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# Ethnofederalism and the accommodation of ethnic minorities in Burma: United They Stand

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# THESIS

**ETHNOFEDERALISM AND THE ACCOMMODATION OF ETHNIC MINORITIES IN BURMA: UNITED THEY STAND**

by

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June 2013

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Recent reform in Burma has challenged the idea that democratic institutions and the 2008 Burmese Constitution are an empty facade for an authoritarian military government. Burma's minorities, which have been in conflict with the national government since independence in 1948, remain skeptical of recent reforms and continue to call for a "return to Panglong," a 1947 agreement to provide autonomy and self-government for ethnic minority regions. Minority groups have consistently demanded federal institutions to protect their rights, and many scholars have advocated an ethnofederal accommodation of Burma's minorities. However, quasi-federal arrangements failed to accommodate ethnic demands during the country's first democratic period from 1947–62. To assess the possibility that recent reforms will be more successful, this thesis conducts a comparative study of institutional arrangements to protect minorities in the 1947 and 2008 constitutions. These arrangements are evaluated against the criteria for successful ethnofederal models, such as those offered by Alfred Stepan. Similarities between the initial democratic period and the current one do not inspire optimism, and evaluations using Stepan's criteria and variables further discredit the 2008 Constitution as the basis of a federal state. Peace between Burma's ethnicities does not completely rest upon the structures of government, but this thesis concludes that any such peace will not be a result of ethnofederalism based on the current Burmese Constitution.


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# ETHNOFEDERALISM AND THE ACCOMMODATION OF ETHNIC MINORITIES IN BURMA: UNITED THEY STAND

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Submitted in partial fulfillment of the
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# ABSTRACT

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# LIST OF ACRONYMS AND ABBREVIATIONS

| | |
|---|---|
| AFO | Anti-Fascist Organization |
| AFPFL | Anti-Fascist People's Freedom League |
| ALUF | Arakan Leftist Unity Front |
| ANC | Arakan National Congress |
| BIA | Burma Independence Army |
| BNA | Burma National Army |
| BSPP | Burma Socialist Programme Party |
| CinC | Commander in Chief of the Defense Force |
| CPB | Communist Party of Burma |
| KIA | Kachin Independence Army |
| KCO | Karen Central Organization |
| KMT | Kuomintang |
| KNU | Karen National Union |
| NDF | National Democratic Front |
| NLD | National League for Democracy |
| NUF | National Unification Front |
| NUP | National Unity Party |
| SEAC | Southeast Asia Command |
| SLORC | State Law and Order Restoration Council |
| SPDC | State Peace and Development Council |
| TNI | Transnational Institute |
| YMBA | Young Men's Buddhist Association |

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# ACKNOWLEDGMENTS

Southeast Asia was as mysterious to me in early 2012 as it was to the Western World in the early 1800s, an undefined region within my knowledge only eighteen months prior to the completion of this thesis. As a result, Burma, ethnic conflict and ethnofederalism were completely foreign concepts, and unlikely subjects of in-depth research. The professors at the Naval Postgraduate School (NPS) deserve immense credit and my sincere thanks for their enthusiastic teaching and committed encouragement that resulted in the interest and passion for the subject. Dr. Tristan Mabry and Dr. Michael Malley were instrumental in helping me define the thesis topic and later provided the honest, practical feedback necessary to help me complete the task. I have been awestruck by the time and attention these and other professors at NPS have devoted to me and my fellow students during my time here.

Several people never saw a word of this thesis until its completion, yet still deserve acknowledgement. Joe, Josh, Jonathan, and Blake have my eternal thanks for hearing my complaints, and prayerfully supporting me nonetheless. My wife and daughter were incredibly forgiving of my inefficient writing abilities that resulted in many nights of seclusion and incessant, "Daddy, you working on your paper?" queries. They are my best friends, and the encouragement they provided, particularly that which I received from my wonderful wife, April, was invaluable to fueling my persistence and optimism toward completion.

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# I. INTRODUCTION

## A. Major Research Question

In 2010, after nearly four decades of authoritarian rule, Burma's military rulers began to take dramatic and unexpected steps toward democracy. They adopted a new constitution, held elections, and allowed previously jailed opposition members—including Aung San Suu Kyi—to take part in politics. The United States and other Western countries, which had shunned and isolated the Burmese regime, warmly welcomed these reforms.

However, it appears that few steps have been taken to address the deep ethnic division between the country's Burman majority and its numerous minority groups. The 2008 Constitution provides autonomy, but it is essentially an empty shell, rendering regional legislatures powerless in comparison to the regional executives that remain centrally appointed. Since independence in 1948, the national government has frequently faced armed rebellions by minority groups located along the country's borders. Today, ceasefire agreements, rather than actual peace, still characterize most minority groups' relationships with the central government.[1] As a result, the government's authority in many regions remains limited. Reports of human rights abuses, violence, and even open conflict between the government and ethnic separatist groups continue, despite recent government pledges to curtail them.[2]

As recent events show, democratization alone is unlikely to accommodate the demands of Burma's minorities. The problem, as Donald Horowitz warns, is that "much of what passes for the usual democratic rules either does nothing about ethnic exclusion or actually fosters it."[3] The reason is that "majoritarian" institutions can allow ethnic majorities to democratically deny rights to minorities. Alfred Stepan provides an answer

1 Transnational Institute, *Prospects for Ethnic Peace and Political Participation in Burma/Myanmar*, (Amsterdam: Transnational Institute, July 8–9, 2012), 1.

2 United States Department of State, *2011 Human Rights Reports Burma, 2011*, http://www.state.gov/documents/organization/186475.pdf.

3 Donald L. Horowitz, "Democracy in Divided Societies," *Journal of Democracy 4*, no. 4 (1993): 28.

to this challenge, claiming the only way for multinational countries including Burma to become a democratic state is through "a workable federal system."[4]

So how are likely are Burma's democratic political institutions, which largely resemble federalism, to incorporate the country's minorities into a stable, consolidated democracy? To answer this question, this thesis will compare Burma's recently adopted political institutions to those in place during its previous period of democratic rule (1948-62) and to Stepan's model of ethnofederalism.

## B. Importance

As Khun Okker of the National Democratic Front (NDF) stated in 1996, "The issue of democracy is often put before ethnic nationality questions … it needs to come first."[5] Nearly twenty years later, the statement still rings true. The crowd gathered at the University of Yangon reaffirmed as much by interrupting and applauding U.S. President Barack Obama's remarks that, "No process of reform will succeed without national reconciliation."[6] Burma has been beset by ethnic conflict since its independence. The initial democratic government set up following WWII proved incapable of peacefully accommodating ethnic minorities, and subsequent military-dominated governments likewise could not unify it through force. These experiences show that the creation of a government in a multi-national state that is sovereign throughout its territory and responsive to its inhabitants depends on the development of institutions that can accommodate minority interests. Conversely, if Burma fails to develop such institutions, ethnic violence is likely to continue, democracy is unlikely to be consolidated, and the promise of Burma's recent reforms will not be achieved.

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4 Alfred C. Stepan, "Toward a New Comparative Politics of Federalism, Multinationalism, and Democracy: Beyond Rikerian Federalism," in *Federalism and Democracy in Latin America*, ed. Edward L. Gibson, (Baltimore: Johns Hopkins University Press, 2004): 75.

5 Martin Smith, "Burma at the Crossroads," *Burma Debate 3*, (Nov./Dec. 1996): 8.

6 U.S. President Barack Obama, "Remarks by President Obama at the University of Yangon," Rangoon, Burma (November 19, 2012), http://www.whitehouse.gov/the-press-office/2012/11/19/remarks-president-obama-university-yangon.

## C. Problems and Hypothesis

Decades of conflict have institutionalized ethnic conflict within Burma. As Mary Callahan and many other scholars describe it, ethnic minorities have come to live in an environment that is, at its best, "not quite peace,"[7]or "neither war nor peace."[8] The distrust and hatred resulting from years of fighting present an enormous challenge for any government, much less a government that represents the antagonist and perpetrator of the conflict in the first place. The challenge of governance in Burma is to establish a representative government that commands the respect and allegiance of not just the majority Burmans, but also the 135 ethnic minorities that constitute Burma's seven National Races (see Table 1). The vast majority of these distinct ethnicities are regionally concentrated and demand varied levels of autonomy and self-governance. (see Figure 1) Careful selection of processes and institutions will be necessary in order to accommodate the minorities and guarantee participation, rather than secession or open conflict in pursuit of independence.

| National Race | Ethnicities Included | 1983 Census | 2000 Estimate |
|---|---|---|---|
| Burman | 9 | 69.0 | 66.9 |
| Shan | 33 | 8.5 | 10.5 |
| Kayin (Karen) | 11 | 6.2 | 6.2 |
| Rakhine | 7 | 4.5 | 4.2 |
| Mon | 1 | 2.4 | 2.6 |
| Chin | 53 | 2.2 | 2.0 |
| Kachin | 12 | 1.4 | 1.4 |
| Kayah (Karenni) | 9 | 0.4 | 0.4 |

Table 1. Burma's National Races, Ethnicities, and Population Percentages[9]

7 Mary P. Callahan, *Political Authority in Burma's Ethnic Minority States: Devolution, Occupation, and Coexistence*, (Washington, DC: East-West Center, 2007).

8 Tom Kramer, *Neither War nor Peace: The Future of the Ceasefire Agreements in Burma*, Amsterdam: The Transnational Institute (July 2009), 1.

9 Than, Tin Maung Maung. "Dreams and Nightmares: State Building and Ethnic Conflict in Myanmar (Burma)." *Ethnic Conflicts in Southeast Asia* (2005): 67.

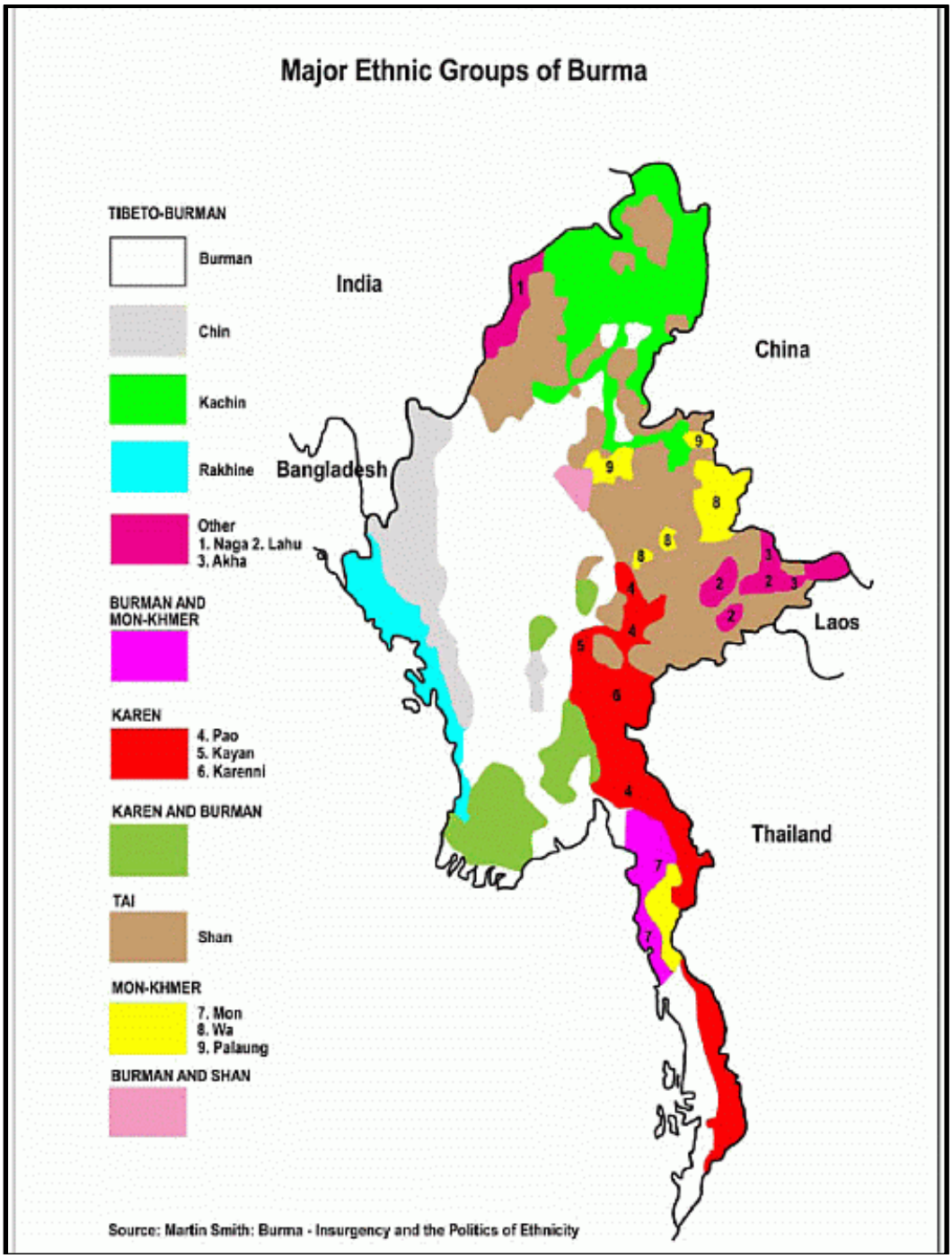


Figure 1. Ethnolinguistic Groups of Burma.[10]

10 Martin Smith, *Burma: Insurgency and the Politics of Ethnicity*, (Atlantic Highlands, N.J: Zed Books, 1991), Map 2.


Figure 2. Burma's Ethnic States and Ethnic Population Concentrations[11]

The atrocities and horrors of Burma's ethnic conflict are the very kind that has compelled scholars and politicians to conceptualize and implement government processes

11 Christians Concerned for Burma Homepage, accessed June 5, 2013, http://www.prayforburma.org/IDX/Images/Burma_Map_Sepia.jpg.

to avoid or eliminate them. Many different forms of democratic government have been suggested for the multi-ethnic state, probably none more so than federalism. Ugo Amoretti, in the introduction to *Federalism and Territorial Cleavages*, calls federalism, "the most important of these hypotheses."[12] Drawing on the work of leading scholars of federalism William Riker, Robert Dahl, and Arend Lijphart, Amoretti defines federalism as "an institutionalized division of power between a central government and a set of constituent governments—variously denominated as states, regions, provinces, Länder, or cantons—in which each level of government has the power to make final decisions in some policy areas but cannot unilaterally modify the federal structure of the state."[13] He claims bicameralism, independent justice or arbitration, and some version of "antimajoritarian" institutions as integral parts of the central government in federalism.[14]

Federalism, and specifically ethnofederalism, by design is intended to combine a limited version of self-rule for minorities within a larger political unit. By doing so, it offers a semblance of self-determination, and can satisfy demands for ethnic autonomy. By surrendering power to the provincial and local region, closer representative ties between government and populace are supposed to result. This concept has been at the heart of Burmese ethnic politics since Aung San, the father of modern Burma, met with ethnic leaders in the town of Panglong in 1947. As a result of this precedent, the concepts of autonomy and federalism, rather than secessionism, have populated ethnic demands since independence, and those cries continue to this day. Consequently, no discussion of democracy or ethnic politics in Burma is complete without federalism, and if federalism is a proposed solution for multinational or multi-ethnic countries, how much greater are its prospects in a context when it is the preferred and requested solution by ethnic minorities to the ethnic problem?

Federalism offers the basic construct, but as previously mentioned, there is a great deal of variance within the model for "antimajoritarian" institutions that Stepan refers to

12 Ugo M. Amoretti, *Federalism and Territorial Cleavages*, ed. Ugo M. Amoretti and Nancy Bermeo (Baltimore: Johns Hopkins University Press, 2004), 9.

13 Ibid., 9.

14 Ibid., 9–11.

as "demos-constraining."[15] The point here is simple enough: altering the details of a federal system can amplify or temper the majority constraining effects of federalism. Simply importing a common federalist structure, such as that of the U.S., is not sufficient to combat the dangers of democracy in multinational countries. It would be similar to a doctor prescribing treatment for a patient without first inquiring as the medical history or allergic reactions that may endanger the patient. Rash territorial accommodation in a multinational country can be just as disastrous. The "tyranny of the majority," in this case the Burman majority, could be constrained by federal construction, but the extent to which it accomplishes that aim depends greatly on electoral processes, constitutional provisions and consociational arrangements.[16]

Burmese minorities have historically rejected many national institutions simply due to a lack of representation within those institutions. This was true of the initial rebellions against the Burmese state following independence. "Forces unwilling to accept their exclusion from state power in 1948 launched the civil war in an attempt to achieve political power."[17] Within a few years, the state was facing multiple ethnic rebellions, despite constitutional provisions for those ethnic groups' autonomy. The point here is both historically and currently relevant: while federalism may guarantee the autonomy that ethnic minorities desire, allegiance and participation in the central government remains crucial to democratic stability in Burma.

Federalism only becomes a viable solution to Burma's ethnic division if it is combined with constitutionally guaranteed inclusion and influence in the central government. This correlates with Stepan's assertion that federalism can only exist under the auspices of a constitutional democracy. Stepan shares Dahl's federal definition of federalism, and in doing so mandates the connection to democracy. "Only a system that is a democracy," he claims, "can build the autonomous constitutional, legislative, and

15 Stepan, "Toward a New Comparative Politics of Federalism," 46–49.

16 Amoretti, *Federalism and Territorial Cleavages*, 10.

17 Robert H. Taylor, *The State in Burma*, (Honolulu: University of Hawaii Press, 1987), 228.

judicial systems necessary to meet the Dahlian requirements for a federation."[18] It is not enough that ethnicities are simply given their own territory and some type of autonomy within it. Instead, Dahlian standards of democracy (effective participation, voting equality, enlightened understanding, control of the agenda, and inclusiveness of adults) remain crucial to the design of a federal system. The accommodation of Burma's minorities depends not only on an ethnofederal structure, but also on a democracy specifically inclusive of minorities to support it.

### D. Literature Review

Federalism's roots are often traced back to the U.S. Constitution and the Federalist Papers written by American founding fathers Alexander Hamilton, James Madison, and John Jay. Indeed, one of the most well-known concepts concerning federalism comes from *Federalist 10* and James Madison's warnings, inspired by Tocqueville and Adams, in which he warned against the possible tyranny of the majority within democracy. Stepan, as noted above, acknowledges this influence in what he calls "coming together" societies, such as the United States, that lack territorially concentrated ethnic minorities, and have a willingness to pool resources and sovereignty. Stepan, however, expands the model to point out federalism's alternate capacity to "hold-together" an ethnically fractured country, thus drawing the important connection between federalism, and ethnic nationalism. The connection of federalism and nationalism is, he argues, emphatically important for the survival of democracy in multi-ethnic countries: "Every single longstanding democracy in a multilingual and multinational polity is a federal state."[19]

Democratic institutions can further manipulate majoritarian influence on a scale between "demos-enabling" and "demos-constraining." This description is particularly useful in presenting the impact institutional intricacies can have *within* a federal system to alter the influence of a majority. Federalism itself has this effect, but as Stepan puts it:

18 Stepan, "Toward a New Comparative Politics of Federalism," 32.

19 Alfred C. Stepan, "Federalism and Democracy: Beyond the U.S. Model," 19.

"democratic federations can and do vary immensely in the degree to which they are "demos constraining."[20] Stepan emphasizes distinct choices and variables within the structure of federalism that can greatly alter the liberty, equality, and efficacy that democratic government can provide.[21]

Nancy Bermeo, a contributor to and co-editor with Ugo Amoretti of the previously mentioned book on federalism, further examined relationship between federalism and ethnic violence in a 2002 essay. Drawing on Stepan's ideas as well as data presented by Ted Robert Gurr in *Minorities at Risk*, she emphasized that federal systems are more successful at preventing or mitigating armed rebellion, political and economic discrimination, as well as political, economic, and cultural grievances.[22] Her advocacy of ethnofederalism comes with one caution, however: imposed federal systems, either by a third party or by a non-democratic government lead to failure of the federal structure or of the government all together. Her warnings draw our attention to the undemocratic way in which Burma's constitution was drafted and institutionalized.

Not all of the study and literature surrounding federalism's application to multi-ethnic countries is as optimistic. Philip G. Roeder's paper on *Ethnofederalism and the Mismanagement of Nationalism*, asserts that separations between communities and nations within the state encourage conflict and discourage attachment to the state.[23] Jack Snyder agrees, and backs up his opinion by outlining the poor historical performance of all ethnofederal states. Snyder also argues that pre-conditions, such as an established middle class and active civil society, are more important than the institutional choices for ultimately stabilizing democracy.[24] Such pre-conditions are rarely choices available to multi-national, divided societies such as Burma. Additionally, while there are many

20 Alfred C. Stepan, "Toward a New Comparative Politics of Federalism," 49.

21 Ibid., 44–45, 52–53.

22 Nancy Gina Bermeo,. "The Import of Institutions." *Journal of Democracy 13*, no. 2 (2002): 96–110.

23 Philip G. Roeder, "Ethnofederalism and the Mismanagement of Conflicting Nationalisms." *Regional and Federal Studies 19*, no. 2 (2009): 203–219.

24 Jack L. Snyder, *From Voting to Violence: Democratization and Nationalist Conflict*. (New York: Norton, 2000).

examples of failed democracy and federalism, the focus should not be the disappointments, but instead, as Stepan asserts, upon the success stories and the lessons that can be drawn from them.[25] Authors such as John McGarry and Brendan O'Leary offer a nuanced criticism of federalism, ultimately concluding that voluntary participation in a multi-state federation that includes a dominant ethnic majority and reinforced by consociational practices stands the best chance of success.[26]

Apart from general literature focused on the institutions themselves, Burma's long history, which includes initial attempts at democracy in the 1940s following WWII and British decolonization, has provided the opportunity for evaluation and critique of Burma's institutions, or those that might be applied to it. Burma's tumultuous past can be divided into a few distinct eras. The first, from 1948 until 1962, was the initial Burmese attempt at democracy, as well as federalism, though not specifically by that name. In only a short few years, civil war engulfed Burma, due to both communist insurgency and armed ethnic groups. The invasion of the Kuomintang (KMT), retreating from China, further added to the chaos. During this time, however, multi-party elections were held at four-year intervals in 1952, 1956, and 1960, and the constitution provided for an incomplete but distinctly federal construction, in keeping with the Panglong agreement. Toward the end of that initial democratic period, Josef Silverstein, a long-time Burma scholar, questioned the effectiveness of that federal model. Silverstein argued in 1959 that while the structure was properly in place, certain policies, namely "forced Burmanization," which equated to forced assimilation, countered the accommodative structure of the government.[27]

The coup of 1962 by General Ne Win ended the federal democratic experiment in Burma. The constitution was abolished and a unitary state was created under military rule. The Burmese military, known officially as *tatmawdaw*, fronted its control of the

25 Stepan, "Federalism and Democracy: Beyond the U.S. Model," 19.

26 John McGarry and Brendan O'Leary. "Must Pluri-national Federations Fail?" *Ethnopolitics 8*, no. 1 (2009): 25.

27 Josef Silverstein, "The Federal Dilemma in Burma." *Far Eastern Survey* (1959): 97–105, quote 105.

government with a political party, the Burma Socialist Programme Party (BSPP), a trend that continues to this day. Much of the literature from the next quarter century focused upon the atrocities of civil war, and the plights of minorities within the government. Robert H. Taylor's *The State in Burma*, serves as a foundational work for the development of the state as far back as pre-colonial history, but is especially useful in its focus on the state during the democratic and military junta eras.

Several other authoritative works focus on the ethnic conflict during these periods, most notably Mary Callahan's *Making Enemies, War and State Building in Burma,* and Martin Smith's *Burma: Insurgency and the Politics of Ethnicity*. These books are vital to understanding the magnitude of the division and distrust built up through years of conflict and brutal authoritative rule. Callahan describes brutality of the violence: "BIA (Burma Independence Army) units executed Karen men, women, and children and arrested whole villages simply for being Karen,"[28] Similarly, Smith describes the military's counterinsurgency plan called the "Four Cuts" campaign, which sought to starve the rebellions from food, funds, intelligence, and recruits.[29] Ethnically focused publications, such as those produced by the Karen Human Rights Group, focused upon the human rights abuses suffered by minorities at the hands of the *tatmawdaw*. Accounts of murder, torture, rape, pillaging, and forced labor understandably brought world-wide condemnation, and resulted in the longstanding economic sanctions and isolation.

Burmese democratic activists perceived potential cracks in the military's hold on government when Ne Win stepped down in 1988, inspiring popular political demonstrations and the rise of Aung San Suu Kyi, the daughter of Aung San, modern Burma's founding father, as a democracy activist and leading opposition figure against the government. The protests were suppressed, and Suu Kyi was imprisoned, quickly crushing both domestic and international optimism. The changes in Burma did not come from popular unrest, but from within the government itself, as a new standard

28 Callahan, *Making Enemies*, 75.

29 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 258–62.

relationship emerged between the government and minority opposition groups. Years of fighting had not successfully unified the country, nor had it consolidated sovereignty for the military government to the extent of Burmese borders, but it had placed the ethnic militias in a state of "battle fatigue" and established the *tatmawdaw* as the superior armed force within Burma. This dynamic, coupled with democratic unrest from within the Burman majority, encouraged the cessation of conflict, and the result was that ceasefires were negotiated with the majority of minorities. A booklet published by Zaw Oo and Win Min in 2007 thoroughly examines those ceasefires, and includes valuable perspectives from the minority groups.[30]

Ceasefires became the new normal in Burma, but never progressed all the way to actual peace, and led observers to use the previously mentioned phrases, "not quite peace," and "neither war nor peace." In 2003, however, the government announced "seven future policies of the State," which would later become known as the Seven Step Roadmap to Democracy. The program was met with worldwide skepticism and even outright dismissal as design to "entrench *tatmawdaw* power behind a façade of democracy."[31] While some optimism might have surfaced following the surprisingly free and fair elections of 2008, in which the primary opposition, the National League for Democracy (NLD), won a stunning victory, the hope of democratic activists was dashed as the government reduced the assembly to a constitutional drafting and recommendation council. The 2008 referendum on the proposed constitution, which was written by the government with overt efforts to entrench *tatmawdaw* power within it, passed with overtly rigged electoral processes, leading Ian Holliday to call it "sham democracy."[32] Likewise, both Steinberg and Smith, writing in the aftermath of the 2010 elections,

30 Zaw Oo and Win Min, *Assessing Burma's Ceasefire Accords*, (Singapore: Washington, DC: East-West Center, 2007), 53.

31 Ian Holliday, "Voting and Violence in Myanmar: Nation Building for a Transition to Democracy," *Asian Survey 47*, no. 6 (Nov/Dec 2006): 1045.

32 Ibid., 1045.

claimed that the elections and the process were unlikely to change the balance of power that was so heavily tilted in the *tatmawdaw's* favor.[33]

Pessimistic attitudes aside, the commitment to a constitution, flawed or not, once again encouraged discourse domestically and internationally about the prospects for democratization and institutions that would facilitate it. For example, the *Legal Issues on Burma Journal* published a special issue that focused on the prospects of federalism and constitutional democracy. Silverstein took the opportunity forty-three years later to once again explore the possibilities of a federal government in Burma. His conclusion is optimistic as to federalism's potential, citing minority groups' desire for it since Panglong, but he is also decidedly pessimistic about the government's commitment to peace and political competition necessary to implement it.[34]

At about the same time, Stepan joined the debate about political reform in Burma. In a co-authored article entitled, "How Burma Could Democratize," Stepan and his colleagues critiqued proposals made by both the National Convention, controlled by the military-backed government, and by the National Council of the Union of Burma (NCUB), which represented several ethnic minorities. Like Silverstein, these authors saw great prospects for ethnofederalism, given the minorities' affection for the principle. But they were also encouraged to see that the government had incorporated federalism into its own constitutional drafts as well. Ultimately, however the same caution emerges here that is included in Stepan's general works: "If Burma is to be a coherent democracy, it will need institutions that work to foster such a sense of partnership and mutual confidence among Burmans and non-Burmans alike."[35]

These views about federalism reflected widespread concern about continuing conflict between minorities and the national government. Zaw Oo and Win Min's book

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33 David I. Steinberg, "Myanmar in 2010," 173; Martin Smith, "Ethnic Politics in Myanmar: A Year of Tension and Anticipation*," Southeast Asian Affairs* (2010): 214.

34 Josef Silverstein, "Federalism as a Solution to the Ethnic Problem in Burma," Legal Issues on Burma Journal 11, (2002).

35 Andrew Reynolds, Alfred C. Stepan, Zaw Oo, and Stephen I. Levine. "How Burma Could Democratize." *Journal of Democracy 12*, no. 4 (2001): 107–08.

2007 publication on Burma's ceasefires was accompanied by new works from Smith (2007), Callahan (2007), and Ashley South (2008). Callahan focused her booklet entitled *Political Authority in Burma's Ethnic Minority States: Devolution, Occupation, and Coexistence* upon the varying levels of state influence throughout the minority regions. She describes some regions as almost completely autonomous, with minority based schools and infrastructure, while others remain conflict ridden or under direct oppressive *tatmawdaw* control.

In *State of Strife: The Dynamics of Ethnic Conflict in Burma*, Smith presents Burma's conflict and ceasefire history as a "cycle of conflict," trapping Burma in interminable waves of violence that can only be escaped through specific reforms and changes that meet the regional political demands within Burma, and guarantee political and human rights. Ashley South examines Burma's potential for a "bottom up" democratic transition in *Civil Society in Burma: The Development of Democracy amidst Conflict*, and ultimately concludes that while grassroots democracy is certainly present, the government's manipulation of conflict and ceasefires prevents popular influence and forces the prospects for democracy back on the government itself.

The elections of 2010 were widely viewed as neither free nor fair. Aung San Suu Kyi and her opposition party, the NLD, were prevented from participating by the government, and the military's political party, the State Peace and Development Council (SPDC) claimed an emphatic victory. While the exclusion of the NLD drew worldwide protest, many scholars were attracted to the participation of Burma's minorities. Silverstein, Smith, and Tin Maung Maung Than all recognized the high ethnic participation in the absence of the NLD. The Transnational Institute (TNI) in the Netherlands focused on this ethnic participation, noting that "ethnic parties fared better than other opposition parties," and representation in four of the ethnic state legislatures crossed a twenty five percent threshold, thereby providing additional powers and political influence. It emphasizes that mechanically, the participation of ethnicities did little to

counter the military and SPDC dominance, but that the presence and participation is an important precedence in contrast to the preceding decades of violence and opposition.[36]

The prior history and literature associated with it leads to the current-day reaction to reforms and political change. The by-elections in 2012 in which Aung San Suu Kyi and her party members won 43 of the 45 contested seats were for the most part free and fair, and suggested a genuine democratic transition might actually be underway. This election, along with liberal political and economic reforms, has many hopeful of democratic consolidation even in light of the 2008 constitution's democratic shortcomings. Observers are just starting to come to grasp with the meaning of these recent developments, but publications from the TNI and the International Crisis Group (ICG) have emphasized the absence of peace between ethnic minorities and the national government. In particular, they have called attention to the renewed conflict between the military and the Kachin Independence Army (KIA) and the continued expulsion of Muslim Rohingya in the Southwest. Additionally, the TNI emphasizes a growing fear of the 2014 census and 2015 election as opportunities for a Burman majority to empower itself through democracy.[37]

Recent attention to federalism has been overshadowed by a focus on political liberalization and human rights. The impending census and election will attract additional and well-deserved attention, but the structure of the government may well decide the potential for democratic consolidation that accommodates and includes Burma's minorities. Burma's minorities have requested a return to the "spirit of Panglong" for years. They are effectively calling for ethnofederalism, and the potential behind that request prompts this thesis.

## E. Methods and Sources

This thesis will examine the political institutions adopted in Burma during two different eras and assess how closely they match the ideal institutions of democratic

36 Transnational Institute, *A Changing Ethnic Landscape: Analysis of Burma's 2010 Polls, Burma Policy Briefing No. 4* (Amsterdam: Transnational Institute, December 2010), 5.

37 Transnational Institute, *Prospects for Ethnic Peace*, 2.

ethnofederalism. In addition, it will examine the failure of those institutions during the earlier era (1948-62), and attempt to assess the possibility that recently adopted institutions will succeed.

The country's pre-colonial and colonial history is rife with ethnic relationship precedents. Those relationships which helped form the distinct identities of Burma's ethnicities and encouraged federal choices upon independence will be reviewed. The initial democracy period following independence in 1948 was largely federalist in structure, yet proved incapable of unifying the country and preventing ethnic conflict. The initial agreement at Panglong, the constitution of 1947, and the subsequent fragmenting of the democratic state will serve as a historical case study to which the principles and structures of contemporary ethnofederalism can be compared. That comparison will allow us to draw some conclusions regarding the practicality of federalism in Burma and the complete or incomplete nature of ethnofederalism in that constitution and government.

Similarly, the 2008 constitution, which defines the current Burmese government practices and structures, will be put to the ethnofederal test. Its structure and provisions for ethnic autonomy will be compared against the historical example of the previous era and contemporary literature on ethnofederalism. These two cases will provide the background for understanding Burma's ethnic divisions, as well as ethnofederalism's prospects and potential for solving them.

In addition to the sources listed in the literature review, this thesis will use regional archived news media, including but not limited to *The Irrawaddy*, *Mizzima*, *The Democratic Voice of Burma*, and *The Singapore Straits Times* to obtain the quotes and perspectives of ethnic minority groups. Additionally, the state-controlled *New Light of Myanmar* will serve as a source of information about government programs and propaganda. An English translation of the 1947 and 2008 constitutions in addition to several other archived primary sources were drawn from the Online Burma Library (www.burmalibrary.org).

## F. Thesis overview

This chapter has described the main research question, problem, and hypothesis, and has reviewed the main literature on ethnofederalism and Burmese politics. Chapter II will examine Burma's pre-colonial and colonial history, focusing on the origins of the country's deep ethnic differences, and on the emergence of its main political institutions. Chapter III will be a case study of the initial democratic period of Burma beginning with an analysis of the 1947 constitution and meetings at Panglong, and concluding with the collapse of democratic federalism in the coup d'état of 1962. Chapter IV will similarly study the 2008 constitution and the contemporary government structure of Burma. It will follow the outline of the previous chapter and will identify potential shortcomings in the ethnofederal structure of the Burmese government through comparisons to the previous period and to ideal ethnofederal institutions as defined in the literature reviewed above. The fifth and final chapter will draw conclusions and implications from the findings from the case studies.

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# II. ETHNIC RELATIONSHIPS IN BURMA'S PAST

## A. Introduction

Burma's ethnicities were forced to interact long before the Constitution of 1947. The history of those relationships is not explicitly referred to within the constitution, but they constitute the basis on which the institutional decisions contained within it were made. Even before the colonial era, Burma's ethnicities were engaged in a relationship in which an ethnically Burman central government maintained sovereignty throughout much of modern day Burma. The Burman empires directly governed and managed central Burma but interfered little with the governance and administration of its peripheral subjects. The British colonial era and Japanese occupation would reinforce the divergent depth of governance between center and periphery, while enmeshing them with modern political structures that would influence governance decisions made in the attempt to unify the country under an independent Burmese government. This chapter will highlight those relationships, illustrating the historical coexistence of a strong central government surrounded by regions that are ethnically different and politically autonomous.

European imperialism receives well deserved blame in the failing and floundering states that resulted from former colonies. But while British-colonized Burma is no exception to this phenomenon, it is short sighted to limit oneself to the colonial history of Burma in the search for the patterns of cooperation and conflict in Burma's ethnic past. Nation states may have been a new concept, imported by European imperialism into Southeast Asia, but ethnically homogenous kingdoms and communities were forced to interact long before the British arrived. Therefore, even such a contemporary idea as federalism cannot ignore pre-colonial ethnic relationships in its assessment of influential historical relationships and interaction. Both the pre-colonial and British-colonial era presented here demonstrate the long and established history of ethnic division and devolved authority contributing to the implementation of federalist principles within Burma.

## B. Ethnicity, Core and Tributary: The Pre-Colonial Relationships

Pre-colonial imperialism within Burma presents a valuable understanding of the governmental structures and relationships of the dominant Burman kingdoms and the ethnic minorities surrounding it. This section focuses upon pre-colonial Burma, focusing on the three major Burman empires, the Pagan, Konbaung, and Toungoo. While the interaction between these kingdoms and their peripheral subjects was not federal, there are characteristics of the relationship that justify and inspire the federal desires of Burma's minorities in the present day. Simply put, Burma's periphery became accustomed to a strong and sovereign central Burman government that demanded allegiance and monetary dues, but interfered little with the culture, language or administration of their people. Conversely, the Burman center came to enjoy unquestioned dominance throughout Burma with a dependence on the taxes and remittances of its peripheral subject. As a result, cultural and administrative autonomy for Burma's minorities has pre-colonial roots.

Prior to the British arrival in 1825, Burma was, as Taylor describes it, "patrimonial."[38] Beginning with the kingdom of Pagan in AD 849 and ending with the Konbaung dynasty that ultimately succumbed to British conquest, Burma was consistently characterized by central Burman dominance, which compelled tribute and allegiance from its neighboring ethnicities, communities, and territories. The scope of that influence depended not upon borders but upon the strength of the central kingdom in comparison with the societies that surrounded it. At its height of power, the king's influence was great enough to sack the Siam capital Ayutthaya nearly 1,000 miles away, but at its depths it would struggle to maintain control of lands less than 150 miles from the capital, or give way to a new dynasty altogether.[39] Extensive bureaucratic institutions were impractical given the dynamic nature of the dynasties' influence. Instead, the king preferred to appoint officials to oversee the remittance of tribute back to the capital, and maintained a limited influence and devolved power relationship.

38 Taylor, *The State in Burma*, 15.

39 Ibid., 21–22


Figure 3. The Extents of the Toungoo Empire in 1580 (From *Wikipedia*, "Burma")

The Pagan, Konbaung, and Toungoo dynasties similarly organized their kingdoms into territorial categories that defined each area's relationship to the state. There were slight variances between the dynasties, but each dynasty similarly had a power and influence that was administratively invasive locally, but decreased in influence with increased distance from the capitol. The basis for power was built upon the local Burman population, and from that base expanded outward to different degrees upon the

neighboring villages, communities and ethnic homelands that included the Shan, Kachin, Karenni[40], Karen, and Chin.[41]

The center, described by Taylor as the "nuclear zone," was under direct rule from the king and served as his primary source of wealth, food, and labor. Beyond this nucleus lay the "dependent provinces," where the *myo-wun*, the bureaucratic officials appointed by the king, and represented his interests in those provinces. Further still were the tributaries of which Taylor's description is particularly useful: Here immediate authority was exercised by hereditary rulers from a variety of cultural and ethnic backgrounds. The relationship between the kingdom and the tributaries could just as well be characterized as an ethnic interaction as much as a regional one. The people living in the periphery were not compelled or encouraged to identify with the core, so they remained tied to their local tribes and villages that would become the base of Burmese ethnicities. The ethnic rulers, Shan *Sawbwas*, Kachin *Duwas*, Karenni *Sawbwas*, Karen and Chin chiefs, etc., paid allegiance to the central court through tribute missions, marriage alliances, military forces, and similar non-permanent, non-bureaucratic displays of obligation. As long as these tributaries posed no serious threat to the central state, kings allowed them to conduct their affairs undisturbed."[42] Pagan and Toungoo kings alike appointed their own representatives to oversee the tributary process and ensure the flow of money back to the kingdom, but they left village chiefs in charge of populace and resources alike. In reality, the centrally appointed officials were little more than middlemen, who as Silverstien points out, were often "inferior to the chieftains."[43] The people continued to exist and identify themselves as separate from the central government.

The local authority, often referred to as a chief or *Sawbwa*, was the authoritative voice in his village and region. Sir Charles Crosthwaite, the Chief Commissioner of the

40 The Karenni people were later referred to as the Kayeh in a 1951 Amendment to the 1947 Constitution of the Union of Burma. For the purpose of clarity, only the name, Karenni, will be used in this thesis.

41 Taylor, *The State in Burma*, 22, 33.

42 Ibid., 22.

43 Josef Silverstein, *Burma: Military Rule and the Politics of Stagnation*, Ithaca: Cornell University Press, 1977, 7; Taylor, *The State in Burma*, 27.

British Crown Colony of Burma from 1887–1890, described the Shan *Sawbwa* exercising his authority under the Konbuang kingdom as having "the power of life and death, and so far as his subjects were concerned, [he] wielded absolute authority unfettered by any rule stronger than custom."[44] From Crosthwaite's observance, "the Burma Government did not scruple to interfere with the *Sawbwa*." The Burmese king had neither the resources, nor a perceived benefit from increased meddling in the local politics of his ethnic neighbors. Local, ethnic-specific customs still governed the administration of each community and region, and in general, life in the tributaries was normally, "avoidance of the state, not appeal to it."[45]

The relationship that existed between the dominant center and the peripheral communities is worth emphasizing. The monarch commanded tribute and acknowledgement from areas that fell under his influence, but he demanded and received little else. Central dominance did not interfere culturally, administratively, or judicially. While center appointed officials held official positions in the tributaries, they had little tangible power. The true governance of each community and ethnic population remained in the hands of the local ethnic chiefs. The minorities in Burma were accustomed to a political relationship that had a high degree of autonomy, yet willingly sacrificed sovereignty to a strong unchallenged central authority.

## C. British Colonialism

### 1. The Institutionalized Divergence of Burma Proper and the Frontier Areas

The description of pre-colonial Burma is not intended to mask the sweeping social and political changes that came about as a result of British. While initial British interest in Burma resulted from security concerns on the border of the invaluable Indian colony, the final Anglo-Burmese war in 1885 conclusively ended the rule of the Burman monarch in Burma, and established the region as another source of wealth and resource extraction

44 Sir Charles Haukes Todd Crosthwaite, *The Pacification of Burma*, (London: Frank Cass and Co., 1912), 134–36.

45 Taylor, *The State in Burma*, 53, 38, quote on 38.

for the British colonial empire. In the years that followed, British rule institutionalized that which the Burman kings had effectively created. This section will illustrate the continued dichotomy between the now British dominated center and the ethnic minority populated periphery. The administrative and cultural autonomy of the periphery will not only be sustained by the British, but institutionalized.

British conquest had several effects on Burma. While introducing a foreign power as the new sovereign ruler over the territory, it delineated static and permanent boundaries, which created an entirely new entity and identity for many within its borders. Through the use of a force larger and more technologically advanced than previously seen, Burma was pacified and unified, including areas, specifically in the western Arakan region, that had not previously been under Myanmar kings' influence.[46] Ethnic populations such as the Arakanese, which had never submitted to a Burman authority, and had little cultural or linguistically similarities with the Burman people, were now technically and permanently Burmese.

British conquest also brought about typical colonial aspects of governance. The colonial state was as Taylor describes it, "artificial," due to the emphasis the freedom of trade, and the generation of wealth as primary aims. Freedom of the marketplace was also considered altruistic, as there was a modernization side to British extraction, and the belief that replacing the previous economy and social order improved the lives of their colonial subjects, rather an disrupting them. Despite these beliefs, the welfare of the Burmese populace was insignificant in comparison to the importance of wealth extraction and the security necessary to facilitate it. What was "good" for the Burmese was decided primarily without Burmese input, and often decided outside its borders in neighboring India. The average Burmese resident initially had little influence or participation with the colonial government.[47]

46 Norman G. Owen, *The Emergence of Modern Southeast Asia*, (Honolulu: University of Hawai'i Press, 2005), 78.

47 Taylor, *The State in Burma*, 68–69.

In terms of governance, the British had the power and resources to push their influence throughout the territory in ways the previous Burman dynasties could not. As a result, there was a capacity to become more centralized and organized than ever before. This capacity primarily manifested itself within the core region, employing great numbers of imported Indian civil servants in the effort to bureaucratize and administer the agriculturally rich center. The same cannot be said of the administrative zones, which the British kept administratively unchanged. Sir Charles Haukes Todd Crosthwaite, the Chief Commissioner of the British Crown Colony of Burma from March of 1887 to December of 1890, described the system that was run by the Toungoo dynasty as honestly and fairly done. "It was not a bad system on the whole, and it was in its incidence probably just as local taxation is in Great Britain."[48] Given this viewpoint, it is hardly surprising that the British simply adopted the Burman imperialist model. Rather than introducing the instability of new relationships and committing the increased resources necessary to enforce them, the British chose to renew the previous arrangements.

The British also chose to retain the territorial difference between the core, which it called "Burma Proper" and was predominantly populated by the Burmans, and the "Frontier," that had previously been the ethnically diverse tributary states. The Burmese Frontier was not expected, nor required to participate in a larger Burmese government. On the contrary, the surrounding tributary states remained "quasi-independent."[49] The Shan, Karenni, and Kachin all enjoyed a continuance of the monarchical arrangement, with the Karenni "retaining nominal sovereignty until Burma's independence in 1948."[50] In effect, "The British raj merely replaced the king of Burma as the suzerain to whom the chiefs paid allegiance through tribute."[51]

Crosthwaite's memoirs explicitly describe the colonial-peripheral relationship, predominantly through the interactions with the Shan *Sawbwas*, where Taylor asserts the

48 Crosthwaite, *The Pacification of Burma*, 5.

49 Ibid., 21.

50 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 42.

51 Taylor, *The State in Burma*, 79–80.

most advanced Burmese political structures were in place.[52] Crosthwaite recalls: "I pointed out to them that they, the Shan chiefs, had duties and obligations on their side: primarily the good government of their peoples, the impartial administration of justice, the development of their territories by roads, and the improvement of agriculture and trade. Lastly, I explained to them that they could not be excused from paying tribute, the amount of which would be adjusted to their ability. The British Government was maintaining garrisons for their benefit, and had undertaken costly expenditures for their defense… It was necessary to ask them to remember their obligations."[53]

The devolved power relationship now also came with legal formalities. The Shan *Sawbwas* "each had received a patent confirming him in his rights and position as head of his State." It was mutually beneficial. By leaving the local authorities intact, the British maintained order by the most frugal methods, while the chiefs sacrificed ultimate sovereignty for localized influence. From the *Sawbwas* perspective, the only change was the benefactor. In most cases, the initial required remittance amount was based solely upon the previous arrangement with the pre-colonial king.[54] The same was true in the Karenni region, and while the rest of the Frontier areas lagged behind, notably including a brief resistance that took the British five years to ultimately pacify, they did not greatly diverge from the model.[55]

Understanding British objectives as a colonial ruler facilitates an understanding of their actions. British governors desired law and order throughout the country to facilitate extraction of resources and wealth from those areas that were profitable. To achieve these ends, the British treated each region differently. In the center, it was necessary to completely remove Burman authority and establish a strong bureaucratic organization populated by imported Indian labor. Traditional elements of the colonial state focused on resource and wealth extraction dominated the agriculturally rich lowlands that comprised

52 Ibid., 92.

53 Crosthwaite, *The Pacification of Burma*, 124–125.

54 Ibid., 23.

55 Taylor, *The State in Burma*, 160.

most of Burma Proper.[56] In the 1940s, years to define a time frame are plural not possessive. roughly fifty years after deposing the Burman king, the British bureaucracy for the Frontier Areas had only forty employees, emphasizing the lack of colonial interest in interfering in the government and administration of those regions.[57]

Even as diarchy introduced political participation within Burma Proper, the Frontier Areas were further removed from the potential impact that the Burman majority might have through participation in government. The British saw it necessary, to establish a Shan States Federation in order to protect the *Sawbwas,* both fiscally and politically, from the effects of a more democratic government and of Burman nationalism."[58] The Kachin Hills Regulation of 1895, the Chin Hills Regulation of 1896, and the 1919 Act of Federated Shan States are all results of this effort, and all ensured continued autonomy, not from British rule, but from the central colonial state that was forming in Burma Proper.[59] In this way, the government relationships of the Frontier Areas further diverged from that of the center. Burma Proper practiced discriminatory and partial representative government, at the same time that the Frontier Areas continued to enjoy autonomy.[60]

Martin Smith emphasizes that whatever division already existed between the people of the plains and hills in Burma was exacerbated by British colonial policy, further separating the center Ministerial Area of Burma Proper from the Frontier Areas. Judicial structures evolved quickly in the center, rapidly becoming an important part of the colonial state bureaucratic apparatus, but this was not the case in the frontier areas, where simplified British law was encouraged, but the responsibility still remained at the traditional authorities' discretion.[61] All told, British colonialism introduced little change for the peripheral minorities. The benefactor was different, but the cultural and administrative autonomy remained.

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56 Ibid., 111–12.

57 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 42.

58 Taylor, *The State in Burma*, 96.

59 Lian H. Sakhong, "Federalism, Constitution Making and State Building in Burma," ed. David C. Williams and Sakhong, "Designing Federalism in Burma," UNLD Press, Chiang Mai, Thailand:2005, 11.

60 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 42–43, Taylor, *The State in Burma*, 121.

61 Taylor, *The State in Burma*, 103–105.

### 2. Ethnic Relationships in Burma Proper

British colonialism clearly had a larger impact that simply institutionalizing the historical autonomy of peripheral Burma. It greatly changed the relationships between the ethnicities themselves, especially within Burma Proper. The Burman center no longer held sway over its neighbors, and in contrast, while many ethnicities on the frontier were allowed to largely govern themselves, the Burman populated core ceded its power to the British and the Indians imported by the British to help administrate the territory. Initially, with the Burman authority displaced, lawlessness abounded, and martial law was the prescribed and necessary solution. The British used as many as 40,500 Indian and British troops, to enforce and police the territories. In an effort to relieve their own troops and reduce the financial debt between colonial India and its Burmese appendage, the ethnicities of Burma were ultimately used to constrain each other, in the "classic example of British *divide et impera* (divide and rule)."[62] Put simply, following WWI, the British began to use the ethnic minorities to subjugate and rule the Burman dominated center. The numbers illustrate the disproportionality of the participation: "13 percent of the population accounted for 83 percent of the indigenous portion of the armed forces in Burma in 1931."[63]

Crosthwaite explained the ethnic disparity in the Burmese security forces as a decision based on entirely on performance, citing the American Baptist converted Karen, which populated the eastern edge of Burma Proper, as the most loyal and the most dependable. Similarly, the northernmost of the frontier area minorities, the Kachin, were described as, "probably the strongest race we have in Burma," and therefore deserving of use in the military.[64] Crosthwaite's memoirs actually acknowledged that the lack of Burman inclusion was "a blot on our escutcheon,"[65] but whatever initial desire existed include the Burmans ultimately disappeared due to concerns about constancy to the

62 Callahan, *Making Enemies*, 33.

63 Ibid., 35.

64 Crosthwaite, *The Pacification of Burma*, 131.

65 Ibid., 131.

British crown. Instead, the ethnicities of the frontier and the aforementioned Karen were coopted into the security forces, and those forces were used to maintain and enforce British order throughout the territory. The Burmans, which had dominated much of Burma for hundreds of years prior, found the traditional power dynamic overturned, now increasingly policed by populations that used to pay tribute.[66]

### 3. Modern Institutions and Political Participation in Burma Proper

Political participation was introduced by the British in Burma Proper as a result of Burmese boycotts in 1920. Burmese laborers were protesting the fact that political participation that had been granted to India, but not to its perceived politically immature appendage. The British had neglected to introduce any form of representative rule due to what they had perceived as a commensurate lack of interest and political maturity within Burma. The contrasting policies, however, activated and politicized Burmese groups, including the Young Men's Buddhist Association (YMBA).[67] The boycott and student protest compelled the British to extend diarchy to Burma as well, providing a Legislative Council as the first opportunity for national Burmese participation. This consequently caused the creation and growth of political parties and political contest for influence, including bitter contestations over ethnic representation. Mon representation was successfully opposed by the Burmans but the British reserved participation for the Karen and Indian nationals. Despite the struggle for influence, the best Burman politicians could hope for was forty-nine of eighty elected seats in a 103 seat Legislative Council that was, generally powerless in comparison to the British Governor.[68]

Economic growth fueled political participation, but a disconnection existed between the politicians, largely populated by the burgeoning middle-class, and the peasantry. While the newborn middle class sought to maintain its status and standard of living, and therefore both endorsed and accepted the modern state apparatus, the peasantry instead lived in avoidance of, and desired the removal of the state's taxation

66 Taylor, *The State in Burma*, 100–01.

67 Maung Maung, *Burma's Constitution*, M. Nijhoff, 1959, 10–12.

68 Ibid., 17–18.

and oppression. Taylor describes the development of political parties and political representation but concludes that full development was never reached. Burmese political parties never fully connected with the peasantry, and the state apparatus never fully achieved legitimacy. More to the point, it remained a symbol of colonial rule; it was never considered Burmese.[69]

It was in this setting that the British government, motivated by increasing nationalist and political aspirations in India, decided to reorganize and codify India's governance to include indigenous representation, albeit under dominant executive oversight of the British governor. The *Government of India Act, 1935* was ultimately split, giving birth to the *Government of Burma Act, 1935*. The act delineated the administrative government of Burma to the extent that it is often referred to as a constitution, and "was a significant document in the development of the modern state in Burma."[70] The act established the legitimacy of democratic institutions, such as British-style government structures, as well as parties and popular participation. In terms of the ethnic dilemma in Burma, these institutions had several notable qualities. Most importantly, this new "Government of Burma," specifically the Legislature, had no jurisdiction over the Frontier Areas, specifically the Shan States, the Arakan Hill Tracts, the Chin Hills District, and the Kachin Hill Tracts.[71] These areas continued to be directly administered by the Governor, and were not invited into the Burmese government, nor expected to yield any authority to it.

The Burma Act succeeded in establishing a parliamentary institution under the pre-colonial concept of the *Hluttaw*, meaning a council of ministers, but it never succeeded in creating a legitimate and responsive representative government, largely due to "the contradictions between the British veto and national self-government,"[72] Instead,

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69 Taylor, *The State in Burma*, 117, 175, 221.

70 Ibid., 123.

71 *Government of Burma Act, 1935*, Part II, 8C, from the Online Burma Library, http://www.burmalibrary.org/docs08/1935_Constitution%28en%29.pdf, hereafter referred to as the Government of Burma Act, IV-40–1, Second Schedule Part I.

72 Taylor, *The State in Burma*, 123.

the Act's effective significance transcended its purpose, as it would later become the blueprint for independent Burma's first constitution.[73] Because it was the first installation of liberal and modern government, the Act set a precedence in structure and style that would not be greatly diverged from in future designs.

As a result of the British introduced modern and democratic political institutions, Burman politicians were introduced to the foundations that would be necessary for the execution of liberal government, and thus, as the constitutional future of an independent Burma. Importantly, this model contained reserved positions and participation quotas within government for the ethnic minorities within Burma Proper.[74]

### D. WWII: The Japanese center and the Amorphous Periphery

Japan's invasion, occupation, and ultimate defeat were just as impactful in Burma as it was throughout the rest of Southeast Asia. Both the retreating British and the retreating Japanese executed a scorched earth policy, leaving Burma's infrastructure and economy in ruin. Politically, the Burman were given the capacity to exercise their growing nationalist movement, while the minorities empowered within Burma proper by the British, found themselves dangerously without the security of the colonial state. Despite these great changes, the separation of core and periphery remained. Japanese occupation and administration focused on the resource rich center and never extended to the British Frontier Areas, leaving them still largely autonomous. Guerrillas made up of the Kachin, Chin, and Arakanese would be trained by British and American personnel, which encouraged ethnic nationalism as a way to encourage Japanese opposition. As this section will prove, the historical precedence of a strong central state with regional ethnic autonomy that had been institutionalized by the British was not destroyed by Japanese occupation. Instead, even as both majority and minority were militarily trained and armed, it was reemphasized

73 Ibid., 228.

74 Ibid., 123.

The ethnic power dynamic was once again inverted with the coming of WWII. Ethnic Burmans, specifically members of *Do Bama Asiayone,*[75] a student based Burman political organization that had been born in the early days of diarchy, and their leaders, called *Thakins*, found potential power and influence in the coming invasion of the Japanese. Through collaboration with the Japanese, several *Thakins*, including U Nu and the father of modern Burma, Aung San, negotiated and coordinated military training and armament through the Japanese, which essentially armed an already organized Burman organization. Together, they helped the Japanese invasion and threw off British rule. These young Burmans were organized and trained by the Japanese as the Burma Independence Army (BIA), and the Burmans took the opportunity with enthusiasm, swelling in numbers and comprising the bulk of the force.[76] The European defeat at the hands of an Asian power had ignited nationalism across Southeast Asia, but perhaps no population was more eager to take advantage of the situation like the Burmans. The organization was ethnically and nationalistically Burman. It rarely ventured out of the Burman center, and excluded minorities from its ranks.[77]

Nationalism mobilized and impassioned the BIA, but independence efforts were prevented by Japanese occupation, and the now armed Burman frustration was instead focused on righting past wrongs and avenging previous oppression.[78] The BIA was employed as an administrative arm and internal police force for the Japanese, flipping the ethnic power relationship that had previously been turned on its head by the British, and reestablishing Burman dominance. Removed from direct Japanese influence simply due to the insufficient oversight the Japanese could provide, nationalism fermented unabated and lawless was a byproduct. Acts such as robbery and murder were justified by vigilante logic. They were correcting and reallocating the wealth that had been unfairly extracted by the colonial state.[79]

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75 Translated means "Our Burman Association." Taylor, *The State in Burma*, 207.

76 Callahan, *Making Enemies*, 53.

77 Taylor, *The State in Burma*, 233–34.

78 Maung, *Burma's Constitution*, 52–53.

79 Hugh Tinker, *The Union of Burma: a Study of the First Years of Independence*, London: Oxford University Press, 1967, 9.

Unfortunately for the minorities of Burma, BIA retribution not only sought to right the wrongs, but to punish those responsible. With the British absent, the focus naturally fell to those that had cooperated with and enabled the colonial state. Thus, Burman vengeance had an ethnic side. As an answer to the years of oppression subjugation at the hands of the British enabled minorities, the BIA specifically targeted minorities, especially Karen for revenge. Seventeen Karen elders were murdered by armed Burmans, and upon intercepting a Karen note planning revenge, Burman attacks on the Karen multiplied. "BIA units executed Karen men, women, and children and arrested whole villages simply for being Karen,"[80] Four hundred villages were destroyed, and nearly two thousand Karen were indiscriminately killed, despite the fact that Aung San, serving as the military commander forbade it. This indiscriminate vengeful act enacted by the BIA could well be considered the birthplace of modern Burmese ethnic conflict.[81]

The lawlessness led to Japanese attempts to discipline its young Burman deputies, which ultimately the estranged the relationship and resulted in violent armed clashes. At this, the Japanese reconsidered wide usage of the young Burman nationals, and instead attempted to turn back to the minority administrative elites the British had used some fifty years prior. The BIA was disbanded in August of 1943, with only five of the twenty three thousand Burmese in the BIA retained to form the more professional and tightly organized Burma National Army (BNA).[82] The Japanese assumed they would create a more controllable entity, but the act encouraged the BNA to seek its support rather than foreign endorsement, which had already proven unreliable. The BNA did turn out to be a more effective organization, and it used those qualities to connect with the Burman populace and become a political actor. The overall effect was disastrous for the Japan, as it created a tightly organized, ambitious, and opportunistic BNA that would ultimately betray it.[83]

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80 Callahan, *Making Enemies*, 75.

81 Hugh Tinker, *The Union of Burma*, 9–10; Callahan, *Making Enemies*, 75.

82 Taylor, *The State in Burma*, 233–34.

83 Callahan, *Making Enemies*, 52–53; Taylor, *The State in Burma*, 234.

At first glance, the anti-Japanese movement seems to offer the perfect prescription for Burmese unity. Core and periphery alike shared the common enemy, and indeed loosely cooperated toward Japanese expulsion, but beneath this common primary goal, independent visions of autonomy and political power existed that were anything but unified. The anti-Japanese movement in the core may have had the potential for unification, but the quick defeat of the Japanese eliminated the cause before any institutional or procedural cooperation could be created, and bloodshed between the Karen and Burman during the Japanese occupation remained fundamental to the relationship, preventing cooperation.[84]

The Frontier remained excluded from the administrative and political power contest introduced by Japanese occupation. Japanese, never fully extended to these regions during the war, creating yet another divergent experience between the core and the periphery that had been institutionalized in both pre-colonial and British colonial history. The frontier areas were instead recruited and trained into irregular units of resistance by the British and Americans, encouraging armed guerilla resistance to foreign occupation. Smith describes the dichotomy: "With the British continuing to recruit ethnic Kachin, Karen and Chin battalions while the Japanese-trained BNA remained predominantly Burman, the war had been fought along largely racial lines."[85]

### E. Breaking the British Bonds: Burmese Nationalism and Politics

The Japanese granted Burma its independence on January 28, 1943, and an Independence Preparatory Commission was established for the creation of a "simple but effective," constitution, but the Japanese continued occupation granted little sovereignty within the Greater East Asian Co-prosperity Sphere.[86] Instead, the idea of Burmese independence ruminated, and with the quick collapse of the Japanese, ultimately found itself back in the familiar hands of the British in the regional military administration of the Southeast Asia Command (SEAC). Now, however, the disorganized political scene

84 Callahan, *Making Enemies*, 69.

85 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 64.

86 Maung, *Burma's Constitution*, 57–58, 60.

that was forming before WWII was replaced by a similarly chaotic setting now complicated with military armaments, military political ambition, and national notoriety for the likes of Aung San and U Nu. London saw the BIA and its leadership as Japanese collaborators, and therefore branded them traitors more deserving of punishment than of inclusion and influence in post WWII Burmese politics.[87] Aung San and his fellow *thakins* recast their organization as the more inclusive Anti-Fascist Organization (AFO) and then the Anti-Fascist People's Freedom League (AFPFL) and made a concerted effort to attack the retreating Japanese in an attempt to win British support. They found it in Admiral Lord Louis Mountbatten, the SEAC commander, and Sir Reginald Dorman-Smith, the returning Governor, who proved lenient, focusing on promoting inclusive conditions for an independent Burma, rather than prosecuting traitors.[88] As a result, Mountbatten pardoned those implicated, and ensured their inclusion in the process of setting up the new Burmese government, while Sir Reginald worked to enact the steps of the White Paper for "full-self-government"[89]

Smith describes early Burmese politics as especially unique in that the dominant political groups were left-leaning, yet faced their most significant challenge from more radical socialist elements. The student based *Do Bama Asiayone*, which beget the AFO and the AFPFL, espoused Marxist ideals. The books and articles, written by its burgeoning leadership that included the likes of the future Burmese icons U Nu and Aung San, were rife with communist reference, but in contrast to many other nationalist struggles in the region, they were included as a means not an end. "Most of the [leadership] saw Marxism as a mere instrument in their anti-colonial struggle."[90] The strategy and goals published by the organization professed a desire for civil liberties and democratic rights, rather than class equality. The focus of the organization was on the independence struggle, not class warfare.[91]

87 Taylor, *The State in Burma*, 234.

88 Tinker, *The Union of Burma*, 16–17.

89 Maung, *Burma's Constitution*, 68.

90 Taylor, *The State in Burma*, 215.

91 Ibid., 207–15.

Because of *Do Bama Asiayone's* loose commitment to communist principles, ideological space remained for more radical communist proponents, and it is from this position, not from ethnic minorities, that the organization and the early governments it dominated initially experienced domestic threats. The focus and struggle of Burma's nascent political leadership in the AFO/AFPFL would be the marginalization of the various socialist splinter organizations, namely the White Flag and Red Flag Communists, albeit by inclusion, out maneuvering their leadership for popular support, or outright warfare. Surprisingly, ethnic participation proved more promising, as Aung San and the League would succeed in securing nominal allegiance of from the Shan and even the Karen, despite a period of conflict and bloodshed between the two ethnic groups.[92]

Aung San's notoriety, prominence, and political clout through the AFPFL enabled him to demand more than inclusion in a British plan for Burmese independence; it allowed him to manipulate the terms. By threatening AFPLF rebellion, and continuing to outmaneuver his internal AFPFL rivals, he was rewarded by being chosen to travel to London in January of 1947 as one of six official Burmese representatives. There he pressed for "full independence within one year… and the early unification of the Frontier Areas with the Government of Burma."[93] In the Attlee-Aung San agreement signed later that month, Aung San got nearly every term he pursued, including the unification of the Frontier Areas, which the British only agreed to with the caveat that the ethnicities themselves participate voluntarily. Burma would be an independent, unified country in, as Aung San had promised, less than a year.[94]

## F. Conclusion

By January of 1947, Burma's leadership faced many crucial decisions. Independence was rapidly materializing, and while many, including Aung San's AFPFL and the British government desired a unified Burma, the division that existed between the center and the periphery demanded careful negotiation and development. As this chapter

92 Tinker, *The Union of Burma*, 13.

93 Ibid., 23.

94 Ibid., 15-18; Taylor, *The State in Burma*, 235; Maung, *Burma's Constitution*, 77.

has emphasized, the minorities of the periphery had enjoyed autonomy regardless of Pagan, Konbaung, Toungoo, British, and Japanese central control. There was little reason for them to expect or settle for anything less under an independent Burmese government. The minorities within Burma's center, namely the Karen, were void of that experience and understandably less optimistic of their prospects under Burman rule. The Burman majority on the other hand, were now empowered to reestablish themselves as the strong central state, and given a template for modern democratic government by which to establish it. These historical experiences stimulated the desires of peripheral autonomy and a unified representative democracy that shaped the decisions of 1947. Federalism was one of many possible forms of government, it was the only one that seemed to answer both of these historically emphasized preferences.

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# III. CHOICE, CONSTITUTION, AND DISINTEGRATION IN THE FIRST BURMESE DEMOCRATIC PERIOD

## A. Introduction

Burma's political leadership faced serious political choices in 1947. For the *sawbwas*, chiefs, and leaders of Burma's minorities, the dilemma hinged upon gradations of autonomy, weighing participation and cooperation with the Burman majority against the desire for sovereignty and self-determination. Some, like the Karen, wished to continue their previous relationship with the British, while others were more willing participants in the formation of a Burmese Union.[95] For the Burman majority, the primary goal was the unification of the country and the inclusion of all Burmese people under one government. This chapter will examine the decisions these groups made, their ethnic implications, and their ultimate failure. These institutional choices, represented by the 1947 Constitution, will be analyzed using Stepan's federalist model to appraise their potential for accommodating Burma's minorities, and possibly expose the flaws that prevented ethnic peace in a united Burma.

This chapter consists of five sections. First, the negotiations and agreement at Panglong will be recounted, revealing the desires and intentions of several of Burma's ethnicities prior to independence. Following that, the Government Act of 1935, which was briefly mentioned in the previous chapter will be revealed as the blueprint for Burma's Constitution. Third, Burma's 1947 Constitution will be reviewed with particular emphasis on federal and ethnic implications. That constitution will then be tested against Stepan's ethnofederal criteria and variables to ascertain its theoretical potential. Finally, the final section will describe the subsequent breakdown of democracy that led to ethnic insurgency and the governmental takeover by Burma's military.

95 The term "Union" will be used throughout this thesis as a reference to the central government.

## B. Panglong and Ethnic Negotiations

Negotiations and resolutions started before the Constituent Assembly came together in to discuss Burma's future in 1947. The willing inclusion of Burma's peripheral minorities was a common goal of the British, Aung San's AFPFL, and the minorities themselves. The first significant case of negotiations between the AFPFL and minority leadership happened in the Shan village of Panglong in February of 1947. The agreement signed there was instrumental in the inclusion of the Shan, Kachin, and Chin minorities. It established a standard by which minorities would judge autonomy and territorial accommodation both then, and even now. "The spirit of Panglong," would come to represent an altruistic sense of compromise and trust that was and still is necessary to unify Burma. More specifically, however, it represented then, just as it does now, a commitment to territorial accommodation and autonomy for Burma's ethnic minorities. This section chronicles those negotiations, the decisions made, and the impact they had upon the governance choices made at the subsequent Constituent Assembly.

Up to this point the political experiences of the periphery differed drastically from those of the core. Even Japanese plans for an independent Burma had excluded the Shan and Karenni.[96] This historical separation did not pass unnoticed by British governance and was the basis for a requiring unification only "with the free consent of the inhabitants of those [Frontier and Ministerial] areas."[97] This mandate forced Aung San and the AFPFL to court the periphery for inclusion. The British, for their part, attempted to lay the groundwork for cooperation and unity by convening a meeting between Shan, Chin, Kachin and Karen leadership in the Shan village of Panglong in March of 1946.[98] There, the British proposed the idea of a United Frontier Union, and attempted to assuage the prospective minorities' fears. Voluntary participation was echoed by Aung San, still seeking British sponsorship, who stated, "As for the people of the Frontier Areas, they must decide their own future. If

96 Maung, *Burma's Constitution* , 57.

97 Ibid., 79.

98 Ibid., 78–79; Matthew J. Walton, "Ethnicity, Conflict, and History in Burma: The Myths of Panglong," *Asian Survey 48*, (Nov 2008): 896.

they wish to come in with us we will welcome them on equal terms."[99] The culmination of these sentiments and of British efforts would be the second meeting at Panglong in 1947, with the Shan, Kachin, Chin, and Aung San of the AFPFL.

At the second and more famous meeting in Panglong, Aung San made several commitments to the ethnic representatives, "including internal autonomy, the desire for a Kachin State, [similar to that of the Shan State provided for by the Burma Act of 1935] and the right to secession."[100] The final agreement, signed on February 12, 1947, guaranteed executive input and inclusion in the form of a Counselor "selected by the Governor on the recommendation of representatives of the Supreme Council of the United Hill Peoples…to deal with the Frontier Areas." This Chancellor would have executive authority for the region, and represent the territory on the Executive Council of Burma. It further established the "separate Kachin State," affirmed the Shan State, established revenue sharing for the Frontier Areas from the future central government, and guaranteed Frontier Area citizens of "the rights and privileges which are regarded as fundamental in democratic countries."[101]

The commitment made at Panglong has resonated and repeated throughout the minorities' political demands ever since. A return to "the spirit of Panglong" is a common phrase uttered by the ethnic groups and politicians in Burma and it is echoed in political commentary and academic writings focused on federalism in Burma.[102] This does not imply, however, that Panglong was without flaw. The representatives the ethnic minorities at the meeting were selected by the British from among those who had previously cooperated with the colonial organization, not by the people themselves. Participation was also notably limited, excluding the Karenni, Mon, Arakanese. The Karen showed up, but acted as only an observer, continuing to rely on direct negotiations

99 Maung, Maung, ed., *Aung San of Burma*. Martinus Nijhoff, for Yale University, Southeast Asia Studies: 1962, 188.

100 Walton, "The Myths of Panglong," 896.

101 The Panglong Agreement, February 12, 1947, obtained from The Online Burma Diary, April 5, 2013., http://www.ibiblio.org/obl/docs/panglong_agreement.htm, Parts I, V, VI, VII, VIII, and IX.

102 Walton, "The Myths of Panglong," 889–910; "Majority should look through the minority's eyes: Suu Kyi," *Mizzima*, November 17, 2012.

with the British for a Karen State. The Chin, meanwhile, negotiated cautiously with Aung San and the Burman representation, troubled and inhibited by their reliance on the center's food supply.[103]

Incomplete participation and ethnic inequality notwithstanding, the meeting and the document held great significance for the future of a unified Burma. The Kachin elders loudly voiced their skepticism, but also noted that despite their misgiving originating from the past, cooperation and "close relations" were possible as long as "hereditary rights, customs and religions" were adequately protected.[104] The commitment toward "full autonomy in internal administration for the Frontier Areas,"[105] would ultimately come to be the very definition of the "spirit of Panglong," and Panglong itself would come to represent the larger notion of unity, as it is still celebrated as "Burma's Union Day."[106] The principle of regional ethnic autonomy within a union was accepted by both sides as the blueprint for a Burmese constitution.[107] The concept of federalism may have been first introduced with the British creation of the Shan Federated States in the early 1920s and reinforced in the *Government of Burma Act, 1935*, but it was at Panglong that the idea of multiple ethnic autonomous regions within a united Burma had its beginning. At this meeting in Panglong, the foundations of Burmese ethnofederalism were established.

### C. Reviewing the Blueprint: The *Government of Burma Act, 1935*

The agreement signed at Panglong was not the only document that would influence and guide those writing the constitution. The British *Government of Burma Act, 1935* had introduced modern political structures including representative government to Burma Proper. By establishing diarchy, the Burmese people in the center were able to

103 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 74.

104 Kachin leader quoted in Smith, *Burma: Insurgency and the Politics of Ethnicity*, 74

105 The Panglong Agreement, V.

106 Smith, *Burma: Insurgency and the Politics of Ethnicity*,79.

107 Ibid., 78–79; Josef Silverstein, "The Federal Dilemma in Burma." Far Eastern Survey 28, no. 7 (1959): 100.

exercise a small degree of self-governance, while the governor held ultimate power. Because it served as the first practical exercise of modern governance, it was, Taylor describes, "a significant document in the development of the modern state in Burma,"[108] acting as an initial blueprint for the "electoral machinery"[109] and governmental structures of the constitution for independent Burma. Because of this, it is worth highlighting a few articles in the British document for the precedent it set, and is the focus of this section.

The most obvious characteristic of the Act is also most understandable given the source and the context: disproportionate power to the executive. It is hardly surprising that the British, while interested in providing an outlet for Burmese political unrest and willing to coopt these elements into a form of representative government, retained the overall authority and sovereignty for themselves. Charged with, among other duties, "safeguarding of the legitimate interests of minorities,"[110] the Governor of Burma, appointed by the British crown, held a dominant position over the local Legislature and Burma. The Governor had the authority to eliminate or prevent bills and legislation, based on his judgment alone.[111] He was also given the freedom and responsibility to exercise individual judgment in policymaking without legislative approval,[112] unchallengeable final authority,[113] appointment authority over the financial and judicial heads of state,[114] and the ultimate power to dissolve legislature and assume those powers, as well.[115]

Another way in which the Act strengthened the Governor's position and dominant positional authority in comparison to the local representative assembly was by putting

108 Taylor, *The State in Burma*, 123.

109 Maung, *Burma's Constitution*, 78.

110 "Government of Burma Act, 1935," Part II, 8C, from the Online Burma Library, http://www.burmalibrary.org/docs08/1935_Constitution%28en%29.pdf, hereafter referred to as the Government of Burma Act.

111 "Government of Burma Act, 1935," Part III, Art. 31–2.

112 "Government of Burma Act, 1935," Part II, Art. 8–2, Art. 40–1, Art. 40–2, Art. 41–1.

113 "Government of Burma Act, 1935," Part II, Art. 5–3.

114 "Government of Burma Act, 1935," Part II, Art. 11–1, Art. 12–1.

115 "Government of Burma Act, 1935," Part XII.

him in command of the military. Military control, defined as "the raising in Burma on behalf of His Majesty of naval, military and air forces, and to the governance of His Majesty's forces borne on the Burma establishment,"[116] was given to the Governor. This authority had two significant consequences. First, it allowed the British to continue to exercise prejudicial selection in the composition of its Burmese forces, therefore facilitating the overwhelming use of minorities that was previously illustrated. Second, it established a fixed and direct relationship between those forces and the Governor. The executive of Burma had complete control of the military. This feature was actually reinforced thanks in part to the Japanese occupation. Taylor points out that the constitution written for independence from the Japanese in 1943 had several features taken from Burma's occupiers, most notably in the robust executive powers that included unreserved military control, which served to encourage military participation in government and give military leaders political influence.[117]

The government structures prescribed by the Act influenced the Burmese Constitution as well. The British solution was bicameral, with a thirty-six seat Senate and a one hundred and thirty-two seat House of Representatives, that retained many of the qualities exhibited in liberal representative assemblies.[118] It was not the rules that made the Legislature a significant precedent, but its composition, as the Third Schedule of the Act designated specific ethnic and occupational seats within the government. The Karen community (similar to the Indian and European populations) was given twelve designated seats[119] and proportional representation in the Senate.[120] Seats vacated by Karens could only be filled by Karens,[121] and territorial constituencies were established for the election of these officials.[122] The Karen, through the *Government of Burma Act*,

116 "Government of Burma Act, 1935," Part II, Art. 2-a.

117 Taylor, *The State in Burma*, 225–27.

118 "Government of Burma Act, 1935," Part II.

119 "Government of Burma Act, 1935," Third Schedule, Art. 3-b.

120 "Government of Burma Act, 1935," Third Schedule, Art. 10.

121 "Government of Burma Act, 1935," Third Schedule, Art. 11.

122 "Government of Burma Act, 1935," Third Schedule, Art. 4-ii.

were legally guaranteed of inclusion and influence within the government. The Burmans, in contrast, had no reserved representation and had to compete for the ninety-one non-communal seats. Reserved ethnic representation is a characteristic that would greatly influence the coming constitution, and was first introduced in the British Act.

Finally, while the Shan State was listed under the Second Schedule, thereby giving it autonomy from the Legislature, it also received a separate section within part VI, Finance. The specific funds and terms reserved for the Shan States are less significant than the additional separation and autonomy they represented. Even as the Act specifically limited legislative side of government to Burma Proper, it also explicitly provided for the continuance of the tributary financial relationship, and further legitimized and reassured the Shan *Sawbwas* of their continued authority. It was constitutionally based territorial autonomy, another important precedent influencing Burma's Constituent Assembly.

## D. The Constitution: Construction, Institutions, and Relationships

In April of 1947, elections were held for a Constituent Assembly to draft the Burmese Constitution. The AFPFL actively campaigned and sought to eliminate rival representation in the Constituent Assembly, and thanks in part to Aung San's efforts, limited Communist participation to only seven of the 255 seats. The AFPFL did not attempt to restrict ethnic involvement and that assembly impressively included Shan, Kachin, Chin, Karenni, and Karen representation.[123] Their participation however, should not and did not indicate that they were without fear or reservation. As a leader of the Karen Central Organization (KCO) described the fears of Burman majority: "The last three and a half years have shown us what can and most inevitably will happen to a small race or nation in the absence of a protecting power."[124]

123 Maung, *Burma's Constitution* , 81.

124 Quoted in Smith, *Burma: Insurgency and the Politics of Ethnicity*, 72.

With the assassination of Aung San, the AFPFL guarantor at Panglong, pessimism amongst the minorities was certainly warranted.[125] The participation of Burma's minorities in the Assembly was largely successful. A Shan chief was elected as the second president of the Assembly, and only the Karen and Arakanese displayed hesitation to joining in the Union. The Karens, having sat on the sidelines at Panglong, continued to petition the British for support in an independent state. Bilateral negotiations between the AFPFL and the Karen proved less fruitful than Panglong had been for the Chin, Kachin, and Shan, and it was only with participation in the Constituent Assembly that any special representative provisions were considered.[126] The ethnically and religiously divided Arakanese territories had fallen into chaos, with "no less than three different groups of separatists," one Muslim, one Buddhist, and one riding the coattails of the Communist Party.[127] Despite these hesitations, the Constituent Assembly successfully garnered the participation of Burma's minorities with the intent and willingness to join together as the Union of Burma. This section analyses their choices, represented by the Constitution of 1947. Constitutional chapters and articles with ethnic or federal implications will be highlighted to facilitate further analysis later in the chapter.

### 1. We the People: The Preamble

The Constituent Assembly had a difficult task, attempting bring all of Burma together under a single government, something that had never previously been accomplished, while discontent and active rebellion already existed among the Karen and Arakanese. The Preamble itself highlights the historical division in the country as it begins, "We, the People of Burma including the Frontier Areas and the Karenni States."[128] That the phrase "the People of Burma," did not resonate and encompass all of

125 Walton, "The Myths of Panglong," 897.

126 Ibid., 898.

127 Thompson, Virginia. "The New Nation of Burma," *Far Eastern Survey 17*, no. 7 (1948): 82.

128 The Constitution of the Union of Burma, Constituent Assembly (1947), Preamble, from Maung, Burma's Constitution and the Online Burma/Myanmar Library, last accessed June 5, 2013, http:www.burmalibrary.org.

parties contributing to the drafting and ratification of a unionizing constitution speaks to the fragility of the national movement behind the constitution.

### 2. State Formation

In chapter 1 titled, "The Form of State," the effects of the Panglong Agreement and the minorities' desire for autonomy were clearly present. The Shan State, Karenni State, and Kachin State were established, notably before Union government structures were explained, or any citizen rights were delineated. Clearly the autonomy of the ethnic states was of great significance, and deserving of their prominence at the front of the document. The autonomous states and regions were introduced in this section, but the function and institutional relationships between these territories and their constituencies were later defined and explained in Chapter IX. In a similar fashion, but unmentioned in Chapter 1, the Chin were given a Special Division which had a similarly constructed state council and centrally appointed minister, but they were not given statehood, nor the commensurate guaranteed authorities listed in the "State Legislative List."[129]

Notably absent from the list of ethnic groups with their own autonomous territory were the Arakan, and the Karen. The Arakan were a heterogeneous community already showing signs of internal fracture, but the Karen in particular presented a unique and significant problem. The vast majority of ethnic minorities in Burma were concentrated in peripheral regions and separate territories, but the Karen were a large population scattered and mixed among the Burman majority. Because of this geographical condition, the lack of participation at Panglong, their continued pursuit of British sponsorship for an ethnic homeland, and the boycott of the Constituent Assembly by leading Karen political entity, the Karen National Union (KNU), the Karen were not initially granted a state in the 1947 Constitution.[130] Instead, "The Karens were given 'minority rights'…entitled to special rights in employment, representation in Parliament, etc.,"[131] which included a Karen Council, mirroring those established for the Shan, Karenni, Kachin, and Chin. The continued agitation and conflict with the Karen eventually brought additional concessions

129 The Constitution of the Union of Burma, Chapter IX, Part 5.

130 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 77.

131 Maung , *Burma's Constitution*, 95.

by the government. Ultimately these included the establishment of a Karen State in a 1951 Constitution Amendment Act, and the elimination of the clauses and concessions that treated them differently from their fellow minorities.[132]

While states and autonomy were desired and apparently necessary for the inclusion of Burma's minorities, there was no model or definition that initially guided the Assembly in its construction of the instructions and their relationships. After much negotiation and dialogue, Scotland's relationship with the United Kingdom surfaced as the preferred model. This example became the inspiration behind the Ethnic Councils' dual function as state lawmakers and union representatives. According to Maung, this placated the assembly's concern about the size of government, which had to be limited in scope due to both personnel and financial constraints of the new country. Similarly, the separate state institutions and government organs that were originally intended were eschewed in favor of the singular parliament, judiciary, and executive institutions of the Union government.[133]

The three original states, the Karen State, and the Chin Special Division were given administrative control over the civil service, schools, and cultural institutions within their territories. Two states, the Shan and the Karenni, were even granted the right to secede after ten years. All of the minorities' representatives to the Chamber of Nationalities formed distinct ethnic Councils which could pass legislation for their own populations and territory with the signature of the president. The executive head of each state, a minister, would be appointed from this group by the president, not the constituents of the state.[134] Through these relationships with the Union Executive, the president of Burma was positioned to play a large role in the governance of the autonomous regions, while the council and minister served both the central government, and their states.[135]

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132 Constitution Amendment Act, 1951 (Act No. LXII of 1951).

133 Maung , *Burma's Constitution*, 168–71.

134 The Constitution of the Union of Burma, Chapter IX, Art. 1–4.

135 Silverstein, Josef, "Politics in the Shan State: The Question of Secession from the Union of Burma," *The Journal of Asian Studies 18*, no. 01 (1958): 48.

### 3. Fundamental Rights: Inclusive of Burma's Minorities

Burma's minorities were not restricted from the civil, religious, cultural, educational and economic rights that follow the Form of State, under the heading of "Fundamental Rights." These rights are conferred without exclusions or limitations to all of "Burma's citizens," which is further ambiguously defined as any person with direct lineage or connection to Burma's "indigenous races." Despite the ambiguity of that phrase, the extents of the fundamental rights and liberties are extensive. Discrimination on the basis of language, race, and religion are prohibited, Buddhism, Christianity, Hinduism, and Animism are all recognized religions, and freedoms such as assembly, expression, and association are guaranteed. The rights and liberties are even more extraordinary given the time and setting, but it is worth noting that these civil liberties were eligible for suspension in "times of war, invasion, rebellion, insurrection or grave emergency."[136] This emergency clause had a similar justification for the emergency powers given to the British Governor in the *Government of Burma Act*, and left the door open for both protecting the public, and limiting its ability to protest or revolt.

### 4. Burma's Legislature: Ethnic Representation in the Chambers

The Legislature followed the example set forth by the *Government of Burma Act, 1935*, in that it specifically allocated seats within the Parliament for ethnic minorities. The Chamber of Nationalities was designed to accomplish this very purpose, and allocated enough seats to the ethnic minorities of Burma so that "minority peoples collectively command a majority over the Burmans."[137] Of the one hundred and twenty-five seat assembly, twenty-five were allocated to the Shan, twelve to the Kachin, eight to the Chin, three to the Karenni, and twenty four to the Karen. These ratios left fifty-three unclaimed seats, and guaranteed that in the least, minorities would command fifty-seven percent of the Chamber. The Amendment Act of 1951, written and ratified to establish

136 The Constitution of the Union of Burma, Chapter II.

137 Maung , *Burma's Constitution*, 120.

the Karen State, reduced the Karen allotment to only fifteen and increased the unreserved seat count to sixty-two, which was just under half of the Chamber.[138]

The Chamber of Deputies was a popular representative chamber, with one representative for each thirty to one hundred thousand people, and did not delineate any specific representation beyond the constituency from which it was elected. There was originally one exception to this in that the Karen, regardless of constituency origins, were guaranteed a representation proportionate with their population. This concession was eliminated in 1951 with the creation of the Karen State, meaning that the Chamber of Deputies was afterward thoroughly comprised of popularly elected officials without ethnic or regional criteria.[139] Subsequently, the Chamber of Deputies was destined to become a Burman dominated assembly in accordance with their large population. In the event of hung legislation, a bill that had passed in one chamber and not the other, a joint session called by the president would decide the matter by majority.[140]

### 5. Burma's President: Individual Power within the Executive

The office of the presidency was established as Burma's executive in Chapter V of the constitution. The president was to be chosen from a joint vote of Parliament rather than popular vote from the people. His authority once again included numerous appointments that included the prime minister, the heads of the Shan, Kachin, and Karenni States, and the rest of the "Union Government."[141] Maung Maung's *Burma's Constitution* is decidedly optimistic in the analysis and explanation of the document. In it, he describes the office to be "severely limited"[142] in power, as the bulk of his functions were to be executed with advice and counsel from the rest of government, and the president did not have veto power over passed legislation. Taylor agrees, stating that it was a, "nominal

138 The Constitution of the Union of Burma, Second Schedule; The Constitution Amendment Act, 1951.

139 The Constitution of the Union of Burma, Chapter VI, Art. 83–1.; The Constitution Amendment Act, 1951.

140 The Constitution of the Union of Burma, Chapter VI, Art. 109.

141 The Constitution of the Union of Burma, Chapter V, Art. 56–1, Art. 56–2,

142 Maung , *Burma's Constitution*, 117.

president possessing few effective veto powers. There were, however, no explicit checks placed upon the president either, meaning that there was no real impetus to make decisions in opposition to his advisors, or in accordance with party or ethnic cleavages. Even Maung admits that several of the powers given to the office are "reminiscent of the powers of the Governor under the Government of Burma Act of 1935."[143]

### 6. Burma's Judicial Branch: No Minority Allocation

In contrast to the legislature, no positions in the national judiciary were reserved for minorities. As a commitment to the Union, traditional ethnic rulers such as the Shan *Sawbwas,* had to surrender their inherent judicial powers, and instead, the secular courts of the states established the extents to which ethnic specific justice could be sought and executed.[144] The justices of the Supreme Court, including the chief justice, were permanently appointed by the president and approved by parliament in an attempt to place them above political influence.[145] Because of their nomination by the president, the Supreme Court was likely to be overwhelmingly populated by Burman justices if it was not ethnically Burman in its entirety. The only control the minorities had upon the composition of the Supreme Court was through the approval process of the president's appointments in the Chamber of Nationalities. Only in that chamber would minorities have enough combined influence to oppose or curtail majority Burman appointments.

### 7. Delineating Power: Legislative Lists and Minority Policymaking Authority

Legislative lists were explicitly laid out to distinguish those policy decisions which were reserved for the states, from those reserved for the central government. The "Union Legislative List" which included the expected authority to raise, train, and equip the military, also included the expected dominion over international relations, finance,

143 Ibid., *Burma's Constitution*, 117.

144 Fairbairn, Geoffrey, "Some Minority Problems in Burma,"307.

145 The Constitution of the Union of Burma, Chapter VIII, Art. 140.

and citizenship provision.[146] The "State Legislative List," in contrast, had an understandably narrower focus on local taxes, education, and health. Security legislation for the states was limited to public order, through village police, and the administration of justice through local courts subordinate to the high courts of the Union. The final word in the separation of powers is listed in the 40th subsection of the "Union Legislative List," that confers "any other matter not enumerated in List II [State Legislative List]"[147] into the hands of the Union. Any matter that the states were not constitutionally assured of influencing relinquished to the central government.

### E. Analyzing the Constitution: Federalism or Empty Autonomy?

The Constituent Assembly's directive resolution, proposed by Aung San himself seems to contain contemporary definition of federalism: "The constitution shall specify constituent units of the Union of Burma and define their powers of autonomy."[148] The term federal is noticeably absent in both this directive resolution and the constitution itself. Even the previously named "Federated Shan States" were recast to become the Shan State within the government. Yet despite the semantic omission, scholars agree that federalism was the blueprint, and to those assembled, the motivation that inspired their participation.[149] With the addition of the Karen State, the majority of Burma's minorities, including the Shan, Karen, Kachin, Karenni, and Chin, were constitutionally prescribed to retain a great deal of autonomy within designated states. Culture, religion, language, and schools, the flashpoints of many nationalistic grievances, were reserved for ethnic governance. The relationship, Taylor asserts, was distinctly federal.[150] This section will compare the 1947 Constitution to contemporary definitions of ethnofederalism. The second and third subsections will evaluate the constitution against

146 The Constitution of the Union of Burma, Third Schedule, List I.

147 The Constitution of the Union of Burma, Third Schedule, List I-40.

148 "Basic Principles of the Constitution," Maung, Maung, ed., Aung San of Burma, Martinus Nijhoff, for Yale University, *Southeast Asia Studies*, 1962, 125.

149 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 79.

150 Taylor, *The State in Burma*, 227.

Stepan's specific criteria and variables to ascertain their strengths or weaknesses in accommodating Burma's minorities and their demands.

### 1. Superficial Evaluations: Not Quite Ethnofederalism

While the construction and intent may have been federal, the effect was not as certain. Taylor's analysis of the constitution is that it "delineated the federal state, but in reality provided for a centralized government system. The states, eventually numbering in five, had no substantial legislative powers and little say in taxation or state finance."[151] Silverstein agreed, stating, "The constitution manifests the dominance of the Burmese and demonstrates their ability to establish a union in which the separate states appear to enjoy more autonomy than they were actually granted."[152] Furthermore, conditions in Burma were such that enforcing and promulgating the constitution proved problematic. In the years following its ratification, much of Burma failed to acknowledge or implement the Union's institutions or authority, and the Union lacked the resources to compel adherence, leaving the Shan States and the like functioning as if there had been little to no change at all.[153] The divergence implies a dangerous scenario in which the states enjoyed greater autonomy than they were constitutionally granted, with a Burman majority party, the AFPFL, seeking to establish and enforce the Union's sovereignty.

The constitution may well have been written with federal principles in mind, but its effectiveness as an ethnofederal answer to Burma's unification requires deeper analysis. Amoretti's definition called for "an institutionalized division of power between a central government and a set of constituent governments,"[154] which seems fulfilled in the four states and one region that were established by 1951. His second criterion, that "each level of government has the power to make final decisions in some policy areas but cannot unilaterally modify the federal structure of the state,"[155] is nominally present, but

151 Taylor, *The State in Burma*, 227.

152 Silverstein, "Politics in the Shan State," 48.

153 Taylor, *The State in Burma*, 227.

154 Amoretti, *Federalism and Territorial Cleavages*, 9.

155 Ibid.,, 9.

the presidential signature and Supreme Court referral authority on territorial legislation written and passed by the state councils ostensibly puts the final authority back within the hands of the central government. Union review and oversight was neither intended, nor specifically provided for, but the processes to facilitate imposition certainly existed.

### 2. Stepan's Criteria

Stepan's article, "Toward a New Comparative Politics of Federalism," contains a deeper analysis of federalism and its composition. Because of this it is a useful framework for evaluating the constitution and rationalizing the basis by which Taylor and Silverstein regarded the government as more central than federal. To begin with, Stepan asserts that only "a constitutional democracy can provide credible guarantees and the institutionally embedded mechanisms that help ensure that the law-making prerogatives of the subunits will be respected."[156] The constitutional basis and democratic foundation for Burma's government cannot be disputed, but what of the democratically guaranteed mechanisms?

Stepan mandates that federal systems should include two defining criteria. First, they should have "territorial political subunits whose electorate is exclusively drawn from citizens of the subunit and that have areas of legal and policy-making autonomy and sovereignty that are constitutionally guaranteed."[157] The territorial political subunits existed for the Shan, Karenni, Kachin, and Chin, as well as for the Karen after the amendment of 1951, but notably excluded the Arakanese and Mon. Legal and policy-making autonomy was established in the constitution, but as the quotes from Taylor and Silverstein have already stated, the scope was limited. Additionally, all unreserved authority defaulted to the authority of the central government, further restricting state autonomy and sovereignty in policy-making.

Stepan's second criterion is that those territorial political subunits should have a "state-wide political unit, which contains a legislature elected by the statewide

156 Stepan, "Toward a New Comparative Politics of Federalism," 31.

157 Ibid., 38.

population, and which has some law and policy-making areas that are constitutionally guaranteed to fall within the sovereignty of the statewide body."[158] Representative policy-making capacity resided in the territorial Councils, which had two duties. On one hand, they represented their constituents in the central government as representatives in the Chamber of Nationalities. Concurrently, the elected representatives also constituted the territorial Council and lawmaking apparatus. While it could be said that this was a state-wide political unit with constitutionally guaranteed policy-making abilities, it certainly falls short of containing a distinct and separate state legislature to perform that role. The two defining criteria are thus met, but with significant limitations.

### 3. Stepan's Variables

Stepan offers more concrete institutional choices that could affect a federal government's demos-constraining abilities. He puts forth four variables: overrepresentation in the territorial chamber, policy scope of the territorial chamber, constitutional allocation of policy making to the subunits of the federation, and the degree to which the party-system is polity wide.[159]

The Chamber of Nationalities is specifically designed to be the most important demos-constraining institution of the Union, and it fits with Stepan's criterion for his first variable: the overrepresentation in the territorial chamber. The passage of laws, appointments, and constitutional amendments were all supposed to come under the judgment and approval of this parliamentary body that had over half of its seats reserved for minority representation. On the surface, this is just the institution Stepan suggests that could encourage minority participation and trust. There are, however several worrisome constitutional clauses affecting the influence of the Chamber of Nationalities and reducing its impact. First, the aforementioned hung legislation article ensures that any bill presented and passed by the Chamber of Deputies that is decidedly undesirable by Chamber of Nationalities does not meet its end with a negative vote in that chamber.

158 Ibid., 38.

159 Ibid., 52–53.

Instead, the matter is decided by a joint session in which a Burman majority is a real possibility. By joining the chambers to decide potentially ethnically divisive legislation, the constitution effectively facilitates a cancellation of its intended demos-constraining provision.

Regarding the second variable, the policy scope of the territorial chamber, there is marginal but meaningful differentiation between the powers of the Chamber of Nationalities and the Chamber of Deputies. Both bodies had the authority to initiate legislation, and the vast majority of that legislation had to pass through both chambers in order to be promulgated as law. The one exception is in "Money bills." Legislation labeled as a money bill by the Speaker of the Chamber of Deputies could only be initiated by that legislature. The bill, once passed by the Chamber of Deputies, would be provided to the Chamber of Nationalities for recommendations; but the upper house's approval was not required. Although its representatives had twenty-one days to evaluate the bill and suggest changes, it could not compel the lower house to accept its recommendations. The legislative body in which the minorities held greater influence was effectively shut out of control over any bill concerning taxes, union debt, and the appropriation of public money.[160]

Stepan's third variable, the degree to which policy making is constitutionally allocated to subunits of the federation, is further broken down into three components.[161] The first of those seeks potential legislation that requires "exceptional law-making majorities." There are two such instances, and both are listed in Chapter XI pertaining to the amendments of the constitution. Constitutional amendments required a two-thirds majority in a joint sitting of the Chambers in order to modify the constitution. In addition to this requirement, if any amendment affected or revised a particular state or minority's rights, including the State Revenue List and State Legislative List, that amendment had to also include a majority of the affected minority's representatives present. While two-

160 The Constitution of the Union of Burma, Chapter II, Art. 98- Art. 107; Stepan, "Toward a New Comparative Politics of Federalism," 57.

161 Stepan, "Toward a New Comparative Politics of Federalism," 64-69.

thirds of a joint session was not an impossible threshold for ethnic Burmans, the specific approval of affected minorities was a substantial protection for the constitutional rights and powers given them.

The second component evaluates which powers are reserved for the center in comparison to the subunits. The legislative powers of both the Union and the states are defined in List I and List II of the Third Schedule. While a numerical representation cannot convey the potential impact of legislation, the numerical difference in assigned authorities is suggests inequality. Eighty-nine areas of legislation are reserved for the Union, to only thirty-nine for the states. Of those thirty-nine legislative powers, many ethnic sensitive issues are included, such as cultural, education, health and local judiciary powers. The bulk of monetary and economic powers revert to the Union, however, including most taxation capabilities, and all national infrastructure. Most significantly, these state powers were only conferred to those minorities which had constitutionally established states. The Chin Special Division, while prescribed law-making authority for its territory, had no constitutional guarantee of sovereignty in those areas, while the Arakan and Mon had no legislative powers whatsoever.

The third component simply asks whether, if the constitution is silent on an issue, the presumption is that residual law-making power resides with the center or with the subunits. The last article of the Union Legislative List (List I) succinctly reserved "any other matter not enumerated in List II," for the central government.[162] When in doubt, law-making power and authority rested in the Union. In addition to these three components put forth by Stepan, it is important to once again draw attention to the concurrent territory and Union responsibilities of the councils and ministers. Clearly the territorial subunit policy makers had limited authority, given the above analysis, but the question as to whether they had a distinct policy making body at all is questionable at best. The final word in the breakdown of central government and subunit dominions in policymaking is provided in Chapter IV, article ninety-two of the constitution in which it states that in an emergency declared by the president, the Union Parliament has the power

162 The Constitution of the Union of Burma, Third Schedule, List 1, Art. 40.

"to make laws for a state or any part thereof with respect to any of the matters enumerated in the State Legislative List."[163] In truth, there was no legislative power reserved for the states that the Union government could not annex if it so desired. Constitutional guarantees Stepan asserts are a necessary prerequisite for federalism were essentially undermined by this clause.[164]

Stepan's final variable shifts focus from legislative capabilities to the party system. Specifically Stepan seeks to determine to what degree the party system is polity wide in orientation and incentives. [165]This is a difficult variable to asses considering that the AFPFL was modeled after socialist parties, thereby infiltrating multiple levels of society and transcending the typical political party influence within society. Additionally, the Constituent Assembly's decision to forgo state institutions, including legislatures, precludes any study of the performance of parties at that level. The electoral process featured single member districts, encouraging a two-party system, but candidates were nominated by parties, encouraging allegiance to the party over the constituency.[166] To make analysis even more difficult, by the time the 1957 elections came about, multiple regions were embroiled in conflict, and political defections were becoming just as common, and just as damaging to the Union solidarity as the military sort.[167]

Despite the inhibitions just mentioned, it is possible to make a few observations. One year prior to the 1957 elections, an opposition party, the National Unification Front (NUF), was created and that party successfully captured forty-three seats, indicating political space for a viable opposition party. Minority-based parties secured thirty-eight seats, fourteen of which came in the United Hill People's Congress Party. Ten different organizations constituted the remainder of the minority seats acquired. The quick

163 Silverstein, "Politics in the Shan State," 48 ref The Constitution of the Union of Burma, Chapter VI, Art. 94.

164 Stepan, "Toward a New Comparative Politics of Federalism," 38

165 Stepan, "Toward a New Comparative Politics of Federalism," 52–53.

166 Reynolds, Andrew, and Ben Reilly, *The International IDEA Handbook of Electoral System Design, Vol. 1,* (Stockholm: International IDEA, 1997), 28; Silverstein, *Burma: Military Rule and the Politics of Stagnation,* 68-69.

167 Tinker, *The Union of Burma*, 62.

assembly and influence of the NUF indicated a system that rewarded the larger parties, in accordance with the expected effects of single member districts, but ethnic differences prevented consolidation of the numerous minority groups.[168] As support for the primarily Burman-AFPFL continued to wane, dropping from 60 percent in 1951, to 48 percent in 1956, ethnic parties remained autonomous, often shifting their support between rival Burman parties. By 1960, the AFPFL had split, but one half, known as the Clean AFPFL, won the overwhelming majority of seats, as well as the support of most ethnically based affiliates and allies. Burma's political structure seemed to be tending toward a smaller number of parties, but through the initial democratic period political remained ethnically fractured and not polity-wide. [169]

### 4. Cumulative Analysis Using Stepan's Model

In retrospect, it is easy to see why scholars have considered Burma's initial government in 1947 to be more unitary than federal. Maung's narrative indicates that the participants of the Constituent Assembly had the best of intentions in unification, but the results missed that optimistic goal. Compared to Stepan's article, the lack of a dedicated territorial legislative body was the most glaring omission, and as Henry Hale points out, "the core region … had no government and legislature of its own and was administered directly by the Union government and legislature."[170] Representation in the Union was carefully crafted, but the regional democracy was a forgotten but essential institution that existed for neither majority nor minority. Through strict application of the requirements set forth by Hale and Stepan, Burma's government of 1947 failed to meet the most basic of criteria of representation in both a regional and central government, thus making its complex demos-constraining institutions futile and powerless.

While the constitution generally succeeded in providing overrepresentation for minorities through the Chamber of Nationalities, the policy scope of that chamber was

168 Silverstein, Josef, "Politics, Parties and National Elections in Burma," *Far Eastern Survey 25*, no. 12 (1956): 177–184; Fairbairn, Geoffrey, "Some Minority Problems in Burma,"307.

169 Taylor, *The State in Burma*, 246–48; Silverstein, *Burma: Military Rule and the Politics of Stagnation*, 67-72.

170 Henry E. Hale, "Divided We Stand," *World Politics 56*, no. 2 (2004): 169.

sharply limited by its exclusion in financial matters. The Chamber's veto powers were all but eliminated by the clause mandating combined chamber votes to settle disagreements between the assemblies. Furthermore, the subunits of the federation, in this case the dual-hatted councils and ministers, had markedly limited authority, while unreserved powers defaulted to the Union. Given this assessment, and the economic, political, and ethnic environment in which it was introduced, failure was hardly surprising or unexpected.

### F. Fragmentation and Democratic Failure

Democracy under the Union of Burma and the 1947 Constitution was short lived, as was the unity it was supposed to establish. Burma's situation was grim. War had destroyed the countryside, the infrastructure, and the economy. As Virginia Thompson lamented in 1948, "The world's greatest exporter of rice was barely able to feed itself."[171] Crime was rampant. In this difficult environment, political and ethnic unity fared no better. Taylor summarized the political scene immediately following the constitution: "forces unwilling to accept their exclusion from state power in 1948 launched the civil war in an attempt to achieve political power."[172] Armed ideological and ethnic opposition would plague the democratic Union over the duration of its existence. In 1962 a coup led by General Ne Win ended Burma's initial attempt at democracy and unity following independence. In only fourteen years, democracy had failed. As the previous section illustrated, the constitution largely falls short of Stepan's criteria for federalism, but given the environment described above, it is difficult to ascribe democratic failure to any single cause. The economic and physical condition of the country inhibited social services and economic growth, and the Union, still largely dominated by the Burman controlled-AFPFL, was beset by armed opposition and separatist groups before, during, and after the establishment of the constitution.

The Union of Burma was anything but unified, and over the next decade, as this section will illustrate, Burma's minorities abandoned the government in favor of armed

171 Thompson, Virginia. "The New Nation of Burma," 81.

172 Taylor, *The State in Burma*, 228.

opposition. Given the choice between participation in the Union or war against it, Burma's minorities chose war. The incomplete or limited participation of some minorities, such as the Karen and Arakan, added an initial degree of illegitimacy to the Union and its government. Communist separatists labeled the AFPFL as traitors to their *Do Bama Asaiyone* roots and adopted the role of spoiler, and insurgent. Those minorities that had more eagerly participated in the constitutional process, such as the Shan and Kachin, found themselves supporting a besieged government that increasingly abandoned constitutional principles in an effort to curb the insurgent threats surrounding it. Because of insurgency and the state's limited capacity, the sovereignty of the Union of Burma was weaker than the devolution intended by federalist design. The Shan and Karenni actually found themselves under less central government oversight within the Union of Burma than they did as a Frontier Area under the British.[173] Rangoon held little sway over the borderlands, and over the next ten years repeatedly "appealed to the people to stop paying taxes to the insurgents."[174]

### 1. Communism and Ethnicity

Because of the challenges presented by the separatist Communist movement, many have blamed its existence, and the AFPFL's inability to overcome it as the primary source of the Union's early struggles. Others emphasize the already fragmenting ethnic arrangement that birthed insurgency groups and separatist movements in the Shan, Karen, Kachin, and Arakan regions of Burma. But as Smith highlights, the Union's enemies and problems were not so easily categorized, and thus likewise for the AFPFL and subsequent central government entities to address: "In forty years of armed conflict, the ethnic and political insurgencies have crossed at so many points that it has become impossible to deal with any of the insurgent movements in complete isolation."[175]

The opportunism of both the CPB and ethnic minority groups was the primary cause of this confusion. The CPB courted ethnic alliances in an attempt to build a Maoist

173 Ibid., 227.

174 Fairbairn, Geoffrey, "Some Minority Problems in Burma," 302.

175 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 28.

United Front, while ethnic leaders willingly supported any group that furthered their own autonomy or separatist agenda. A common enemy facilitated cooperation, but dissimilar goals kept them from forming a lasting alliance. While the minority groups fought for their communities and their cultures, the CPB fought for ideology and revolution. These goals were not only dissimilar, they were also ultimately conflicting. As Smith notes, a successful communist revolution merely "represented an alternative face of Burman nationalism. It has long been accepted that the overthrow of any government in Rangoon might well mean the replacing of one Burman-dominated government with another."[176] Understanding this perspective explains the minorities' abandonment of the CPB in 1989, when ethnic forces, including the Shan, withdrew their support near the height of its influence in Burma, which in combination with decreased funding from Communist China, effectively commenced its collapse.[177]

Whatever prospects the CPB had at uniting ethnic opposition in support of its cause were ultimately ruined by their actions. The ethnic misgivings and distrust of the CPB mentioned above were underscored by a lack of ethnic representation within its leadership, and the CPB commitment to power and revolution, with a complete disregard to development and enhancement of ethnic areas.[178] The ideological commitments of the CPB, which refused to consider reserved ethnic participation and instead focused on class equality, disenfranchised the ethnic elites When an alternative mode of opposition presented itself in the form of democracy, ethnic minorities sought influence there instead. As flawed and as illegitimate as that democracy proved to be, it still held more potential for influence and representation than any alliance with the CPB, the AFPFL, or any other Burman dominated organization ever could.[179]

176 Ibid., 29.

177 Ibid., 22.

178 Kramer, *Neither War nor Peace,* 8–9.

179 Smith, Burma: *Insurgency and the Politics of Ethnicity*, 322–23.

### 2. Initial Fragmentation and Union Disenfranchisement

The Union government did little to endear itself to its minority constituents in those early days of Burmese democracy. The absence left by the assassination of Aung San left U Nu and General Ne Win as the most prominent leaders, but they lacked the reputation and the charisma Aung San had wielded before them.[180] The AFPFL was always more than simply a political party, having its roots in a socialist ideology that encouraged party influence throughout society. As political opposition grew, the AFPFL desperately attempted to maintain its hold on the government, leading to policies that ultimately provoked minority resentment within Burma. One of the more incendiary policies was "Burmanization" which Geoffrey Fairbairn described in 1957 as "the packing of the administration with AFPFL supporters."[181] The motives were political, intending to secure control of the government from within and ensure continued influence, but to the ethnicities, it was no less than a purging of minority membership in the government. Pessimistic fears were realized: the new Union was nothing more than another Burman oppressor. From the perspective of Burma's ethnic minorities, the Union, the AFPFL, and the *tatmawdaw* were one and the same. They were all Burma. Opposing one was opposing all.[182]

Three regions presented immediate ethnic opposition and insurgency: the Karen, Arakan, and Karenni. Historically, the least likely of all ethnicities to be included in the Union of Burma had been the Karenni. The Karenni had remained even more autonomous and independent during the colonial years than the Shan, and were previously not included in British colonial Burma.[183] In contrast to the somewhat illegitimate Karen participations in the Constituent Assembly, the Karenni delegation was more representative of its people. Despite missing the first two days of the assembly, the Karenni delegation succeeded, along with the Shan, in securing the greatest degree of

180 Silverstein, *Burma: Military Rule and the Politics of Stagnation*, 20-21.

181 Fairbairn, Geoffrey, "Some Minority Problems in Burma," 306.

182 Ibid., 306.

183 Tinker, *The Union of Burma*, 29.

autonomy in the new Union.[184] This participation, however, did not preclude independence movements within Karenni society which was unaccustomed to inclusion and potential repression under its Burman neighbors. In September of 1946, the United Karenni Independent States Council was established, and the following year, only months after the establishment of the Union, one faction within that council unilaterally declared independence, and instigated a Karenni rebellion. The Karenni rebellion was watched closely by other minorities who considered it a test case for future rebellions of their own.[185]

The situation of the Karen was ironically in complete contrast to that of the Karenni, to whom they are ethnically very closely related. The Karen were easily the most politically organized minority within Burma, but they were also the least committed and integrated in the Union. While the rest of Burma negotiated and drafted a constitution, the Karen continued to petition for a British protection and a mandate establishing a Karen homeland. The Karen National Union (KNU) was established in early 1947 for that specific purpose. It was a major political entity from its start, incorporating multiple Karen constituencies and already established Karen political groups, leading Smith to call it "by far the most influential of all the Karen political organizations."[186] Because of its British focus, the KNU did not represent Karen interests in the Union of Burma. It boycotted the Constituent Assembly, and did not participate in the constitution's creation. The pleas to London went unanswered, and a comparatively poorly organized substitute, the Karen Youth Organization (KYO) took the KNU's place.[187] The result was that Karen support of the Union was never fully legitimized, and despite later attempts to provide regional ethnic autonomy, the Karen and the KNU were never effectively incorporated into the Union.[188]

184 Maung , *Burma's Constitution*, 82.

185 Smith, *Burma: Insurgency and the Politics of* Ethnicity, 74.

186 Ibid., 77.

187 Silverstein, *Burma: Military Rule and the Politics of Stagnation*, 20.

188 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 81, 85.

The constitutional grievances of the Karen, including the lack of territorial accommodation, were well justified, even if they were a result of their own unwillingness to participate and negotiate with the rest of Burma's ethnicities. Greater grievance, however, is justified for the people of the Arakan region. Similar to the Karen, the Arakanese had a powerful political body in the Arakan National Congress (ANC), but in pursuit of greater political influence, the members of the ANC chose to merge with the AFPFL in 1947. Specific ethnic desires subsequently took a backseat to the AFPFL agenda, and the results were disastrous for both the ANC and the Arakan region. At the Constituent Assembly, ANC members did not persistently lobby for ethnic privileges, and the Arakanese desire for regional autonomy was flatly rejected.[189] The Arakanese did not receive any special privileges or concessions in the Burmese Constitution, and lost legitimacy amongst its constituency, as those that were supposed to represent Arakanese interests were instead focused on AFPFL political power. The ANC's fall simultaneously created a political vacancy and eliminated a unifying political organization. Ideological and religious factions ensued, with ethnic and religious violence soon after. One of the largest remaining factions, the Arakan Leftist Unity Front (ALUF), led calls for increased autonomy and the elimination of taxes to the Union. The political platform was popular, and radicalized into protests, strikes, and even ALUF sponsored violence. Instead of concession or mediation, *tatmawdaw* personnel brutally suppressed the uprising, and created even more animosity. The collective disorder in the region attracted the underground communist movements, and effectively turned the region into the stage for both ethnic and ideological conflict.[190]

Conflict and insurgency in the Karenni and Arakan regions destabilized the government, but it was the defection and insurgency of the Karen that presented an existential threat to the new government. In January of 1949, the bulk of the Karen personnel in the *tatmawdaw* were playing a crucial role in the Union's fight against the communist insurgency. Upon hearing reports of irregular Burman troops conducting

189 Tinker, *The Union of Burma*, 37.

190 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 81-82.

indiscriminate killing and pillaging of Karen villages back in the center of the nation, all three Karen Rifle battalions abandoned the cause, and unbeknownst to the KNU, or Union and *tatmawdaw* leadership at the center, defected with the intent of rebellion.[191] The 1st Kachin Rifles abandoned the anti-communist effort as well, and the loss of the four units was crippling for the *tatmawdaw*. The capital became vulnerable to both CPB and Karen capture. What had been loose, unofficial, and broken communication between the Karen political leadership and ethnically homogenous Karen military units now transformed into parallel, and increasingly coordinated opposition against the central government.[192]

### 3. Expansion of the Opposition: Losing Shan Support

The Kachin and Shan watched the unrest throughout the other frontier areas and within Karen-populated central Burma with extreme interest. Interactions with other minorities had direct implication to their own relationships with the central government, but as participants and supporters of the agreements made at Panglong, they were hesitant to follow other minorities in opposition of the Union.[193] The ethnic leadership, the *sawbwas* and chiefs, had always jealously protected their autonomy, guarding against early British and later Burman initiatives to reorganize the periphery in ways that would limit their influence. This period was no different, and as a result, while political and military separatism lay dormant, there were overt attempts to reduce or eliminate economic dependence on the center. Those attempts largely failed, and remain contentious issues to this day.[194]

Opposition and insurgency pervaded the Shan State, but it was initially inorganic. The Shan State's geographic location, natural resources, and the lucrative opium trade made it an enticing base for opposition groups. As a result, it was the presence of the

191 Callahan, *Making Enemies*, 129.

192 Ibid., 133; Taylor, *The State in Burma*, 236; Smith, *Burma: Insurgency and the Politics of Ethnicity*, 93.

193 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 191.

194 Ibid., 74.

CPB, the KMT, the Karen National Defense Organization, and Kachin opposition in Shan territory that compelled the national government to intervene militarily, and eventually led Rangoon to declare an emergency and the impose martial law in June 1950.[195] In comparison to other minority groups, Shan leadership remained the most committed to the Union through the first few years of democracy. Nascent separatist movements started in the 1950's but outright opposition was not present until November 1959.[196]

During those years in which the Shan State was beset by anti-Union insurgencies and opposition groups, the government met with Shan *sawbwas*, interested in reducing their regional influence to facilitate stronger central control over the Shan State by the Union. The *Sawbwas* participated in those discussions, largely believing that they held the ultimate power in any autonomy negotiations thanks to the constitutional right of secession. In response to the secession threat, the Union began gradually stripping the *sawbwas* of their local influence and power, turning negotiations for political power into powerless hereditary titles and monetary compensation. Callahan summarizes the Union efforts: "the Nu Government improved its bargaining position in these negotiations when it deployed the *tatmawdaw* throughout most of the region and had the army take over tax collection, social services, police forces, and other governmental services previously under the purview of the *sawbwas*."[197] The autonomy and administrative capacity of the Shan *sawbwas*, and consequently of the Shan people, was methodically stripped away.

By 1953, the *sawbwas* accepted what they perceived as an unavoidable elimination of stature and gave up administrative authority, including judicial power, which the Shan had never historically relinquished, in exchange for financial compensation and the preservation of their titles. Less than ten years after a constitution seemingly guaranteed regional administrative rights to one of Burma's most independent minorities, Burman military forces became the primary providers of government

195 Callahan, *Making Enemies*, 156.

196 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 190-91.

197 Ibid., 158.

services.[198] Military administration in the Shan State resulted in ethnic violence. The wife of a Shan *sawbwa* recalled the military administration, stating they, "behaved like ruthless occupation forces rather than protectors of the land."[199]

The results of these policies would be insurrection and opposition from the Shan, and subsequently the Kachin as well. Both of these original participants in the Panglong Agreement had notably backed Union through several years of conflict and insurrection despite reduced autonomy and clear civil rights abuses at the hands of the Burman *tatmawdaw*. Because of this, there is reason to believe that the agreements represented by Panglong and the 1947 Constitution may well have accommodated the Shan and Kachin. Unfortunately, Union violence and administrative marginalization ruined that opportunity, and the two minorities which had so ardently supported the Union had now become its enemies. Voluntary minority participation of the 1947 Constitution ultimately lasted only 14 years.[200]

### 4. Democratic Failure and the Threat of Federalism

The decline and eventual breakup of the AFPFL coincided with falling minority expectations of a united Burma under the framework of the 1947 Constitution. By the time the AFPFL split in 1958, confidence in the government from even the most ardent Burman supporters was shattered. Prime Minister Nu still held some charismatic appeal he gained as a former leader of *Do Bama Asaiyone* and as *Thakin Nu* alongside Aung San, but his decisions, which included concessions for Arakan, Mon, and Chin States were too late, too erratic, or lacked Union support to retain the support of Burma's minorities.[201] The AFPFL and the Union government split, more a victim of its own internal politics than of defeat from its external ideological and ethnic enemies. The fall of the AFPFL was symbolically the end of the legacy left by its mastermind, Aung San, and without that legacy, the 1949 Constitution and the government it created was

198 Ibid., 158; Taylor, *The State in Burma*, 268-69

199 Callahan, *Making Enemies*, 158.

200 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 191.

201 Taylor, *The State in Burma*, 249; *Smith, Burma: Insurgency and the Politics of Ethnicity*, 194.

meaningless, even for the Burman. As Taylor asserts, "Ethnicity, religion, or Communism inspired more loyalty than did the state."[202]

The *tatmawdaw*, led by General Ne Win, took control in 1958 in the form of a two year "caretaker" government, and later executed a successful coup in 1962. The motivation behind the takeover went beyond a quest for power. The *tatmawdaw* saw the parliamentary democracy as ineffective and corrupt, and viewed itself as the suprapolitical actor necessary to end both the ideological and ethnic insurgencies.[203] Ironically, federalism became the trigger. The threat of minority military cooperation had alarmed the military, but it was the Federal Movement, a late 1960's minority movement for greater autonomy, and the "Federalist Seminar" of February 1962 that caused the military to act.[204] Democracy and federalism were, in the eyes of the *tatmawdaw*, ineffective and incapable of uniting Burma's fragmented populace.[205] General Ne Win made his views clear that fateful morning of March 2, 1962: "Federalism is impossible; it will destroy the Union."[206]

### 5. Conclusion

Burma's leadership faced significant challenges in uniting an ideologically and ethnically fractured country under one government. Armed with the Panglong Agreement and the legacy of the *Government of Burma Act, 1935,* the 1947 Constitution represented their best attempt at accomplishing the goal of Burmese unity. But in the years between the creation of the 1947 Constitution and the coup of 1962, democracy never consolidated, and the country was more politically, ethnically, and ideologically fractured at the end of the period than it was at its beginning. Therefore, by virtue of the outcome alone, the constitutional choices proved ineffective. Stepan's federal criteria offer explanations for the failure by highlighting the absence of an exclusive sub-unit

202 Taylor, *The State in Burma*, 285.

203 Ibid., 236-37.

204 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 195-97.

205 Taylor, *The State in Burma*, 290-92.

206 Quoted in Smith, *Burma: Insurgency and the Politics of Ethnicity*, 196.

lawmaking body, and marginalized influence in the Union legislative system despite overrepresentation in the Chamber of Nationalities. The constitution of Burma's first democratic period fails the federal test, just as the government it created failed to accommodate Burma's minorities.

# IV. BURMA'S PRESENT: FEDERAL DESIRES AND THE 2008 CONSTITUTION

Prior to the loosening of civil liberties and the participation of Burma's democratic opposition party, the NLD, within the government in 2012, few viewed Burma's 2008 Constitution to be anything other than empty rhetoric. Ridicule of the government's 2003 "seven-stage roadmap" towards "building a modern, developed and democratic nation,"[207] was justified, given the continued disregard for political and individual freedoms prior to reform. The constitutional referendum of 2008 and the election of 2010 were neither free nor fair and indicated little break from the totalitarian past. Now, however, as the National League for Democracy (NLD) functions as a legitimate opposition party within government, skepticism and disregard of the constitution seems out of date. This chapter will evaluate the 2008 Constitution and its prospects for accommodating and incorporating Burma's minorities. It will begin with a brief summary of the interaction between the *tatmawdaw* (military) and Burma's minorities since 1962. The contemporary conditions and demands of Burma's minorities will be reviewed, and the constitution will be analyzed, once again using Stepan's criteria for effective ethnofederalism.

## A. Historical Background (Post Democracy)

Burma's ethnic minorities have faced the spectrum of human rights violations since 1962. The *tatmawdaw* and its government have been repeatedly chastised by the international community, but such accusations have not altered their behavior, nor improved the lives of their victims. Because of this, it is unexpected that any minority group would remain willing to consider inclusion in a government dominated by the very people that perpetrated the crimes, but Burma's minorities largely remain committed to the idea. The following section chronicles the history of governance in Burma, highlighting the degree of ethnic participation since the coup of 1962, and outlining the

207 "Mass Rally Supports Seven-Point Roadmap Clarified by Prime Minister," *The New Light of Myanmar*, September 30, 2003, http://www.ibiblio.org/obl/docs/rallies-etc..htm.

minorities' physical experiences since that time. A review of contemporary ethnic political demands sets the stage for evaluating the 2008 Constitution and its potential for meeting those desires and accommodating Burma's minorities.

### 1. Ethnicity and Government Since 1962

At the completion of the 1962 coup, General Ne Win and his cohorts set up the Revolutionary Council which held complete power throughout all levels of government. The Council and the government it established was, at least in theory, based along socialist ideals called the "Burmese Way to Socialism." Such an ideological basis justified the government to intrude and invade into all aspects of society. Federalism, autonomy, and administrative independence were eliminated. Ethnically sensitive matters such as education, music, and dance became subject to government prohibition, and control over publishing ensured control over the media and the maintenance of language. The Council sought to eliminate ethnically based rights and privileges, preaching, "equal rights and equal status for all minority groups." The point, however, was not democratic liberalism, but rather the elimination of concessions and accommodation for Burma's minorities. The ethnic councils established by the 1947 Constitution were abolished and replaced with centrally appointed administrations. Taylor summarizes the Council's desired end state: "The effect of the Revolutionary Council's policies was to eliminate ethnicity as a constitutional issue and replace it with more tractable ones such as regional development and cultural diversity."[208]

In 1974, the Revolutionary Council introduced Burma's second constitution. The 1974 Constitution largely justified and affirmed the actions already executed by the Revolutionary Council, and established a strong central government, controlled administratively by the military down to the village level.[209] It established the *Pyithu Hluttaw*, a unicameral legislative chamber that functioned similarly to other socialist and communist regimes' legislative bodies. Only members of the military's Burma Socialist

208 Taylor, *The State in Burma*, 294-301.

209 Ibid., 303-304.

Program Party (BSPP) participated, and those members were chosen by the party, not the populace. The constitution also officially established separate new states, including the Mon State, the Chin State, and the Arakan State.[210] Despite the ethnic attachment of the territories' names, the point was not increased ethnic accommodation, but structural reorganization. The country was divided into seven states and seven divisions (See Figure 4), and 72 percent of the population, which translated to 66 percent of the seats, lived within the Burman dominated divisions.[211] Even if democratic elections did take place, representation within the unicameral legislature would have been overwhelmingly Burman.[212] As Silverstein assessed in 1977, the goal was "direct control over the entire nation through a strong and disciplined administrative structure."[213] The 1974 Constitution was overtly central.

The political dominance of the military through the BSPP remained largely unchallenged until the famous 8888 Democratic protests on August 8, 1988. The BSPP, renamed as the State Law and Order Restoration Council (SLORC), aggressively suppressed the uprising, imprisoned Aung San Suu Kyi, suspended the 1974 Constitution and reinstated martial law.[214] General Saw Maung, the *tatmawdaw* Chief of Staff, announced impending elections, and followed through with that promise, which surprisingly resulted in free and fair elections. The NLD dominated those elections, and the new military party front, the National Unity Party (NUP) was utterly defeated.[215] In response the military nullified the elections, ensuring that the NLD never attained power. From that point, until 2011, the military would continue to rule by martial law.[216]

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210 Constitution of the Union of Burma (1974), Chapter III, Art. 30.

211 Constitution of the Union of Burma (1974), Chapter III, Art. 31; Taylor, *The State in Burma*, 303; Silverstein, *Burma: Military Rule and the Politics of Stagnation*, 135.

212 Constitution of the Union of Burma (1974), Chapter V.

213 Silverstein, *Burma: Military Rule and the Politics of Stagnation*, 133.

214 Callahan, *Making Enemies*, 210.

215, Tin Maung Maung Than. "Myanmar's 2010 Elections: Continuity and Change." *Southeast Asian Affairs* 2011, no. 1 (2011): 195.

216 David I. Steinberg, "Myanmar in 2010," 175.


Figure 4. Burma's Administrative Divisions[217]

217 University of Texas Libraries Perry Castañeda Library Map Collection, Burma (Myanmar) Maps, http://www.lib.utexas.edu/maps/burma.html

In 2003, during the midst of the military junta's governance, the SLORC announced its seven step roadmap for democratization, which consisted of reconvening the National Convention, taking steps to ensure emergence of a genuine democratic system, drafting of a new constitution, adopting that constitution through national referendum, free and fair elections for the legislative bodies, convening of the legislatures, and the building of a modern democratic nation by state leaders elected by the legislature.[218] These steps were regarded by foreign and domestic observers as empty promises which at best would result in façade democracy similar to the socialist period that preceded it.[219] International criticism of the military government during that time largely focused on its treatment of Aung San Suu Kyi and the NLD. This fact did not go unnoticed by the minorities. One ethnic minority leader expressed his exasperation in 1996 saying, "When several hundred NLD supporters were recently arrested, there was much international concern, but fortunately most have been released. In ethnic minority areas, however, our people are still being killed every day, and thousands of people are being forced from their homes. It does not attract anything like the same degree of attention."[220]

Because of the focus on Burma's civil and political right abuses, the participation and inclusion of Burma's minorities in the seven step process has often been dismissed along with the process itself. This is despite the fact that one of the world's longest running insurgencies, the Karen, participated in the first step: the reconvening of the National Convention. At that convention, a thirteen party multi-ethnic coalition submitted proposals for a federal union. Even though these proposals were rejected, participation in the process was seen by the minorities themselves as more potentially significant and influential than a return to insurgency.[221] They reasoned that to have a

218 "Mass Rally Supports Seven-Point Roadmap Clarified by Prime Minister," *The New Light of Myanmar*, September 30, 2003, accessed through Lexus Nexus Academic, April 15, 2013.

219 Holliday, "Voting and Violence in Myanmar," 1045.

220 Martin Smith, "Burma at the Crossroads," 8.

221 Martin Smith, "Ethnic Politics in Myanmar: A Year of Tension and Anticipation." *Southeast Asian Affairs* (2010), 218; Kramer, *Neither War nor Peace*, 32-33.

constitution and a government was better than recent experiences in which the regional military commanders persecuted them without the rule of law. They concluded that even a defective constitution could be amended. The Karen specifically recalled the consequences of their Constituent Assembly boycott in 1947 as motivation to participate this time. As Tom Kramer wrote in 2009, "the Karen could not afford to remain outside of the political process, albeit a flawed one." [222]

The constitutional referendum and the elections of 2010 were globally regarded as neither free nor fair, but the participation of Burma's minorities in the election was significant, as were the results. Seventeen ethnic minority parties won seats within state or Union government, and in four of the minority states, those parties won over 25 percent of the vote, conferring several constitutional rights.[223] The Transnational Institute rightly assesses the importance of minority presence in the Union government, stating that it is not the degree of influence that matters, but instead emphasizes the significance as, "the presence of elected representatives of minority ethnic populations who are able to actively discuss the key local issues, be they social, cultural economic, or political."[224] While the world largely condemned the SLORC's seven steps, many of Burma's minorities decided a seat at the table, however marginalized it might be, was better than exclusion and continued insurgency.

### 2. Beyond Governance: The Consequences of Ethnicity in Burma

The previous section summarizes Burma's governance and minority participation since 1962, but ethnic interaction was hardly limited to the political sphere. Following the coup, General Ne Win attempted to negotiate an end to the ethnic and ideological conflicts throughout Burma. Those efforts proved futile and the fighting resumed.[225] Facing numerous armed groups in different locations throughout the country, the *tatmawdaw* took steps to increase its own capabilities and undermine the capacity of its

222 Kramer, *Neither War nor Peace*, 33.

223 Transnational Institute, *A Changing Ethnic Landscape*, 1-2, 5.

224 Ibid., 5.

225 Taylor, *The State in Burma*, 299.

opponents. By modernizing and restructuring, the military was able to gain a technological advantage over its opponents that resulted in near immediate results, such as defeating the US supplied Kuomintang in the Shan State.[226] The *tatmawdaw* then divided the country into military regions, and gave regional commanders great freedom and authority within those regions to eliminate insurgencies.[227] In this limited oversight, human rights abuses and corruption multiplied.[228]

The country's military divisions did not significantly alter the minorities' experiences. The *tatmawdaw* counterinsurgent policy, called "Four Cuts" mandated separating insurgent groups from sources of food, funds, intelligence, and recruits.[229] This policy promoted and justified increasingly brutal tactics by the military, resulting in the types of reports mentioned in the Karen human rights book, *Suffering in Silence*, published in 2000. Rape, burnt villages, confiscated food stores, mutilated livestock, and indiscriminate killing became standard occurrences in the ethnic periphery.[230] By several accounts, including Callahan and Hazel Lang, who wrote on the Burmese refugees in Thailand, the *tatmawdaw* goal was closer to depopulation than it was to suppression.[231]

The armed insurgent groups held varying control of the regions furthest from the Burmese capitol and were able to use the people and resources of that region to varying degrees.[232] Those groups remained largely isolated, however, and nearly as ignorant of the plights of their neighbors as central Burmans were of their fellow countrymen in the hills.[233] In 1989, following the "8888" protests and subsequent crackdown, the insurgency situation in Burma took another turn, with the collapse of the Communist

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226 Callahan, *Making Enemies*, 159.

227 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 259.

228 Callahan, *Making Enemies*, 212.

229 Ibid., 209–210, 229; Smith, *Burma: Insurgency and the Politics of Ethnicity*, 258-60.

230 Claudio O. Delang, and Kevin Heppner, ed, *Suffering in Silence: The Human Rights Nightmare of the Karen People*, (Parkland: Universal Publishers, 2000).

231 Callahan, *Making Enemies*, 223; Hazel J. Lang, *Fear and Sanctuary: Burmese Refugees in Thailand*., Vol. 32. (Cornell: Southeast Asia, 2002).

232 Silverstein, *Burma: Military Rule and the Politics of Stagnation*, 113.

233 Callahan, *Making Enemies*, 223.

Party of Burma (CPB). Without Chinese support, the CPB was highly reliant upon its ethnic hosts in the peripheral regions of the country. When the minorities withdrew their support, anticipating the possibility of democratic opposition, the CPB fell. The long-awaited elimination of the military's ideological rival facilitated a change in ethnic minority insurgency negotiations. Over the next few years, the government negotiated cease-fire agreements with the Wa, Kachin, Mon, and Karen.[234] While peace was and is still yet to be negotiated, the cease-fires gave many of Burma's minorities the time and opportunity to participate politically.

In some respects, the cease-fires have come to represent a devolved power relationship between the government and political representation of the minorities. In some areas, ethnic insurgents have kept their weapons and act as internal police, which the government has attempted to adopt into regional, ethnically homogenous "Border Guard Force." [235] It is not uncommon for *tatmawdaw* forces to leave their weapons at the edge of the controlled region before entering into it. [236] Callahan's view of the cease-fires is somewhat ironic, given the focus of this thesis: "In some respects, through its seventeen cease-fires, the SLORC/SPDC constructed a novel approach to federalism."[237]

### 3. The Contemporary Grievances and Desires of Burma's Ethnicities

The "spirit of Panglong" still resonates loudly within the hopes and demands of Burma's ethnic minorities. In Panglong, minorities remember the voluntary negotiation between equals, but most importantly "Full autonomy in internal administration for the Frontier Areas"[238] In 1947, minorities agreed on a construction of government that was intentionally federal.[239] In 1976, an eleven party coalition drafted and proposed federalism. Once again in 2008, a multi-ethnic alliance, the United Nationalities

234 Kramer, *Neither War nor Peace*, 8-9.

235 Ibid., 35

236 Callahan, *Making Enemies*, 220.

237 Ibid., 224.

238 The Panglong Agreement, Art. 5.

239 Smith, "Burma at the Crossroads," 8.

Alliance, proposed a more federal union, and opposed the proposed constitution because it did "not include the federal union concept."[240] The United Nationalities Federal Council, which claims the support of the major Karen, Shan, Karenni, Mon, Arakan, and Chin political fronts was established in 2011, desiring the establishment of a "Federal Union guaranteeing freedom, justice and equality for lasting and peaceful co-existence"[241] Similarly, the Ethnic Nationalities Council, the successor of the NDF, aims for "a genuine Federal Union" to "guarantee…self-determination."[242] Federalism may have been absent in all three of Burma's independent constitutions, but it remains at the heart of Burma's minority demands. The following sub-sections briefly identify the contemporary demands, from the mission statements of the politically coordinated Karen, to the unheard plights of the Rohingya.

Perhaps the most striking feature of Burmese minority demands is their consistency. In 1950, Saw Ba U Gyi established the four main principles of the KNU as no surrender, recognition of the Karen State, retain arms, and self-determination.[243] Those four principles remain unaltered, appearing on KNU's official website along with the following mission statement, "To establish a genuine Federal Union in cooperation with all the Karen and all the ethnic peoples in the country for harmony, peace, stability and prosperity for all."[244] Despite over sixty years of opposition, oppression, and immeasurable human rights abuses at the hands of the *tatmawdaw* have not changed the desires of Burma's Karen people. The story resonates similarly with the Kachin, the Shan, the Mon, the Chin, and the Arakan. It is self-determination that they desire, and federalism is their preferred means of achieving it.

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240 Smith, "Ethnic Politics in Myanmar," 218; *Democratic Voice of Burma*, "Twelve Burma Parties Urge Vote Against Constitution," Apr 20, 2012, http://www.dvb.no/.

241 "United Nationalities Federal Council Annual Meeting Statement," last accessed June 4, 2013, http://www.burmapartnership.org/2013/01/united-nationalities-federal-council-annual-meeting-statement/.; *Current Ethnic Issues (Kachin & Shan) Report*, last modified July 7, 2011, http://uscampaignforburma.files.wordpress.com/2011/07/current-ethni-issues-shan-kachin.pdf.

242 Ethnic Nationalities Council (Union of Burma) website, accessed June 4, 2013, http://www.encburma.net/index.php/about-enc.html.

243 Smith, *Burma: Insurgency and the Politics of Ethnicity*, 143.

244 Karen National Union Objectives, last accessed June 7, 2013, http://karennationalunion.net/index.php/burma/about-the-knu/objectives.

## B. The Constitution: Construction, Institutions, and Relationships

### 1. We the People: The Preamble

In contrast to the 1947 Preamble which seemed to search for popular justification, the Preamble of the 2008 Constitution attempts to build a historical narrative of unity that predates imperialism. It states, "Myanmar is a Nation"[245], rather than suggesting the joining of separate nations such as the Shan and Karenni under a unifying framework. It emphasizes a historical pattern of "living in unity in oneness,"[246] and blames past failures on external influences and unfortunate circumstances, such as the need for a hastily prepared constitution in 1947 to support independence timelines. The predominant theme is unity, despite the exclusivity expressed in Article 450 which succinctly states: "Myanmar [Burmese] language is the official language."[247] "Similarly, it is to be the only language through which the constitution it so be legally interpreted.[248] The Preamble claims that, "National races representative of all townships in the Nation took part in the National Convention."[249] It calls on its citizens to "uphold racial equality, living eternally in unity,"[250] clearly placing the onus of unity upon Burma's minorities, rather than the government that unifies them.

One phrase is introduced in the Preamble and repeated throughout the constitution: "non-disintegration of the Union, [and] of National Solidarity"[251] Non-disintegration, more than any other notion, defines the focus of the constitution. This language is repeated sixteen times, included in the Oath of Affirmation, justifying martial

245 Constitution of the Republic of the Union of Myanmar (2008), Preamble, from the Online Burma/Myanmar Library, last accessed June 5, 2013, http://www.burmalibrary.org and The Republic of the Union of Myanmar President Office, last accessed June5, 2013, http://www.president-office.gov.mm.

246 Constitution of the Republic of the Union of Myanmar (2008), Preamble.

247 Constitution of the Republic of the Union of Myanmar, Chapter XV, Art. 450.

248 Constitution of the Republic of the Union of Myanmar, Chapter XV, Art. 452.

249 Constitution of the Republic of the Union of Myanmar (2008), Preamble.

250 Constitution of the Republic of the Union of Myanmar (2008), Preamble.

251 Constitution of the Republic of the Union of Myanmar (2008), Preamble.

law, and outlawing political parties whose platforms oppose these ideals.[252] While the constitution establishes separate states for Burma's national races, and guarantees representation for minorities with a certain population percentage, all of these "multi-National"[253] principles are tempered by a powerful emphasis on national unity. Any divisive threat is deemed illegal, and carries consequences that include the restriction of liberty and freedoms with *tatmawdaw* intervention.

### 2. State Formation

Burma is divided into "Seven States and Seven Regions of equal status established under current names."[254] The previously established states for the Shan, Karen, Karenni, and Kachin are retained, along with new Chin, Mon, and Rakhine States. This, combined with Burma's official recognition of seven National races incorporating the one hundred thirty-five ethnicities, effectively establishes a state for each of Burma's major ethnic divisions. The Burman dominated areas are broken up into regions, notably a decision Hale would recommend in a case of a dominant majority, such as this one.[255] The result is the heavily Burman populated Yangon, Mandalay, Sagaing, Ayeyawady, Bago, Magway, and Taninthayi Regions. The states and the regions are given identical rights and representation within the government, much of which will be discussed in the following sections.[256] Changes to the boundaries of these territories require the approval of the national legislature, known as the Union Assembly (*Pyidaungsu Hluttaw*), which comprises both the lower house and the upper house; such changes also require the approval by one-half of affected region's populace.[257] The Union, however, maintains the final word, and can override the regional preference with a vote of more than three quarters of the Union Assembly. Moreover, secession is explicitly prohibited, which

252 Constitution of the Republic of the Union of Myanmar, Preamble, Chapter 1, Art. 40, Chapter 10, Art. 44, Schedule Four.

253 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 2.

254 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 9.

255 Hale, "Divided We Stand," 166-67.

256 Constitution of the Republic of the Union of Myanmar, Chapter II, Art. 49.

257 Constitution of the Republic of the Union of Myanmar, Chapter II, Art. 52.

further restricts the rights of the states and reinforces the principle of non-disintegration.[258]

Three distinct levels of government are established: The Union, the States and Regions, and Self-Administered Areas. In a divergence the 1947 Constitution, each state and region is prescribed its own legislature (*Hluttaw)*, meaning that representative legislative bodies are solely dedicated to the territories they govern, and the members of those bodies have no connection or responsibilities within the Union.[259] Self-Administered Areas are set up for distinct sub-ethnicities within states and regions that have a population of at least ten thousand. The elected leader of that Area is additionally guaranteed representation within the state or region legislatures.[260]

### 3. Fundamental Rights

The fundamental rights and liberties listed in Chapter I and Chapter VIII are befitting of any contemporary democracy. The freedoms of expression, assembly, association, language, literature, and culture seem to foster a free and open democracy in which ethnic diversity would be welcome. Since 2008, however, those freedoms have not always materialized, largely due to the constitutional commitment to non-disintegration and national solidarity. To this end, there are several clauses that insinuate limitations or restrictions to fundamental rights. The freedom of religion, for example, is contingent on "order, morality or health,"[261] clearly leaving interpretive room in its implementation. More explicitly, however, occurrences of foreign invasion, insurrection and emergency justify the suspension of the personal liberties and rights described in Chapter VII.[262] Multiple and repetitive times within that chapter, the citizenry of Burma is charged with

258 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 10.

259 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 12, 13.

260 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 15; Chapter V, Art. 276.

261 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 34.

262 Constitution of the Republic of the Union of Myanmar, Chapter VIII, Art. 379, 381.

the responsibility to safeguard national solidarity,[263] independence and sovereignty,[264] non-disintegration,[265] and "unity among the national races."[266]

As a commitment to the ethnicities and cultures of its inhabitants, the Union commits to "assist in the development of language, literature, fine arts and culture of the National races, " to "promote socio-economic development including education, health, economy of less developed National races," and to promote "solidarity and mutual amity."[267] All of these commitments, and all of the liberties and rights previously cited, are once again subject to an emergency clause, which justifies sweeping civil liberty restrictions, and establishes the military as the protector, and justifies the implementation of martial law. The significance and consequence of the emergency clause within the constitution, and thus the government it established, has been the focus of much opposition and criticism, seemingly establishing a legal justification for another military coup. The clause, introduced in Chapter I reads, "If there arises a state of emergency that could cause disintegration of the Union, disintegration of national solidarity and loss of sovereign power or attempts therefore by wrongful forcible means such as insurgency or violence, the Commander-in-Chief of the Defense Services (CinC) has the right to take over and exercise state sovereign power in accord with the provisions of this constitution."[268]

The provisions on the "State of Emergency" are further outlined in Chapter XI, which is in fact, dedicated to the topic. In that Chapter, the responsibilities and authority of the military is clearly outlined. If the president believes that an emergency that threatens the unity of the Union, his emergency declaration and subsequent ordinance will establish a full year of military administration.[269] The legislative functions of the

263 Constitution of the Republic of the Union of Myanmar, Chapter VIII, Art. 365.

264 Constitution of the Republic of the Union of Myanmar, Chapter VIII, Art. 385.

265 Constitution of the Republic of the Union of Myanmar, Chapter VIII, Art. 383.

266 Constitution of the Republic of the Union of Myanmar, Chapter VIII, Art. 387.

267 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 22.

268 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 40.

269 Constitution of the Republic of the Union of Myanmar, Chapter XI, Art. 417.

*Hluttaw* are suspended, and all legislative, executive and judicial power, also later referred to as all "sovereign power,"[270] is transferred to the military and the CinC.[271] Most importantly, "The Commander in Chief of the Defense Services may, during the duration of the declaration of the state of emergency, restrict or suspend as required, one or more fundamental rights of the citizens in the required area."[272] Democracy in Burma is but one presidential proclamation away from termination.

### 4. Burma's Legislature: The *Hluttaw*'s

The national legislature, known as the Union Assembly (*Pyidaungsu Hluttaw*), was designed as a bicameral legislature. In the lower house, known as the House of Representatives (*Pyithu Hluttaw)*, seats are allocated mainly according to population. In the upper house, known as the House of Nationalities (*Amyotha Hluttaw*), each state and region has an equal number of seats.[273] At first glance, this seems to mirror the attempts in 1947 in establishing a representative body with increased minority influence alongside a more directly representative body. There are, however, several differences which limit the minorities' influence within the legislatures themselves, and consequently in the Union in general.

The first aspect that limits minority influence is this: every legislature includes guaranteed, centrally appointed membership for the military.[274] The CinC, a position notably separate from the presidency, is responsible for directly appointing military representatives to each of Burma's law-making bodies. This military representation comprises either one-fourth or one-third of the representatives, meaning that greater than a quarter of Burma's lawmaking institutions have no direct responsibility to its constituents, and instead answer only to the tatmawdaw.[275] It is a significant restraint on

270 Constitution of the Republic of the Union of Myanmar, Chapter XI, Art. 419.

271 Constitution of the Republic of the Union of Myanmar, Chapter XI, Art. 418.

272 Constitution of the Republic of the Union of Myanmar, Chapter XI, Art. 420.

273 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 12.

274 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 14.

275 Constitution of the Republic of the Union of Myanmar, Chapter IV, Art. 109, 141, 161.

representative democracy, justified by the military's self-proclaimed existence transcending divisive politics and as the protectorate of Burma's unity. Regardless of the motivations, however, the continued Burman domination of the *tatmawdaw* forces Burma's minorities to interpret the military allotment as insurance for Burman domination, rather than a check on ethnic or party politics.

The House of Nationalities was designed to function much like the U.S. Senate. Each state and region was given twelve seats in the legislature, resulting in 168 regionally elected representatives. This effectively made the upper house the legislature with democratically imbalanced ethnic representation, similar to its predecessor, the Chamber of Nationalities. Fifty-six additional seats, representing one-quarter of the assembly, are reserved for military appointment by the CinC. Essentially this construction reserves eighty-four of the 224 seats, or 37.5 percent, for Burma's ethnic states, a dramatically smaller number than the 57 percent that was reserved for the ethnicities themselves in the 1947 Constitution. Burma's seven ethnic minorities constitute roughly 27 percent of the population, meaning that the House of Nationalities essentially provides only 10 percent increased influence for ethnic minorities.[276]

The House of Representatives, like the Chamber of Deputies in the 1947 Constitution, is the legislature designed to be more directly representative of Burma's population, prescribing 330 seats to electorates based on population and townships. It is logical to assume that ethnic minorities have genuine opportunities to win seats within the House of Representatives, but those chances would be far less than their proportion of the electorate because so many members of minority groups live in Burman-majority while few Burmans live in minority-dominated areas. One hundred ten seats were added for CinC appointment, similarly resulting in one-quarter of the House of Representatives membership.[277] The House of Representatives operates separately from the House of

276 Constitution of the Republic of the Union of Myanmar, Chapter IV, Art. 141.

277 Constitution of the Republic of the Union of Myanmar, Chapter IV, Art. 109.

Nationalities, but in the case of disagreement between the two bodies, the entire Union Assembly, literally a joint session of the two assemblies, will decide the matter.[278]

Burma's state and region legislatures constitute separate and distinct legislative bodies for each territory, which is a divergence from the precedent set in 1947. These bodies hold the tightest relationship with their constituencies, and subsequently should be expected to represent the most obvious materialization of ethnic representation in government. It is in these legislative bodies that every ethnicity is constitutionally mandated representation, provided it constitutes 0.1 percent of Burma's population. The sizes of these legislatures were not constitutionally defined, but like the Union Assembly, these regional bodies also had an appointed military component, with one third of the seats reserved for CinC nominations. The ramifications of the military provision are staggering. Ethnic parties need to win more than three-fourths of the democratically available seats to constitute a majority within their own territorial assemblies.[279]

### 5. Burma's Executive: The President

Burma's chief executive, the president is the head of government and head of state. The 1947 Constitutional position of prime minister, which had held few distinct powers and served mostly an advisory role, was eliminated. The president is elected from an electoral college made up of the representatives that constituted the Union Assembly, making it similar to the electoral process of the US president.[280] Overall, the executive enjoys much greater influence in the current government than what the position had been previously assigned. While the president still has little veto power over Union Assembly legislation,[281] he is once again given power to act without legislative approval in the case that the legislature is not in session, or emergency situations justify it. His ordinances can last up to sixty days without legislative approval.[282]

278 Constitution of the Republic of the Union of Myanmar, Chapter IV, Art. 95, 137, 157.

279 Constitution of the Republic of the Union of Myanmar, Chapter IV, Art. 161.

280 Constitution of the Republic of the Union of Myanmar, Chapter III, Art. 60.

281 Constitution of the Republic of the Union of Myanmar, Chapter IV, Art. 105, 106, 107.

282 Constitution of the Republic of the Union of Myanmar, Chapter V, Art. 212.

The power of the Presidency is increased to two different ways. First, the executive is not only the head of the Union, but of the states and regions as well.[283] The Union Government includes the ministers of the Union, who function as the executive branch of the states and regions. These ministers are appointed by the president and answer directly to him, rather than to the territorial constituency over which that minister presides.[284] Similarly, the Civil Services are not a power delineated to the states and regions, but instead fall directly under the president and the Union government. The heads of those services, which include the administration of districts and townships and the "Myanmar Police Force," are appointed by the president.[285]

The second manner in which the executive was strengthened was in appointment authority. In 1947 the president also held vast appointment powers, but those powers were checked by the combined approval of the legislative chambers. The same widespread appointment authority remains and even expands to include the Supreme Court, the attorney general, the auditor general, the state and region chief ministers, and the heads of civil service. The president's choices, however, can no longer be rejected by the legislature, except for failure to meet the prescribed criteria which constitutes little more than age and experience restrictions.[286] All told, only the president, the vice-president, and the representatives constituting the *Hluttaws* have an origination outside of the president's dominion.

The presidential oath affirms commitment to the "non-disintegration of the Union, non-disintegration of national solidarity and perpetuation of sovereignty,"[287] and indeed many of the charges and responsibilities listed directly facilitate that end. His powers are not only laterally extensive across the Union, but also carry significant depth, including the ability to dictate and specify state and region ministries. He is not only empowered to

283 Constitution of the Republic of the Union of Myanmar, Chapter V, Art. 199.

284 Constitution of the Republic of the Union of Myanmar, Chapter V, Art. 200, 229, 232.

285 Constitution of the Republic of the Union of Myanmar, Chapter V, Art. 208, 288, 292.

286 Constitution of the Republic of the Union of Myanmar, Chapter V. Art. 208, 232, 234, 239, 242.

287 Constitution of the Republic of the Union of Myanmar, Chapter III, Art.65.

choose the number size and shape of those ministries; he is able to choose who administers them.

### 6. Burma's Judicial Branch

The construction of the Supreme Court is little changed from the construction of 1947. As the highest judicial authority in the land, the Supreme Court is the court of final appeal and has jurisdiction over any dispute between states, regions, and the Union.[288] As previously mentioned, the justices, numbering from seven to eleven, are nominated by the president to the *Pyidaungsu* which has "no right to refuse the person nominated…unless it can clearly be proved that the persons do not meet the qualifications for the post."[289] The qualifications listed include extensive experiential credentials, an age between fifty and seventy years old, and a freedom from party politics.[290]

The Union's influence over the courts does not end at the Supreme Court, The Chief Justices of each state and region are also nominated by president, and the state and region *Hluttaws* are, just like their Union counterparts, powerless to object to those nominated.[291] Those regional Chief Justices supervise the remainder of the courts within the state or region, and as a result, the courts within each subunit remain largely centrally controlled, rather than locally administered.[292]

In addition to the court system, Chapter VI also establishes the Constitutional Tribunal of the Union, which is tasked to "interpret the provisions of the constitution," to judge laws of both the Union and the regional *Hluttaws* compliance with the constitution," and "to decide constitutional disputes between Union and region or region and region.[293] Three candidate members of the Tribunal are provided from the House of

288 Constitution of the Republic of the Union of Myanmar, Chapter VI, Art. 295.

289 Constitution of the Republic of the Union of Myanmar, Chapter VI, Art. 299.

290 Constitution of the Republic of the Union of Myanmar, Chapter VI, Art.300, 301.

291 Constitution of the Republic of the Union of Myanmar, Chapter VI, Art. 308.

292 Constitution of the Republic of the Union of Myanmar, Chapter VI, 314

293 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 46

Nationalities , the House of Representatives, and the president.[294] Those candidates are supposed to be adopted as the president's nominations, which, similar to his other nominations, cannot be rejected by the *Pyidaungsu Hluttaw* for anything other than failure to meet the requisite qualifications.[295] The president alone selects and approves the replacement member if one of them is found to be constitutionally unqualified for membership on the Tribunal.[296] All told, the Constitutional Tribunal represents another presidentially appointed Union institution with powerful influence over the whole country, including the states and regions.

### 7. Delineating Power: Legislative Lists

Just as in 1947, power and jurisdictions not explicitly listed in the constitution are reserved for the Union. This is openly stated in Chapter III, which reserves all legislative powers "relating to other matters not enumerated in the legislative list of the Union, region or state"[297] to the Union and the *Pyidaungsu Hluttaw*. Similarly, any law passed by the territorial legislatures that is in conflict with Union legislation is disregarded: "The law enacted by the *Pyidaungsu Hluttaw* shall prevail."[298]

The Union and Territorial Legislative Lists are quite extensive nonetheless. National defense, foreign relations, and economic policies are naturally reserved for the Union. In addition to these typical sectors, several lines stand out as specifically notable inclusions that facilitate the removal of historically important insurgent sustaining sectors from ethnic control. Among these are nearly all natural resources including gems, forests, minerals, and international trade duties, all of which have helped ethnic insurgencies fund their campaigns.[299] These choices clearly indicate a desire to limit insurgency resources and justify *tatmawdaw* acts preventing their use by insurgent groups.

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294 Constitution of the Republic of the Union of Myanmar, Chapter VI, Art. 321.

295 Constitution of the Republic of the Union of Myanmar, Chapter VI, Art. 328.

296 Constitution of the Republic of the Union of Myanmar, ChapterVI, Art.329.

297 Constitution of the Republic of the Union of Myanmar, Chapter III, Art. 98.

298 Constitution of the Republic of the Union of Myanmar, Chapter IV, Art. 198.

299 Constitution of the Republic of the Union of Myanmar, Schedule One, Art. 6.

In addition to establishing the Union's economic dominance over legislation and funding, the list delineates a Social Sector that is extensive, and encompasses much of civil service and administration, from education curricula and standards, to security and police operations. In contrast, the region or state legislative list is much smaller. The permitted economic legislation is in fact dependent upon Union legislation to authorize it.[300] The most ethnically sensitive legislative authorities are excluded. Ethnic minorities in Burma may have been given territorial accommodations, but within those territories, there is no control over schools, civil service, language, culture, police, or courts. Autonomy seems more nominal than actual.

## C. Analyzing the Constitution

Is it federal? For Stepan, federalism requires a constitutionally guaranteed division of authority between separately elected national and subnational political bodies, and he argued that such guarantees are only possible under a legitimate constitutional democracy. Recent reforms have implied increasing fulfillment of that requirement, but military representation in the legislatures remains constitutionally protected, as does the re-implementation of martial law under the emergency clause. Still, the federal relationship between the central government and the sub-units does exist and once again requires an analytical application of Stepan's criteria and variables. This section constitutes a federal analysis of the 2008 Constitution, beginning superficially with basic definitions, and then studying the constitution using the structure of Stepan's criteria and variables.

### 1. Superficial Evaluations: Symmetrical and Unitary

Taylor and Silverstein assessed the 1947 Constitution as more unitary than federal, based on limited state legislative powers, few state tax or finance rights, and limited practical autonomy.[301] In these terms, the 2008 Constitution is even more unitary. The economic and financial capacities of the states and regions are even more limited, the legislative lists are substantially shifted in favor of the Union, and autonomy

300 Constitution of the Republic of the Union of Myanmar, Schedule Two, Art. 2.

301 Taylor, *The State in Burma*, 227; Silverstein, "Politics in the Shan State," 48.

is limited to the legislative bodies, which are only two-thirds autonomous in themselves thanks to the military component that is constitutionally mandated. Given these general observations, it is unlikely that Taylor or Silverstein would view the 2008 Constitution as more federal than the 1947 constitution.

Once again, despite the obvious federal institutional structures imparted, the term federalism is not mentioned in any part of the document. While state formation explicitly defines sub-units of government, the federal term is notably absent. This is similar to the 1947 edition, but remains a stark contrast to ethnic minority groups' mission statements. The KNU for example espouses a "Federal Union based on democracy and self-determination."[302] The constitution is clearly inspired by federalist principles forming a "Union of Myanmar," but the focus is not on the federal term or principle. Instead of the 1947 Constitutional prose promoting the unification of multiple nations, this 2008 Constitution emphasizes the integrity of the Union, a narrative of "peaceful coexistence," and a commitment to national solidarity and state sovereignty.[303]

Amoretti's criteria, briefly mentioned in Chapter III, mandate "an institutionalized division of power between a central government and a set of constituent governments." This criterion is clearly met and with much more clarity than it had been in 1947. States and regions are clearly defined, and the relationships between territories and the Union are explicitly spelled out. Amoretti's second criterion is more difficult to fulfill. Amoretti prescribes that "each level of government has the power to make final decisions in some policy areas but cannot unilaterally modify the federal structure of the state." The limited legislative scope of the states and regions makes qualification in this criterion imprecise. Furthermore, the powers reserved for the Union, including the emergency clause, pave the way for central unilateral modification of the relationship and structures of the government and its constituent governments. The division of power, while present is undermined by the lopsided nature of the policy scope and lack of subunit executive

302 Karen National Union Mission Statement and Objectives, accessed 8 May, 2013, http://karennationalunion.net/index.php/burma/about-the-knu/objectives.

303 Constitution of the Republic of the Union of Myanmar, Preamble.

control. The 2008 Constitution appears federal, but does not grant enough constitutionally protected power to the subunits to truly qualify.

The regional breakdown of the states and regions is distinctly federal, and the division of the Burman populated areas would be appreciated by Henry Hale, who suggests that an ethnofederal arrangement with a single dominant region amidst minority states is prone to collapse.[304] The divided Burman regions may encourage regional politics amongst the Burman majority and further stabilize the relationships between the Burmese ethnicities. But such a symmetrical construction infers other consequences as well. Burma's legislative and electoral college similarities with the United States amplify the perception that the 2008 Constitution is more of a civic federalist model, drawing upon the racial equality theme of the 1974 Constitution, rather existing as genuine ethnofederalist accommodation. As Stepan suggests, this symmetry counters the normal construction of successful federal models in multinational countries.[305]

### 2. Stepan's Criteria

Stepan's defining criteria and variables are once again used to judge the federal viability of Burma's attempt to resolve the ethnic conflict within its borders. Stepan first and foremost mandates that the Constitution must be a constitutional democracy. The presence of unelected military appointees within each legislative body clearly violates democratic principles and further limits ethnic minorities' influence within both the House of Nationalities and the state legislatures. Looking beyond the military quotas and their effects, the constitution and the institutions it defines seem to fit this prerequisite. Stepan's first criterion states that the government should have "territorial political subunits whose electorate is exclusively drawn from citizens of the subunit and that have areas of legal and policy-making autonomy and sovereignty that are constitutionally guaranteed."[306] Burma's political subunits are clearly designated, and their constituents exclusively elect members of both a territorial subunit legislature, as well as a Union

304 Henry E. Hale, "Divided We Stand," World Politics 56, no. 2 (2004): 169-70.

305 Stepan, "Toward a New Comparative Politics of Federalism," 40.

306 Ibid., 38.

assembly. The presence of the *tatmawdaw* within the state legislatures betrays this principle, however, infecting state and region politics with Union influence. Burma's Constitution fails Stepan's defining criteria, and does so because of the military's unelected presence within the legislative bodies.

Secondly, Stepan asserts that a federal government must have a "state-wide political unit, which contains a legislature elected by the statewide population, and which has some law and policy-making areas that are constitutionally guaranteed to fall within the sovereignty of the statewide body."[307] Whereas the 1947 Constitution fell short in providing a regionally dedicated political unit, including a legislature, the 2008 Constitution meets all of these criteria. The scope of the constitutionally guaranteed law and policy areas is certainly worth discussion, and will factor into some of the variables below, but in terms of meeting the institutional prerequisites, the latest Burmese attempt meets the standard.

### 3. Stepan's Variables

The first of Stepan's four variables is the degree to which minority regions are overrepresented in the territorial chamber.[308] The House of Nationalities , by virtue of its territorial representation quotas, fits this description. In the description of this institution, it was shown that ethnic representation would likely be no greater than about 37.5 percent. This is only 10 percent greater than the actual population of Burma's minorities. They are overrepresented, but only marginally so. Symmetry exists in this contemporary constitution that was not present fifty years prior. The 1947 edition presented a definitive asymmetrical quality. Ethnicities in Burma enjoyed comparatively different accommodations within the federal system. Territorial accommodation was unequal between Burma's minorities, as were representative quotas within the Chamber of Nationalities. The majority Burman population received no guaranteed influence, other than their majority status within a democratic government.

307 Ibid., 38.

308 Ibid., 53-57.

In contrast, the 2008 Constitution presents what Stepan would call a symmetrical federal system. No constitutional differences exist "between the legal status or prerogatives of different subunits within the same federation."[309] The regions and states enjoy the same rights and influence within government. Stepan asserts that durable federal democracies in multinational states are asymmetrical, and that symmetrical federal democracies are successful in only mono-national situations. The reason is that symmetry potentially eliminates key demos-constraining qualities that could be present within the most important structure of a federal democracy, the territorial legislature. The asymmetry in 1947 provided veto power for the combined representation of the Shan, Karen, Kachin, Karenni, and Chin against the Burman majority. United, those ethnicities commanded more than half of the Chamber of Nationalities, and thereby had what Stepan refers to as "blocking power" constitutionally guaranteed.[310] In contrast, the symmetry of the 2008 Constitution, reduces the combined influence of seven ethnic states to exactly half of the elected seats, eliminating any veto capacity for Burma's minorities. The mandatory military presence further dilutes minority influence, turning the House of Nationalities into yet another institution with likely Burman domination.

Secondly, Stepan looks to ascertain the policy scope of the territorial chamber.[311] The House of Nationalities has little difference from its counterpart, the more directly representative House of Representatives. In fact, aside from differences in qualification criteria, the functions and policy scope of the two legislatures is practically identical. In the previous constitution, the Chamber of Nationalities had been excluded from monetary legislation, but in this case, the territorial chamber is not limited or restricted in policy scope.[312]

Stepan's third variable focuses on the constitutional allocation of policy making to the subunits of the federation, further breaking the analysis into three separate

309 Ibid., 39.

310 Ibid., 45.

311 Ibid., 57-64.

312 Constitution of the Republic of the Union of Myanmar Schedule One, Schedule Two, Chapter IV, Art. 98.

components.[313] First, what "exceptional law-making majorities"[314] are required for specific legislation. There are two instances when legislation ultimately requires more than 50 percent of the *Pyidaungsu Hluttaw*. The first of these requires than any change to state or region territorial boundaries requires the approval of one half of affected region's populace. This requirement, however, is overridden by more than 75 percent approval in the *Pyidaungsu*.[315] The second manifestation of a necessary super majority is applied to amendments to the constitution. Such legislation requires 20 percent of the *Pyidaungsu Hluttaw* to submit the bill for consideration, and more than 75 percent approval to be ratified. Amendment of particular sections additionally requires the approval of a nation-wide referendum.[316]

A comparison of the powers reserved for the Union with those powers reserved for the states and regions reveals significant disparity. On a superficial scale, one hundred twelve legislative powers are reserved for the Union, while only forty-one are reserved for the states and regions. The numbers, however, hardly illustrate the power disparity. Judicial law, Police and security matters, the civil service sector, and educational legislation are all reserved for the Union. The sectors reserved for the territorial units largely constitute areas left over or are explicitly dependent on Union legislation to authorize them. Emphasizing the preeminence of the Union, all unreserved powers default to Union control.

Stepan's fourth variable seeks to measure to what degree the party system is polity-wide.[317] In contrast to 1947, the existence of representative assemblies at the state level provides the encouragement of ethnic specific party formations, and likewise provides an analytical basis from which to gauge how Burma's Constitution encourages or discourages polity wide parties. Union legislative and presidential electoral

313 Stepan, "Toward a New Comparative Politics of Federalism," 64-69.

314 Ibid., 64.

315 Constitution of the Republic of the Union of Myanmar, Chapter II, Art. 52.

316 Constitution of the Republic of the Union of Myanmar, Chapter XII.

317 Stepan, "Toward a New Comparative Politics of Federalism," 69-71.

similarities with U.S. institutions help provide an expectation. The electoral method of selecting both the legislative representatives and the chief executive are nearly identical, as is the commitment to and electoral process favoring single member districts. In the mono-national U.S., this construction results in extreme polity wide parties creating a strong two party system. While Burma's ethnic landscape makes direct correlation impossible, many of the incentives should remain. In contrast to the democratic period of 1947-62, coalitions and umbrella groups unite many of the ethnic minorities into larger, and more influential entities. Several of those coalitions ran as political parties in 2010, with moderate success, thereby inferring a possibility of a polity-wide minority party.

While there may be a temptation to view the NLD as a polity wide and ethnic inclusive party, the stark differences in political agenda give pause. While both ethnic parties and the NLD take exception to portions of the 2008 Constitution, notably the military representation within the *Hluttaws*, there is little else incentivizing consolidation or amalgamation. Ethnic minority groups supported the CPB when it suited their needs, but ultimately abandoned the communists because it represented nothing more than another form of Burman-dominated governance. The NLD is itself a Burman-dominated party that primarily campaigns for civil liberties and increased liberalization, not increased ethnic autonomy. To become a polity-wide party, Aung San Suu Kyi and the NLD will have to specifically target and campaign for ethnic minority support by supporting minority demands in addition to their own traditional democratic platform.

Ultimately, the structures and incentives are present to encourage polity wide party activity, but the effects may not be seen for some time. The general election of 2015 will likely reveal the extent to which polity-wide parties have successfully attracted the interest and support of Burma's minorities. The 2010 election and ethnic parties tendency to form alliances rather than support nation-wide political parties, however, indicates that the party system remains regional and fractured, and likely to remain so in the near future.

### 4. Cumulative Analysis Using Stepan's Model

The 2008 Constitution fails the basic criteria set forth by both Stepan and Amoretti, primarily due to the existence of the military representation in the legislatures. Further evaluation using Stepan's variables furthermore reveals that it falls short of constituting the type of federal system necessary for holding together a multi-national state. The primary deficiency of 1947, the absence of dedicated territorial legislatures, is not repeated in this constitution, which clearly provides political representation in both the central government and its subunits. The deficiencies of the contemporary constitution instead largely present themselves in the allocation of powers between the Union and the territorial subunits, and in the centralized control of the territorial administrations and civil services. Executive power within the territories is not elected. It is appointed from the center, and while Stepan's criteria have limited analysis of executive powers, the president's authority in this manner violates the principle of constitutionally guaranteed subunit sovereignty.[318]

Furthermore, the constitutional inclusion of the military in all of the legislatures not only marginalizes ethnic minorities' control of their legislative bodies, but also limits the effectiveness of the key demos-constraining intuition: the House of Nationalities. Disagreements between the two legislative houses results in a combined vote, which would probably silence minority legislative opposition, but the inclusion of the military essentially prevents ethnic minority blocking power within the House of Nationalities. Thus, there are multiple impediments to ethnic accommodation within the Union government. Cumulatively, there are far too many deficiencies to suggest that the 2008 Constitution can be a federal solution to the accommodation of Burma's minorities.

318 Ibid., 38.

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# V. CONCLUSIONS AND IMPLICATIONS

This thesis has evaluated the viability of Burma's 2008 Constitution and the government it establishes as an accommodation of Burma's ethnic minorities. It has done so by presenting the historical basis for identity and autonomy within Burma's minorities, and comparing the 2008 arrangements to the ones that were laid down in the 1948 constitution. In each case, this thesis has assessed the institutions for governing ethnic minority regions against the criteria for successful ethnofederalism as described by Alfred Stepan. In doing so, it concluded that the 2008 Constitution does not define a federal state, and thus cannot be regarded as a potential federal accommodation of Burma's minorities, even though it establishes territorial subunits in which ethnic minorities are dominant. Highlighting similarities and differences offers further insight as to why Burma's minorities share the same view and continue to push for a more federal state. This first part of this chapter will draw conclusions based upon the similarities and differences between the two eras, as well as predictive outcomes based on the historical precedent. The second part of this conclusion introduces and highlights an unforeseen result of liberal reforms. The contemporary plight of the Rohingya and the religious-based conflict that seems to have resulted from their unwanted presence and relaxed civil liberties, offers further opportunity for the study of Burma's ethnic conflicts, and the prospects for lasting peace.

## A. Federalism in Burma: The Minorities' Unfulfilled Desire

### 1. Similar Constitutional Shortcomings

In 1993, Donald Horowitz wrote, "Constitution makers in new democracies have often been content to restore the very institutions that were conducive to the previous ethnic breakdown."[319] The similarities between the 1947 Constitution and the 2008 Constitution could inspire Horowitz to repeat his statement with added evidence. Structural similarities abound, including the bicameral legislature and most positions of

319 Donald L. Horowitz, "Democracy in divided societies," 35.

government. This section will focus instead on the similarities of two components which undermine both constitutions' functional capability for incorporating and accommodating minorities. They are the emergency clause, which is remarkably resilient, present in all four of Burma's constitutional iterations, and the joint assembly method for resolving disagreements between the Union parliamentary chambers.

The emergency clause, first introduced in the *Government of Burma Act, 1935*, gave the British governor the authority to abandon diarchy by dissolving the Burmese legislature, and then govern the colony in an autocratic manner. The executive power inherent in the emergency clause was reduced in the 1947 Constitution, but the clause remained, providing a constitutional basis for denying the rights and privileges that the constitution otherwise promised.[320] In the initial democratic period, this emergency clause was applied in the Shan State in response to the many insurgent groups that resided there. The result of that decision was the alienation of the Shan leadership, the *sawbwas*, which had previously been one of the Union's most steadfast supporters from the minority community. The description of the clause expanded in the 2008 Constitution and went to great lengths to describe the duration and function of martial law in the event an emergency was declared.[321] To say that the emergency clause undermines the intent of the constitution is not enough. In Burma, emergency clauses and martial law have been real, the threat remains real, and a constitutional justification for them significantly marginalizes the remainder of the constitution.

The second similarity concerns the manner in which disagreements between the Union legislative bodies are decided. In both the 1947 Constitution and the 2008 Constitution, a disagreement between the lower house and the upper house was resolved through a joint session and a collective vote.[322] The practice sounds democratic, using majority rule to settle disputes. In an ethnofederal arrangement, however, in which ethnic minority influence in one of the chambers is increased relative to its population to

320 The Constitution of the Union of Burma, Chapter VI, Art. 94.

321 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 40.

322 The Constitution of the Union of Burma, Chapter VI, Art. 109; Constitution of the Republic of the Union of Myanmar, Chapter IV, Art. 95, 137, 157.

provide veto powers, such a practice dilutes the influence of minority representatives and effectively cancels the benefits they gained through overrepresentation in the upper house. Numerically speaking, even in the best scenario, in which the military no longer has reserved seats and minorities are able leverage their entire population to secure the maximum representation their populations can achieve, representatives from minority regions would command no more than two-fifths of the combined house seat count. Because of this, there is truly no demos-constraining functionality within the legislatures, then or now.

### 2. Differences, But Not Necessarily Improvements

The failure of the previous democratic period should have compelled the writers of the 2008 Constitution to improve upon the 1947 version, lest they produce the same result. Several of the differences between the documents reflect the writers' desire to prevent Burma's return to the politically and ethnically fractured condition of the 1960s: increased the power and influence of the executive, equal representation and territorial accommodations to the ethnic minorities, limited policy scope of those territorial units, and reserved military personnel within the both the Union and sub-unit legislatures.[323] Only one of these changes, the territorial accommodations, could be construed as an improvement over the federal structure of the 1947 Constitution. The others clearly inhibit democracy and federalism; they are intent on maintaining a military presence and ensuring all of government and society are monitored and influenced by the executive branch of the Union government. The result is a truly unitary government. Minorities have a dedicated legislative body, to govern their territories, but those legislatures are marginalized by the inclusion of military representatives, and have little actual power, overshadowed within their own territory by an executive government that is centrally appointed.

The overall effect is a marked decrease in the autonomy and self-government enjoyed by Burma's minorities as well as a decrease in their influence on and security in

323 Constitution of the Republic of the Union of Myanmar, Chapter I, Art. 9, Schedule Two,

the Union government. Without control over the sensitive issues such as language, culture, and education, there is little impetus for the minorities to accept the current constitution. With this in mind, it is little surprise that minority demands still revolve around the concept of federalism, refusing to accept the 2008 Constitution as a true reflection of a federal state.

### B. Ethnic Peace and Conflict in Burma's Future

From the perspective of Burma's minorities, the 2008 Constitution is flawed, but that has not inhibited their participation in the constitutional drafting process, and the elections that followed it. Whether compelled by "battle fatigue," as suggested by Zaw Oo and Win Min or by a genuine desire to be a part of a flawed system rather than left outside of it, as the Karen have suggested, most minority groups have chosen to participate in it.[324] Cease-fire agreements, however, have yet to be solidified into peace agreements, and minority groups retain their arms, facilitating a return to violence such as that seen most recently witnessed in the Kachin State. A new cease-fire has been implemented there, but the failure of the previous cease-fire, which had lasted seventeen years prior to the outbreak of violence in June of 2011, demonstrates the tenuous nature of minority agreements with the Burmese government.[325] Without constitutional change, Burma's minorities will continue to be deprived of political influence relative to their Burman countrymen. Ethnic peace and the maintenance of cease-fire agreements largely rely upon minority patience and willingness to seek those federal demands democratically. If their demands continue to go unanswered, conflict seems more likely than peace.

A constitutional amendment then becomes the key to federal prospects for ethnic peace within Burma. First and foremost, for the 2008 Constitution to become acceptably

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324 Kramer, *Neither War nor Peace*, 33; Zaw Oo and Win Min, *Assessing Burma's Ceasefire Accords.*

325 Aung Zaw, "A Step Towards Peace in Kachin State?" *The Irrawaddy*, May 31, 2013, accessed June 13, 2013, http://www.irrawaddy.org/archives/36176.

democratic, military representation in the legislatures would have to be removed. Furthermore, to meet the federal demands of Burma's minorities, states' rights would have to be markedly increased. State legislatures' policy scope would have to be greatly increased, and the executive governments of each sub-unit would have to be locally selected, rather than centrally appointed. Constitutional reform is, however, unlikely, as the size of the legislative military quotas specifically inhibit the three-quarters majority needed to amend the constitution.[326] Even if the opposition groups such as the NLD and ethnic minority parties successfully swept the entirety of the elected Union Assembly seats in 2015, it is unlikely that a single military representative would vote to eliminate the *tatmawdaw's* place in government. Burman NLD representatives could be a powerful ally, but one that would most likely continue to focus on the consolidation of democracy and civil liberties instead of minority desires such as increased state and region powers. In short, even if the military party is swept from government, the constitutional changes necessary to create an effective ethnofederal state are unlikely to occur.

326 Constitution of the Republic of the Union of Myanmar, Chapter XII. Chapter IV, Art. 109, 141, 161.

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