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The Dark Side of Liberalization: How Myanmar’s Political and Media Freedoms Are Being Used to Limit Muslim Rights

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ABSTRACT
This article describes how divisive groups have taken advantage of Myanmar’s new political and media freedoms to pursue an agenda that will limit the civil and political rights of the country’s Muslim population. The article argues that enforcement of the four Protection of Race and Religion Laws will disadvantage Myanmar’s already politically marginalized Muslim residents by creating a de facto religious test for full Myanmar citizenship rights. The article examines both the positive and negative aspects of Myanmar’s liberalizations, the nature of the ‘Protection of Race and Religion’ legislative package and how this will interact with Myanmar’s citizenship laws.

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Introduction
Divisive groups have taken advantage of Myanmar’s much lauded new political and media freedoms to pursue an agenda that will limit the civil and political rights of the country’s Muslim population. This article examines how extremist groups such as the Ma Ba Tha have exploited these new political and media freedoms and analyses the policy agenda they have pursued. The article argues that the enforcement of the four Protection of Race and Religion Laws will disadvantage Myanmar’s already politically marginalized Muslim residents by creating a de facto religious test for full Myanmar citizenship rights.

Despite considerable evidence that Myanmar’s democratization process has stalled (Anguelov 2015; Eck 2013; Irrawaddy 2014; Kingsbury 2015; Sifton 2014), the country has nonetheless liberalized more during the last five years than throughout the previous five decades of direct military rule (Hlaing 2012; Renshaw 2013; Ware 2012; Zin and Joseph 2012). This article examines the freedoms that have accrued to Myanmar’s residents since the country’s 2010 national elections began a transition to a notionally civilian administration. It will briefly describe the nature of these freedoms and the opportunities they have provided for the country’s long-suppressed pro-democracy groups to organize and engage with the political process. However, the darker consequences of these freedoms will be addressed as well. It will be shown that increased freedoms to express political opinions, combined with a growing, less censored media landscape and ready access to the Internet and mobile phones, have provided opportunities for divisive voices to
enflame religious and ethnic tensions and promote discriminatory policies, often to the detriment of Myanmar’s Muslim population (Freedom House 2013; Holland 2014; Trautwein 2015).

Myanmar’s military junta changed the country’s name in 1989. Since that time, names have often become an indicator of political allegiance (Steinberg 2010). These debates are beyond the scope of this article, which uses the name ‘Myanmar’ to refer to the country from the time of its official name change. In reference to the country’s history prior to this, the name ‘Burma’ is used. However, this naming convention is far from universally followed and many, including the governments of the USA, UK and Australia, still refer to the country as Burma. The same is true of some sources that refer to contemporary Myanmar as ‘Burma’ and the country’s inhabitants as ‘Burmese’. This article makes efforts to preserve the meaning of these sources. Similarly, the article seeks to preserve meaning and consistency with sources when using Myanmar’s naming conventions. The honorific ‘Ashin’ is applied to monks, ‘Daw’ to women, and ‘U’ to men in senior positions.

Policy changes since the transition to a notionally civilian form of government in 2011 have resulted in significantly greater economic, political and media freedoms for the people of Myanmar (International Monetary Fund 2013; Kulczuga 2013; Shober 2014; Trautwein 2015), including allowing for the participation and victory of the country’s political opposition in the 2015 general election (BBC 2015c; Ware and Lee 2015). However, the consequences of these liberalizations have not always been positive. Economic liberalization has led to criticisms that workers are frequently exploited as cheap labour in a global supply chain (Hobbes 2015), while political and media freedoms have provided opportunities for divisive voices to stoke religious and ethnic tensions previously held in check by the country’s military government (Holland 2014). Groups such as the 969 Movement, the Association for the Protection of Race and Religion known as the Ma Ba Tha and the political activist monk Ashin Wirathu have made ready use of Myanmar’s new political and media freedoms to argue that it is in Myanmar’s national interest to protect the Buddhist religion from a perceived Muslim threat, and they have called for restrictions on Muslims’ political and civil freedoms (Fisher 2015; Mizzima 2015).

Ethnic relations in Myanmar have been a long-standing source of domestic conflict (International Crisis Group 2013). Ethnicity can be a test for citizenship and ethnic identity is often closely linked with religion. Communal conflict between elements of the country’s Buddhist majority and the Muslim minority since 2012 have exposed previously suppressed staunch anti-Muslim voices from within the Buddhist community (International Crisis Group 2013). This article suggests that the success of Ashin Wirathu and the Ma Ba Tha’s political agenda, and the enforcement of the Protection of Race and Religion Laws that they champion, would add another layer of complexity to how Myanmar’s citizenship laws operate, since existing citizens would have their rights restricted on the basis of religion. Because of the nature of Myanmar’s citizenship arrangements, these policies, if enforced, would lead to a two-tier national citizenship, with full freedoms and rights reserved for some on the basis of their religion or gender (Amnesty International 2015; Burma Citizenship Law 1982; Human Rights Watch 2015b; Republic of the Union of Myanmar 2008; Zaw 2015b).
How has Myanmar liberalized?

Attitudes towards Myanmar’s liberalization have been mixed. There has been a positive response from some Western political leaders, including US President Barack Obama, who visited Myanmar in 2012 and welcomed and encouraged the country’s changes, declaring, ‘…a dramatic transition has begun, as a dictatorship of five decades has loosened its grip. Under President Thein Sein, the desire for change has been met by an agenda for reform’ (2012). However, in the latter half of 2014, President Obama acknowledged some slowing of the pace of reform (Landler 2014) and, since the November 2015 national elections were held without any significant constitutional changes taking place, there is now increasing acknowledgement that Myanmar’s democratization process has indeed stalled (Anguelov 2015; Democracy Digest 2014; Eck 2013; Kingsbury 2015; Sifton 2014).

Critics, including opposition leader Daw Aung San Suu Kyi, in 2014 described the government’s reform process as presenting a ‘veneer’ of democracy to cover continued authoritarian control. She has said: ‘Everybody has been talking about the tremendous reforms that have come to our country, but I think it all has been overstated’ (quoted in Aikman 2014) and in 2015 she told the Washington Post, ‘We do worry that the reforms will turn out to be a total illusion, and we think that we need more concrete steps to ensure that the democratization process is what it was meant to be’ (Hiatt 2015).

While in-depth discussion of whether Myanmar’s political changes represent an ongoing movement towards a democracy is beyond the scope of this article, there is evidence of significant policy liberalization, particularly related to certain aspects of politics, the economy and the media.

Increased political freedoms have allowed for the registration as an official political party of the long-banned National League for Democracy (NLD), as well as scores of other political parties, and the participation and success of Daw Aung San Suu Kyi and the NLD in the April 2012 parliamentary by-elections (BBC 2013a; Burma News International 2012; International Crisis Group 2015; Jones 2014). Aung San Suu Kyi and the NLD were able to participate freely in the national elections held on 8 November 2015, which she described as ‘largely’ free (BBC 2015c). The party emerged as the overwhelming election winner and both the outgoing President, U Thein Sein, and Myanmar’s military chief, Senior General Min Aung Hlaing, have stated that they will respect the election outcome (BBC 2015b; Voice of America 2015).

Describing Myanmar’s economic liberalization, the World Bank (2014) explains that, since 2011:

[Myanmar’s] government has embarked on an ambitious economic, political and governance reform program. It has begun a series of reforms to remove economic distortions, such as floating the currency, new fiscal regulations to rationalise personal income tax and reduce consumption tax, liberalizing the telecommunications sector, reforms aimed at developing the private sector and stimulating direct foreign investments, a review of the financial sector, promotion of access to finance, and creating an environment conductive to job creation. These reforms are paying off …

Meanwhile, despite post-publication censorship continuing (Watkins 2012), two significant liberalizations of Myanmar’s media landscape have been the 2012 decision to end
the country’s pre-publication press censorship (Pidd 2012) and the 2011 decision to unblock access to exile media. Of this decision Renshaw (2013) explains:

On Democracy Day, 15 September 2011, the government unblocked many previously censored international news sites, including the BBC, Democratic Voice of Burma (DVB), and Burmese language broadcasts of Radio Free Asia and Voice of America. These moves followed an earlier relaxation of blocks on Skype, Yahoo! and YouTube. In 2011, it was possible to display and sell pictures of Aung San Suu Kyi, an activity that would have risked a jail sentence a short time beforehand.

With this decision, Myanmar’s residents gained ready access not only to foreign news sources but also to previously blocked social media channels.

The rise in the use of social media for communication and to spread political messages has dovetailed neatly with Myanmar’s economic liberalization. The opening of the mobile telephone market has transformed the way Myanmar’s residents communicate and access the Internet. In 2010, mobile telephones were a luxury with the cost of a SIM putting their use well beyond the reach of the vast majority of Myanmar’s residents (Gowan 2014; Kulczuga 2013). Mobile phone use in Myanmar was so low that, ‘Only North Korea had fewer cell phones per capita’ (Motlagh 2014). The opening of this market to international carriers and a significant reduction in the price of SIMs have led to huge growth in the penetration of mobile phone technology in recent times. Myanmar’s Ministry of Communications and Information Technology believes that the mobile phone penetration rate has grown to beyond 50% and that it will reach 80% of the population during the 2015–2016 fiscal year (Matsui 2015).

The dark side of liberalization

However, Myanmar’s new freedoms have not always led to positive outcomes. The removal of media censorship, combined with greater access to communication technologies and social media, has given a long-denied platform to incendiary political opinions that can enflame ethnic and religious tensions (Beech 2013). While pro-democracy political groups have taken the opportunity to organize and promote their message, so too have Myanmar’s more divisive political figures such as activist monk Ashin Wirathu, the 969 Movement and the Ma Ba Tha (BBC 2015a; Hodal 2013; Holland 2014; Pinnock 2013).

Since 2010, long-suppressed tensions between elements of the country’s Buddhist majority and the Muslim minority have erupted into violence, most terribly during 2012 in Rakhine State (Center for Diversity and National Harmony 2015; Human Rights Watch 2012, 2013; International Crisis Group 2013). This violence has exposed previously suppressed staunch anti-Muslim voices within the Buddhist community. Most prominent among these is Ashin Wirathu, who has made ready use of Myanmar’s new media freedoms and is a particularly active user of social media channels, including YouTube and Facebook, to promote his sermons (Wirathu 2015a, 2015b). ‘As government rules relaxed, he became more active on social media … spread his message by posting his sermons on YouTube and on Facebook where he currently has more than 37,000 followers …’ (BBC 2015a). By early 2016, this figure had reached 129,000 (Wirathu 2016). While Ashin Wirathu’s attitudes and activities have been known in Myanmar for some time, it was the deadly 2012 violence in Rakhine State between Muslims and Buddhists...
that brought him to the attention of the international media. He has actively enflamed religious tensions, blaming Muslims for this violence and regularly repeating ‘unsubstantiated claims about [Muslim] reproduction rates … He also claims that Buddhist women are being converted by force …’ (BBC 2015a).

Ashin Wirathu’s sermons about religion, particularly his extreme negative views on Islam, landed him a 25-year jail sentence for inciting anti-Muslim hatred in 2003, when the country was under military rule (Hodal 2013). He was released under a 2010 general amnesty for political prisoners (BBC 2015a). Since then, his incendiary sermons on Islam have earned him a *Time* magazine cover page with the headline ‘The Face of Buddhist Terror’, as well as the moniker ‘Burmese Bin Laden’ (Beech 2013). An ardent Buddhist nationalist, Ashin Wirathu fears that Myanmar’s Buddhist population is under threat of a takeover by the country’s Muslim population (Fitzgerald 2014). Muslims are estimated to comprise 4–5% of Myanmar’s population (CIA 2013). Underscoring the nationalist nature of Ashin Wirathu’s sermons, the BBC (2015a) suggests a typical sermon begins with his words, ‘Whatever you do, do it as a nationalist.’ Ashin Wirathu argues that Myanmar’s national interest requires the protection of Buddhism as the majority religion from a threat posed by other religions such as Islam. In a widely publicized 2013 *Time* interview, he told Beech (2013): ‘[Muslims] are breeding so fast, and they are stealing our women, raping them … They would like to occupy our country, but I won’t let them. We must keep Myanmar Buddhist.’ Beech goes on to say that, according to Ashin Wirathu, about 90% of Muslims in Burma are ‘radical, bad people’.

Ashin Wirathu’s sermons simultaneously echo and increase community fears about the threat to Buddhism and the Myanmar nation because of the growth of Islam. This message echoes unease expressed by many in the country about the influence of Islam at home and abroad (Holland 2014; Perria 2015; Trautwein 2015). It also taps into a narrative that is ‘rooted in dissatisfaction at unchecked immigration from the sub-continent during the colonial period. Large numbers of Indians moved to Myanmar as part of the colonial administration; in commerce and moneylending; and as low-income migrants’ (International Crisis Group 2013, 2).

These colonial-era migrants were seen as gaining an economic advantage at the expense of Burma’s predominantly Buddhist, indigenous population. Charney (2009, 23–24) explains:

Burmese feelings of exclusion were bolstered by immigrant dominance in commerce, industry, and administration. Hindustani, for example, emerged as the lingua franca of the colonial capital and Europeans in government (and often in commercial) service were required to pass exams in this language and not Burmese.

This colonial-era migration remains a considerable contributor to ethnic and religious tension within contemporary Myanmar (Charney 2009; International Crisis Group 2013; Steinberg 2010). So too are perceptions among Myanmar’s Bamar Buddhist majority that Rakhine State Muslims and other Indians, by their support of the British rather than the Japanese during the Second World War, were disloyal to Burmese aspirations for an independent state (International Crisis Group 2014). Despite the eventual decision of Burmese leaders to change sides and help the British defeat the Japanese (Smith 2008; Steinberg 2010), perceptions that Indians and Muslims were disloyal to the cause of Burmese nationhood have persisted and, for many, these colonial-era wounds have
been slow to heal (Berlie 2008; Egreteau 2011; Rogers 2012). Lingering doubts about
Muslim loyalty to the nation and the historic reality of Islam’s growth in the region
over the centuries have in recent times coalesced into a concern among many that Bud-
dhism and the Myanmar nation are ‘under siege’ by Islam (Beech 2013).

This moral panic has been a key publically stated motivator for the political actions of
Ashin Wirathu (Zaw 2015b), who has argued, with considerable success within Myan-
mar’s new democratic processes, for government policies to restrict the political and
civil freedoms of non-Buddhist religions (BBC 2015a; Zaw 2015b). Working towards
similar objectives to Ashin Wirathu and benefitting from the existence of the political con-
sistency he has cultivated through his media activity, the Committee for the Protection of
Nationality and Religion, more commonly known as the Ma Ba Tha, has been particularly
active in promoting a collection of laws known as the ‘Protection of Race and Religion’
package (Amnesty International 2015; Human Rights Watch 2015b; Min 2014; Radio
Free Asia 2015; Zaw 2015a).

What is the ‘Protection of Race and Religion’ legislative package?
The ‘Protection of Race and Religion’ legislative package that has been promoted by the
Ma Ba Tha is comprised of four parts: the Population Control Health Care Law
(Dinmore and Myint 2015), the Religious Conversion Bill, the Myanmar Buddhist
Women’s Special Marriage Bill and the Monogamy Bill (UNHCR 2015). Elements of
each part of the package are discriminatory and, taken as a whole, these proposals rep-
resent significant restrictions of religious freedom.

In a joint statement, 180 Myanmar civil society organizations asserted that, if they were
to become law, these proposals could ‘destroy the stability’ of Myanmar society by “incit-
ing hatred, discrimination, conflict and tension” within religious communities (Radio Free
Asia 2015). There have been strong criticisms too from the US government, the UN
(UNHCR 2015) and human rights organizations (Amnesty International 2015; Human
Rights Watch 2015b). US Deputy Secretary of State Antony Blinken described the law
as likely to exacerbate ethnic and religious tensions (Dinmore and Myint 2015).

However, none of this prevented Myanmar’s new parliament, the Pyidaungsu Hluttaw,
during May 2015, from endorsing the first part of the package, the Population Control
Health Care Law (Perria 2015). This law will allow Myanmar’s central government to
impose ‘birth spacing’ regulations on women in communities where population growth
leads to ‘unbalanced resources’ (Dinmore and Myint 2015). How it is to be enforced is
not yet clear but, given Myanmar’s poor human rights record (BBC 2013b; Rogers
2012; Steinberg 2010; Ware 2011), the law has understandably raised serious red
flags for human rights advocates, just as it has raised serious concerns among the international
community and among civil society activists within Myanmar. While the Population
Control Health Care Law is considered by many to be a direct attack on perceived high
birth rates among Myanmar’s Rohingya Muslim population, its provisions can be
applied to any population nationwide. Ashin Wirathu’s explanation as told to The Irra-
waddy is that the law’s dual purpose is to protect women’s health and ‘stop the Bengalis’
(Zaw 2015b), a pejorative name he often applies to the Muslims of Rakhine State who call
themselves ‘Rohingya’ (Kaplan 2015).
In the months prior to Myanmar’s November 2015 general election, the politically charged nature of these laws was highlighted by the timing of President U Thein Sein’s decision to enact the Population Control Health Care Law (Lee 2015). The president signed it at a time when the international community was captivated by the crisis of irregular migration within the Bay of Bengal (Albert 2015; Macnamara 2015; McKirdy and Mohsin 2015). This migration was caused in large part because of Myanmar’s Rakhine State Muslims fleeing by boat from appalling conditions within Myanmar (Jikkham 2015). Despite concerned nations from throughout the region, and the USA, preparing to meet in Bangkok to seek solutions to a humanitarian crisis widely believed to be largely of Myanmar’s making, the president chose this time to sign a law described by the UNHCR as ‘highly discriminatory against ethnic and religious minorities as well as against women’ (2015).

The remaining three parts of the legislative package have been similarly criticized as discriminatory by civil society groups, the UN and human rights organizations, yet they were passed by the national parliament during July and August 2015 (Caster 2015). The Religious Conversion Law, for instance, would mandate that those wishing to change their faith first obtain local authority permission (BBC 2015a). According to the UNHCR (2015), the proposed system would establish a state-regulated process for religious conversion, ‘involving justification, registration, interview, study and approval’ and would be contrary to the protection of the right of conversion under human rights law. It is also contrary to the provisions of Article 18 of the International Declaration of Human Rights, which states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (United Nations 1948)

In addition, the Myanmar Buddhist Women’s Special Marriage Bill aims to ‘protect’ Buddhist women marrying non-Buddhist men. Emna Aouij (UNHCR 2015), head of the UNHCR Working Group on discrimination against women explains: ‘The Bill discriminates against women by restricting the right to marry for Buddhist women and placing restrictions only on Buddhist women who wish to marry outside their faith.’ It is feared that this Bill would, in practice, actively discourage interfaith marriage by ‘imposing disproportionate penalties on non-Buddhist men’ seeking to marry Buddhist women. Furthermore:

under the Bill, a cohabiting couple where the female partner is Buddhist and the male is not, is de facto deemed ‘married’. If one or both parties do not wish to marry, they may be forced into marriage by a Court, which interferes greatly with the right to enter into marriage only with free and full consent.

The fourth Bill, the Monogamy Bill, criminalizes polygamy while also prohibiting extramarital affairs. While the polygamy ban is described by the UNHCR as being consistent with international human rights requirements, other aspects of the Bill are of concern, notably the ‘restrictive and discriminatory approach’ it takes to the regulation of marriage (2015). The Bill refers to ‘non-Buddhist persons’ and ignores other types of marriage that are discriminatory against women, such as early and forced marriages. Emna Aouij
outlines her concern with this aspect of the legislative package: ‘Enforcement of laws criminalizing adultery often leads to discrimination and violence against women. Experience shows that, in practice, adultery legislation imposes disproportional criminal liability on women’ (UNHCR 2015).

The UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, explains that these bills ‘risk deepening discrimination against minorities and setting back women’s rights in Myanmar’ (UNHCR 2015). The Special Rapporteur on minority issues, Rita Izsák, suggests that ‘… these bills particularly discriminate against ethnic and religious minorities and have the potential to fuel existing tensions in the country’ (UNHCR 2015).

However, while a substantial element of civil society, human rights organizations, the US government and the UN have expressed grave concerns about the discriminatory nature of these proposals and the threats that they will likely pose to Myanmar’s fragile peace and nascent democracy, Ashin Wirathu’s perspective is, not surprisingly, diametrically opposed: ‘Taking care of our own religion and race is more important than democracy’, he says (Beech 2013). Yet this attitude has not prevented Ashin Wirathu, the Ma Ba Tha and their supporters from making active use of Myanmar’s new democratic systems and the country’s liberalizations to pressure lawmakers to enact the laws they want. While the media activity, political organizing and engagement with lawmakers that have been undertaken to support the Ba Ma Tha’s political case would likely have been impossible under the military junta, it is still worth considering whether other changes that have taken place during Myanmar’s recent transition, besides liberalization, might have created this political space.

Some, including Green (2013) and Selth (2013a), suggest that anti-Muslim attitudes have been a long-term feature of life in Myanmar and that liberalization should not be held to blame for recent outbreaks of religion-motivated violence or an agenda of discriminatory policies. Green (2013, 25) cites Selth’s (2013a) argument:

Full rights for Muslims were enshrined in the 1947 constitution, but in 1960 Buddhism was made Burma’s state religion and after the 1962 coup the military regime tended to equate Muslims with colonial rule and the exploitation of Burma by foreigners. Muslims were not permitted to run for public office, join the security forces or work as civil servants. The number of mosques was restricted, some Muslim cemeteries were destroyed and a number of madrassas were closed.

In Myanmar, Selth (2013a) continues, ‘Religious tensions have never been far from the surface.’

While it is certainly the case that religious tension has rarely been far from the surface of Myanmar life and that the military junta’s policies were frequently discriminatory on the basis of both religion and race (Rogers 2012), it is difficult to ignore the fact that Ashin Wirathu and the Ma Ba Tha are quite obviously making successful use of Myanmar’s new media and political freedoms to advance their agenda. No doubt there were religious tensions and discriminatory policies before, but contemporary political avenues to promote discriminatory attitudes and policies appear to be much wider than they were under the military junta, as evidenced by the parliament’s endorsement of the Race and Religion Package.
Could constitutional change, rather than liberalizations be to blame?

In addressing questions of what might have facilitated this push for discriminatory laws, it is worth considering whether a changed constitutional attitude towards freedom of religion might be the cause. Issues of constitutional change in Myanmar have been to the fore of politics since the country began its transition away from direct military rule (Allchin 2011; Radio Free Asia 2013; Selth 2013b). Debate about the rights that the national constitution provides to some citizens and not others to stand for the office of president has rarely been far from the public eye. Constitutional change is a key stated objective of opposition leader Daw Aung San Suu Kyi and her party the NLD (Irrawaddy 2014; Myint 2015). In these circumstances, it is reasonable to consider whether the new constitution, endorsed as it was in controversial circumstances during the aftermath of the Cyclone Nargis disaster, might be the cause or part of the cause of Myanmar’s recent religious tensions (The Economist 2008; Larkin 2010).

Since Independence from Britain, Myanmar has had three constitutions, 1947, 1974 and 2008. They each share a similar ‘attitude’ towards religion and the right of citizens to religious freedom, including freedom from discrimination on the basis of religious belief. Each constitution provides for religious freedom, consistent with public order, and they oppose the abuse of religion for political purposes. They each use similar language when describing citizens’ rights to religious freedom.

The 1947 Constitution provided for all persons to have ‘the right freely to profess and practise religion subject to public order, morality or health …’ (Union of Burma 1947, s20) and stated that ‘The State shall not impose any disabilities or make any discrimination on the ground of religious faith or belief’ (s21.3). Similarly, the 1974 Constitution makes a number of references to the rights of citizens to profess the religion of their choice. These include Article 153(b), which acknowledges the right of every citizen to ‘profess the religion of his choice. The exercise of this right shall not, however, be to the detriment of national solidarity and the socialist order which are the basic requirement of the entire Union’ (Socialist Republic of the Union of Burma 1974). Article 153(c), however, explains that, notwithstanding this clause, ‘acts which undermine the unity and solidarity of the national races, national security or the socialist social order are prohibited’.

Missing from the 1974 Constitution but returning in the 2008 version is the explicit recognition of the ‘special position’ of Buddhism. The 1948 Constitution states: ‘The State recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union’ (Union of Burma 1947, s21.1). Again, omitted from the 1974 Constitution is the 1948 Constitution’s statement that ‘The State also recognizes Islam, Christianity, Hinduism and Animism as some of the religions existing in the Union at the date of the coming into operation of this Constitution’ (s21.2).

These rights are returned in the 2008 Constitution, which states in Section 361: ‘The Union recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union’ and in Section 262: ‘The Union also recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into operation of this Constitution’ (Republic of the Union of Myanmar 2008, s362). The 2008 Constitution similarly mirrors the statements of the two previous constitutions about the use of religion for political purposes. Section 364 forbids the use of religion for political purposes and bans ‘any act which is intended or is likely to promote
feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution. A law may be promulgated to punish such activity’. Myanmar’s three post-Independence Constitutions can be collectively described as supporting religious freedom consistent with public order, and standing in opposition to the use of religion for political ends.

This examination of Myanmar’s three post-Independence constitutions shows considerable consistency between them when it comes to matters of religious freedom. Far from the 2008 Constitution representing a dramatic shift in attitude towards religion, its attitude towards religion and religious freedom is noteworthy for how little it differs from that of the country’s two preceding constitutions. This suggests that factors other than constitutional alternations have contributed to and must be the cause of the recent rise in religious tensions. It is reasonable to suggest that we need to look no further than the elements of Myanmar’s liberalization already described.

**Why Myanmar’s citizenship laws are important**

Any assessment of whether Myanmar is moving closer to a religious test for full citizenship requires some examination of how Myanmar currently determines citizenship. Myanmar’s 2008 Constitution provides no guarantee of citizenship (Republic of the Union of Myanmar 2008, s346). These matters are determined by the Burma Citizenship Law of 1982, which spells out the criteria for Myanmar citizenship. The Citizenship Law provides for three broad categories of citizenship and the key provisions of the law are based on ethnicity. Steinberg (2010, 72–73) describes the 1982 Citizenship Act as:

establishing a three-tiered system of citizenship. Full citizens were those who were Burman or a member of one of the indigenous ethnic/linguistic groups or those who could prove they were descendants of residents who had lived in what was Burma in 1823 … associate citizens, such as Indians and Chinese, were those who were born in the country after that time. The third group was comprised of naturalized citizens …

While this law came into effect during the time when Myanmar was ruled by the military (Oberoi 2006), there has been little domestic political momentum for it to change when compared with other constitutional provisions such as those related to the qualifications for the Presidency or the role of the military in the legislature (Irrawaddy 2014; Myint 2015). There has been considerable international and human rights-led criticism (Constantine 2012; Human Rights Watch 2015a) of the law’s reliance on potentially arbitrary notions of ethnicity as well as of the provision that declares, ‘The Council of State may decide whether any ethnic group is national or not’ (Burma Citizenship Law 1982, s4). This aspect of Myanmar’s citizenship arrangements has been the cause of considerable debate, particularly as it relates to the government decision to deny the Muslims of Rakhine State who call themselves ‘Rohingya’ the status of an ethnic group and with it the collective right to citizenship (Cheung 2012; Lee 2014; NPR 2015).

While the detail of this debate is beyond the scope of this article, the Rohingya’s situation still serves to underscore the point that Myanmar’s citizenship laws are controversial, complex and based on ethnicity, and that citizenship rights can accrue because of seemingly arbitrary government decisions about whether to recognize or refuse a claim to ethnic group status. The question of just how Myanmar’s government determines
whether a particular group of residents is entitled to be known as an ethnic group and to acquire the resultant citizenship rights is highly controversial. Taylor (2015, 3) explains:

Ethnicity, compounded by religion, has been the dominant motif of Myanmar’s politics for a century or more. Since the cusp of the country’s independence in 1948, the issue of ethnicity, or ‘race’, has been conflated with a debate over the question of the alleged rights of so-called ‘national races’, and those who reside in the country but are not included within the rubric of ‘national races’. The notion of national races was devised as means of recognising the existence of various ethnic groups within the territory of the Myanmar state, i.e. ‘races of the nation’, underscoring the confusing rhetoric the issue generates.

Taylor (2015, 3 n. 1) goes on to explain how language clouds and confuses this issue even more:

The confusion over ethnicity and race in Myanmar is compounded by the fact that one word, lumyo, is normally used to express both concepts. Literally, lumyo means variety or kind of human. The Myanmar-English Dictionary (Yangon: Myanmar Language Commission, 4th printing, 1994) defines the term as ‘1. race, nationality, 2. nation, 3. type (of people); character.’ There is a separate term for ethnic group, lumyosu, but it is little used.

These matters become even more challenging because, as Walton (2013, 4) writes, people in Myanmar ‘often perceive ethnicity as something inborn, unchangeable and, in some cases, determinant of an individual’s very nature’. This creates an obvious difficulty for those wishing to make a claim of ethnicity based on newer or less familiar ethnic descriptors, as is the case for the Muslims of Rakhine State who call themselves ‘Rohingya’ (Human Rights Watch 2015a; Taylor 2015). Taylor provides an up-to-date and worthy analysis of how Myanmar’s government might have come to compile its list of ethnic groups entitled to citizenship. In noting the possibility that the government might have made use of British-era colonial census records, Taylor (2015, 8) states: ‘67 years after independence, people are still discussing a nearly hundred year old list created by British colonial officials and amateur linguistics [sic] and ethnographers.’ The problems with such an approach are manifold and there are obvious criticisms (see eg Ferguson 2015) that such data may have been compiled by enumerators who lacked a thorough understanding of the country they were surveying, or were biased towards recording ethnicities with which they were already familiar.

 Ethnic identity represents a belonging to a social group with shared characteristics or history. Distinct ethnic groups frequently share, for the most part, a common religion. With regard to the situation in Myanmar, where citizenship rights are determined by parliamentary law rather than by constitutional right, and where these citizenship rights accrue because of membership of a common ethnic group (and as a result often because of a shared religion), the impact of religious discrimination in the laws should be considered most carefully. Since Myanmar determines citizenship, in part, on the basis of an individual’s membership of a distinct ethnic group, the membership of which often includes a common religious affiliation, this means there should be strong cause for concern about recent laws discriminatory against non-Buddhists.

**Conclusion: the dark side of liberalization**

An examination of the ‘Protection of Race and Religion’ legislative package shows it to be racially discriminatory. These proposals, when considered in the context of Myanmar’s
Citizenship Law, create a situation where some citizens have full citizenship rights, while others, because of their religion (or possibly ethnicity), will suffer discrimination and have their rights limited. This, in practice, represents another layer of citizenship rules and creates a nation where full citizenship rights are only guaranteed to some Buddhist citizens. This outcome is in line with the rhetoric of Ashin Wirathu and the Ma Ba Tha, who expect the Protection of Race and Religion Laws to be targeted at Myanmar’s Muslim population. This article has shown how divisive groups such as the Ma Ba Tha have taken advantage of Myanmar’s new political and media freedoms to pursue their agenda aimed at restricting the civil and political rights of the country’s Muslim population. It argues that the enforcement of the Protection of Race and Religion laws amounts to the creation of a de facto religious test for full Myanmar citizenship rights and that this is a test designed to limit the rights of Myanmar’s Muslims.

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