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

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## Abstract

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

## Keywords

Myanmar, parliament, legislative institutionalisation, routinised behaviour, democratisation

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## Introduction

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

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

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

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

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

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

## **Reintroducing Legislative Bodies in Post-Junta Myanmar**

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

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

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

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

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

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

### The Re-Emergence of Parliamentary Rituals and Procedures

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

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

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

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

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

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



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

### **Behind the Scenes: The Pivotal Role of Parliamentary Staff**

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

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

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



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

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

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

## **Legislative Business and Its Tentative Routinisation**

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

### *Complexification of the Legislative Process*

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

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

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

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

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

### *Emerging Patterns of Parliamentary Oversight*

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

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

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

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

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

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

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

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

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

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

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

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

### *New Modes of Representation*

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

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



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

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

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



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

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

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

## **Conclusion: The Limits to Parliamentary Institutionalisation**

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

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

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

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

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

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### Notes

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

7. Interview with Secretary of the Rights and Privileges Committee in the *Amyotha Hluttaw*, Naypyitaw, 14 March 2017.
8. *Procedures of the Pyithu Hluttaw Law No. 23/2012* and *Procedures of the Amyotha Hluttaw Law No. 23/2012* (both adopted on 26 November 2012) as well as the *Law Amending the Procedures of the Amyotha Hluttaw Law No. 35/2015* (25 June 2015) and *Law Amending the Procedures of the Amyotha Hluttaw Law No. 56/2015* (7 September 2015).
9. Interview with Director General of the *Pyidaungsu Hluttaw*, Naypyitaw, 25 November 2016.
10. Interview with the Deputy Director General in charge of research and public relations in the *Pyithu Hluttaw*, Naypyitaw, 25 November 2016.
11. Interview with a National League for Democracy (NLD) legislator from the *Pyithu Hluttaw*, Naypyitaw, 8 June 2016.
12. Interview with Director General of the *Pyidaungsu Hluttaw*, Naypyitaw, 25 November 2016.
13. Interview with an NLD member of the Public Affairs Committee in the *Pyithu Hluttaw*, Naypyitaw, 16 March 2017.
14. Interview with Director General of the *Amyotha Hluttaw*, Naypyitaw, 23 November 2016.
15. Interview with an international parliamentary consultant, Naypyitaw, 21 November 2016.
16. Interview with the Chair of the *Pyithu Hluttaw* Bill Committee, Naypyitaw, 17 July 2014.
17. I thank one of the anonymous reviewers for pointing that point out.
18. Interview with NLD legislator from the *Amyotha Hluttaw*, Naypyitaw, 14 March 2017.
19. Focus group with members of the Joint-Bill Committee of the NLD-led legislature, Naypyitaw, 22 November 2016.
20. See Tha Lun Zaung Htet (2013).
21. Interview with a legislator from the Shan Nationalities Democratic Party in the *Pyithu Hluttaw*, Naypyitaw, 3 July 2014.
22. Interview, Naypyitaw, 17 July 2014.
23. Interview with a member of the NLD-dominated Joint-Public Accounts Committee (PAC), Naypyitaw, 14 March 2017.
24. Interview with a Myanmar consultant providing budget oversight training in Naypyitaw, Yangon, 4 November 2018.
25. Interview with an ethnic opposition MP, member of the Union Solidarity and Development Party (USDP)-led *Pyithu Hluttaw* PAC, Naypyitaw, 18 February 2015. PACs, however, cannot add any new budget item nor sanction the government for misappropriation. See also Article 103[c] of the 2008 Constitution. The Defence budget has also long seemed unalterable.
26. See for instance: Htet Naing Zaw (2018).
27. Interview with the Secretary of *Pyithu Hluttaw*'s International Relations Committee, Naypyitaw, 18 November 2016.
28. The figure was close to thirty, though: interview with author, Naypyitaw, 18 July 2014.
29. *The Economist*, Democracy has muzzled Myanmar's parliament, 1 June 2017.
30. See Ei Ei Toe Lwin (2016).
31. See Pyae Thet Phyoo (2016).
32. See Egreteau (2018).
33. Interview with a retired university rector and USDP legislator from a Yangon constituency, Naypyitaw, 20 February 2015.
34. Interview with a renowned blogger elected regional MP (Yangon) from the NLD in 2015, Naypyitaw, 15 February 2018.
35. See his personal Facebook page at <https://www.facebook.com/HETHuraUSHweMann>.

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

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