Many ethnic voters supported NLD rather than ethnic parties, either for strategic reasons or because NLD's representative claims were deemed more attractive (Sai Wansai, 2015). The 2015 election was the first one with free competition between NLD and USDP. This made the election into a referendum between the legacy of military rule and USDP's campaign focus on "unity and development," on the one hand, and the legacy of the pro-democracy movement and NLD's focus on "change", on the other (Ardeth, 2016; Tin Maung Maung Than, 2016). In this polarised political contest between two dominant non-ethnic parties, ethnic parties and identity politics were relegated to a subordinate position.

Ethnic parties also had little capacity to formulate political alternatives and limited financial and organisational resources to run effective campaigns and mobilise ethnic constituencies (Burke, 2015; Transnational Institute, 2015). Respondents from ethnic parties and civil society organisations thus report that many ethnic voters supported the NLD to ensure a pro-democracy government (Sai Wansai, 2015; Tin Maung Maung Than, 2016). Respondents and observers also point to the iconic standing of Aung San Suu Kyi, symbolising the mass movement for democracy and federalism, as a key explanation for both political and strategic support for NLD among ethnic voters (Ardeth, 2016).

This alternative interpretation of the 2015 election thus argues that ethnic parties had little capacity to compete with NLD for support in ethnic constituencies. It is not vote-splitting among ethnic parties that explains their electoral defeat, but rather the political weaknesses of ethnic parties and uncertainty about their ability to provide substantive representation. As there are little empirical data available on ethnic voters' motivations for supporting NLD, it is difficult to ascertain whether it represents a strategic voting that was limited to the 2015 election or indicates a shift from ethnic identity politics towards non-ethnic parties. Ardeth (2016: 137) finds that "Karen (or Kayin) voters in the Yangon region said that they voted for the NLD rather than Karen parties because of disunity among Karen political parties or the perception that they were too small to effect major change or form a government." A post-election survey in Kachin State reports that voters were motivated both by strong resentment against USDP rule and a strong correspondence between the voters' political orientation and the NLD's core campaign message (Kachinland Research Centre, 2016). A large share of the respondents answer that they would have supported NLD even if there had been a merged Kachin ethnic party. This leads the authors to conclude that "Kachin parties lost the election badly not because they failed to forge a unified Kachin party; it was because they were not able to command the confidence of the Kachin voters" (Kachinland Research Centre, 2016: 21). These surveys confirm the observation made by some respondents that ethnic parties failed to make attractive representative claims in a context of party fragmentation and a dominant political contest between NLD and USDP.

The observed problems of political capacity raise critical questions about the character and determinants of ethnic party development. Field observations support the

analytical generalisation that most ethnic parties are poorly institutionalised both in terms of party values and policies and in terms of party organisation, which are the core dimensions of party institutionalisation that are emphasised in the scholarly literature (Randall and Svåsand, 2002). Ethnic parties are typically characterised by the absence of comprehensive political programs or specific policies beyond basic identity markers (Stokke et al., 2015; Wells, 2018). Most political parties are also weak in terms of organisational structure and internal democracy. With some notable exceptions such as SNLD, they have limited capacity to organise party activities, mobilise voters, and function as political representatives. In this situation, they resort to ethnic identities and the symbolic capital of party leader as the basis for representative claims.

These problems of weak party institutionalisation can be further contextualised with reference to Myanmar's political history of repressive party–state relations (Stokke, forth-coming). Most of Myanmar's post-colonial period has been marked by military rule and state repression of parties, although there have been periods of partial military withdrawal from government (Egreteau, 2016; Huang, 2016). These conjunctures, within the overall context of a praetorian state, have offered some temporary and constrained political spaces for party development, but not sufficient political opportunities for gradual and continuous party development based on social and political cleavages in society. In this situation, Myanmar's political parties, and especially the ethnic parties, tend to be leadership-centric networks for identity politics rather than programmatic political organisations.

Strategies for Party-Building among Ethnic Parties

The 2015 election has been followed by various initiatives for party-building in ethnic states. While most observers and political actors expected the NLD to win the election, as had already been indicated by the 2012 by-election, the magnitude of NLD's victory took many by surprise (Ardeth Maung Thawnghmung, 2016; Marston, 2013; Tin Maung Maung Than, 2013). NLD's clear majority in the Pyidaungsu Hluttaw had particularly strong repercussions for ethnic parties. Before the election, there was a common expectation that ethnic parties would gain the power to decide who should be the President and exert influence on the government or be included in a ruling alliance (Sai Wansai, 2015). Instead, NLD's strong position in parliament allowed it to form a single-party majority government and appoint governors and ministers in ethnic states with little consideration for ethnic allies (Sai Wansai, 2015). Consequently, ethnic parties – including ANP and SNLD – were left in a marginal position with limited influence on policymaking and public administration, despite the change of government from USDP to NLD.

The foremost strategic response of ethnic parties following the 2015 election has been to merge parties within each ethnic state (Hein Ko Soe, 2018; Nan Lwin, 2018). This consolidation strategy is based on the realisation that most of the major ethnic groups – the Shan, Kachin, Kayah, Chin, Mon, and Karen – were represented by at least two competing parties in 2015. Mergers or electoral alliances are thus seen as a natural response to the problems of vote-splitting. The extent to which such mergers have happened has, nevertheless, taken many observers by surprise, in the light of the

hesitance to merge parties in the past. A newspaper report in April 2018 concluded that although vote-splitting was recognised as a major impediment for ethnic representation, "mergers to maximise their chances at the ballot box in 2020 seem unlikely in all states but two" (Hein Ko Soe, 2018: 1). This prediction has since been proven wrong: At the time of writing (November 2019), Karen, Kayah, Kachin, Mon, and Chin ethnic parties have agreed to merge and some have registered new parties (Nan Lwin, 2018).

In Mon State, for example, merging the 1990-era Mon National Party (MNP) and the 2010-era AMRDP has been a contentious issue since before the 2015 election (Aung Aung, 2018; Burma Partnership, 2015). Although the need and common ethnic basis for a merged party is recognised, there have also been deep-seated political divisions between MNP and AMRDP that have blocked an actual merger. Reluctantly, the leaders of both parties came to accept an amalgamation after being pressurised by an alliance of civil society organisations and Buddhist monks supported by the New Mon State Party (NMSP), the foremost Mon ethnic armed organisation. In the aftermath of two large-scale Mon Political Conferences, and under the threat of a third Mon party being formed, the AMRDP and MNP finally agreed to merge in 2018 (Lawi Weng, 2018; Naw Betty Han, 2018b). The new party, named Mon Unity Party, has reportedly not yet developed a comprehensive political platform beyond the overall focus on Mon identity and demands for self-determination.

The Mon case points to the existence of both unifying and divisive factors in ethnic politics. While being united by Mon identity and shared frustration with a government that is perceived to be majoritarian, entrenched political differences between the parties have posed major obstacles for a merger. In this situation, third party engagement by civil society organisations and NMSP seems to have played a crucial role. These observations resonate with a parallel process in Kachin State, where merging small and unsuccessful parties has come to be seen as a precondition for Kachin political representation and influence after the 2020 election. Discussions about party consolidation has centred on seven Kachin parties, but the process has also involved civil society organisations, Baptist and Catholic leaders, as well as consultations with the Kachin Independence Organisation (KIO) (Hein Ko Soe, 2018; Zaw, 2018). The relations with KIO are especially complex and opaque. KIO has extended general support for the initiative but has not engaged actively, due to the experience in 2010 when Kachin State Democracy Party (KSDP) was blocked by the Union Election Commission due to the leader's earlier links to KIO. Some respondents also suggest that KIO may have its own goals and strategies for political transformation in the future.

In contrast to Mon State, the process of ethnic party-building in Kachin State has also brought up questions about the ethnic boundaries that form the basis of ethnic identity politics. In simplified terms, key civil society organisations have advocated an inclusive notion of "Kachin people" (including the six groups Jinghpaw, Lisu, Zaiwa, Lhaovo, Rawang, and Lachid) and a broad-based and bottom-up party development process. In contrast, the actual party-building process has consolidated what is commonly seen as a group of Jinghpaw parties, thereby reinforcing rather than transforming internal ethnic boundaries within Kachin. At first, the process produced a merger of three parties: Kachin Democratic Party, KSDP, and Kachin National Congress (Network Media

Group, 2018). These are parties that have been broadly related to the 1990-era ethnic and democracy movement. A fourth party, Union and Democracy Party of Kachin State, was formed before the 2010 election and collaborated closely with the USDP-government. Eventually, all four parties agreed to merge and to form a new Kachin State People's Party (Kachin News Group, 2018, 2019). Other Kachin parties – LNDP, Lhaovo National Unity and Development Party, and United Nationalities Federal Democracy Party – have opted out of the new party formation and it is unclear whether there will be any electoral agreements before the 2020 election.

Similar processes have also taken place in Chin, Kayin, and Kayah states, where no parties representing the major ethnic groups won a significant number of seats in 2015. In Kayin State, four small parties – PSDP; Kayin Democratic Party; Kayin State Democracy and Development Party; and Kayin National Democratic Party (KNDP) – agreed to merge in 2018 and have registered at the Union Election Commission as KNDP (Ariffin, 2018; Chan Tar, 2018; Nan Lwin, 2018; Zaw, 2018). In addition to this comes two more Kayin parties – Kayin People's Party and Kayin National Party – that are based outside Kayin State and will continue as separate parties representing Kayin constituencies outside Kayin State (Aung Aung, 2018; Hein Ko Soe, 2018).

In Kayah State, likewise, Kayah Unity Democracy Party and the All Nationals' Democracy Party (Kayah State) agreed to merge in 2017 and has registered as Kayah State Democratic Party (Ariffin, 2018; Kantarawaddy Times, 2017; Nan Lwin, 2018). A third Kayah party – the Kayah National Party – is reportedly seeking a strategic alliance rather than a merger with KSDP.

In Chin State, the 2010-era Chin National Democratic Party and the CPP reached a merger agreement in 2017. In 2018, they were joined by the 1990-era Chin National League for Democracy to form CLD (Ariffin, 2018; Nan Lwin, 2018; Naw Betty Han, 2018a; Zaw, 2018). The ZCD Party, which represents a Chin subgroup and was relatively successful in the 2015 election, is not part of this merger but is reportedly planning consultations with other parties to avoid vote-splitting among ethnic Chins (Hein Ko Soe, 2018).

These party-building initiatives have mainly focused on merging parties to avoid vote-splitting. Such mergers may form a basis for subsequent party institutionalisation, but there seems to be relatively little attention to the political programs and policies of these parties so far, except general references to ethnic identities and interests.

Shan and Rakhine states stand out as different from the other ethnic states in terms of electoral success for ethnic parties in 2015 as well as the dynamics and trajectories of party development after the election. In Rakhine State, there was a successful merger in 2014 between the 1990-era ALD and the 2010-era RNDP, which formed a basis for electoral success of the ANP in 2015 (Burma Partnership, 2015; Nan Lwin, 2018). The merger of ALD and RNDP meant that ethnic vote-splitting was avoided, while Rakhine nationalism had a strong mobilising effect on voters. ANP's success was especially strong in the northern part of the state, where a large number of Rohingyas had been disenfranchised (Transnational Institute, 2015).

ANP's electoral success demonstrates the political potential of consolidated ethnic identity politics and thus provides a model for other parties, as mentioned above. It
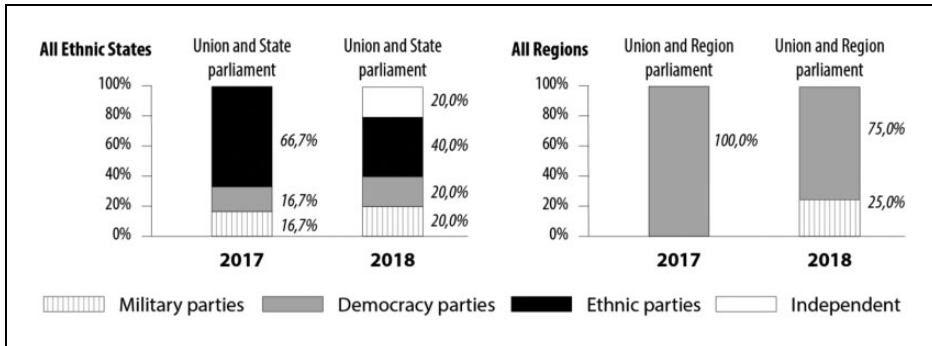
Figure 4. Distribution of parliamentary seats by party types in states and regions, 2017 and 2018 by-elections.
Source: Ei Ei Toe Lwin (2018) and Myanmar News Agency (2017).

should, however, be noted that post-election factionalism within ANP also demonstrates the challenges of party-building that is narrowly focused on party mergers and representative claims based on ethnic identity (Min Min, 2016). In 2017, ANP split due to political and personal disagreements between the former members of the two founding parties. Key members from the ALD criticised the RNDP-domination within ANP and their strong emphasis on Rakhine Nationalism, arguing that this may impede local development (Min Min, 2016). In turn, the chair of ANP resigned with reference to disunity among the party leaders (Hein Ko Soe, 2018; Zaw, 2018). It thus seems that key political differences that were subsumed under Rakhine identity politics remained a source of factional contentions and subsequent break-up.

In Shan State, where SNLD was relatively successful in the 2015 election, post-election party-development has taken a different path. The 2015 election marked a shift from the 2010-era SNDP to the 1990-era SNLD. SNDP has on several occasions expressed an interest in merging the two parties, but SNLD has instead prioritised building its strength as a policy-based party (Hein Ko Soe, 2018; Myat Moe Thu, 2019; Nan Lwin, 2018; Nyein Nyein, 2017; Zaw, 2018). Their stated aim is to build a party that is based on policies rather than being defined by ethnic identity and to use this to strengthen communication and accountability vis-à-vis the voters (Mizzima, 2018; Myat Moe Thu, 2019). Towards this end, SNLD has held internal policy workshops, organised working committees, and drafted party policies for prioritised thematic areas. This strategic focus on party platform and accountability relations, rather than merging two parties with different political stances, seems to be both a source and a product of SNLD's position as a one of the most institutionalised ethnic parties, showing few signs of internal factionalism.

This review indicates that the weak electoral performance in 2015 has been followed by various initiatives for ethnic party-building. While most of these have focused on merging ethnic parties, in agreement with the thesis on the vote-splitting, there are also initiatives that are aimed at political institutionalisation of parties. Irrespective of their

choice of strategy, many respondents from ethnic parties express optimism regarding the prospects of at the 2020 election. This is justified with reference to their party-building initiatives, but also a common perception that ethnic voters are increasingly dissatisfied with the NLD-government. Their expectation is thus that ethnic parties may gain a more prominent position and increase its bargaining power in parliament and government.

Several respondents and media observers find support for this expectation in the outcomes of the 2017 and 2018 by-elections (Ei Ei Toe Lwin, 2018; Jagan, 2018; Sai Wansai, 2017). At these elections, NLD only gained nine out of nineteen seats in 2017 and seven out of thirteen seats in 2018, which was below expectation. Respondents from ethnic parties especially emphasise that NLD won few of the vacant seats in ethnic states (Figure 4). This is taken as an indication of reduced support for NLD among ethnic voters, while consolidated ethnic parties are expected to attract more ethnic votes in 2020. A note of caution may be that most ethnic parties remain poorly institutionalised both in organisational and political terms. Questions about their political capacity thus remain, despite the merging of parties and the reduced risk of vote-splitting.

Conclusion

This article has examined the role of political representation by ethnic parties within Myanmar's new system for formal electoral democracy and parliamentary politics. Based on recent electoral performance, a key finding is that ethnic parties have been relatively ineffective in ensuring formal and descriptive representation for ethnic groups and have thus had limited possibilities for substantive representation of ethnic interests. In this situation, political representation by ethnic parties may so far have played a legitimising role for the new democratic institutions more than providing substantive representation towards democratic deepening and conflict resolution. The article has also identified key explanations for this relatively weak electoral performance of ethnic parties, emphasising party fragmentation and vote-splitting as well as weak party institutionalisation and limited capacity to make representative claims. In preparation for the 2020 election, ethnic party-building initiatives have especially focused on merging parties, but there are also some notable initiatives for organisational and political party institutionalisation. Such party development combined with voter frustrations with the NLD-government may bring electoral gains for ethnic parties at the 2020 election. There are, however, also persistent concerns about the capacity of ethnic parties to make representative claims and provide substantive representation in union and state legis-latures. The 2020 election in ethnic states is thus set to be a new open-ended test for how ethnic voters see themselves best represented, in the light of competing representative claims and past experiences with formal and substantive representation: by consolidated ethnic parties or non-ethnic democracy parties?

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Containing the Self-Interested Individual: Moral Scepticism of Political Parties in Myanmar

Matthew J. Walton

Abstract

In this article, I examine a persistent set of concerns regarding the political party system in Myanmar that I read as emerging in response to a Theravāda Buddhist-grounded conception of human nature as inherently self-centred, biased, and morally ignorant. Although these critiques come from political actors anchored in different ideologies and situated in different historical periods (including the early twentieth-century politician U Ba Khaing, contemporary military leaders, and Daw Aung San Suu Kyi and her party, the National League for Democracy), I argue that the resonance of their critiques with this understanding of human beings has imparted a consistent disciplining and delegitimising effect on opposition and minority parties. However, the same conception of human nature has led other Burmese political commentators (including the independence hero General Aung San and the nineteenth-century minister U Hpo Hlaing) to construct opposing arguments that present collective, participatory political action or engagement as the necessary response to human moral deficiencies. Putting these arguments in conversation helps to reveal the disciplining aspects of the critiques of parties and offer alternative justification – still in accordance with this conception of human nature – for a robust and inclusive party system.

Keywords

Myanmar, Buddhism, political parties, morality, human nature

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Introduction

Since well before the first political parties were formed and legalised within electoral systems, politicians and commentators have disagreed on their effects and the risks associated with them. Despite the near-universal institutionalisation of parties – including within non-democratic electoral regimes – they are frequent targets of critique for their presumed tendency to foster factionalism or engender corruption. Some of these critiques appear to be universal, but other evaluations of critiques of political parties reveal additional facets and effects when situated within their particular cultural and discursive contexts. In this article, I examine a persistent set of concerns regarding the political party system in Myanmar that I read as emerging in response to a Theravāda Buddhist-grounded conception of human nature as inherently self-centred, biased, and morally ignorant. Although these critiques come from political actors anchored in different ideologies, I argue that the resonance of their critiques with this understanding of human beings has imparted a consistent disciplining and delegitimising effect on opposition and minority parties. However, the same conception of human nature has led other Burmese political commentators to construct opposing arguments that present collective, participatory political action or engagement as the necessary response to human moral deficiencies. Putting these arguments in conversation helps to reveal the disciplining aspects of the critiques of parties and offer alternative justification – still in accordance with this conception of human nature – for a robust and inclusive party system.

I begin by situating this study within the growing field of Comparative Political Theory (CPT), which seeks to understand "non-Western" systems of thought on their own terms, displacing the hegemonic position of the Western canon in thinking about politics, and within studies of political thought in Burma/Myanmar. Next, I explain the particular understanding of human nature that I see operating within these accounts, through the figure of the *pu htu zin*, a morally deficient being that encapsulates many of the characteristics of the quintessential self-centred political actor. I then consider five Burmese accounts that either critique political parties through reference to the "problem" of the *pu htu zin*, or provide ways to reframe this problem through participatory political engagement. These accounts include the early twentieth-century political writer U Ba Khaing; a succession of recent military leaders; Daw Aung San Suu Kyi and her party, the National League for Democracy (NLD); the anti-colonial political leader General Aung San; and the late nineteenth-century minister U Hpo Hlaing.

Methods and Approach

I situate this article within the emerging subfield of CPT, which has sought to "deparochialise" political thought within the globally privileged Western canon, by including thinkers, positions, methods, and knowledges from "non-Western" places and cultures, or from marginalised perspectives within the Western tradition.[1] Discussion among CPT scholars is often characterised by hyper-reflexivity, and most of the terms used in the previous sentence (Western, non-Western, tradition, culture) are the subject

of active critique and debate, as participants seek to avoid generalising, essentialising, and reifying, even while recognising and contesting the power dynamics that continue to govern the practice and teaching of political theory in academic institutions, dynamics that privilege the thought and views of predominantly white, male, heterosexual individuals from Europe or North America (Godrej, 2009; Idris, 2016; Williams and Warren, 2014).

My engagement with Burmese thinkers and texts consists of several interpretive shifts. First, I seek to situate each thinker contextually, with regard to her or his political and intellectual context and also with a general sense of who she or he might be in conversation with. Because these thinkers span over a century of time, not all were in direct conversation with each other. However, in reading them all as engaging with the political implications of a particular conception of human nature, I also seek to draw out resonances that cross ideological positions and I construct some accounts as providing ideational resources to respond to critiques that would not have been contemporaneous. This is a common approach within the discipline of political theory more generally, and allowing these disparate accounts to "speak to" each other on a topic of shared interest is an aspect of treating work from non-Western or marginalised perspectives as capable of generating theory both within and beyond the tradition within which they are usually categorised.

I am also interested in reading their work as having been produced from a space broadly influenced by Theravāda Buddhist ideas. In constructing this analysis, I am not suggesting that there is a singular or unitary conception of "Burmese Buddhist political thought," although my focus is on these thinkers' engagement with a particular conception of human nature generated from Theravāda Buddhist doctrine. While part of my argument relies on identifying a consistent understanding of this conception – through the figure of the *pu htu zin*, explained in the next section – I also demonstrate a wide range of interpretations of its significance within the field of the political, sometimes explicitly for political parties, sometimes for participatory politics more generally.

Finally, and again, consistent with common methodology within the discipline of political theory, I develop my own interpretive understanding of some of their ideas, moving beyond the contexts in which they were first iterated to "think with" their ideas in a way that would likely not have been envisioned by the thinkers themselves. It should be readily apparent, for example, that the late nineteenth-century minister U Hpo Hlaing did not directly comment either on the party system or on the discourses critical of political parties that have been produced in recent decades by either military leaders or leading figures in the NLD, and it is also true that his ideas do not commonly circulate in Burmese public discourse today. But this does not mean that his insights regarding the moral import of collective deliberation cannot be developed in such a way that they can be oriented as an alternative assessment of the role of parties in Myanmar's contemporary electoral politics. These imaginative, interpretive reformulations are part of the methodology of political theory, here undertaken in conversation with multiple thinkers in the Burmese tradition.

My own positionality is relevant in adopting this interpretive approach. I am a white, male scholar, educated in the West, who has conducted fieldwork in Myanmar for

approximately a decade and a half. My own personal spiritual practice is rooted in the Burmese Buddhist tradition, yet I recognise that, while mediated through Burmese monks and lay teachers, it likely diverges from many of the ways that Buddhism is lived and practised in Myanmar. My understandings of these thinkers and texts aim to be as embedded as possible, while recognising limits to that possibility, enacted through cultural sensibilities and affective positions that I might appreciate but do not internalise, differential linguistic access (I speak and read Burmese, but as a non-native), and a range of other factors, not least the privileged position that I occupy as a foreign researcher in the country. However, none of these factors ought to limit one's ability to "think with" insights and theory from a given perspective. If we understand interpretive engagement with political thought to be generative rather than authoritative, we must position any given interpretive account as partial, open to critique and revision, but intended to be part of an ongoing conversation. It is in that spirit that the following analysis is offered.

While studies of Buddhist political thought are generally under-represented in academia, there has been previous attention to this field in Burma Studies.[2] Several works that are particularly notable for adopting methods of engagement that resonate with the approach laid out above are Manuel Sarkisyanz's *Buddhist Background of the Burmese Revolution* (1965), which sought to situate U Nu's political reform project in the 1950s within the context of Buddhist moral ideas about welfare and political participation, and Gustaaf Houtman's *Mental Culture in Burmese Crisis Politics* (1999), which identified a number of ways in which the conflict between the military and the democratic opposition in Burma in the 1980s and 1990s took place with reference to Buddhist ideas, symbolism, and practices.

The argument developed here builds on my (Walton, 2015) invocation of a "disciplining" discourse of unity in contemporary Burmese politics. In that analysis, disunity is understood in moral terms, as a reflection of the egotism and self-interestedness of a given actor or political group. In Myanmar, political parties – even in accounts from those defending and promoting democracy – are often understood to be vehicles for the expression of particularistic interests, whether those of an individual, identity group, or other political actor. Importantly, the power of this discourse is amplified by the moral censure attached to claims of egotism. That is, within a Theravāda Buddhist world view, the illusion of "self" is understood to be the foundation for all other misperceptions and related misguided actions within the world. "Disunity is the result of a group of individuals committed only to their own benefit; it is a result of moral failure" (Walton, 2015: 5). The next section elaborates on this figure of the self-interested individual.

The Political Implications of Self-Centred Human Nature

In the analysis that follows, I argue that the figure of the *pu htu zin* haunts Burmese attempts at institutionalising electoral systems and party politics. This term, a Burmese iteration of the Pāli word *puthujjana*, is often translated as "ordinary worldling," and elsewhere (Walton, 2015, 2016) I have positioned it as an influential conception of human nature within Theravāda Buddhist belief and practice. "In the Buddhist

soteriological system a *puthujjana* [. . .] is defined as one who has not experienced the life-transforming insight into selflessness which alone guarantees liberation [Pāli *nibbana*, Bur. *Neikban*] from worldly existence [Pāli *samsara*, Bur. *Thanthara*]" (Adam, 2008: 116). The *pu htu zin* is not inherently good or evil, simply ignorant, yet this fundamental state of ignorance encapsulates and perpetuates the profound tragedy of human existence, as diagnosed by the Buddha.

Specifically, the *pu htu zin* is ignorant of three characteristics of existence that the Buddha identified, namely *anattā* (Bur. *anatta*), *anicca* (Bur. *aneitsa*), and *dukkha* (Bur. *doukkha*). *Anattā* is understood as the state of selflessness, or as the realisation that one ultimately lacks control over anything. *Anicca* is impermanence: everything that comes into existence will inevitably pass away. *Dukkha*, often glossed as "suffering," can refer to actual feelings of physical pain or emotional distress, but refers more widely to a sense of dissatisfaction that emerges based on ignorance of the first two characteristics, and a desire for things – and self – to have an abiding essence.

Thus, the *pu htu zin* clings to the belief that things can be permanent, that they can be controlled. Because of this basic ignorance, his life is characterised by *dukkha*, suffering encountered in negative experiences, but also in positive experiences that will not last. The desire for permanence and control also animates a wider range of desires and cravings, leading the *pu htu zin* to self-centred thought and action. This unrestrained desire also motivates intentional action, which generates *kamma* (Bur. *kan*), locking people into a continual cycle of rebirth (*samsara*). More importantly for the critiques considered in this article, self-centredness rooted in ignorance makes the *pu htu zin* morally unfit to rule himself – let along others – as his actions will constantly be conditioned by negative defilements and biases. It is this persistent conception, of people as morally flawed, self-centred actors, that I argue animates Burmese scepticism towards political parties.

While the term *pu htu zin* regularly appears in monastic sermons and texts, it does not seem to have been frequently used by political figures in Myanmar over the last century. Instead, I argue that we can find the figure of the *pu htu zin* invoked through its qualities – specifically, its moral deficiencies – and through terms that construct its idealised opposite, the detached, other-oriented moral exemplar. In the writings and speeches considered below, the quality of egotism (Bur. *atta seit*) is often attributed to both scheming party leaders and self-centred voters. Here, a mind (*seit*) governed by a belief in a permanent self (*atta*) leads one to prioritise one's own interests, or to not recognise a greater purpose. Another way to express the general condition of the *pu htu zin* is through the notion of "wrong view" or "wrong understanding" (*thekkaya deihti*), which refers specifically to ignorance of the three characteristics of existence as well as the cause and effect logic that underpins *kamma*. Additionally, several of the commentators below refer to the influence of the four *agati*: desire, anger, fear, and ignorance. Taken individually or in combination, these are understood to create bias or partiality, to obscure a clear understanding of a given situation, and the condition of the *pu htu zin* is susceptible to these *agati*.

The self-regarding *pu htu zin* is contrasted, implicitly or explicitly, with the morally superior other-regarding figure. In some of the accounts below, the claim is that the

speaker occupies this position; this is more explicit in the case of military rhetoric, more implicit in the NLD's "Union party" rhetoric. But the notion is also made more explicit in language that elevates *sedana* (Pāli *cetanā*; goodwill, benevolence, selfless intention) as an essential characteristic of the good politician or good citizen. Numerous other accounts make clear that this is not only an aspect of the political discourse of NLD leadership (Wells, 2019), but of previous generations of political leaders (Houtman, 1999; Walton, 2015: 6), military officials (McCarthy, 2008: 311; Philp and Mercer, 2002: 1591), and a wide range of political actors today (McCarthy, 2016: 319).

The figure of the *pu htu zin* presents an additional layer of complexity in that some canonical sources emphasise the fact that even kings are ultimately subject to the same type of ignorance or bias.[3] One of the texts that deals particularly with this dynamic is the *Cakkavatti-Sīhanāda Sutta*.[4] Relating the story of a moral and effective king who rules over a realm of happy and satisfied subjects, the *sutta* also provides an example of a king whose conduct is not in accordance with the Buddha's moral teachings, leading to the drastic material decline of his realm and its inhabitants. I have tracked several interpretations of the *Cakkavatti-Sīhanāda Sutta* (and its variants in other texts) by Burmese authors, noting the claims that "the moral conduct of the king sets an example for his subjects but also has tangible effects on the prosperity of society" and that "the actions of those subjects, whether moral or immoral, will bear similar fruits in the society as a whole" (Walton, 2016: 87).[5] These two claims underlay different stances on whether an influential *individual* is necessary for the moral uplift of society or if the community itself is capable of shifting the direction of moral – and thus, material – travel. This ambivalence is present in several of the accounts considered below, informing positions on whether parties can be effective or appropriate vehicles for political participation.

The analysis here also represents a challenge to a common distinction made by many analysts of Burmese politics that certain figures represented or represent a defined "secular" perspective.[6] Historically, General Aung San and U Nu have frequently been posited as the exemplars of the respective "secular" and "religious" positions. While individuals like U Ba Khaing and General Aung San advocated for Burma to be a secular state, their writing also demonstrated an explicit engagement with Buddhist ideas, symbolism, and rhetoric, often adapted through a critical Marxist lens. The same can be said for generations of military leaders, whose invocations of Buddhism are too often taken as cynical instrumentalism, a characterisation which ignores the fact that they too are Buddhists embedded within the moral belief structure of *kamma* (Jordt, 2007). In what follows, I argue that a particular Theravāda Buddhist conception of humans as *pu htu zin* has influenced Burmese thinking about political parties and political participation across a wide range of ideological positions, since the initial introduction of parties to the country.

Burmese Critiques of Political Parties

Following from the previous description of the *pu htu zin*, the analysis below breaks Burmese concerns regarding political parties[7] into several types of problems related to the effects of a party system and the tendency of parties to exacerbate negative intentions

or characteristics.[8] On the one hand, political parties are understood to promote egoism, simply channelling or even augmenting the self-centred nature of the *pu htu zin.* The second line of criticism accuses parties of promoting narrow interests, either of individuals or particular identity groups, a collective version of the self-centred critique that is contrasted with individuals or groups that either present themselves as or presume themselves to be other-regarding, or committed to a greater goal.

The perspectives considered below do not proceed chronologically, nor are they meant to be exhaustive. They do, however, span a range of ideological positions, including between political figures more committed to an electoral democracy and those who governed the country through decades of authoritarian military rule. Indeed, part of the purpose of examining these different individuals' views is to show that even avowedly democratic parties and politicians are compelled to engage with the challenge presented by the figure of the *pu htu zin* in a democratic context. The thinkers in the first three sections (U Ba Khaing, recent military leadership, and Daw Aung San Suu Kyi and the NLD) all explicitly engage with questions of party politics. I read the second two thinkers (General Aung San and U Hpo Hlaing) as contending with the challenge that the *pu htu zin* generates with regard to political participation more broadly, and I interpret the implications of their reasoning for questions about the role and effect of political parties.

U Ba Khaing

One of the first critiques of political parties in Burma was U Ba Khaing's *Political History of Myanmar* published by the Nagani Book Club in 1937.[9] 1937 was the year in which Burma's administrative separation from India was made official, although the Government of Burma Act had legislated it in 1935. Technically, the first election in which Burmese political figures could stand was the 1920 Indian Legislative Assembly election, but a series of elections throughout the 1920s produced limited participation due in part to organised boycotts by emerging nationalist groups (Taylor, 2009: 180–189). The party system was thus newly introduced to Burma and, according to Robert Taylor, most people's political interests remained focused at local levels, with deep scepticism as to the benefits of supporting a national party or candidate and reluctance to upend local arrangements between power brokers (2009, 166). U Ba Khaing was a founding member of the Fabian Party but was scathing in his analysis of the mixture of political parties, a gullible electorate, and self-serving political elites. In his book, he recounted the early decades of the country's independence struggle at the turn of the century, first praising the *wunthanu athin* (patriotic organisations that rallied rural populations in support of self-rule) then eventually criticising them, along with the influential General Council of Burmese Associations for succumbing to factionalism.

U Ba Khaing's disappointment in the party system reflected his scepticism of the ability of individuals to lead morally and of party members to hold leaders accountable for their behaviour, rather than merely following them in the hopes of personal gain. The high degree of personalism also impeded the institutionalisation and development of the party system itself. He contrasted the situation in Burma with that in the metropole:

> A pathetic state of Burmese politics is that political parties do not have [a] definite ideology. In England there is no such thing as Baldwin's party, or Landsberry's party, or Mac Donald's party, or Lloyd George's party. The parties in England are Conservative, Socialist, Labour, Liberal, which are based on party ideology. (quoted in Zöllner, 2006a: 113)

Of course, while parties in England were not named after individuals, they were not above the influence of personalism, but U Ba Khaing seems to have had in mind an idealised programmatic model of party organisation, in which a declared ideology would guard against the vagaries of individual leaders' whims.

Without such an ideology, people would have nothing to meaningfully unify them, beyond the charisma and sway of the leader:

> As the parties are named after persons there can be no definite -ism; only activities that follow the will of the leaders prevail. This is the greatest defect in Burmese politics; it is the duty of the people to correct it. (Zöllner, 2006a: 113)

This criticism is again rooted in concern about individuals' ability to be effective leaders in which they work for the benefit of the larger community rather than their own; here U Ba Khaing not only suspects that the masses won't be able to make selfless decisions, but that immoral and ego-driven leaders will exacerbate this process. Not only would this negate any potentially beneficial aspects of the party system, it would also undermine the broader struggle for national independence, dragging the country down through the mundane squabbles of morally fallible and self-centred humans.

U Ba Khaing's critique mirrors some of the internal tensions present in the *Cakkavatti-Sīhanāda Sutta*, mentioned briefly above, about the relationship between leaders and masses, especially with regard to influence and moral conduct. He appears to be sceptical that any actor in this arrangement, from would-be party leaders to rank-and-file membership, is capable of lifting themselves out of the self-regard that inevitably characterises the *pu htu zin*. Without a moral paragon, political parties will remain mechanisms that are shaped by and replicate human failings, nothing more than vehicles for self-aggrandisement or mindless following.

Contemporary Military Leadership

The *pu htu zin* model also shapes military views of the value or risks of political parties as an ordering device for democratic participation. Military leaders have had a particularly strong and persistent view of political parties as evidence of factionalism and disunity. Some of this can be traced to concern over splits in the ruling Anti-Fascist People's Freedom League (AFPFL) in the late 1950s (Sein Win, 1989) that military leaders of the time saw as destabilising. This helped to generate the justification for a temporary handover of power to a military Caretaker government from 1958 to 1960 and then the more permanent military coup in 1962. Partly as a result of this history, military leaders have, for decades, been keen to emphasise that they take part in "national politics, as distinct from party politics" (*The National Ideology and the Role of the Defence Services*, 1960; quoted in Tin Maung Maung Than, 1993: 33). This was, perhaps,

something of an ironic slogan during the period of single party rule under the Burma Socialist Programme Party from 1962 to 1988, but military leaders of the time presumed the interests of their party to be equivalent to the interests of the state and its people as a whole. Gustaaf Houtman has also explored this notion of the military as apolitical, noting various ways in which its leaders and spokespeople placed it beyond politics or beyond division. General Saw Maung, who led the military government for several years after the coup in 1988, went so far as to declare, "I don't know anything about party politics" (quoted in Houtman, 1999: 69).

The language of national politics versus party politics is morally encoded. An institution that works on behalf of national politics – as the military claims itself to be – is painted as selfless, rising above individual interests and capable of grasping the political path that is best for the broader community. By contrast, the denigrating of party politics labels it as essentially partial and self-interested, and therefore morally underdeveloped, even dangerous. Again, this is not to say that the military's arguments here are not disingenuous, as its leaders have consistently acted in their own best interest. But the moral implication of their critique, particularly when directed at parties or organisations working on behalf of specific ethnic or political interest groups, is notable. A recent example that explicitly invoked this moralised language to denigrate ethnic political demands was a November 2019 press conference given by Major General Soe Naing Oo, head of the military's (unironically named) True News Service. He stated, "The (ethnic armed groups) have deep-seated biases. If they drop those biases and focus on the country and the people, peace will be achieved quickly" (Htoo Thant, 2019).

Speaking more generally about citizen participation in elections, in a speech on Armed Forces Day on 27 March 2005, Senior General Than Shwe also invoked the risk of bias when he warned of the dangers of a return to the disorder and chaos that characterised the parliamentary period. He stated that "Genuine democracy can flourish only when each and every citizen possesses reasoning power and is able to vote for delegates without [the] four *agati* [forms of partiality]" (Burma, 2005: 24). Recall that being subject to the four *agati* (desire, anger, fear, and ignorance) is a core characteristic of the *pu htu zin*. There is clear overlap between Senior General Than Shwe and U Ba Khaing, in believing that most people would be incapable of resisting the pull of an influential leader, and that this is likely to be either self-serving or destructive for the country. Similarly, a 2008 editorial from the government-run *New Light of Myanmar* seemed to suggest a proper way of "implementing democracy," closely connected to right moral behaviour, in opining that the failures of the parliamentary period (1948–1958, 1960–1962) were "not because of democracy, but because of those who implemented democracy, and those who were desperate to come to power with egotism, attachment to the party concerned, and selfishness, and those who bore jealousy and disturbed others" (Kyaw Min Lu, 2008b).

A related discourse from military leaders and propagandists, that makes indirect reference to the perils of the *pu htu zin* in politics, is the idea that there is a minimal (yet unspecified) level of maturity necessary to practise democracy. This idea was widely promulgated in editorials and other commentaries in the government-run *New Light of Myanmar* following the 1990 election, which was won in a landslide by the NLD,

although the military government of the time refused to recognise the result; accusations of immaturity – directly primarily towards the democratic opposition – subsequently became a staple of regime rhetoric. A 2008 editorial, notable in that it was printed the month after the military government's constitution was ratified in a widely criticised referendum, stated that, "In the run-up to the 1990 election, political parties were mushrooming. The number of political parties stood at 235, and that implied that the people were not mature enough in the party politics without any political experiences" (Kyaw Min Lu, 2008a).

This language has not only functioned as a morally disciplining critique of the probable factionalism of the party system and of particular parties within it, it has also facilitated the indefinite deferral of the military's formal withdrawal from politics. When, in 2013, Senior General Min Aung Hlaing indicated to Thailand's then-Prime Minister Yingluck Shinawatra that the military planned to reduce its role in politics, deputy information minister and presidential spokesperson U Ye Htut clarified that "Former Senior General Than Shwe said the constitution could be changed as needed when all groups involved in our democracy are mature," adding "We can't say when [the withdrawal of the military from politics] will start because it depends on the maturity of all groups" (Soe Than Lynn, 2013). Then-President Thein Sein (himself a former general) reinforced this notion in a March 2014 speech to Parliament, where, speaking of the military's role in politics, he said: "Reducing the army's role gradually depends on internal peace and development as well as the maturity of the democracy." And Senior General Min Aung Hlaing brought all of the tropes together in a 2015 interview, saying that the country needed a

> maturing of the multiparty democracy system [. . .] We – the armed forces – favor national politics, not partisan politics. We are not rigid on the constitution [. . .] We have already signed a nationwide cease-fire agreement. But we need a mature and stable political situation in our country. We need to gradually change. Right now we are not ready. (Weymouth, 2015)

While part of the motivation behind the military's depiction of Myanmar's political system as "discipline-flourishing democracy" is to retain influence and decision-making power, the constraints on democratic participation also seem designed to counter the risk that democracy represents, when examined through the lens of the *pu htu zin* understanding of human nature. Without ignoring the (ironically) self-aggrandising interest behind the limited and guided transition the military put in motion, we should also recognise its resonance with persistent concerns about human bias in politics, amplified by the role of political parties.[10]

Daw Aung San Suu Kyi and the NLD

Daw Aung San Suu Kyi and her party, the NLD, have spoken of parties in ways that challenge the dismissive attitude of the military, but also deploy the *pu htu zin* moral imagery in additional disciplining ways. In the following paragraphs, I draw on transcripts of a series of public talks she gave in 1995–1996, when she was confined at her

home in Yangon under house arrest.[11] At the time, military authorities allowed her to come to the front gate and talk with supporters on the weekends. These meetings developed into routinised "conversations at the gate," where other party members would collect questions from the audience for her and other senior NLD officials to answer. The tone of the sessions alternated between informal joking about the repressive conditions in the country and gentle but insistent admonishment, for people to assert themselves and resist regime demands. Because the 1990 election was still relatively fresh in people's experiences, but familiarity with multi-party democracy was equally new for a population that had been ruled by a one-party state for three decades, she frequently discussed concepts and critiques related to political parties, making these texts a particularly fruitful source on the subject.

Seeking to resuscitate the image of political parties, she repeatedly and explicitly rejected the military's distinction between national politics and party politics (a distinction which had obviously been oriented critically at the NLD since the party's formation, but which also reads as increasingly disingenuous today, as more members of the military retire to form or join political parties [Nyi Nyi Kyaw, 2019]). In a speech on 30 September 1995, she said "I think that party politics is vital for a democratic system. I think that those who make a distinction between national politics and party politics, [. . .] treating the latter as something inferior do not believe in democracy" (quoted in Zöllner, 2014: 93).

However, her additional statements about parties and citizens are clearly morally inflected in ways that make reference to the *pu htu zin* model of human self-centredness. Moments later in the 30 September speech, seemingly channelling U Ba Khaing, she noted that "one of our weaknesses is personalized politics [. . .] we change a policy because we like a person [or] we tend to change a policy in fear of a person" (quoted in Zöllner, 2014: 95). In another talk a few days later, she noted, "Human beings tend to be more or less self-oriented and egoistic" (quoted in Zöllner, 2014: 175).

Further distinguishing her views from those of the military leaders or a critic like U Ba Khaing, she has regularly presented a democratic political system as not in danger of being corrupted by morally imperfect individuals, but rather as a system that can constrain the worst impulses of self-centredness and guard against personalisation in party politics. On 8 October 1995, she declared that a "proper political system" was "established on genuine *cetana* or goodwill for the sake of the people [. . .] If politics are for our party, for our interest or for our institution, our system cannot be a proper system" (quoted in Zöllner, 2014: 150). Here she made clear that party politics was acceptable as long as the party was not the ultimate end of politics. She also discussed this topic at length in a speech on 14 October 1995, in response to a question about the relative importance of system or leadership:

> Human nature is liable to moral decay. The purpose of a good system is to curb this human tendency [. . .] Turn your back on me once my actions undermine democracy. Personalized politics are not good for the country, not for me. (quoted in Zöllner, 2014: 174–175)

Through these speeches, we see a picture of Daw Aung San Suu Kyi as operating within a conception of the *pu htu zin*, but seeing democratic political institutions as an

appropriate and effective way to manage human moral deficiency. However, this image becomes more complicated when we see the ways in which she and her party have engaged critically with *other* parties, particularly those based on ethnic identity. Similar to some military commentators, she has been dismissive of ethnic populations and parties, labelling them at times as impediments to democracy, and implying that they are self-centred, focused on their particular interests rather than what she perceives to be the national political priority of ending military rule and the military role in politics (Walton, 2013: 16). I have argued that, although often her language is less directly critical, her comments reflect the position of normativity that she enjoys as an ethnic Burman Buddhist, where there is a presumption – again, in some respects, parallel to the military position described above – that her political efforts are automatically in the service of the greater good, and seen as universal in contrast to the more specific efforts of ethnic nationalities to address issues of ethnic inequality.

The same positionality characterises the NLD, which, despite persistent perceptions among non-Burman ethnic nationality parties that it is, in essence, a Burman party, has adopted campaign rhetoric in the lead-up to the 2020 election that labels itself a "Union" party (*The Irrawaddy*, 2018).[12] I argue that we can see assertions of the NLD as a "Union" party – a clear attempt to distinguish ethnic nationality-based parties as not fully representative of the entire union – as similar in function to the national politics versus party politics distinction favoured by the military; this rhetoric *disciplines* people and groups, codes them as self-centred, as morally deficient, and limits democratic partici-pation, all while valorising the NLD as somehow standing above partisan activity.[13]

General Aung San[14]

The man who is widely acknowledged as having guided Burma to independence had a relatively short political career, as he was assassinated at the age of thirty-two, less than a year before the country declared independence in 1948. General Aung San's electoral career was preceded by a period of student activism in the early 1930s. He later joined the prominent nationalist group, the *Dobama Asiayone* ("We, the Burmese Association"), and was a founding member of the Communist Party of Burma in 1939. After allying with the Japanese during their World War II occupation of Burma, then switching sides to join the British and other ethnic groups to expel the Japanese, he became the president of the AFPFL, the coalition party that would spearhead the handover from Britain and dominate Burmese parliamentary politics through the 1950s.

In February 1940, he published an article in *Dagon Magazine* entitled "Different Types of Politics." While the article itself only engages minimally with the question of political parties, we can see General Aung San attempting to respond to critiques like that levelled by U Ba Khaing several years earlier, to rebut the idea that politics was a dirty business and to encourage and legitimate broader popular participation by convincing people that politics consisted of "all of the affairs of human society" (quoted in Mya Han, 1998: 92).[15] In laying out his vision of the political, he developed an argument that I suggest skillfully reoriented the *pu htu zin* model – without rejecting its moral logic – by

embedding it in an ideology critique of capitalism, and reminding readers of its *universal* validity (applied to kings and leaders as well as the general population).

In presenting his understanding of politics, General Aung San drew on the canonical *Aggañña Sutta*, which tells a tale of human moral degeneration that precipitates conflict and requires the election of the first ruler, *Mahasammata*, to impartially adjudicate societal disputes.[16] He paid close attention to the moral components of the narrative, noting how it originated from the greed displayed by a single individual that eventually spread through the population. In assessing the lessons to be drawn from the story, he focused on the evil of private property, as it was the fencing off and claiming of land that escalated conflict. In his reading, private property ought to be understood as "wrong view" (Bur. *thekkaya deihti*), rooted in ignorance of *anattā*, in this case implying no control or ownership (Mya Han, 1998: 94). It was this ignorance – characteristic of the *pu htu zin* – that caused people to believe that they could possess property, and to feel the need to defend it against others.

While General Aung San acknowledged the moral deficiencies of the *pu htu zin*, he altered the narrative in important ways. First, note that in his formulation, property-owning elites would be tainted by this ignorance to a greater degree. In fact, later in the text he explicitly rejected attempts by elites to manipulate belief in *kamma* in order to justify their position and denigrate the masses:

> The people who were benefitting [from the government-supported system of private property], began to say "It's because of our *kutho* [merit, Pāli *kusala*]." Those who weren't getting any benefit didn't know that the correct response would be "It's not because of your *kutho*. It's because you have organized this immoral [*a-dhamma*] system." Instead, they started to think, "[We're poor] because of our *kan* [Pāli *kamma*]." (Mya Han, 1998: 96)

Here I suggest he offered not only a critique of capitalism, but a path to Buddhist moral development (overcoming at least some of the ignorance of the *pu htu zin*) through political action. If people could come to see the capitalist system of private property ownership as not just rooted in greed and ignorance, but fundamentally *a-dhamma* (immoral or unjust), they could work to dismantle it, in the process, freeing themselves and others from "wrong view."

The second intervention General Aung San made related to the figure of the *pu htu zin* was to downplay the role of *Mahasammata*, the "first king" of the *Aggañña Sutta*. He subversively used an account that had previously been appropriated in order to legitimate monarchical authority to empower the masses (as opposed to the political elites), focusing on the actions of the people in setting up a government and in authorising *Mahasammata*'s decision-making power. Later in the essay, he explicitly pushed back against the self-centred *pu htu zin* model, arguing that "The fact that the term *parahita* ['welfare of others'] is part of our political vocabulary is an indication of the noble human desire for development. One human characteristic is intelligence [that can be used] to improve the common welfare" (Mya Han, 1998: 99). He also further foregrounded popular participation and leadership in politics, claiming that, armed with a proper understanding of the world, people would not be stuck waiting for a *min laung*

(challenger to the throne) or a *setkya min* (universal monarch). "Politics concerns everyone; everyone must participate" (Mya Han, 1998: 101).

General Aung San not only knocked political and economic elites down a few pegs – even suggesting that they might be more deluded than the masses in a crucial moral respect – he also rounded out the problematic image of the *pu htu zin*, acknowledging human moral failings, but insisting on the presence of other-regarding sentiment as well, realised through collective participation, a topic that will be considered further in the next section. However, when it came to actual party politics, his record was more suspect, as the AFPFL was roiled in 1946 and 1947 with high-profile disputes and defections (Maung Maung, 1989). Similarly, while he is often acknowledged as the only person capable of bringing Burma's diverse ethnic groups together in the struggle for independence, his rhetoric and attitude towards non-Burman ethnic groups in that period often displayed a similar attitude to the NLD, that only he was uniquely capable of valuing national political goals above personal interest, while their demands were reflective of narrow group interest (Walton, 2008: 897–898).

U Hpo Hlaing

General Aung San drew attention to the process of participating in collective political action as a way to overcome the individual moral weaknesses of humans as *pu htu zin*. Yet this subject had already been considered almost six decades prior by the scholar and minister U Hpo Hlaing. While it may seem odd to invoke the arguments of a late nineteenth-century Burmese thinker, writing at the end of the period of monarchy but decades before political parties were introduced to Burma,[17] I argue that U Hpo Hlaing provided further insight into the "problem" of the *pu htu zin* that has persisted to the present in Burmese electoral politics. I do not claim that his writing has had any direct influence on party politics in Burma/Myanmar – indeed, he was dismissed as a minister after presenting it to the king and his reforms were never implemented – but rather that, if we understand sceptical views of the efficacy of party politics as related to the nature of human beings as morally deficient *pu htu zin*, U Hpo Hlaing's reflections provide an alternate way of assessing the validity (even necessity) of including particularistic perspectives in political decision-making.

U Hpo Hlaing was a scholar and minister to the last two kings of the Konbaung Dynasty, Mindon and Thibaw. He wrote the *Rajadhammasangahagyan* (Rules of Kingship) in 1878 as a manual of advice for King Thibaw. In it, he proposed an assembly in which the king would hold discussions with his officials in order to arrive at the best decisions for the country. In discussing the proper way to hold these assemblies, he warned his readers about the four *agati* (biases/partialities), the negative states that arise fundamentally from wrong views about the nature of existence. The failure of a political body to act in a unified way would indicate that some or all of its members were under the influence of these factors and, as a result, acting according to their own narrow interests. A unified assembly, on the other hand, had overcome divisions precisely because its members had developed their moral practice to overcome the *agati*.

We can read U Hpo Hlaing as drawing our attention to the essential role of deliberation in decision-making and the need for collective participation, which can generate both individual and collective benefits:

> Those who have positions in government must take particular care in watching these four paths to avoid. People in ruling positions may agree that the four *agati* [biased] ways are to be avoided, but for the average person in government service there is no way of avoiding these four wrong ways in his work; there will either be someone that he loves, or that he hates – he will not know the whole story – he will be afraid of someone's stubborn anger. As has been said on the seven rules of *aparihaniya* [stabilizing; avoiding decay], if a number of people get together for any sort of action, there can be no question of following the *agati* way. In such assemblies what one man does not know another will; when one man has feelings of hate, another will not; when one is angry, another will be calm. When people have agreed in a meeting and preserve their solidarity, there will be no need for fear. For these reasons, we must affirm that if a number of people conduct their business in an assembly there is no way in which the four wrong ways can be followed. (Bagshawe, 2004: 174)

To reiterate, U Hpo Hlaing was not speaking explicitly about political parties and because he likely had in mind a relatively small assembly of advisers, there is a mode of direct engagement implied in his argument that parties do not provide, indeed, that parties were designed to help manage in modern electoral democracies. But we can read his position as providing a response to the critical perspectives of military and democracy leaders considered above, perspectives that I demonstrated were themselves characterised by partiality, in their attempts to paint their own positions as universal and oriented towards the greater good, while denigrating others (particularly opposition and ethnic political parties) as self-centred. Consistent with General Aung San's approach to the "problem" of the *pu htu zin*, U Hpo Hlaing emphasised the universal character of this conception of human nature, arguing that even kings could be subject to bias and needed advisers to participate in political decision-making. If we extrapolate his argument to a modern electoral system, we might see political parties – with their distinctive platforms, agendas, and ideologies not (solely) as a reflection of self-interest and moral deficiency but rather as reflecting a range of positions and concerns present in a given society. The political process *requires* the presence and input of all of those positions, not simply to generate more representative policies that better reflect the diverse perspectives, needs, and concerns of the citizenry as a whole, but also because it is only the interaction between these positions that allows a polity to generate morally superior – that is, less subject to bias and ignorance – decisions.

There are, of course, risks in pushing the expansion of U Hpo Hlaing's arguments too far. In the context of a relatively small assembly of advisers to a monarch, the interaction between particular perspectives might be productively dynamic, something we could not expect in a modern electoral democracy that uses a party system to indirectly represent the interests of its tens of millions of citizens. The more modest insight from his argument, however, is one that can be marshalled to repudiate critiques from dominant or normative political figures that either view the proliferation of parties as evidence of

moral degeneracy or that dismiss the particularised concerns of some parties as anti-thetical to the broader national interest, and thus delegitimise them as self-interested. On the contrary, political parties can be understood as an essential (albeit admittedly imperfect) institutional response to the "problem" of the *pu htu zin* in the modern electoral democracy; they are conduits of the multiplicity of perspectives within the polity that allow for a range of views to be represented and considered. Through this process, political actors are exposed to the particularity and partiality of their own positions, and presented with the opportunity to overcome their own *agati* (biases and ignorance) in collectively formulating policy for the entire political community.

Conclusion

In this article, I have argued that the figure of the *pu htu zin* – a Theravāda Buddhist-grounded conception of human nature as inherently self-centred, biased, and morally ignorant – underlies many Burmese critiques of political parties, spanning nearly a century of political systems and present across a range of ideologies. While critiques of parties as channelling narrow self-interest and as vehicles for self-aggrandisement can be found in political systems around the world, I demonstrate that the distinctive ground of Buddhist moral understanding has particular political consequences in Myanmar, namely the amplified moral disciplining force of these critiques (whether expressed as partiality, self-centredness, or immaturity) and the delegitimation of particular groups. The analysis here does not seek to position Buddhism or Buddhist ideas as singular or determinative with regard to views on political parties or on political dynamics in Myanmar more generally, but rather to reveal the additional interpretive positions that are present in the critical narratives of political figures representing a range of ideological positions yet operating within a shared political space significantly shaped by Buddhist ideas.

While many commentators are willing to see the self-aggrandising disingenuousness of the military's distinction between national and party politics, I argued that we ought to see the NLD's description of itself as a "Union" party as functionally equivalent, rein-forcing scepticism of (certain) people's readiness and worthiness to participate in ways that are not self-centred. These are not objective empirical assessments from party leaders; they should be viewed as *political* statements that have strong disciplining and delegitimising effects, enhanced by the resonance with Buddhist moral ideas. This discourse therefore *limits* the participation of certain groups that have *particular* interests that are not adequately recognised in mainstream politics today and have not been recognised historically. Put in terms of my earlier argument regarding ethnic Burman privilege, we can see how it is socially and politically plausible for Burman military leaders or for the (mostly Burman) leaders of the NLD to say that they are working in the national interest, when the national interest is generally configured around a normative, majority Buddhist, Burman interest, albeit given a neutral, allegedly all-encompassing "Myanmar" veneer.[18]

Within this dominant political discourse – sceptical of the utility and value of political parties for a number of reasons, but specifically critical of parties that express more

particularistic values and grievances – Myanmar's plural range of ethnically and religiously diverse political actors and communities are likely to find limited success. But ideas from other Burmese thinkers can be read as providing more creative and collectively oriented responses to the "problem" of the *pu htu zin* that invite – even necessitate – participatory politics. Both General Aung San and U Hpo Hlaing make arguments that advocate for broader and deeper forms of political participation as an institutionalised response to individual human bias or ignorance. We can see their accounts as helping to challenge and reveal the partiality of the disciplining critiques from military and NLD leaders. Thinking about the implications for Myanmar's electoral politics, if political agendas from non-Burman ethnic nationality parties and actors – for increased decentralisation of power and decision-making and affirmative action-like programmes designed to redress historical repression and resulting inequality – are rejected as self-centred and contrary to national political unity, then the influence of this Buddhist moral world view is likely to inhibit efforts at reconciliation. If, on the other hand, political parties are seen as essential channels for articulating diverse concerns that, in reflecting the variety of identities and lived experiences in Myanmar, can help to overcome bias and generate more representative policies, then we might imagine a more inclusive space for political participation.

Declaration of Conflicting Interests

Funding

Notes

1. For overviews of various positionalities and methodologies in the subfield, see Von Vacano (2015) and Ackerly and Bajpai (2017). On the notion of "deparochialising," see Tully (2016).
2. See, for example, Aung-Thwin (1985), Badgley (1965), Brac de la Perrière (2015), Charney (2006), Ferguson (1975), Foxeus (2011), Gravers (2012), Jordt (2007), Kawanami (2016), Koenig (1990), Ling (1979), McCarthy (2004, 2016), Mendelson (1975), Prager (2003), Rozenberg (2010), Silverstein (1996), Smith (1965), Spiro (1982), Tannenbaum (1995), Turner (2014), Walton (2016), and Wells (2018).
3. While the suggestion that an overwhelmingly privileged figure such as a monarch might be subject to bias or ignorance may seem obvious, for centuries Burmese chronicles and other royal accounts have gone out of their way to present monarchs as morally exemplary figures, well on their way to Buddhahood (e.g. see Charney, 2006).
4. The *Cakkavatti-Sīhanāda Sutta* is part of the *Dīgha Nikāya* (the "Collection of Long Discourses"), one of five collections in the *Sutta Piṭaka*. The *suttas*, as collections of the Buddha's teachings during his lifetime, comprise one of three "baskets" in the Pāli language Theravādin canon, the others being the *vinaya* (monastic code of conduct) and *abhidhamma* (philosophy).

5. Matthew Moore (2016: 134–135) similarly notes that the *sutta* offers both an account of the king being morally influential *and* the possibility that the people themselves can initiate a process of moral uplift.

6. See, for example, Smith (1965) and Trager (1966).

7. Stokke et al. (2015: 11–15) provide a helpful brief history of political parties in Myanmar.

8. In this article, I am primarily interested in views about political parties as a mechanism and institution for democratic practice rather than particular electoral systems. While Myanmar currently has a "first-past-the-post" system, discussion of variants on proportional representation has taken place since the first election under the current constitution, in 2010.

9. The Nagani ("Red Dragon") Book Club was founded in 1937 by a collection of intellectuals and political activists, led by U Tun Aye and U Nu (who would go on to become the first Prime Minister of Burma). Its purpose was to translate select international writings on politics (especially Marxist texts) into Burmese and publish original works by Burmese authors. For more information on the *Nagani* Book Club, see the Myanmar Literature Project's Working Paper No. 10:1 (Zöllner, 2006b).

10. We can identify a similar dynamic of moral scepticism directed at political parties, the masses who populated them and the politicians who led them in Thailand. That country's 2007 Constitution (developed and ratified under military rule) "reduced the number of senatorial seats directly elected and gave unprecedented power to the 'independent bodies', such as the anti-corruption and election commissions that over the following years would remove elected prime ministers and dissolve ruling parties close to Thaksin" (Sopranzetti, 2016: 5). A decade later, the Constitution promulgated by the military government led by General Prayuth Chanocha expanded and further institutionalised these dynamics by strengthening restrictions on party formation and competition and expanding the scope and authority of the independent regulatory bodies (Kongkirati, 2018: 364).

11. The translation of these transcripts was done by Ko Ko Thett and Frankie Tun.

12. I am indebted to Ko Han Htoo Khant Paing for alerting me to this shift in his presentation at the 2018 workshop in Yangon from which this special issue developed.

13. We might also understand the rhetoric of recent self-described "Buddhist nationalist" parties (such as the National Development Party and the 135 United Patriots Party) as a reformulation of the military's distinction between "national" and "party" politics, but reconfigured to map on to Buddhism as the religion of the majority (and de facto, of the nation), as contrasted with the interests of other religion- or ethnicity-specific parties, which are encoded as particularistic and damaging to national unity.

14. He is most commonly referred to by Burmese people with his military title, as General Aung San, often simply as "General" (Bur. *Bogyoke*). Although it may seem awkward to some readers, I will retain that title every time I mention his name, to follow Burmese convention, as it would be rude to call someone by name without an honorific in this context.

15. All citations from this text (originally written in Burmese) were translated by the author.

16. The *Aggañña Sutta* is also part of the *Dīgha Nikāya* from the Pāli language canon.

17. While U Hpo Hlaing did not explicitly address the topic of political parties in the *Rajadhammasangahagyan*, it is likely that he would have been familiar with the institution through reading the London Diaries of his colleague Kinwun Mingyi U Kaung. These accounts of his diplomatic mission to Europe from 1872 to 1874 were very detailed about the political system and were popular at the time (Myint-U, 2007: 16).

18. The analysis here might also challenge more broadly the claim that people not mature enough to participate in politics, that they need moral guidance from selfless leaders. This rhetoric

comes not only from Burmese political actors, but from the rapidly growing field of NGO reports, which consistently decry low levels of party institutionalisation but also citizen understanding of party platforms and political knowledge.

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Class Dismissed? Explaining the Absence of Economic Injustice in the NLD's Governing Agenda

Gerard McCarthy

Abstract

Economic justice was the catch-cry of Burma's independence struggle and a defining issue of postcolonial party politics. Yet, despite severe economic disparities and social vulnerability, class and inequality are now largely absent from the ideology and policy platform of Aung San Suu Kyi and her party, the National League for Democracy (NLD). What explains the absence of class inequality from contemporary Burmese politics? Drawing on historical research and extensive fieldwork in provincial Myanmar since 2013, this article focuses on how the junta's post-1988 strategy of state-building shaped the political development of the NLD. It focuses specifically on how the military junta's dissembling of Ne Win's dysfunctional welfare state, control over market reform, and selective suppression of civil society privileged economic elites and religious philanthropic networks within the democracy movement while undermining labour activists and more overtly partisan groups. The resulting weakness of class-based interests within the democracy movement prior to 2011 has enabled commercial elites and market solutions to steer the organisational and ideological direction of Myanmar's most prominent democratic political vehicle, the NLD, since liberalisation. Reflecting these social and institutional constraints, after taking office in 2016 the programmatic agenda of Suu Kyi's NLD has plotted market liberalisation, foreign investment, and individual moral revival as the primary paths to a more "democratic" Myanmar, largely ignoring the dire inequality and economic injustices bequeathed by military dictatorship. If Myanmar's democracy is to endure, the article concludes that structural reforms must be advanced, especially by the NLD, which encourage political representatives to address the precarity experienced by ordinary people.

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Introduction

During the rule of socialist dictator Ne Win, Burma's central bank issued a variety of odd-denominational banknotes featuring heroes of class struggle. Their symbolic place on the currency of everyday economic life served to link the autarkic dictatorship that held power between 1962 and 1988 to the anti-capitalist, anti-imperialist movements of the 1930s and 1940s.

One of the most widespread uprisings during that period occurred following the economic disaster wrought by the Great Depression. It was led by peasant activist and traditional healer Saya San, who later featured on the 90 kyat banknote, against the exploitative colonial agricultural economy.[1] Between the 1890s and the 1920s, Burmese farmers had migrated in droves to the Irrawaddy delta and other regions as British laws promised them tenure after 12 years if they converted sodden land into cultivable and fertile rice fields. The human energy this promise unleashed transformed the delta from a largely vacant marshland in the mid-nineteenth century into one of the most agriculturally productive regions in the world. Yet, in the absence of any legal protections or social insurance schemes for Burmese farmers, when the price of rice halved between 1929 and 1931 hundreds of thousands of peasants defaulted on loans they had taken out to finance land reclamation and cultivation. To pay off catastrophic debts many were forced to hand over the land they had spent years improving to non-peasant money-lenders and creditors. By 1937, upwards of 50 per cent of land in the delta was owned by non-agricultural interests, up from 19 per cent prior to the Great Depression (Adas, 1974: 188).

The resulting economic and social destruction prompted the "Burma Rebellion," as it was dubbed by the British. Farmers across the country took up arms against colonial authorities, blaming not just their laws but the entire imperial economy for the misfortune that had befallen them. The insurgency commenced in Saya San's native town of Tharrawaddy in Bago Region after British administrators enforced land and regressive head taxes despite the economic devastation wrought by the Depression (Adas, 1979; Aung-Thwin, 2010).[2] Within weeks, the rebellion spread throughout the delta to Rangoon and north into central Burma and the Shan States, eventually encompassing 12 of Burma's 20 colonial districts (Brown, 1999: 143). Emergency powers were granted to administrators, and a Special Rebellion Commission was appointed and hundreds of troops were dispatched from India (Aung-Thwin, 2010: 6–8). Though Saya San was arrested, trialled and executed in mid-1931, the rebellion continued for more than two years, resulting in the deaths of between 1300 and 10,000 rebels and the surrender of another 9000 (Aung-Thwin, 2010: 8; Cady, 1958: 316; Maung Htin Aung, 1967: 292).

Burma's peasantry had risen up against colonial rule, and been violently suppressed by brute force. The experiences of Burma's independence leaders, including Aung San, of economic injustice under colonial rule inscribed a deep antagonism towards unregulated capitalism in post-colonial policy. Disputes about the role foreign investment

should play in independence-era industrialisation plans were a recurring feature of party politics during Burma's first democratic period (Badgley, 1974: 244). General Ne Win's later justified his coup against U Nu in 1962 and subsequent nationalisation of all large and small businesses on the basis that independence governments, by encouraging foreign investment, had failed to end imperial and capitalist rule (Brown, 2013: 136).

Concerns regarding economic injustice have thus been central to the policy programmes of governments throughout Myanmar's vexed postcolonial history. Yet, class inequality is largely absent from the contemporary ideology and policy of the ruling National League for Democracy (NLD). The domestic rhetoric of opposition leader turned State Counsellor, Aung San Suu Kyi, has notably eschewed class politics and instead urged a moral revival of the Burmese polity. She has encouraged citizens to rely on each other rather than the state for social support. Meanwhile, she has consistently encouraged foreign investment to Myanmar, especially to the restive western region of Rakhine State. This is puzzling not just given the severity of inequality and poverty in contemporary Myanmar but also because Suu Kyi previously accused military generals who governed directly between 1988 and 2011 of inflicting suffering on Burmese people through their socio-economic mismanagement.[3]

In this article, I enlist theories of "political opportunity structure" and party–voter linkages to explain the absence of economic injustice and inequality from the policy programme of the NLD. Focusing on the state-building approach adopted by the State Law and Order Restoration Council (SLORC)/State Peace and Development Council (SPDC) junta after the dissolution of Ne Win's dictatorship in 1988, I argue that authoritarian-era market reform and selective suppression of civil society shaped the development of the democracy movement and the NLD during authoritarian rule, creating institutional dynamics which have endured after liberalisation in 2011. Business elites and religious charitable networks accrued considerable resources and scope for mobilisation and collective action, while independent political and labour activists were brutally repressed during junta rule. Dominant economic elites and regressive social ideologies have thus been well-positioned to play central roles in the NLD's organisational and programmatic development since 2011. A pattern of oligarchy has subsequently begun to emerge which is only likely to worsen if the scales of Myanmar's democracy are not institutionally rebalanced. Without reforms such as public funding of political parties aimed at redressing the political dominance of economic elites in the NLD and other parties, this article argues that Myanmar's nascent democracy will continue to fail ordinary citizens, strengthening the appeal of more populist authoritarian modes of rule.

The article proceeds in three sections. Section one reviews the literature on patterns of party–voter linkages and how these are shaped by political opportunity structures. Section two traces the junta's approach to marketisation and civil society regulation after 1988 and describes how these ideologically and institutionally shaped the democracy movement and the NLD during military rule. Section three examines party–business relations since 2011, especially the impact that the disproportionate influence of economic elites and religious actors within the NLD has on the party's approach to inequality. The article concludes that the durability of democracy in Myanmar compels

party leaders to challenge the legacies of military rule and propose policies such as public funding of parties that encourage elites to more directly address the roots of inequality experienced by everyday people.

Section One: Political Opportunities and Party–Voter Linkages

Why do parties prioritise some issues over others in their policy platforms? Comparative political theory suggests that the issues that dominate democratic debate reflect the institutional and personal linkages between voters and the representatives they elect. In his theoretical examination of democratic systems of accountability, Herbert Kitschelt (2000) specified these linkages, arguing that party–voter ties are a reflection of how political parties respond to two fundamental quandaries of democratic politics.

The first challenge is the collective action problem posed by the need for individual candidates to communicate with voters in ways that satisfy their need for information about candidates' positions on diverse issues. Candidates for office overcome this problem by banding together in parties and investing in their administrative-organisational infrastructure so as to lower the cost of communicating and engaging with voters (Kitschelt, 2000: 847).

The second problem is how parties respond to the diversity of social preferences across the electorate through their policy programme. As individual voters often have diverse opinions on issues, it is difficult for them to predict how electing one individual representative may impact democratic decision-making and thus overall policy outcomes. Parties address this problem by forming a political agenda that prioritises certain issues or problems for resolution. These programmatic agendas, even if largely abstract or only vaguely coherent, provide voters with choices and cues as to which parties best reflect their preferences (Kitschelt, 2000: 848).

The extent to which parties develop an organisational apparatus or present a programmatic agenda to voters varies across contexts. Kitschelt identifies three main forms of party–voter linkages: programmatic, charismatic, and clientelistic ties. Democratic parties tend to develop different patterns of linkage on each dimension. Some parties choose to invest in organisational infrastructure, for example, by developing a system of local offices and branches, yet make little attempt to aggregate interests of voters into policy programmes. In these contexts, parties try to solve problems of collective action and social choice through clientelistic bonds either with wealthy groups (who provide resources to parties and candidates in exchange for tenders or targeted regulatory concessions once the party is in power) or with poor communities and voters (who receive resources from government officials either through club goods such as roads or individual benefits such as pensions or jobs).

Where parties fail to address either collective action or social choice problems, leaders tend to rely on their personal charisma and powers of persuasion to secure voter support. Given the fragility of this form of party–voter linkage in the context of complex organisational and social choice problems, charismatic leaders tend to adopt simplistic policies that "promise all things to all people" while avoiding more distributionally

complex policies that undermine their personal charisma and dominance over the party vehicle (Kitschelt, 2000: 849).

Neatly categorising party–voter linkages is an analytically intriguing exercise in Myanmar, as it is easy to see the role both of charismatic and clientelistic patterns of accountability within the NLD, Union Solidarity and Development Party (USDP), and other parties (see Roewer, 2020). For the purposes of our puzzle regarding the rise and fall of class politics, however, the question remains: *why* do parties respond to collective action and social problems in the way they do? Here the concept of political opportunities, which will inform much of the forthcoming analysis, provides a useful analytical bridge.

In his earlier work on variations in anti-nuclear politics in Europe and North America, Herbert Kitschelt (1986) set out to explain the different strategies of popular mobilisation adopted by social movements. He argued that mobilisation approaches in each context reflected the particular configuration of *resources, institutional arrangements*, and *historical precedents* these movements faced. The political opportunities framework has been applied by political sociologists including Sidney Tarrow, Douglas McAdam, and Charles Tilly to study the impact of social movements on formal institutional politics throughout history. The variables that comprise political opportunity vary somewhat between studies and by author, often including state capacity, government openness to dissent, and the financial and organisational resources within a protest coalition. In this article I enlist Tarrow's (1994: 85) broad definition of political opportunities as "consistent – but not necessarily formal or permanent – dimensions of the political environment that provide incentives for people to undertake collective action by affecting their expectations for success or failure."[4]

Drawing on extensive fieldwork with provincial social and political organisations since 2013, I argue that the economic and social constraints and opportunities which faced the democracy movement during the 1990s and 2000s have curtailed the NLD's capacity and willingness to solve the fundamental problems of democratic politics: how it organisationally listens to grassroots networks, simplifies electoral choices, and informs voters about policy positions after 2011. Along with the organisational centralism of the NLD (see Roewer, 2020), I argue that these political sociological factors are critical to explaining the absence of economic inequality from the policy agenda and ideology of the NLD. The next section examines how the junta's approach to economic liberalisation and selective repression of civil society shaped the political opportunity structure of the democracy movement and NLD during junta rule.

Section Two: Political Consequences of Post-1988 Junta Reforms

The political opportunity structure of the National League for Democracy during the 1990s and 2000s was shaped by the way military officials reorganised political and economic life after 1988. Soon after seizing power, brutally repressing the escalating wave of protests and dissolving the Burma Socialist Programme Party, the SLORC repressed the activism both of labour groups and the NLD (Kyaw Soe Lwin, 2014). Military officers then mediated marketisation so as to encourage ostensibly "apolitical"

religious and social organisations to proliferate (McCarthy, 2018b: chapter 3). From late 1988, the junta began implementing a series of reforms aimed at improving Myanmar's dire economic situation and entrenching the territorial dominance of the military state, especially in the periphery. Foreign investment was invited in a swathe of industries including agriculture, timber, and fisheries.[5] Junta officials sold state enterprises to foreign and domestic companies, legalised the black market, granted licenses to domestic commercial banks, liberalised trade in agricultural commodities, and welcomed foreign investment in agribusiness, especially cash crops (Kudo, 2005: 11; Turnell, 2009: 258–260; Woods, 2015: 8). Meanwhile, brutal counterinsurgency campaigns and commercial ceasefire arrangements brought borderland areas under varying levels of state control and tied ethnic armed elites to the Myanmar military state through joint ventures, taxation regimes, and money-laundering schemes (Jones, 2016; Meehan, 2011; Woods, 2011). Within a decade, substantial growth in trade, mining, construction, finance, and manufacturing had brought significant changes in Myanmar's economy, with the state's share of gross domestic product (GDP) dropping to below 7 per cent in 2005–2006 from 45 per cent in 1985.[6]

Market Reform Shaped Political and Moral Economy

Marketisation of the post-socialist economy distributed commercial power and resources in ways that shaped the possibilities of democratic political action. Provincial military officers mediated the emergence of a private business class by informally regulating the terms of capital accumulation in their territories. Regional Tatmadaw commanders were empowered with the authority to issue licences for various business activities in their regions, including permits to operate rice mills or heavy machinery essential to extracting gemstones (Kudo, 2001: 12). Most of these licenses needed to be renewed annually. Junta officials also approved who received tenders to supply or perform functions for state economic enterprises and used powers of oversight and influence over commercial elites and assets, either to ensure the local implementation of junta objectives or for personal gain (Ford et al., 2016; Jones, 2014).[7] In addition to their licensing powers, to ensure compliance with their demands on business people junta officials would issue fines, seize merchandise or machinery and in some cases give jail terms to business people who did not hold appropriate permits (Cook, 1994: 132; Kyaw Yin Hlaing, 2007b: 222).

The junta's approach to market reform facilitated the rapid emergence of ostensibly "apolitical" civil society during the 1990s and 2000s. Military officials used their influence over business people to encourage them to perform essential social functions within their zones of operation. A widely referenced 2006 study found an estimated 214,000 community-based organisations including neighbourhood organisations, native place, and ethnic organisations and welfare groups operating in every corner of the country (Heidel, 2006: 60).[8] As the authors' research in provincial Myanmar highlights, provincial military commanders encouraged business people to establish and manage social organisations in an attempt to respond to the dire economic inequities and social problems created by marketisation and the dissembling of Ne Win's dysfunctional

dictatorship. Records of founding donations from provincial Myanmar highlights that military commanders and businessmen frequently co-funded the establishment of funeral associations, aged care homes, and other religiously imbued welfare groups at a township, ward, and village level during the 1990s and 2000s. Monastic and other religious authorities helped to house and partly finance many of their activities, though most of these groups were managed on a day-to-day basis by lay business people and civil servants. A prominent rice merchant in provincial Myanmar described why assuming partial responsibility for local social affairs – at either the explicit or implicit urging of military patrons – was essential to accruing and maintaining capital during this period:

> If you wanted to get permission to run a rice-mill or another business then you needed to be involved in the community . . . If you had a good name/reputation then the military would be more likely to cooperate with you . . . Why? Because wealthier people in the community must provide for those who are suffering. If you did this kind of work [welfare/religious groups] then you and the government would have a good reputation. (Interview with Trader, 6 May 2016).

Socio-moral obligations and economic incentives coalesced, reinforced by a strategic reinterpretation of Buddhist charity by state propaganda and religious figures. Official religious teachings used in trainings by the junta-organised welfare group, Union Solidarity and Development Association (USDA), connected Buddhist notions of charity (B: *dana*) to the "building of an ideal state" (Kyaw Htut, 1994: xi). From the early 1990s, prominent Buddhist monks including Sitagu Sayadaw also engaged in social welfare activities aimed at meeting the dire needs of people during rapid socio-economic change. Sitagu gained particular renown across Myanmar after returning from exile following his involvement in the 1988 protests to establish a network of charitable health facilities and educational institutions in Sagaing and Yangon in the mid-1990s, often funded through donations from state and business elites. He later led one of the largest non-state humanitarian efforts in the wake of Cyclone Nargis in 2008 (McCarthy, 2020: 9–10; Walton, 2016: 33, 142). From the early 1990s, Sitagu and other prominent monks began to refer to their social initiatives using the Pali-derived concept of *parahita* (social work). Sitagu often dedicated lengthy public sermons to explaining *parahita* as a form of *byama-so taya* or meritorious practices of moral conduct or truth seen to bridge the mundane (B: *lawki*) and supra-mundane (B: *lawkouttara*) realms within Buddhism, thereby improving chance of ending the cycle of rebirth and reaching Nibbana (B: *neikban*) (Houtman, 1999: 308; McCarthy, 2020: 9; Walton, 2016: 153). [9]

Selective Suppression of Civil Society

While ostensibly "apolitical" civil society, especially groups linked to religious institutions, were permitted to flourish during junta rule, more critical and independent civil society was severely repressed. Mobilisation of labour, especially through protests, strikes, and collective bargaining, was tightly restricted and often violently suppressed (Arnold and Campbell, 2017: 87–88; Campbell, 2019a: 7–8; Kyaw Soe Lwin, 2014:

296). The NLD at a local level was the subject of intense persecution. Junta officials eviscerated NLD party structures through the concerted destruction of ties between local branches, the central executive committee, and Suu Kyi, who was placed under house arrest for much of the 1990s and 2000s. Activists labelled as democracy "agitators" by SLORC/SPDC representatives were regularly jailed, and local party branches were violently disbanded. Even volunteers coordinating disaster response work in the wake of Nargis were harassed and in some cases arrested by authorities if they were viewed as politically motivated (Seekins, 2009: 730–731). As a result, many reformists were deterred from formal affiliation with the democracy movement or the NLD in particular.

Social Consequences of Junta Rule

Despite the constraints on the democracy movement, the junta's approach to militar-isation and state-building left a significant social gap to be filled by welfare groups and the emergent business elites who patronised them. The junta spent the least of any country in the region on social development during the 1990s and 2000s. Military officials instead outsourced social expenditures to commercial elites and emergent welfare groups while doubling the size of the state army or *Tatmadaw* (Selth, 2002: 253).[10]

Rather than rely on state aid the only way to achieve a relatively stable livelihood – at least for periods of time – was to personally cultivate ties of patronage with military commanders and officers who held positions of decision-making power or with business people who accrued capital during junta rule. Research from SLORC/SPDC rule high-lights that military-linked patrons helped a select few to access commercial rackets or monopoly arrangements, mediated access to state or non-state sources of welfare, and provided reciprocal forms of aid with clients (Brac de la Perriere, 2014). However, there was an inherent instability to these ties of patronage as "careers of patrons [were] highly unpredictable, and the fall of a prominent person (a 'great tree') [could] bring down many 'small trees'" (Seekins, 2009: 733).

People adversely incorporated into networks of commercial or social patronage or excluded from them entirely were forced to turn to diversified coping strategies to survive the 1990s and 2000s. Most households accrued considerable debt, often to cover the costs of healthcare which increased by 300–400 per cent in the years after 1988 (Kyaw Yin Hlaing, 2007b: 162).[11] Many sent relatives elsewhere in Myanmar or internationally to work and remit their wages, placing tremendous strain on family units, yet providing a source of stable income during this difficult period (Thawnghmung, 2011, 2019). Perverse attempts to encourage military units to self-finance during a period of rapid expansion also encouraged the unjust seizure of land from farmers by military officials, with an estimated 5.3 million acres of agricultural land changing hands by 2013 (McCarthy, 2019b: 14–15). Much of this land was later resold to business interests, often at concessionary rates, creating the land grab crisis which as will be discussed in Section Three remains a central source of poverty and precarity for many in contemporary Myanmar.

Organisational and Ideational Possibilities of Democratic Politics

The junta's strategy of market reform, selective suppression of civil society, and indirect direct social expenditure created wide disparities between the poor and the small number of military-linked tycoons and business elites. Wealth inequality shaped the political possibilities of the democracy movement and the NLD in particular. Due to the constraints faced by the broader democracy movement during junta rule, the NLD was not able to develop an organisational apparatus through which to distribute resources to voters or via which it could aggregate voter needs into a detailed policy programme.

The NLD instead responded to the constraints and opportunities of junta rule by attempting to define abstract ideals to bind the broad democracy movement. Suu Kyi's writings and occasional speeches during this period appealed to business people who held capital and influence, as well as the electorate at large, via an oppositional discourse that built on post-socialist Buddhist social thought. She was often critical of the socio-economic consequences of junta rule. Yet, she eschewed class-based ideology or policy programmes in her speeches. She instead enlisted Buddhist concepts to symbolically highlight the suffering ordinary people were experiencing under the SLORC/SPDC, accusing officials of possessing power without *myitta* (loving-kindness).[12] Given overt demonstrations of discontent with the regime were often met with brutal violence by the military, Suu Kyi encouraged supporters of "democracy" to engage in charitable social action as a way to "cultivat[e] loving kindness and compassion", educate citizens about "democracy" and delegitimise the government (Suu Kyi quoted in Houtman, 1999: 314, 322). Actions of selfless moral conduct, she argued, would bring about the "revolution of the spirit" necessary for the attainment of democracy in the collective sense as they led to "the emergence of feelings of solidarity and the formation of a society" (Walton, 2012: 197).

In the absence of formal party structures, diffusing an ideology of morality, charity, and political liberation across society in this manner helped maintain the broader democracy movement during junta rule. Religious and social organisations which flourished after 1988, often under the patronage of business people and at the implicit encouragement of military officials, played an essential role in popularising a moralised, "selfless" conception of democracy (see McCarthy, 2018a: 172–174). Public figures who engaged in charitable works such as movie star turned funeral director Kyaw Thu, who founded the Free Funeral Service in 2001 with film director Thukha, became paragons of democratic and moral virtue that other celebrities and ordinary people sought to emulate (San San Oo, 2018). At a local level, many volunteers with ward and village welfare associations interviewed by the author described social work during the 1990s inspiring them to take small actions aimed at transforming society and the political system at large. In a context where state social expenditures were minimal, industrial or agricultural mobilisation was impossible, overt demonstrations for "democracy" were suppressed and local party structures severely repressed, the democracy movement and the NLD, in particular, urged everyday charitable groups and their commercial patrons to view their social work as contributing to the objective of political liberation.

In the context of these constraints, the main linkage between voters and the NLD was the charisma of its leader, Aung San Suu Kyi, and her ideal of democracy as selfless, disciplined moral conduct in a capitalist society. To the extent that NLD ideology during the 1990s was "programmatic", it broadly focused on encouraging commercial elites and ordinary people to engage in social work as a subtle form of solidarity with the poor and protest against military rule. These organisational and programmatic constraints on the democracy movement and party–voter ties of the NLD had a significant impact on the evolution of linkages with voters after liberalisation in 2011. The next section examines party development since 2011 in an effort to explain the absence of class and inequality from the NLD's contemporary governing agenda.

Section Three: Post-2011 Party Development

Between 2008 and 2015, Myanmar's junta rulers led a process of significant social and political change. Consistent with the "Seven Step Roadmap to Discipline-flourishing Democracy" announced in 2003 by then General Khin Nyunt, after the military-drafted 2008 Constitution was "ratified" and the fraudulent November 2010 elections were held, former junta officers formed a civilian government with partial control over the apparatus of the state (Pedersen, 2011). A transition from direct military dictatorship to partial civilian rule occurred.[13] Days after the election they then freed Aung San Suu Kyi from house arrest. Though the USDP claimed a majority of the seats in parliament, President Thein Sein subsequently commenced a process of liberalisation, including economic reforms which reduced the military's formal role in licensing and marketisation. Competitive tenders and auctions were introduced for most major commercial licences and state construction projects. New space was also granted for civilian activism, and Suu Kyi and other activists were permitted to organise more openly and then enter parliament in by-elections held in 2012. Under the advice of the International Labour Organisation reforms were also made to the Labour Law to permit enterprise-level Unions and employee committees (Arnold and Campbell, 2017: 807–808). However, cross-sector organising continued to be legally limited and the formal registration of workers in social security schemes constrained to trade-exposed sectors such as garment manufacturing, limiting the mobilisation of the Burmese working class. The result was that workers in Myanmar's emergent industrial sector have had weak institutional capacity to mobilise labour interests electorally since 2011, despite some attempts to formalise and improve industry standards (Campbell, 2019a: 8–14).

Party Organisation and Collective Action Problems Post-2011

Despite the economic inequality and social precarity bequeathed by decades of military dictatorship and mismanagement, the NLD's approach to these issues after 2011 has been shaped by the legacies of junta rule. In late 2010, the NLD quickly re-established local branch offices at a township-level across the country, often in the home of candidates who contested the earlier 1988 election. The party subsequently won 43 of the 44 seats it contested at the 2012 by-election. Developing clientelistic linkages with voters

through the provision of targeted social assistance or jobs was difficult given the party's limited access to state resources. However, ties of patronage with business people were quickly formalised at the national and provincial level. Suu Kyi began accepting financial support from commercial elites to support the NLD's education network, the construction of a new party headquarters in Naypyitaw and the 2015 election campaign, defending her receipt of donations by saying: "Let them donate if they donate for good things."[14] Such donations were seen by party operatives interviewed as necessary in a context where no public funding is provided to political parties and foreign income is prohibited (Pyae Sone, 2018). Development of the party at provincial level followed a similar pattern, with business elites becoming a major source of resourcing for the party's 2015 election campaign. In lowland townships of provincial Myanmar followed closely by the author throughout 2015, the NLD campaign received significant financial support and manpower from local and nationally prominent business people who had been favoured by military officials during junta rule.

As with many who had accrued wealth through close ties to regional military commanders, the most affluent and prominent donors to the NLD had previously patronised various government organised and informal social and religious associations during the 1990s and 2000s, including the junta's mass mobilisation patronage group, the USDA. When the USDA converted into a party and claimed the majority of seats at the 2010 elections, most of these business people helped bankroll both national and provincial-level campaign and, in some cases, even ran for office at the urging of junta officials. After restrictions on the NLD were lifted in late 2010, however, many commercial elites shifted their allegiances and more explicitly supported Suu Kyi and the NLD. Some did so subtly by making contributions to both the USDP and NLD. Others ceased their support for the USDP entirely and began to publicly claim they always had a deep and abiding commitment to "democracy" despite their earlier and, in some cases, ongoing collaboration with military officials. USDP operatives interviewed in 2015 felt particularly aggrieved by one nationally prominent tycoon who shifted his allegiances to the NLD in 2012 – describing him as a "chameleon" changing his colours. The tycoon made sizable contributions to the NLD at the later 2015 election, including seconding staff to township-level campaigns and providing trucks and funds to help candidates visit constituents in rural parts of electorates. Other local business people made significant contributions to the NLD as well as other parties such as the National Development Party, a USDP proxy party led by a close associate of Thein Sein.

It would be inaccurate to characterise the NLD as entirely reliant on commercial elites to resource the party's organisational development after 2011 (see Roewer, 2020).[15] However, in analysing the NLD's post-2011 political development, it is certainly true that business people have played and continue to perform a far more essential role in helping party officials solve collective action problems than more weakly mobilised urban or rural working-class interests.[16] These resourcing dynamics have been reflected in the limited priority inequality has received in the party's policy and programmatic platform both prior to the 2015 election and since the party took power in early 2016. Indeed, despite the liberalisation of political contestation and the transfer of power to a partial civilian government, the precarity and inequality bequeathed by junta rule have

been peripheral to the NLD's policy programme since 2011 and governing strategy since taking power in early 2016.

Party Programme and Social Choice Problems Post-2011

The NLD's programmatic agenda since 2011 has emphasised moral revival far more than economic justice. The absence of class is partly explained by the centrality of moral conduct in Burmese political thought. Various scholars have noted the convergence of individual moral conduct and societal liberation in the political ideology of Suu Kyi and other prominent democracy activists (see Walton, 2016, 2020; Wells, 2016, 2018). Political scientist Tamas Wells conducted interviews with fifty democracy and civil society activists between 2012 and 2014. Many framed moral discipline as an essential attribute not just for democratic leaders but for society more broadly. Echoing the notions of moral democracy espoused by Suu Kyi during the 1990s and 2000s, Wells (2018: 4) notes that "freedom" was often interpreted and deployed by ethnic Bamar democracy activists in ways which emphasised "freedom for moral conduct, freedom to bear moral responsibilities, rather than freedom for the exercise of individual entitlements." Identifying what he terms a "benevolence narrative" of democratisation, numerous activists emphasised that democracy requires "the public, community, and all parties" to "set aside obsessions and stand together" (Wells, 2016: 152). In order to achieve true liberation, prominent democracy activists argued that citizens needed to set aside their "own desires" and cultivate moral "discipline" (B: *si kan*) (quoted in Wells, 2016: 153).[17] As Walton (2016: 129) notes in his study of Burmese political thought, the emphasis placed on elite and religious discourses upon moral conduct as a necessary component of democracy has allowed a wide range of actions – from "electoral politics to civil society activities to proper moral conduct in daily social interactions" – to be considered forms of political participation by both elites and many ordinary people. The proliferation of Suu Kyi's moral conception of "democracy" during the 1990s and 2000s provided a degree of normative coherence within the NLD that was central to its re-emergence as a political force at the 2012 by-elections (Stokke et al., 2015: 25–27).

The NLD's 2015 campaign at national and provincial level subsequently deployed these same ideals and narratives. Suu Kyi and local candidates often implicitly compared acts of "selflessness" with the self-dealing seen to be characteristic of junta decision-making. In so doing, they framed the election as a chance to simultaneously condemn authoritarian rule and endorse abstract ideals of "democracy" which Suu Kyi herself had come to epitomise since 1988. The abstract principles that formed the basis of the party's appeal to voters were evident as NLD candidates bustled from village to village introducing themselves to trusted activists in the months prior to the polls. I attended dozens of NLD campaign events in provincial Myanmar and listened as candidates for office and local NLD sympathisers swapped stories about the egregious abuses they had experienced at the hands of state officials and police during the 1990s and 2000s. As candidates and local elders recounted these narratives, a hushed lull would often descend on the audience of loyalists, and the air of optimism would evaporate from the shrine rooms or living area in which we were all crammed.

Juxtaposed with the solemnity of these accounts of suffering, however, was another kind of personal story told by candidates and loyalists. In these narratives, well-intentioned people managed to circumvent authorities who had tried to suppress or disrupt small acts of kindness or works of local improvement, often as they were considered to be too "political." One female NLD candidate, a former school teacher, recounted the callousness of being dispatched by her superiors to a rural school without notice, transportation, or accommodation – only to meet local villagers with "goodwill" (B: *cedana*) who offered her food and lodging. The story elicited knowing cheers from assembled supporters and ended with a comparison between the immorality of the military-affiliated USDP and the generosity of "the people" (B: *pyithu ludu*), of Suu Kyi, and the NLD as a party. "As Mother Suu says, working only for your own interest is not politics. Politics is working for the interests of all, with loving kindness (B: *myitta*)," she declared at the end of her story. Similar accounts recurred at other urban and rural campaign meetings, recounted both by candidates and party loyalists.

Viewed analytically, the linkage strategy deployed by the NLD through these events was "programmatic" in much the same way as the ideal of "democracy" espoused by Suu Kyi since 1988: it focused on the role of "selflessness" and "loving-kindness" in achieving social and political change but was not based on any attempt to aggregate voter preferences across constituencies into a carefully targeted platform of distributive policies. Rather than systematically addressing the socio-economic injustices bequeathed by junta rule, however, the party's programmatic agenda relies implicitly and in some cases, explicitly, on business people and foreign investors enacting Suu Kyi's ideal of "democracy." Indeed, the NLD has largely sought to maintain the status quo and has avoided using formal or informal authority to address inequities created by junta rule – for example, by seizing and redistributing the assets of Myanmar's military-linked business class. Prior to taking power, Suu Kyi urged voters not to oppose socio-environmentally destructive companies and industries in ways that might frighten foreign investors and instead encouraged them to "sacrifice for the country" (Prasse-Freeman and Latt, 2018: 409). Soon after taking office, she advocated successfully for the lifting of remaining US economic sanctions in an effort to encourage foreign investment into sectors largely dominated by military-linked cronies.[18] Her government's emphasis on attracting capital to Myanmar has intensified in the wake of the international condemnation of the military's expulsion of 730,000 Rohingya people since August 2017 amid alleged "clearance operations". Both Suu Kyi and the Union Minister for Investment and Foreign Economic Relations, Thaung Tun, have repeatedly promised fast-tracked government approvals and tax incentives for investment in Myanmar, especially in "untapped" restive regions including Rakhine State and cease-fire areas (see McCarthy, 2019b: 28–36).[19]

Since taking power, her government has sought to rebalance some hierarchies of power and influence. Strategies have been announced that seek to make Union and subnational planning and budgeting processes more environmentally and socially "sustainable" and "inclusive" of diverse constituencies, including women (see RoUM, 2018). However, reflecting the absence of class discourse from public debate, Suu Kyi and her government have notably eschewed class-based discourse nor sought to

directly confront the immense inequalities generated during junta rule (see Prasse-Freeman and Latt, 2018: 408). Instead, she has espoused what political scientist Mary Callahan (2017: 1) terms a "socially conservative ideology of radical self-sufficiency and laissez-faire relations between the state and society." Following the NLD's landslide victory at the November 2015 election, Suu Kyi has repeatedly emphasised the importance of personal "courage" and "responsibility" to democracy, telling crowds gathered at multiple public events:

> Think of what you can contribute for the development of your country, not what benefits you can have from your country . . . Only demanding rights without assuming responsibility and accountability, which are wholly left to the government, does not comply with democratic standards. (Suu Kyi in Callahan, 2017: 2).

Suu Kyi's idealistic emphasis on "responsibility" (B: *tawun*) is coupled with the seamless integration of junta-era business elites into her ideal of "democracy" and its practice since early 2016. Even the most notorious military-linked "cronies" previously sanctioned by the United States and Europe have been offered a path to reputational salvation by Suu Kyi. She has publicly challenged them to renounce small portions of their wealth in the name of "democracy", rhetorically asking a group of assembled business elites in Naypyitaw in October 2016:

> Can't those who have previously worked for their own self-interest work for others in the future? Don't they have the necessary attributes to work for others? I believe it is possible.[20]

State Counsellor Suu Kyi has personally mediated the symbolic resuscitation of Myanmar's tycoons by inviting them to a series of "giving ceremonies" in Naypyitaw. She has solicited funds for her reboot of Myanmar's peace process (in December 2016) as well as kick-start civilian efforts at repatriating Rohingya from Bangladesh who fled war crimes committed by security forces in Rakhine State (in October 2017). In both cases, requests from Suu Kyi and her advisers for "donations" from Myanmar's most prominent former cronies were met with enthusiastic performances of generosity, including by junta-era tycoons such as Kanbawza Bank Chairman Aung Ko Win and Asia World Chairman Steven Law.[21] The centrality of commercial elites to the government's approach to critical national and provincial challenges complicates attempts to resolve the injustices or address the inequities generated during junta rule. Land grabs provide a useful case study of how constraints on the democracy movement during junta rule and the party's resulting approach to collective action and social choice problems after 2011 shape outcomes for Myanmar's most vulnerable.

Organisational and Programmatic Impediments to Progress: The Case of Land

Suu Kyi and senior ministers have committed the government to resolving land disputes across the country and set up a range of new investigative processes and committees. However, while a presidential decree to resolve all land disputes by the end of 2018 did compel some officials to reach resolutions, millions of acres of land remain contested.

At a provincial level, the integration of tycoons and commercial elites into the party organisation and the programmatic platform has created alliances that distort accountability and complicate resolution. For instance, in a context followed closely by the author since 2015, local NLD activists and supporters actively sought to suppress media coverage of an ongoing land dispute between a prominent businessman, who patronised the NLD since 2012, and local farmers who demanded return of land seized from them during junta rule. Rather than directly addressing grievances of the villagers or examining the amount of land they claimed had been seized, NLD activists organised a social media and protest campaign against the reporter who was attempting to cover the alleged land grabs. One Facebook post by a prominent NLD activist which received 1100 likes and over 180 shares in the days following the January 2016 protest accused the reporter of "attacking the (businessman) who provided a lot of support" to the town (Fieldnotes, 13 January 2016). The post listed "good things" that he had done for the development of the region by "working hand in hand with the NLD and USDP" and criticised the journalist for linking the protests to the businessman's other commercial activities. Citing limits to "freedom of expression," the post concluded with an indictment of the journalistic ethics of both the reporter and the outlet itself: "A few years ago prior to the entry of so-called journalists from [media outlet] we did not have this kind of problem" (Fieldnotes, 13 January 2016).

NLD activists previously involved in the 2015 campaign also circulated a provocative meme on Facebook in which the question "Is your goal to create a riot?" was superimposed over an image of the entrance to the city. The meme carried a potent subtext: allegations made by the farmers and journalist against a business person who was enacting Suu Kyi's abstract ideal of "democracy" through local patronage of the NLD and various religious and social associations was an attack on the unity of the city as whole (Fieldnotes, 14 January 2016). In the days that followed local associates of the businessman, including activists seconded by the businessperson to the NLD township campaign during the 2015 election organised counter protests in which demonstrators carried signs explicitly criticising the journalist reporting on the land grab dispute.[22]

Rather than acknowledging the grievances of farmers and using the authority of the democratically accountable government to resolve the dispute, party activists instead mobilised against the reporter who was scrutinising the unjust land deals made during junta rule. Though the specificities of the case may be unique to the context, similar stalemates over land disputes are occurring at a provincial level across Myanmar, complicating fair and just outcomes for Myanmar's landless people. NLD and other elected officials are reluctant to use their governmental power to compel tycoons or companies to return contested land. Nor are they seeking to aggregate the material needs of the rural poor into a programmatic policy agenda that addresses poverty and landlessness. Instead, many party officials and activists prefer to resolve disputes by business people – especially those linked to the party – returning land or redistributing their assets voluntarily in rituals that closely resemble the "donation ceremonies" Suu Kyi has personally hosted for tycoons in Naypyitaw.

Here we see how the political opportunities which shaped the democracy movement during junta rule continue to influence the way the NLD addresses problems of

economic injustice and inequality in the contemporary period. Organisationally reliant on the resources and support of commercial elites and programmatically committed to an abstract ideal of "democracy" as "selfless" action in a market economy, a class-based agenda focused on restitution for economic injustices has so far found little traction within the party. The party's primary linkages with voters instead rely on an ideal of moral discipline epitomised by the charismatic leadership of Suu Kyi along with an abstract agenda of neoliberal market reform shaped by clientelistic ties with junta-era business elites. Despite the dire poverty and precarity that have endured into partial civilian rule, the weakness of working-class interests and class ideology relative to business elites and moral ideals within the democracy movement of the 1990s and 2000s is stunting the NLD's development as a cornerstone of Myanmar's nascent democracy.

Conclusion

Almost seventy years after her father Aung San committed independence politicians to redressing the exploitation of the colonial economy, the governing ideology of Aung San Suu Kyi's National League for Democracy embraces established elites, market reform, and foreign investment. Meanwhile, party officials either avoid acknowledging the source of the precarity experienced by millions of Burmese people, or justify state inaction on the basis of the poor being "lazy" and thus unworthy of governmental assistance (see McCarthy, 2019a).[23] In addition to the NLD's organisational centralism (see Roewer, 2020), this article has demonstrated that the absence of class and economic justice from contemporary Burmese politics is institutionally explained by enduring constraints it faced as the part of the democracy movement during junta rule. The concentration of economic resources and social agency in the hands of commercial elites and religious welfare associations throughout the 1990s and 2000s helped popularise notions of "democracy" as "selfless" action in a market economy. Meanwhile, suppression of labour activism limited the potential for class-based activists to mobilise for a more redistributive vision of democracy. The subsequent reliance of Suu Kyi and the NLD on donations from commercial elites after 2011 and the enactment since taking power in 2016 of a moral ideal of capitalist democracy which wholly or partly justifies the economic injustices of junta rule, reflects organisational and ideological constraints which have endured the transition to partial civilian governance. The case of Myanmar thus highlights how the political opportunities of democratic protest movements can impact the redistributive agendas of political parties long after liberalisation.

The absence of inequality from the NLD's political programme is a major threat to Myanmar's democracy. Comparative research suggests that the severity of exclusion and elite dominance of political institutions is a key determinant of the quality, durability, and developmental potential of democracy in post-authoritarian contexts (Albertus and Menaldo, 2014). Democracies in which the socio-economic preferences and needs of the poor or "median voter" are weakly reflected in public policy tend to be more vulnerable to oligarchic or military domination and the gradual erosion of democratic institutions (see Cox, 2017). In addition to reforms which would ease the capacity for labour

activism and mobilisation in formal industries, one option for shifting the political economy of democratic politics in Myanmar would be to introduce a system of public funding for political parties. At current parties and candidates, including within the NLD, rely on private contributions from business elites to finance their political campaigns. These relations of financial dependence often go unreported, as existing electoral laws do not require funds donated directly to the township, state, or regional and national party offices to be declared (Pyae Sone, 2018). In the current system, voters thus cannot know who may be using their financial influence to shape policies or laws in ways that run contrary to the interests and needs of ordinary people. The distortions created by the imbalance between private and public interests in Myanmar's democracy is undermining the possibility of representative government to deliver a more socially and economically just polity. If democracy is to endure in Myanmar, political elites and civil society must advance reforms that rebalance the scales and ensure parties, including the NLD, address the vulnerability and injustice bequeathed by decades of military rule.

Declaration of Conflicting Interests

Funding

Notes

1. For a discussion of the banknote in the context of Myanmar's socialist history, see Campbell (2019b).
2. Scott (1976) provides a seminal analysis of the Saya San rebellion. He argues that the capitation tax "provided the detonator" for the uprising as it was "a unifying issue par excellence . . . [Whether] smallholders, tenants or labourers, the capitation tax was the single material claim weighed on all of them at a given, regular time" (Scott, 1976: 150–151).
3. For a useful analysis of vulnerability indicators across Myanmar, see http://themimu.info/sites/themimu.info/files/documents/Report_Vulnerability_in_Myanmar_HARP-MIMU_Jun2018_ENG_Online_version_low-res_0.pdf.
4. For a useful theoretical discussion of the political opportunity structure approach and the variables that comprise it, see Meyer and Minkoff (2004).
5. Two laws – the Foreign Investment Law (November 1988) and the State-owned Economic Enterprises Law (March 1989) – were passed during this period, enabling private foreign capital after 25 years and allowing authorized private enterprises to be engaged in all but 12 stipulated industries. For analysis of the laws, see Kudo (2005: 12).
6. By 1998–1999, the private sector accounted for 85 per cent of manufacturing output and almost three-quarters of GDP (Jones, 2014: 149–150; Myat Thein, 2004: 125, 200–205, 251). Military enterprises are here counted as "private" rather than state activities.
7. Jones, ibid and Ford et al., ibid. For a more in-depth discussion of provincial-level state-business relations during the 1990s and 2000s in Myanmar, see McCarthy (2018b: chapter 3).
8. These groups and networks of risk-sharing and non-state welfare provision are described by a range of scholars who conducted research in Myanmar in the late 1990s and early 2000s

including Helen James (2005), Ashley South (2004), Jasmin Lorch (2006, 2007, 2008), Khin Zaw Win (2006), Kyaw Yin Hlaing (2001, 2007a), and Petrie and South (2014).

9. Para – others – is the inverse concept of atta – self and is here conjoined with the concept of benefit (hita). Thus, "for the benefit of others" or "work for others". The concept previously had a fairly strict religious scope, having been enlisted most prominently by Burmese nationalists in the decades prior to independence to encourage lay involvement in propagating nation-wide religious institutions (Pali: *sasana*, B: *thathana*) (Turner, 2014: 19). Mingun Sayadaw used donations to support the construction of a university and a range of social service organisations in the decades following independence (Walton, 2016: 152). A more expansive concept of *parahita,* however, appears to have lost traction with the tight constraints on civil society and state dominance over the licit economy during the BSPP period.

10. Public health expenditures as reported by the Myanmar government did not rise above 0.3 per cent of GDP between 1995 and 2010; however, data for health expenditure across the region are only available from 1995 onwards. James (2005: 57) observes an increase in health spending in 2000–2001, though notes it was largely spent on infrastructure and human resource development rather than hiring new staff.

11. Out-of-pocket expenses accounted for 78 per cent of all healthcare expenditures in Myanmar in 2011, according to The World Bank. For an in-depth study of catastrophic out-of-pocket health expenses in the provincial region of Magway in central Myanmar, see Inn Kynn Khaing et al. (2015).

12. Suu Kyi framed the concept of *myitta* as the central criteria for evaluating the junta after 1988. She argues that during the precolonial monarchical periods, *myitta* was considered an attribute of "good" power. Suu Kyi also repeatedly referred to her father Aung San's approach of governing "on the basis of loving kindness and truth", placing herself and the NLD within a regal lineage of just rule (quoted in Houtman, 1999: 325).

13. Throughout this article, the author refers to Myanmar's regime type since early 2011 as "partial civilian rule". This term is used to signal the more representative form of governance which has existed since the military junta held the November 2010 election. Though not openly contested or considered free and fair that election resulted in the formation of a reformist government largely led by civilianised former military officers who then held a more openly contested election in November 2015. Though power over civilian administration was formally transferred to an elected government led by Aung San Suu Kyi in March 2016, Myanmar's military retains 25 per cent of seats in the legislature, formal control over the Ministries of Defence, Home Affairs and Border Affairs and a veto on constitutional reform by virtue of the 2008 Constitution. Thus, the author refers to governance even after the November 2015 election as "partial civilian rule", albeit a more democratic form of it.

14. ABC News (2013)

15. The author witnessed significant variation between NLD candidates and townships as to the resourcing offered and accepted from commercial elites.

16. Numerous party officials interviewed about resourcing expressed deep distrust of tycoons, viewing them as attempting to "shift their allegiance" ahead of the 2015 election.

17. In one of his first public comments following his release from prison, 88 Generation leader and democracy activist Min Ko Naing emphasised that "it is very important to have discipline and unity, we have to show that we deserve democracy" (Voice 2012 in Wells, 2016: 168). The discourse of "discipline" runs back to the colonial period (Walton, 2015) and has recurred on NLD signboards, campaign materials, and in the speeches of senior political leaders since liberalisation in 2011.

18. Mar and Gerin (2016)
19. Arshad (2018) On investment in Rakhine State see AFP (2019).
20. See Htet Naing Zaw (2016).
21. Over US$13 million was donated for Rohingya repatriation by Myanmar's top tycoons. According to a list of donations released by the State Counsellor's office, Kanbawza Bank's Aung Ko Win was the top donor, contributing the equivalent of over US$1.5 million. Over US$8 million was donated to Suu Kyi in early 2017 to support peace-related initiatives projects she favoured, including US$2.2 million from Kanbawsa Bank, Myanmar's largest private financial institution. Following the Tatmadaw's campaign of ethnic cleansing in Rakhine State in August 2017, a similar appeal was made. While many of the donors were the same, their initial contributions were far less – though a number have lent in-kind services of various forms as well. See Nyein Nyein (2017) and Dunant (2018).
22. A volunteer at a local welfare group, however, filmed a Facebook-live interview with one of the protesting farmers who claimed he did not know the name of the journalist and that he "just wanted his land back" (Fieldnotes, 15 January 2016).
23. See Bogyoke Aung San's speech at the preliminary AFPFL Conference held on 19 May 1947, cited in Saw Naing (2017).

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Myanmar's Transition without Justice

Catherine Renshaw

Abstract

Myanmar's transition towards a limited form of constitutional democracy is taking place in the absence of national measures to deal with the legacy of massive human rights abuses: without criminal prosecutions for historical crimes; without the establishment of institutions for truth-telling; without reparations. This article considers the escalation of violence against ethnic minorities during the early period of Myanmar's democratic transition in the context of the claim that transitional justice has the potential to deter future atrocities. First, the article explains why the military, the democratic opposition, Western states, and the United Nations (UN), all accepted that Myanmar's democratisation should proceed without the establishment of institutions and processes of transitional justice. Second, the article shows how, in the absence of transitional justice, the transitional government attempted to bolster the rule of law by conducting its own investigations into allegations of misconduct by the military and through low-level prosecutions of individual military officers, and explains why this strategy failed. Finally, the article considers the potential impact of recent efforts at the international level to establish accountability, such as the UN Human Rights Council's establishment of an Independent Investigative Mechanism for Myanmar, the International Criminal Court (ICC) proceedings related to the crime against humanity of deportation, and the case bought by Gambia in the International Court of Justice (ICJ) for Myanmar's violation of the Genocide Convention.

Keywords

democratisation, transitional justice, Myanmar

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Myanmar's transition towards a limited form of constitutional democracy is taking place in the absence of national measures to deal with the legacy of massive human rights abuses: without criminal prosecutions for historical crimes; without the establishment of institutions for truth-telling; without reparations. The reasons for this are practical political ones. First, the military is in control of transition and there is a strong belief that prosecutions would jeopardise democratic consolidation. Second, Myanmar's legal system is overburdened and its judges are ill-equipped to dispense even ordinary justice. Third, in many parts of the country, civil war and accompanying human rights violations continue, making the collection of evidence problematic.

This article considers the escalation of violence against ethnic minorities during the early period of Myanmar's democratic transition in the context of the claim that transitional justice has the potential to deter future atrocities. First, the article explains why the military, the democratic opposition, Western states, and the United Nations (UN), all accepted that Myanmar's democratisation should proceed without the establishment of institutions and processes of transitional justice. Second, the article shows how, in the absence of transitional justice, the transitional government attempted to bolster the rule of law by conducting its own investigations into allegations of misconduct by the military and through low-level prosecutions of individual military officers. Finally, the article considers the potential impact of recent efforts at the international level to establish accountability, such as the UN Human Rights Council's establishment of an Independent Investigative Mechanism for Myanmar, the International Criminal Court (ICC) proceedings related to the crime against humanity of deportation, and the case bought by Gambia in the International Court of Justice (ICJ) for Myanmar's violation of the Genocide Convention.

1. More Murder in the Middle and Myanmar's Transition towards Democracy

In October 2016, the government of Myanmar announced that the military was commencing what it called a "clearance operation" in northern Rakhine state, home to Myanmar's population of Rohingya Muslims, in response to an attack by armed insurgents on three border guard posts (President's Office, 2017; Slodkowski et al., 2017). The area was sealed off, movement within the area was restricted and humanitarian agencies were denied access. The operation lasted from 9 October 2016 until 9 February 2017. During that period, according to a report by the Office of the High Commissioner for Human Rights, government forces carried out a series of atrocities against local Muslim populations (High Commissioner for Human Rights, 2017). These included the burning and looting of Rohingya villages; the murder of Rohingya men, women, and children; summary execution of imams, religious scholars, and community leaders; rape and torture. The military used helicopters to fire bullets and drop grenades on villagers as they were working on their farms, shopping in markets, or fishing. Tens of thousands of villagers fled across the border to Bangladesh. "Now is the worst it has ever been," said one Rohingya villager. "We have heard from our grandparents that there were bad things happening in the past too, but never like this" (High Commissioner for Human Rights,

2017: 42). In August 2017, following further attacks by Muslim militants, Myanmar's military unleashed a wave of violence that caused some 700,000 Rohingya villagers to flee across the border. The Fact-Finding Mission established by the UN Human Rights Council to investigate the events found that, if proven, the military's acts would amount to the international crime of genocide (Fact-Finding Mission on Myanmar, 2018).

Why was 2017 "*the worst it has ever been*" for the Rohingya? In the period 1987–2016, the Rohingya – and other ethnic minorities in Myanmar – were subjected to serious persecution and discrimination. Successive regimes violated their right to life (by murder and extrajudicial killing); their right to personal inviolability (by torture, rape, enforced disappearances); their right to own their own labour (by slavery, forced labour); their right to freedom of movement (by segregation and apartheid). Throughout that period, during which the country was under single-party socialist rule or military dictatorship, Freedom House consistently ranked Myanmar as "unfree." Then in 2017, for the first time, Freedom House awarded Myanmar a ranking of "partly free," following a series of political reforms and two successful general elections (Freedom House, 2017). On broadly accepted measures of political freedom, Myanmar was more democratic in 2017 than it had been at any time in the previous half-century. In theory, the expectation is that the closer states get to the ideal of liberal democracy, the better able and more willing they are to protect fundamental human rights (Donnelly, 1999). So why would genocide – the "crime of crimes" – take place *after* the beginning of Myanmar's transition to democracy?

The puzzle of why increasing levels of democracy are matched by more severe violations of human rights has been hypothesised by Helen Fein as the "More Murder in the Middle" thesis (Fein, 1995). Fein argues that there is an inverse relationship between the expansion of democracy and states' respect for life-integrity rights. That is, as states become more democratic, there is no correlating increase in their propensity to protect the most fundamental human rights. In fact, the converse is true. Increasing levels of democracy increase the chance of mass political violence: partly free states are more dangerous than unfree states (Gastil, 1988). Thus, at extreme ends of the political spectrum – in authoritarian states and dictatorships, and in established liberal democracies – there is the lowest possibility for mass killing by the state. But in partly free states – that exist somewhere on the continuum between absolutism and liberal democracy – the risk of states committing wide-scale atrocity is at its highest. One reason for this is that the increase in the degree of political freedom in a previously authoritarian state creates new opportunities for political opposition, provoking state repression and leading to more intense and wide-ranging violations, such as calculated murders and massacres. In circumstances of underlying ethnic discrimination, underdevelopment, inequality, and internal conflict, the danger of the severe violations is particularly high. Fein's analysis also shows that the most dangerous circumstances arise when political rights (voting and participation) are extended but civil liberties (rights of freedom of expression and association) are not.

The Rohingya were not the only ethnic minority group to experience an increased level of human rights violations since the commencement of democratic transition. In the North of the country, a fourteen-year ceasefire with the Kachin Independence Army

came to an end in 2011. Renewed conflict saw escalating levels of violence against civilians and severe levels of human rights violations. For a number of reasons, however, the vulnerability of the Rohingya was made particularly acute by the dynamics of Myanmar's transition. First, the degree of political reform in Myanmar was structurally constrained by a constitutionally guaranteed role for the military in the governance of the state. Myanmar's political transition was partial, its architects were the military themselves and the military remained deeply committed to maintaining, by violent force if necessary, the constitutionally mandated priorities of non-disintegration of the Union, non-disintegration of national solidarity, and perpetuation of sovereignty. Second, although political rights of voting and participation had been extended to many citizens, there was no successful corresponding institutionalisation of the protection of civil liberties. Protection of freedom of speech, association, and movement under the transitional 2008 Constitution remained subject to "existing laws," many of which were oppressive and discriminatory in relation to the Rohingya. In terms of enforcement, the judiciary struggled to establish independence after decades of being subservient to the military and new institutions such as the national Human Rights Commission failed to fulfil its mandate to promote and protect human rights. Third, the Rohingya have historically been discriminated against. They are racially and religiously distinct from the majority Burmese Buddhists and their presence in Myanmar is deeply contested (Renshaw, forthcoming; Ullah, 2016). Finally, Rakhine state, home to the majority of Rohingya, is acutely underdeveloped. Rakhine's poverty rate is almost double the national rate; child mortality is among the highest in the country; ongoing civil conflict between Rakhine Buddhists and the central Bamar government has exacerbated poverty and discouraged investment, leading to further conflict over scarcity (Advisory Commission on Rakhine State, 2017).

Against this backdrop, it is possible to see how the circumstances of Myanmar's transition led to what Osiel (1995) calls "administrative massacre." On 24 August 2017, Kofi Annan, former Secretary-General of the UN, released a report that recommended, in part, that the Rohingya be afforded citizenship: the most basic right of political participation. Some eight hours later, a militant Rohingya organisation, the Arakan Rohingya Salvation Army, committed terrorist acts against a number of border force officers. The following day, the military responded with severe violence, carrying out a systematic campaign of arson, rape, and extrajudicial killings, driving some 700,000 Rohingya across the border into neighbouring Bangladesh and leading to allegations of genocide.

The aim of this article is to consider the extent to which the atrocities that took place during the first ten years of the transitionary period can be attributed to the absence of formal institutions and processes of transitional justice. *Transitional justice* refers to the formal attempt by post-authoritarian societies to address past wrongdoing in their efforts to democratise (Murphy, 2017: 1). The range of measures that societies have implemented to confront the legacies of violence and build the rule of law include criminal trials, truth commissions, vetting processes ("lustrations"), reparations, and apologies (Bell, 2009). The long-term transitional justice goal, which is often only realised with the rise of a new generation, is a society that has reconciled itself to its history and is

inclusive, just and stable. But in the scholarship on transitional justice, there is no settled answer to the question of precisely how transitional justice measures effect democratic consolidation, protect human rights, or contribute to rebuilding the rule of law in different societies (Fletcher and Weinstein, 2002; Gibson and Macdonald, 2001; Kelsall, 2005; Mendeloff, 2004; Olsen et al., 2010; Shaw, 2005; Snyder and Vinjamuri, 2003). Nor is there a clear answer to which institutions or processes, or combination of institutions and processes, will be most effective in different circumstances. The research is contradictory and points to different policy prescriptions (Thomas et al., 2008). Recent scholarship has made the point that acknowledging past wrongs might not be the priority for populations struggling with present-day scarcity and conflict (Hayner, 2011: 60, 187; Rotondi and Eiskovits, 2015; Shaw, 2005). There is no rule that a violent past must be addressed in any process of transition. In the immediate post-conflict or post-authoritarian period (the first five years), when members of the old regime still hold power to cause disruption and mobilise security forces and media networks loyal to them, there is a plausible argument that the hasty implementation of trials and truth commissions may have negative effects on democratic consolidation (Gready and Robins, 2017; Macdonald, 2015; Posner, 2004a, 2004b; Sharp, 2013a, 2013b).

Myanmar faced a problem familiar to many new democracies: "to repair historical injustice and thereby risk social dissent, destabilization, and return of violence; or to aim at a democratic and peaceful present and future to the 'disadvantage' of the victims of a grim past?" (Bevernage, 2013: 21). The conclusion was that focusing on retribution – or even calling for recognition of the crimes committed by the former military regime through the establishment of a truth commission – would destabilise the political situation and undermine prospects for democratic consolidation and peace (Tin Maung Maung Than, 2012). The implication was that those who were genuinely interested in protecting human rights should support peace and political stability at all costs. If justice (in the sense of accountability for past acts of the military) stood in the way of peace, then justice should be deferred or sacrificed.

This article considers the escalation of violence against ethnic minorities during the early period of Myanmar's democratic transition in the context of the claim that transitional justice deters future atrocities. First, the article explains why the military, the democratic opposition, Western states, and the UN, all accepted that Myanmar's democratisation should proceed without the establishment of institutions and processes of transitional justice. The article also shows that this view was not uniform: within civil society and among ethnic minority groups, many believed that lasting peace was not possible without justice. Second, the article shows how, in the absence of transitional justice, the government attempted to bolster the rule of law by conducting its own investigations into allegations of misconduct by the military and through low-level prosecutions of individual military officers, and explains why this strategy failed. Finally, the article considers the potential impact of recent efforts at the international level to establish accountability, such as the UN Human Rights Council's establishment of an Independent Investigative Mechanism for Myanmar, to collect evidence which might be used in future prosecutions (IIM); the decision of the ICC to open an investigation into whether Myanmar had carried out the crime against humanity of

deportation; and the case bought by Gambia in the ICJ for Myanmar's violation of the Genocide Convention. The article argues that considering (1) the historical response of Myanmar's military to the threat of international prosecution and (2) evidence of the way other groups in comparable political situations have responded to international prosecutions in the aftermath of atrocity, there is reason to be sceptical about the deterrence effect of international law interventions to protect groups such as Myanmar's Rohingya population.

2. Transitional Justice in the Context of Myanmar

Transitional justice is not a feature of Myanmar's democratisation process. The primary reason for this is that the military is in control of transition. In 1991, Samuel Huntington set out the consideration which new democratic regimes must take into account in deciding how to address crimes committed by officials of the predecessor regime (Huntington, 1991). In Huntington's view, the decision to prosecute and punish, or forgive and forget, does not turn on moral or legal arguments about societal obligations to truth, justice, and the rule of law. Instead, the decision is determined by the nature of the democratisation process and the distribution of political power during and after transition. Huntington argues that in circumstances where democratic transformations are initiated and guided by leaders of the existing authoritarian regime, then assurances regarding non-prosecution – or amnesties – are essential to prospects of democratic consolidation. Put simply, no authoritarian leader will enable transition if they anticipate being prosecuted as a result. A guarantee of non-prosecution is the price of peaceful transformation.

This logic was well understood by the key actors in Myanmar's democratic transition. The National League for Democracy (NLD) and its leader Aung San Suu Kyi accepted that the success of transition depended on not prosecuting military officers for crimes they committed while they were in power. The guarantee of immunity for Myanmar's former military rulers is written into Article 445 of the 2008 Constitution of the Union of Myanmar. At various points during the first decade of transition, the NLD proposed amendments to key constitutional provisions, such as Article 59f, which prevents Aung San Suu Kyi from becoming president. But the NLD did not seek to remove or amend Article 445. The Nationwide Ceasefire Agreement, signed in 2015 by the government and representatives of some ethnic insurgent groups, does not include provisions for the establishment of criminal proceedings in relation to crimes committed by the military in ethnic states (or crimes committed by ethnic armies), nor does it refer to the establishment of truth commissions. It does, however, refer to efforts to improve the health, education, and socio-economic development of civilians, and maintaining the rule of law (*Myanmar Times*, 2015).

In short, it was understood by key actors such as the NLD and the military that successful transition required the protection of military interests and one of the key military interests was impunity. In the words of Tin Maung Maung Than: "There are certain red lines in Myanmar for the military. Transitional justice is one of the red lines" (Tin Maung Maung Than, 2012). Within Myanmar, in the view of many people, there

was a clear historical precedent for what might happen if the democratic opposition crossed the red line. In general elections held in 1990, the NLD, led by Aung San Suu Kyi, won a sweeping victory, securing more than 50 per cent of the popular vote. The military, however, refused to transfer power to the NLD. It is popularly believed that one of the reasons for this was an offhand comment from U Kyi Maung, chairman of the NLD, who in a post-election press conference referred to "Nuremberg-style tribunals" while explaining to a foreign journalist that the NLD did *not* intend to seek accountability for what the army had done to the people during its period of rule. "Here in Myanmar," said Kyi Maung, "we do not need any Nuremberg-style tribunals" (Kaung, 2007). There is a widely held belief that one of the primary reasons why the Burmese military refused to relinquish power after the 1990 elections was because the generals feared they would be tried for crimes committed during the period of dictatorship (Mitton, 2015). The NLD was determined to ensure that history would not repeat itself and that the generals would not once again be frightened into retreating from reform by the prospect of retribution.

In the period 2010–2018, Aung San Suu Kyi went to significant lengths to reassure the military that the NLD had no interest in retribution. Through public statements and gestures of support for the *Tatmadaw*, Aung San Suu Kyi continually affirmed that the NLD would not seek accountability for acts committed during the years of military rule. After 2012, Suu Kyi pointedly embraced the *Tatmadaw* as "her father's army" and declared that she was "very fond" of the army (Young, 2013). When she discussed transitional justice, which was rarely and reluctantly, it was in the form of a truth and reconciliation commission, similar to the South African commission, which might be established at some distant point in the future (Naing, 2012). Suu Kyi said that she followed in the footsteps of leaders such as Desmond Tutu, who preached forgiveness and reconciliation rather than vengeance and retribution (Aung San Suu Kyi, 2008: 29). Suu Kyi asked the people to reconcile with the military and move forward "hand-in-hand".

In Myanmar, among different communities, there was a range of responses to the question of how to deal with the past (Holliday, 2012; Holliday, 2014; David and Holliday 2018). This reflected the variegated experience of abuse, degradation, and oppression, and different religious and cultural understandings about suffering and redress. Among many in the Buddhist-majority country, Aung San Suu Kyi's approach to transitional justice resonated because it was underpinned by Buddhist concepts about the nature of suffering and the temporality of existence (Aung San Suu Kyi, 1991; McGowan, 2012; Sagar, 2009; Spiro, 1992). In Buddhism, suffering is a spiritual phenomenon, an inevitable part of an individual's daily existence and ultimately the key to obtaining enlightenment. Buddhism stresses impermanence and the inevitable changes that all things must undergo, including the self (Burton, 2002). In Buddhist philosophy, the self, as a stable, localisable, and autonomous instance of control governing our decisions, is illusory. The false idea of a permanent state of self is one of the primary causes of suffering (Dorrell and Berguno, 2004). In Buddhism, existence is a momentary coalescence of constitutive elements, impermanent and fleeting. Each moment of coalescence is conditioned by what preceded it and our being is constituted and reconstituted

in a cyclical fashion. This notion is reflected in the doctrine of *karma*. At a very basic level, *karma* holds that those who do good deeds will receive good; those who do bad deeds will inevitably suffer the consequences (Groves and Farmer, 1994; Holder, 2007). For Suu Kyi, the law of *karma* was an appropriate response to the suffering of Myanmar's people during the years of dictatorship. In *The Voice of Hope*, Suu Kyi said that Myanmar's military dictators might be able to avoid the repercussions of breaking human laws, but that:

> they are not above the law of karma, because the law of karma is actually very scientific. There is always a connection between cause and effect. It's like the light of a star isn't it? The light that we see now was initiated so many light years ago, but there it is. In science too there can be a seemingly long gap between cause and effect. But there's always the connection between them. (Aung San Suu Kyi, 2008: 87)

For many in Myanmar, responses to the past and views about the appropriate means of addressing it were shaped and conditioned by Buddhist understandings about the nature of time, impermanence, and suffering. For some victims, belief in karma led them to blame themselves for abuses they had suffered under military rule (ND-Burma, 2018: 20). Others questioned whether the apparent cathartic effect of reliving the past through trials and truth commissions would accord with Buddhist understandings of the place of suffering and the paths to its alleviation (Biggar, 2003; Hayner, 2011; Mani, 2002; Seils, 2002, Wilson, 2001). The essentially individualistic focus of Western legal theory (Simpson, 2009), where individuals are central as perpetrators and victims, sits uneasily with the very different Buddhist conception of the self. For many people in Myanmar, the whole idea of looking back past into the past was foreign. In Western thought, the past is important because it provides lessons for the future; the future is a major preoccupation because it is the better age that lies ahead (Loy, 2000). Retributive justice extends this conceptualisation of time by focusing on the past (establishing guilt) and the future (promoting deterrence). Buddhism, however, follows an understanding of time that is profoundly at odds with this linear conception of time.

While Buddhism does not countenance retribution, there is a role for truth. In Suu Kyi's view, "truth and reconciliation go together. Once the truth has been admitted, forgiveness is far more possible. Denying the truth will not bring about forgiveness neither will it dissipate the anger in those who have suffered" (Clements, 1997). Suu Kyi said that suffering had to be acknowledged:

> You can't just wipe away the past. If you try, there will always be this ocean of festering resentment within those who have truly suffered. They will feel that their sufferings have been pushed aside, as though they've suffered for nothing; as though they've undergone torture for nothing; as though their sons and fathers had died for nothing. (Clements, 1997)

A decade before transition began, Suu Kyi was asked specifically about a Truth and Reconciliation Council in Burma. She said:

> I think in every country which has undergone the kind of traumatic experience that we have had in Burma, there will be a need for truth and reconciliation. I don't think that people will

really thirst for vengeance once they have been given access to the truth. But the fact that they are denied access to truth simply stokes the anger and hatred. That their suffering is not been acknowledged makes people angry. That is one of the great differences between SLORC and ourselves – we do not think that there is anything wrong with saying we made a mistake and we are sorry. (Aung San Suu Kyi, 2008)

Research carried out by David and Holliday (2018) confirms the desire of many people in Myanmar for the establishment of an official process to uncover and acknowledge the truth about human rights violations and crimes that occurred during the years of dictatorship. Domestic human rights organisations also report that truth – rather than retribution – is the primary concern of victims (ND-Burma, 2018). Truth-seeking crosses religious divides and is a focus for Buddhists as well as Christians and other religious minority groups. Yet once transition was underway, Suu Kyi's language and actions betrayed profound unease at the prospect of any sustained process of official truth-telling – of remembering, mourning, or acknowledging the traumas of the past. Ultimately, Suu Kyi did not make it a condition of her co-operation in the transition that Myanmar's military rulers acknowledge or apologise for the years of terror endured by the people. Instead, Suu Kyi joined the military in constructing a political process of forgetting rather than remembering (Graham, 2007). Political leader and former political prisoner Cho Cho Kyaw Nyein said: "[w]hen I talk to Aung San Suu Kyi, she says, 'Forget the past'. If she says that, that is what we must do" (Myers, 2011).

Recent literature on transitional justice has been attentive to the fact that there are important cultural dimensions to determining appropriate responses to mass atrocity (Shaw, 2005; Shaw et al., 2012). In 2004, the Secretary-General of the UN produced a report on rule of law and transitional justice, urging that we "eschew one-size fits all formulas and the importation of foreign models, and instead, base our support on national assessments, national participation and national needs and aspirations" (UN Security Council, 2004). In complex societies, determining what the national needs and aspirations are is a difficult and contentious task (Fletcher and Weinstein, 2002). There is a strong argument that in transitional conditions where former oppressors still hold a significant degree of power, it is not only pragmatic to delay or defer the establishment of institutions and processes to address historical wrongs because they might threaten the interests of transitional elites, it is also the correct moral response. This is because societies need a period of time to adjust to new circumstances of freedom from oppression, conflict, and terror; only after a period of adjustment are they able to articulate how they would like to respond to the past. In circumstances where trusted elites such as Aung San Suu Kyi were saying that historical justice was not a priority, that the time was not right for official truth-telling processes, and that even discussion about transitional justice could imperil democratic consolidation, many people in Myanmar were prepared to agree.

Nonetheless, "transition without justice" presented several significant problems for Myanmar's transitional leaders. One of these centred on the question of trust. Transitional justice processes and institutions have, in theory at least, the potential to build trust between the new regime and the people, by signalling a break with the past; by removing

offenders from positions of power; by illuminating systemic problems such as corruption and discrimination. In the absence of transitional justice, Myanmar's leaders needed other ways to convince the traumatised population that they should have confidence in the transitional path mapped out by their former oppressors. One way to do this was by establishing new institutions, such as the Myanmar National Human Rights Commission and the Committee for the Rule of Law and Tranquillity (chaired by Aung San Suu Kyi). Another was to increase the number and visibility of prosecutions of officers who did not follow correct procedures, thereby demonstrating that the rule of law now applied to the military and the police, as well as to ordinary people. In the period 2015–2020, there were unprecedented prosecutions of members of the military for abuse of civilians. For example, in September 2016, seven Burmese soldiers were brought before a military court, charged with the murder of five men from the village of Mong Yaw in Northern Shan state, convicted and sentenced to seven years in jail with hard labour (Weng, 2015). The families of the victims were offered compensation. In April 2018, seven *Tatmadaw* soldiers were convicted of the murders of ten Rohingya men, whose bodies had been found in a village in north-western Rakhine state. The men had been hacked to death or shot.

Yet in relation to the campaign of atrocities perpetrated against the Rohingya in 2016 and 2017, none of the four separate investigations established by state and federal parliaments and by the military and police made findings that accorded with UN investigations or reports from credible human rights non-governmental organisations. Some of the conclusions of domestic investigations were patently absurd. The military investigation into the first wave of violence in Rakhine, for example, found that there had been only two cases of abuse of civilians by military personnel in the period October 2016–February 2017. One of these involved the theft of a motorbike; the other involved military personnel beating villagers who were tardy in helping to extinguish a fire.

The conclusion is that the transitional strategy of ending impunity and embedding the rule of law through the low-level prosecution of members of the military, and through the establishment of new independent institutions to promote accountability, was a failure. This is because the military's methods of achieving desired political outcomes remained the same after transition as before. In relation to the Rohingya, the military have long pursued their removal from Rakhine state. In 1962, General Ne Win militarised the state under a nationalist ideology of "one blood, one voice, one command" (Smith, 2002). From that time, the overarching strategy was to degrade life for the Rohingya to the point where it could no longer be endured: to deny food, work, the ability to marry within the law and register the birth of children. The aim was to force the Rohingya into ghettos to die of disease and hunger, or to leave the country by fleeing into Bangladesh, Thailand, or Malaysia (Renshaw, 2016a, 2016b; Zarni and Cowley, 2014). The methods included operations so brutal and terrorising – particularly in 1978, and in 1991–1992 – that the Rohingya historically fled.

3. Transitional Justice from the Outside?

In 2019, the government of Myanmar faced three different international legal procedures aimed at deterring it from committing further atrocities against the Rohingya and other

ethnic minorities. The first of these was the International Investigative Mechanism (IMM) established by the UN Human Rights Council. The IMM took over the work of the Fact-Finding Mission, which was established by the Human Rights Council in the wake of the atrocities of 2017. The Fact-Finding Mission provided the Council with a Final Report that concluded the acts of state agents in persecuting the Rohingya were, in likelihood, genocide. The IMM's role was to gather and preserve evidence of international crimes in preparation for future legal proceedings.

The second procedure was a process before the ICC. Although Myanmar is not a party to the Rome Statute of the International Criminal Court and can only be subject to the Court's jurisdiction through a referral by the UN Security Council (or in the unlikely event of a self-referral), the Prosecutor argued that Myanmar could be investigated in relation to the particular crime against humanity of deportation. This is because an element of this crime (the crossing of a border) took place on the territory of a State party to the Statute (Bangladesh). In September 2018, the ICC Pre-Trial Chamber accepted the Prosecutor's argument, paving the way for an investigation into deportation (and potentially other crimes).

The third procedure was before the ICJ, where Gambia brought a case against Myanmar for violation of the Genocide Convention. Burma ratified the Genocide Convention in 1956, in the brief period of parliamentary democracy between gaining independence from British rule and the coup d'etat of General Ne Win.

Without the co-operation of the government of Myanmar in providing evidence, serving warrants on alleged perpetrators and granting access to investigators and court officials, all of these proceedings face serious problems. The ICJ does not have the capacity to gather evidence on its own: it is reliant on the material gathered in other international courts and tribunals. In the case of Myanmar, material from other courts and tribunals at present consists primarily of eyewitness accounts from refugees. Forensic evidence from the sites of atrocities – which was devastating in proceedings before the International Criminal Tribunal for Rwanda and the former Yugoslavia – is largely missing. The question, for my purpose here, is whether despite these shortcomings, international proceedings have the potential to fulfil any of the aims of transitional justice: to rebuild the rule of law; to change the behaviour of the police and military towards civilian populations; to instil trust between the people and transitional elites; and most importantly, deter the commission of further atrocities.

In the early years of Myanmar's transition, key international actors decided to support domestic measures aimed at gradual reform, and to accept a time frame for historical accountability that was congenial to Myanmar's transitional leaders. By the end of 2017, it was clear that new measures were in order. It was less clear to what extent new strategies would succeed in deterring further atrocity. The history of Myanmar/UN engagement was not auspicious. Between 1993 and 2011, UN human rights bodies – with the arguable exception of the International Labour Organisation – were largely unsuccessful in efforts to positively engage with Myanmar's military leaders (Renshaw, 2019). Indeed there is near uniform consensus among scholars and analysts that past policies of condemnation, isolation, and sanctioning were ineffective in encouraging greater human rights observance (Abramowitz and Kolieb, 2008; Hadar, 1998; Pedersen,

2000, 2007). Indeed, in the view of many scholars, these measures were in fact counterproductive. Their primary consequence was to prolong the political stalemate that existed between the military government and the opposition, while at the same time exacerbating the suffering and impoverishment of the Burmese people (Taylor, 2004). Burma's colonial history and its leader's fears of external interference fostered a culture of xenophobia that external condemnation only exacerbated (Holliday, 2005). Myanmar's politicians and generals became adept at bureaucratic obfuscation, deceit, and delay in their dealings with the UN and their efforts to deflect accountability.

The first Special Rapporteur on the human rights situation in Myanmar was Dr. Yozo Yokota, appointed by the UN Human Rights Council in 1993. Yokota carried out his investigation with a reasonable degree of co-operation from Myanmar's government, which at the time was the State Law and Order Restoration Council (SLORC). Yokota was permitted to enter Myanmar and inspect various sites, including Insein Prison, and travel to ethnic minority areas including Rakhine state. Yokota interviewed members of the SLORC, including General Khin Nyunt, and victims and witnesses of alleged human rights violations. The report is remarkable for the level of detail it provides. For example, in relation to allegations about the deaths and disappearances of thousands of people after anti-government demonstrations in 1988 and 1990, Yokota was told the precise site of the mass graves where the military had buried the bodies of protesters (Commission on Human Rights, 1993: para 232). In relation to the rape of ethnic women by the military in conflict zones, he was informed of the date, location, identities of victims and regiment to which alleged perpetrators belonged. In relation to forced relocation of civilians by the military, he was shown a relocation order, containing the names of villagers who were required to move and the edict that those who did not move by that date would be considered "bandit-insurgents" and "would be eliminated" (Commission on Human Rights, 1993: para 76).

The report is also remarkable for what it reveals about the approach of Myanmar's rulers to engagement with UN bodies. When Yokota wrote to the government on the final day of his visit, complaining that he had not been able to establish direct contact with imprisoned political opposition leaders, the response from the Ministry of Foreign Affairs was that "there are no political prisoners in this country, but only some politicians who are under detention for breaking the established laws of this nation" (Commission on Human Rights, 1993: para 68). When he complained that intelligence services had threatened and intimidated potential witnesses, the Minister's office responded that the reason why people did not communicate with the Rapporteur was probably because they were engaged in illegal activities and they did not want to draw attention to this. When Yokota provided the Minister with a list of detainees he wished to see in Insein Prison, he was told that higher authorities do not interfere with the running of the prison and that the request should be made to the prison authorities. When he inquired of the prison authorities, they explained that they were unable to comply with his request because they required authorisation from higher authorities (Commission on Human Rights, 1993: para 64).

The experience of the first Rapporteur was repeated with subsequent Rapporteurs. The military government stage-managed the visit of Special Rapporteurs and impeded

investigations with bureaucratic obfuscation. Intimidation and the threat of government reprisals hung over anyone who engaged with the Rapporteurs. Rapporteurs were not permitted to interview members of the military who may have been directly responsible for carrying out human rights violations, nor were Rapporteurs given access to the military documents and personnel that might have confirmed the systemic nature of abuses. On some occasions, Rapporteurs were denied access to the country.

Nonetheless, Rapporteurs were able to marshal specific, plausible evidence of international crimes. Paul Pinheiro, who was Rapporteur between 2000 and 2008, reported widespread and systematic violations of human rights in Myanmar (Special Rapporteur, 2006). Tomás Ojea Quintana, who was Special Rapporteur between 2008 and 2014, reported that:

> [g]iven the gross and systematic nature of human rights violations in Myanmar over a period of many years, and the lack of accountability, there is an indication that those human rights violations are the result of a state policy that involves authorities in the executive, military, and judiciary at all levels.

He said that "[a]ccording to consistent reports, the possibility exists that some of these human rights violations may entail categories of crimes against humanity or war crimes under the terms of the Statute of the International Criminal Court" (Human Rights Council, 2010: para 121).

But the tone of Quintana's reports changed markedly as Myanmar's nascent democratisation process garnered support from the NLD and from the United States and its Western allies. In his September 2011 report to the UN General Assembly, Quintana refrained from repeating his call for the establishment of a Commission of Inquiry (COI). He identified ongoing grave human rights issues, but he also emphasised the importance of assisting the transition to democracy and building a more positive environment for the protection of human rights (General Assembly, 2011). In 2013, the Special Rapporteur recommended merely that the government consider establishing a truth commission, to "inform continuing democratic reform and national reconciliation" (General Assembly, 2013: para 75).

In 2014, events in Rakhine and Kachin made clear that Myanmar's progress on human rights had stalled. In his final report to the Human Rights Council, Quintana said that in Rakhine state, extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations had taken place on a large scale and had been directed against the Rohingya Muslim population. He repeated his statement that:

> [g]iven the gross and systematic nature of human rights violations in Myanmar over a period of many years, and the lack of accountability, there is an indication that those human rights violations are the result of a state policy that involves authorities in the executive, military, and judiciary at all levels.

He referred again to the ICC (General Assembly, 2014: para 51). The High Commissioner for Human Rights produced a 2016 report suggesting widespread or systematic attacks against the Rohingya, which if established by a court of law would indicate the possible commission of crimes against humanity. The High Commissioner stated that the allegations, if proven, would amount to violations of international humanitarian law and human rights law, and that in the context of armed conflict, some of them would amount to war crimes (High Commissioner for Human Rights, 2016). This report was followed, in February 2017, by the High Commissioner's report into the government's clearance operation in Northern Rakhine state after 9 October 2016. Investigators, who were denied access to Northern Rakhine state, gathered evidence from 220 refugees who had fled across the border to Bangladesh. Investigators gathered first-hand testimony from men, women, and children in eight different refugee camps, who had been fired upon by helicopters, driven from their villages, raped, burnt, and beaten. The Report stated:

> The testimonies gathered by the team – the killing of babies, toddlers, children, women and elderly; opening fire at people fleeing; burning of entire villages; massive detention; massive and systematic rape and sexual violence; deliberate destruction of food and sources of food – speak volumes of the apparent disregard by Tatmadaw and BGP officers that operate in the lockdown zone for international human rights law, in particular the total disdain for the right to life of Rohingyas. (High Commissioner for Human Rights, 2017)

In the wake of this report, the High Commissioner for Human Rights and the Special Advisor on the Prevention of Genocide, together with human rights advocates, urged the Human Rights Council to establish a COI to investigate allegations of violations, identify the perpetrators and determine whether international crimes had taken place. In other cases, COIs have paved the way for the establishment of International Criminal Tribunals (Rwanda in 1994; Yugoslavia in 1992) or prompted the Security Council to refer those situations to the ICC (Darfur in 2004; Libya in 2012). Within the Human Rights Council, however, there was only sufficient support to establish a Fact-Finding Mission. In 2017, a UN Fact-Finding Mission was created with a mandate to "investigate reports with a view to ensuring full accountability for perpetrators and justice for victims" (Human Rights Council, 2017). The Mission provided its Final Report to the Human Rights Council in September 2018 (Human Rights Council, 2018). The report concluded that there were grounds to establish genocidal intent on the part of the State of Myanmar. The reasoning was straightforward: the Rohingya are a distinct racial, religious, ethnical group; they were subjected to killing, serious bodily and mental harm, and conditions of life calculated to bring about their physical destruction; these acts were attributable to the State and committed intentionally; it could be inferred that the purpose of the acts was to destroy the Rohingya as a people, in whole or in part (Human Rights Council, 2018: paras 84–87). The legal elements of genocide were satisfied. In September 2019, the Fact-Finding Mission published a statement warning that Myanmar continued to harbour genocidal intent and that the Rohingya remained under serious risk of genocide (Fact-Finding Mission, 2019).

The government of Myanmar's response followed the pattern that had been set in the early 1990s. The government did not engage directly with the claim that government

actors had committed international crimes. Noting that the reports of UN investigators were largely produced without physical inspection of the sites of suspected atrocities and without the co-operation of the government, they insinuated that the reports were false or exaggerated, based on fabrication and disinformation, and that allegations were unsubstantiated and unfounded. Government officials claimed that the reports were unfairly one-sided, that the government had a responsibility to maintain order and that force was only being used to that end; that those who were killed were terrorists; and that if there had been transgressions by the military or the police, these would be dealt with according to existing domestic legal rules and procedures. U Kyaw Tin, Permanent Representative of the Republic of the Union of Myanmar to the UN, claimed that UN reports were unfairly one-sided, that they did not acknowledge the significant progress that had been made since Myanmar began its transition to democracy or the difficult circumstances in which the transition was taking place. In relation to the Special Rapporteur, Kyaw Tin argued that it was time for the mandate of the Special Rapporteur to come to an end.

Myanmar's government, which included Aung San Suu Kyi as Special Counsellor of State, opposed the creation of UN investigative mechanisms and consistently refused to provide entry visas to members of the UN Missions. Myanmar's ambassador to the UN in Geneva, U Htin Lynn, said that:

> Such kind of action is not acceptable to Myanmar as it not in harmony with the situation on the ground and our national circumstances. Let the Myanmar people choose the best and the most effective course of action to address the challenges in Myanmar. (President's Office, 2017)

Myanmar's Foreign Ministry said that the decision to send an independent international Fact-Finding Mission to Myanmar "would do more to inflame, rather than resolve, the issues at this time" (McPherson, 2017). The Tatmadaw's Senior-General Min Aung Hlaing said the decision to send a Fact-Finding Mission threatened national security. He told an Armed Forces Day parade in the capital Naypyidaw that Burmese armed forces would shun the UN mission (Agence France Press, 2017). Aung San Suu Kyi said: "We are disassociating ourselves from the [Human Rights Council Resolution appointing a Fact-Finding Mission] because we don't think the resolution is in keeping with what is actually happening on the ground" (*Guardian*, 2017).

Is there potential for the various processes and procedures of international criminal law to prevent further atrocities in Myanmar? On one view, the defensive responses from Myanmar's generals, from the 1990 reaction to talk of "Nuremberg-style tribunals" to the 2017 response to the establishment of an international investigative mission, suggest that there is a level of sensitivity to the ignominy of potential international prosecutions. Aung San Suu Kyi's reaction also suggests high levels of sensitivity to disapprobation: in 2018, Suu Kyi cancelled an appearance before the UN General Assembly and failed to make scheduled appearances during a trip to Australia. But sensitivity to the prospect of prosecution is one thing: changing a course of behaviour based on a reasonable prospect of being tried for committing offences is another. In relation to Suu Kyi, her power to

influence military behaviour is limited. In 2016, at the same time as Suu Kyi was pre-siding over peace talks with armed ethnic organisations, the military was intensifying attacks in Kachin state.

Evidence that international criminal law has a deterrence effect is very weak (Alexander, 2009). To understand the reason for this, we need to understand why mass atrocities occur. The most compelling explanation we have, gathered from studies of the Holocaust onwards, is that state-perpetrated atrocities are not the result of individual evil. Instead, they occur as part of a political response to a particular problem – an extreme and horrific response, certainly, but nonetheless one that is carried out for reasons connected to matters of state: the defence of the nation, the protection of other citizens, or the preservation of ethnic or religious identity. If this is so, then it is unlikely that the threat of punishment will be enough to dissuade a leader from doing what he or she thinks (misguidedly) is right. For this reason, the prospect of individual punishment will not usually be sufficient to cause potential perpetrators to refrain from acting. Even if the threat of punishment becomes part of the calculation about what course of action to follow, the limited enforcement potential and long delays of international criminal law are likely to diminish its salience. Connected to this question is the issue of who should be tried in international criminal proceedings. The principle in international criminal law is that those most responsible (the generals and political leaders) should be tried before ordinary soldiers who carry out the acts of atrocity. But in relation to those under command – ordinary soldiers – the distant threat of international prosecution, when balanced against the present threat of court martial and immediate punishment for not following orders, is unlikely to cause them to stay their hand.

One particular incident stands out among the many barbarities that occurred in Myanmar in 2016 and 2017. In February 2018, the bodies of ten Rohingya men (seven fishermen, a teacher of Islam, and two high school students) were discovered buried in a shallow grave near a village called Inn Din. Their hands were tied behind their backs and their bodies bore evidence of having been shot or stabbed to death. For several reasons, the incident caught the attention of the international media. One reason was that the murders were reported by two Reuters journalists who were later arrested and charged with breaching the *Official Secrets Act,* after being framed by the police. One of the policemen admitted to this in open court proceedings. Another reason is that a photo-graph was taken of the ten men immediately prior to their deaths. The men are seen kneeling, in a row, with their hands tied behind their backs. The photograph was dis-turbingly similar to the one that horrified the court in the Srebrenica case, where a similar number of Muslim men were photographed kneeling with their hands tied behind their backs, just prior to their execution.

One way of understanding the killings at Inn Din is that they were the ultimate consequence of the original military order to "clear" the area of Muslim terrorists: an order that was passed down the military chain of command to the 33rd Light Infantry Division and the 8th Security Police Battalion. The relevant soldiers and police under-stood this order to mean the removal and killing of Muslims who lived in the area: this understanding was not corrected by their superiors. On this reading, what happened at Inn Din was a crime of state; one that the architecture of international criminal law can

address. There are details of the event, however, that complicate this reading. Some months after the murders, the military confirmed that the killings had taken place and that those involved would be punished. The military said that the perpetrators were army officers and two Buddhist villagers. The villagers, it was reported, were brothers whose father, Maung Ni, had disappeared – believed killed. The soldiers invited the brothers to decapitate and slash the Rohingya prisoners with swords, before the soldiers finished off the job with bullets (Reuters, 2018). On this reading, what happened at Inn Din was more a crime of hate than a crime of state (Alvarez, 1999); one that the architecture of international criminal law is ill-suited to addressing.

If criminal processes and procedures at the international level are unlikely to change the behaviour of Myanmar's military leaders, and are also unlikely to change the mind-set and proclivities of those who operate at the lower levels, then they do not fulfil the most basic requirement of transitional justice – the prevention of further atrocities against civilian populations. This is not to say that they have no purpose at all. At a minimum, they satisfy the deep sense of many in the international community that in the face of such horror, there must be some response. Perhaps, they serve to comfort ethnic minorities in the North and West of Myanmar that what is happening is being recorded: history will not forget them. It is arguable that international criminal processes have a pedagogical function, signalling to decision-makers that certain responses to political problems are beyond the pale. The difficulty is that the UN has been sending these signals to decision-makers in Myanmar for a quarter of a century and there is limited evidence of behavioural change.

4. Conclusion: Towards 2020

The backdrop to Myanmar's transformation from military rule to a limited form of constitutional democracy in the period 2008–2018 was a complex, fragile politics of transition and cultural ambivalence about pursuing accountability for past wrongs. In the particular circumstances of Myanmar, the moral justification for deferring serious discussion about transitional justice was that it might not ultimately be beneficial to the people whose lives had been disrupted or destroyed by the perpetrators of violence. Key actors believed that transitional justice measures, if introduced too early and in circumstances of political uncertainty, would not serve the goals of rebuilding trust, increasing political stability, reconstructing the rule of law, or alleviating the social, economic, and psychological effects of long-term suffering and injustice. Faced with the dilemma of choosing between stability and justice, Myanmar's new democratic leaders chose stability.

The period from five to twenty years after transition is when post-authoritarian societies undergo the social and political reconstruction necessary to reconceptualise political morality after years of authoritarian rule. The transitional justice challenges for political actors in Myanmar, as the country approaches elections in 2020, remain significant. The obvious contradictions of the early transitionary period remain. Aung San Suu Kyi, for decades a staunch opponent of military rule and an icon of democracy, shares power with the military and occupies a position "above the President." Some

censorship laws have been abolished only to make way for new laws constraining freedom of speech and expression. Commitments to ending civil war are matched by increasing levels of conflict in some ethnic states. The rule of law remains in grave disrepair. Belief in the precepts of Buddhism, the basis upon which many Burmese accepted the argument for forgiveness rather than retribution, has not alleviated the personal suffering and physical hardship resulting from decades of oppression and conflict. The overall pattern is one of uncertainty and confusion and it is in these circumstances that extreme violence takes shape as a possible method of achieving a political goal. The country's post-2020 leaders will at some point have to address the structural causes of distrust and pessimism and implement measures that will prevent past atrocities from reoccurring. The title of the most recent report of ND-Burma is portentous – "You cannot ignore us" (ND-Burma, 2018).

Declaration of Conflicting Interests

Funding

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