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Ruling but not Governing: Tutelary Regimes and the Case of Myanmar

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Abstract

The article sheds light on tutelary regimes, which have so far been left out in the discussion of contemporary authoritarian regimes. It uses a configurative approach to conceptualize tutelary regimes according to the three dimensions of tutelary interference, electoral competitiveness and civil liberties. Tutelary interference is conceived of as a spectrum of possible and not mutually exclusive roles which tutelary powers perform – depending on their position in the political system. Empirically, the article uses a case study of Myanmar’s tutelary regime to illustrate how the armed forces’ institutionalized powers and prerogatives have helped the country evade substantial democracy. The results show a high degree of regime heterogeneity, with a functioning electoral regime in place but substantial weaknesses in civil liberties. Both are (partly) rooted in the tutelary interference of the military, which is pervasive. The military’s position straitjackets the government; the military vetoes certain policies and structural reforms and guards the political system and its prerogatives from a position of strength. Politicians have so far not come up with successful strategies to bring the military under civil control.

Keywords: authoritarianism; tutelary regime; civil–military relations; civil liberties; Myanmar

Myanmar has moved away from closed authoritarianism but is not yet a full-fledged democracy. It falls into the category of hybrid regimes, which are understood in the literature as ‘neither clearly democratic nor conventionally authoritarian’ (Diamond 2002: 25), as a ‘half-way house’ form of political regimes in which authoritarian and democratic institutions coexist (Huntington 1991: 137). Myanmar is often considered an ‘illiberal democracy’ or ‘electoral authoritarian regime’. These concepts, however, are misleading and actually veil military prerogatives and military actions, which are systematically encroaching on civilian institutions. Although recent research on hybrid regimes has produced a number of important subtypes, tutelary regimes have so far not received the attention they deserve.¹ While tutelary democracies have belonged to the typological canon of the democratization literature for years

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(Croissant et al. 2010; Merkel 2004), tutelary regimes below the democratic threshold are not yet fully understood. While it is often argued that the lack of civilian control hampers democratic consolidation or democratic deepening, we do not have a clear idea of why democratization actually fails when military officers are placed in key positions of democratically elected regimes.

This article addresses this debate in a number of ways. First, it tackles conceptual challenges and highlights that modelling tutelary regimes according to the sole criterion of contested elections is insufficient. It demonstrates that a multidimensional concept is necessary to delineate this regime type, including the criterion of tutelary interference, which helps disentangle the influence of the tutelary power in the political system – be it, as in the case of Iran, the clergy or, as in cases like Pakistan or Myanmar, the military.

Empirically, the article uses the case study of Myanmar to show how the armed forces' institutionalized powers and prerogatives help the country evade substantial democracy – even though the military is not directly involved in electoral politics. Although the role of Myanmar's armed forces as 'guardian' has been acknowledged in the country-specific literature (Bünthe 2014; Egretau 2016), a systematic study of the political effects of the military's influence has remained absent.

Some caveats are in order here. First, the choice of Myanmar as an exploratory case study highlights some of the core issues in a regime long dominated by the military. However, in other tutelary regimes, in which other political actors loom large over the political system (such as the religious authorities in Iran), the effects might be different. Second, Myanmar's tutelary regime is facing other daunting challenges, such as the dominant position of the executive, constrained citizenship, a lack of substantive representation of political parties and an authoritarian political culture, all of which are impinging on democratic diversity and pluralism (Chu et al. 2016; David and Holliday 2018; Holliday 2014; Stokke 2019). While this has been acknowledged elsewhere, the analysis here aims to understand the functioning of tutelary regimes and to show how the involvement of Myanmar's military in politics is designed to systematically limit substantial democracy. The article proceeds as follows: first, it introduces the concept of tutelary regimes and discusses how they can be conceptualized; then it uses the case study of Myanmar's tutelary regime to describe the extent of the military's influence and to show how the military's participation in politics systematically blocks democratic aspirations.

Conceptual notes on regime hybridity

The debate about regime hybridity goes back to the early days of the study of 'transitology'. Guillermo O'Donnell and Philippe Schmitter's (1986) 'dictablanda' and 'democradura' depict regimes located in the grey zone (Carothers 2002) between authoritarianism and democracy. Despite more than three decades of research, there has been considerable disagreement among scholars about how best to conceptualize hybrid regimes. We can broadly identify three camps. The first conceptualizes hybrid regimes as diminished subtypes of liberal democracy, highlighting deviations from the root concept of democracy and stressing which attributes of liberal democracies are missing. These 'defective democracies' may lack civil liberties (illiberal democracy), violate horizontal accountability (delegative democracy) or

exhibit significant domains reserved for veto actors (tutelary democracy) (Merkel 2004; O'Donnell 1994; Zakaria 1997). This conceptualization evolved after the end of the 1990s in light of the emerging disillusionment with liberal democracy, which reflected a growing scepticism towards full democratization. Tutelary democracies, such as Thailand in the 1990s or Turkey in the early 2000s, hold regular free and fair democratic elections – yet the militaries in these countries wield some veto powers or reserve domains, such as extensive defence budgets or slush funds not controlled by civilian politicians. These regimes exhibit all the traits of electoral democracies, but lack democratic quality.

In contrast to those scholars who view hybrid regimes as defective democracies, a second group of scholars stress the attributes these regimes possess, rather than what they lack (Cassani 2014: 544). Reflecting a growing pessimism in democratization studies, Andreas Schedler (2002, 2006) and Steven Levitsky and Lucan Way (2010) consider hybrid regimes outright examples of authoritarianism, either as a subtype of authoritarianism or as a diminished form. For these authors, the introduction of democratic institutions – such as elections, political parties, courts, and so on – does not necessarily change the identity of these regimes. A specific type of tutelary authoritarianism does not exist in this line of research. Instead, military, single-party, personalistic or hereditary regimes may all become 'hybrid' by introducing democratic facades (Cassani 2014: 545). Military regimes, in which the military rules as an institution and serving or retired officers occupy key positions within the unelected government, formally end when these regimes introduce elections.

Scholars in this camp tend to treat hybrid regimes according to the dimension of electoral competitiveness, with liberal democracy on one end and closed authoritarianism on the other. These scholars have also introduced new subtypes of authoritarianism, such as electoral authoritarianism or semi-authoritarianism. Lee Morgenbesser (2014) highlights that elections have completely different functions in democratic and authoritarian settings. In democratic regimes, elections serve the purpose of elite selection and the transfer of political responsibilities. In authoritarian regimes, however, they are used for the purpose of elite management, distribution of patronage and regime legitimation. Placing regimes with serious deficits under the rubric of democracies thus entails conceptual stretching. As a consequence of this discussion, scholars have become more sensitive to Terry Karl's 'fallacy of electoralism' (Karl 1995) and emphasized the importance of *meaningful* elections – that is, elections that are competitive, free and fair, and which entail a 'chain of responsiveness' that covers every stage of the electoral cycle from electoral choice to its final consequences (Schedler 2013: 83). Andreas Schedler has proposed seven conditions to ensure that elections are meaningful: empowerment (citizens wield power to choose decision-makers and there is not a limited 'scope of jurisdiction of elective offices'); free supply (citizens must be free to form, join and support conflicting parties); free demand (citizens must be able to learn about alternatives through alternative sources of information); inclusion (universal suffrage); insulation (free expression of preferences without coercion); integrity (neutral election management); and irreversibility (the winners must be able to assume office, exercise power and conclude their terms) (Schedler 2013: 84).

Katharine Adeney has shown that Schedler's classification is actually ambiguous for a regime such as Pakistan, since the distinction between electoral democracy and

electoral authoritarianism does not adequately fill the conceptual space between liberal democracy and electoral authoritarianism (Adeney 2017: 121). She belongs to a third group of scholars who propose classifying hybrid regimes as a separate regime form between democracy and authoritarianism (see also Bogaards 2009; Wigell 2008). Arguing that viewing hybrid regimes as either authoritarian or democratic ‘diminished’ subtypes has blurred boundaries, Matthijs Bogaards conceptualizes hybrids as a ‘residual category’. He suggests a ‘double-root strategy’ in which the root concepts are defined in relation to each other and cases are classified with a view to both (Bogaards 2009: 410).

As mentioned above, the overwhelming majority in the regime classification literature uses electoral competition as a key criterion. This neglects the fact that a range of other dimensions are equally important to the analysis of political regimes, and that hybrid regimes can differ from one another in other ways beyond the competitiveness of elections. Another essential element that establishes a boundary between democracy and non-democracy is tutelary interference. Following Adeney (2017) and Leah Gilbert and Payam Mohseni (2011: 281), I propose a multidimensional configurative approach to conceptualizing tutelary regimes which combines several attributes and puts tutelary interference at the centre. This helps avoid the conceptual confusion found in the literature and contributes to a discussion of hybrid regimes beyond the framework of electoral authoritarianism. I argue that a more contextualized understanding of tutelary regimes is needed to conceptualize this form of hybrid.

Tutelary regimes as a form of hybrid: bringing in tutelary interference

To provide a more nuanced understanding of tutelary regimes, this article follows the work of Gilbert and Mohseni (2011: 285) and Adeney (2017), who have conceptualized hybrid regimes according to the three dimensions of electoral competitiveness, civil liberties and tutelary interference. The first two dimensions are borrowed from the core repertoire of conceptions of minimal democracy. The competitiveness of elections is ranked according to four criteria: elected officials, universal suffrage, right to candidacy and correctly organized free and fair elections. Beyond the right to vote and ensuring that the right to vote is meaningful, we have to add the establishment of civil liberties, which include press freedom, freedom of association and the rule of law (Merkel 2004). Beyond elections and civil liberties, another key element that establishes a boundary between democracy and non-democracy is tutelary interference. Larry Diamond (2002), Schedler (2002) and Levitsky and Way (2010: 14) have correctly argued that tutelary institutions or reserved domains for militaries, monarchies or religious authorities engaging in politics constrain the agenda of elected leaders and block the ‘chain of responsiveness’. Consequently, we need to unpack how these domains function and how tutelary interference affects other dimensions of democratic governance (Wigell 2008).

Tutelary regimes are distinct from electoral authoritarian regimes because while elections in such regimes may be competitive, the power of the elected governments is constrained by non-elected, tutelary powers – be they religious authorities (Iran), the military (Myanmar, Pakistan) or monarchic authorities (Nepal in the 1990s, Thailand). Tutelary intervention is not defined here as a binary of direct power

relationships between political actors (controlling versus not controlling). Instead, it is constructed as a spectrum of possible and not mutually exclusive roles which tutelary powers perform – depending on their position in the political system. This conception emphasizes their (networked) roles and effects on the other dimensions of electoral competitiveness and civil liberties.

Tutelary powers can act as rulers or decision-makers (policymaking and implementation), as necessary partners in governance and as veto players. As rulers, they can use their position to protect their interests, often with substantial impacts on freedom and participation. As long as unelected actors or appointed persons are unaccountable to elected persons in the government and have carved out certain fields of autonomous decision-making in the government, we may speak of tutelary regimes below the democratic threshold. Ultimately, a well-coordinated and professional partnership in governance adhering to democratic norms and practices is important to cross into the democratic sphere. Yet it is also important that no actors hold a position where they can veto decisions taken by the elected government. Often, reserved seats for certain groups in parliament dilute the general will of the population as voiced in general elections. If these groups can act as veto players, the regime is also below the democratic threshold.

This understanding of tutelage goes beyond civilian control as well as beyond the focus on the electoral arena and highlights the power certain actors have within the political system. With a focus on the three criteria of tutelary interference, electoral competitiveness and civil liberties, this concept provides a theoretical foundation and tool for comparison, which helps disentangle the diversity of hybrid regimes themselves. The case study of Myanmar helps to illustrate how this form of regime functions.

Myanmar: a tutelary regime below the democratic threshold

Myanmar's self-proclaimed transition to 'discipline-flourishing democracy' was initiated by the military from a position of strength. Myanmar's armed forces (Tatmadaw) were not coerced into reforms by oppositional or foreign forces, nor did the regime break down due to the consequences of civil war or internal rebellion (Callahan 2012). Consequently, Myanmar's tutelary regime differs from those in Iran or Thailand, which have seen disruptions and revolutions. Having ruled directly or indirectly since 1962, the Myanmar military has formed the backbone of the state in both the socialist (1962–88) and the capitalist eras (Nakanishi 2013; Selth 2002). It has fought more than a dozen ethnic rebellions in the periphery since the 1960s and has been the most powerful actor in the country since that time. Given its deep penetration of the regime, the economy and the society, the Tatmadaw has even been referred to as *the* state (Crouch 2019). With the aim of enhancing regime stability and gaining international legitimacy, the military junta (State Peace and Development Council, SPDC) initiated a series of reforms in the early 2000s which established the tutelary regime's foundation.

At the regime's core lies the 2008 constitution, which contains many liberal and illiberal elements and established a power-sharing arrangement between civilian and military actors. It secured the military's role in the national leadership of the state: the military undertakes both legislative and executive tasks and is the guardian of the constitution, technically overseeing the political system (Crouch 2019: 12).

Additionally, it created a ‘coercive centralism’ (Crouch 2019: 13) – a centralistic polity with limited devolution of power to subnational or regional entities – and placed most appointment processes and lines of accountability at the level of central government. As such, the 2008 constitution represented a ‘survival strategy’ on the part of the military regime to overcome the dangers of factionalism and instability (Croissant and Kamerling 2014), an ‘insurance policy’ for the military elite to foresee loss of power (David and Holliday 2018: 52) and a ‘key part of the establishment and maintenance of the military state’ (Crouch 2019: 3). It established the preconditions for and delineated the boundary of the political liberalization that followed under President Thein Sein (2011–15) and the current National League for Democracy (NLD) government (since 2016) (Bünthe 2016). It allowed for relatively competitive and meaningful elections and established firm safeguards to protect the military’s interests.

Elections in Myanmar’s tutelary regime: learning to live with competition

Since broader reforms were initiated in the early 2000s, three general elections have taken place: in 2010, 2015 and November 2020. While the 2010 elections were generally regarded as a ‘sham’ designed to legitimize the military proxy-party Union Solidarity and Development Party (USDP) in the eyes of the international community (Morgenbesser 2015), the 2015 elections were characterized as ‘being about as free and fair as is possible in a fledgling democracy like Myanmar’ (Badgley and Holliday 2018). According to most international election observer missions, the 2015 elections were credible and to a certain extent free and fair, and thus reflected the general will of the people (Carter Center 2016; EU EOM 2016). There was considerable fear that the USDP could manipulate the 2015 elections, particularly due to the strong role of the Election Commission, which was headed by a retired general and filled with former USDP members. In the end, however, the commission successfully organized the election process without undue influence from the government (Carter Center 2016: 6). Also in 2020, the Election Commission (this time filled by the NLD) was criticized for failing to create a level playing field. Ultimately, however, most election observer missions agreed that the elections represented the will of the people. They were seen as largely free and fair (but with notable disenfranchisement of certain groups) (IFES 2020).

Due to security concerns, the 2015 elections had to be cancelled in five townships and approximately 490 villages in the conflict zones in Kayin, Kayah state, Shin state, Mon state and Bago region (EU EOM 2016). In 2020, the elections had to be cancelled in 56 townships, which impacted 1,596 villages in conflict zones. As Diamond has argued, violence and intimidation by themselves do not preclude a state being classified as an electoral democracy ‘unless the political violence is clearly and extensively organised by the state or ruling party’ (Diamond 2002).

Myanmar’s elections have also suffered from a lack of inclusion: the definition of the demos is based on the 1982 citizenship law, which excludes the Muslim Rohingyas and other ethnic minorities (and many Indians and Chinese), who were disenfranchised in the lead-up to the 2015 and 2020 elections (Cheeseman 2017). Members of religious orders are also excluded from the right to vote. Due to nationalistic and anti-Muslim campaign rhetoric, neither the USDP nor the

NLD fielded any Muslim candidates in 2015, leading to the exclusion of Muslim candidates. Moreover, significant malapportionment favoured rural areas over towns and ethnic minority regions over Bamar regions (Ostwald and Courtin 2020).

Despite these shortcomings, the 2015 elections were meaningful in the sense that the electorate was able to vote out a disliked pro-military party, while the military did nothing to prevent the long-term opposition party NLD from taking over the helm of the government (Thawngmung 2016). The USDP under President Thein Sein suffered a humiliating defeat, with many incumbents being voted out of office. In 2020, the NLD again won by a landslide, while the USDP was destroyed, receiving fewer votes than five years before. This illustrates that there is a certain democratic choice in Myanmar, unlike the case in competitive authoritarian states where elections do not pose a serious threat to the incumbents, and institutions 'are a façade in order to conceal and reproduce harsh realities of authoritarian governance' (Schedler 2006: 1). The military has not manipulated elections or interfered in the formation of the government, either during the 2015 elections or in the numerous by-elections in 2012, 2017 or 2018, all of which were won by the oppositional NLD or ethnic parties (Stokke 2019). In 2020, the military also did not respond – either before or after the election – to the lobbying of opposition parties calling for it to step in. The question is why?

Installing safeguards and allowing room for competition

From the beginning, the military did not intend to rule directly and has learned, over time, to live with competition. It installed a number of safeguards to protect its core interests against civilian politicians, some of which later became dysfunctional when competition in the political arena became more intense. This was something the military leadership could not prevent, as it would have endangered the long-term interests associated with the reforms.

Though it is correct to claim that 'elections have become the central conduit to achieving and maintaining political power' (Farrelly 2015: 17), one has to concede that democratic competition is distorted by the 25% of seats constitutionally reserved for the military in all parliaments. This military cohort is meant to keep elected politicians in check and keep the tutelary regime in place, since the military bloc nominated by the commander-in-chief and subject to military discipline has the power to veto changes to the constitution. Moreover, the reserved seats for military personnel mean in practice that to achieve a majority a party has to win more than two-thirds of the seats available for election, while a political party allied with the military needs to win just over one-third of the seats to maintain effective legislative control (David and Holliday 2018: 52). The military installed another safeguard in the form of Article 59f, which bars anyone from becoming president if their spouse, either of their parents, or any of their children's spouses are citizens of a foreign country. This safeguard is often said to have been directed towards Aung San Suu Kyi, since her late husband and sons are British citizens; however, it also barred a former USDP politician from taking up the vice presidency in the Thein Sein era and excludes many ethnic rights and democracy activists who have been living in exile.

Some of these safeguards have eroded over time. The military-aligned USDP failed to develop into a strong mass party, weakened by increasing frictions between several power centres in the party. President Thein Sein and house speaker Thura Shwe Mann became fierce competitors within their party, both driving liberalization from within their institutions (2012–15) and building new alliances. While Thein Sein was supported by army chief Min Aung Hlaing, Thura Shwe Mann was allegedly forming an alliance with Aung San Suu Kyi. The rivalries within the USDP, which erupted in a military-supported party coup in August 2015, in which Thura Shwe Mann was ousted as party leader and Thein Sein reinstalled, caused frictions within the Tatmadaw as well (Zin 2015). Since an election defeat for the USDP would not have endangered the dominant position of the military, the latter appears to have adjusted its strategy and decided it was not in its interest to save the USDP from defeat.

A further safeguard was dismantled when the NLD worked around Article 59f by introducing the powerful position of state counsellor in order to allow Aung San Suu Kyi to take up a position at the helm of the government. When the NLD pushed the law through in parliament, military representatives complained about ‘democratic bullying by the majority’ or the ‘tyranny of the majority’ (Bünto 2017; Myoe 2018: 204ff). Although they were ‘furious’, they accepted the move, since they had further safeguards in place to protect their interests. Myanmar’s tutelary regime gives the military a strong and independent position in the government.

Institutionalizing control, straitjacketing the government and vetoing change

While policymaking in the economic, financial and social arena was transferred to the civilian government after the dissolution of the SPDC in March 2011, the military remained in control of internal and external security and continues to be completely autonomous in the management of its own affairs. It justifies this position by citing the ongoing civil war, the weakness of civilian institutions and the incompetence of the civil governments (Egreteau 2016: 22). The military remains the ‘guardian’ at the centre of the tutelary regime through its parliamentary representation and its institutionalized control of three ministries (and one of two vice presidents). The Tatmadaw is also a major veto power. As architect and guardian of the political system, it is caretaking yet ultimately constraining democratization. It straitjackets the government, which defends and shields the military for its actions in the security arena, hoping to get its support for further reforms.

Maintaining control: ruling in the fields of security and defence

Although it has taken a backseat in most policy areas, the military has continued to rule directly in the fields of security and defence. The commander-in-chief appoints the security-related ministries (defence, border and home affairs), and the Tatmadaw has also remained completely in control of the management of its own affairs. Although Commander-in-Chief Min Aung Hlaing has repeatedly asserted that the Tatmadaw acts ‘under the president’, decisions in the security sphere are solely his purview. According to the 2008 constitution, the commander-in-chief is

‘responsible for all the armed forces of the Union’, which means that the army, navy, air force, police, militias and other paramilitary forces are all under his control. The intelligence agencies are also under his command (Selth 2018: 140).

In the security arena, the military has demonstrated a ‘preference for military solutions to political problems’ (David and Holliday 2018: 80), particularly regarding the ethnic and religious tensions in Rakhine state and the ethnic tensions in Kachin and Shan states. This has often had devastating humanitarian effects and severe human rights implications. In Rakhine state, the military reacted to attacks on army outposts by a Rohingya armed group, the Arakan Rohingya Salvation Army (ARSA) in October 2016 and August 2017 with successive and escalating waves of what it called ‘clearance operations’. Within months, a total of 750,000 Rohingya people were driven into neighbouring Bangladesh. Refugee testimonies, satellite imagery and investigative reports suggest that the Myanmar military and Arakanese militia have carried out systematic extrajudicial killings, torture, sexual violence and arson, leading the UN to declare this a ‘textbook example of ethnic cleansing’ (Cumming-Bruce 2017). UN special rapporteur for human rights Yanghee Lee asserted that the military’s actions ‘bear the hallmark of genocide’ (Larson 2018).

Both the military and the NLD government have denied these allegations, labeling ARSA a ‘terrorist group’ while reinforcing the message that the Rohingya are neither an official ethnic group nor rightful citizens of the country. Capitalizing on anti-Muslim sentiments in Myanmar, the military has tried to further exploit the Rohingya crisis for its own purposes by portraying the military as the defender of the country’s majority Buddhist culture. Commander-in-Chief Min Aung Hlaing has justified the brutal expulsion of the Rohingya from Myanmar’s soil with the need to complete ‘unfinished business’ from World War II, in a reference to the exodus of Indians from Myanmar in 1942 (Hookway 2017). While it is obvious that *de facto* leader Aung San Suu Kyi has no leverage over the military in general and troop deployment in particular, the reasons for her moral failure not to confront or condemn the military are not clear.

Aung San Suu Kyi also decided to defend Myanmar (and the military) against charges of genocide at the International Court of Justice in The Hague in December 2019. Within the country, this has led to a rally-around-the-flag effect and both the military and Aung San Suu Kyi have won domestic support for their policies. Abroad, however, this strategy has led to an immense reputational loss of the former human rights icon. She has fallen from grace in the West and has been stripped of many accolades due to her ‘cohabitation’ with the military. So far, the military’s actions in northern Rakhine state have remained unpunished. Since the Tatmadaw is solely responsible for military justice, only a few soldiers have been punished, with brief prison terms, for what the military says were isolated missteps in a couple of villages. Given the sacrosanct position of the military, this is no surprise.

The Tatmadaw is also solely responsible for defence issues, and Myanmar’s defence minister is nominated by the commander-in-chief. Although regular discussions take place within both houses, the defence budget control exercised by parliament is purely superficial – in light of hidden budgets for the security forces and off-budget positions (Egreteau 2017). The defence budget has been maintained at a

high 13–14% of the total budget since the NLD took over, which is significantly higher than the allocations in fields such as health or education. This has been described as a payoff for military officers taking a backseat in policymaking (Selth 2015: 11). More importantly, the military has insulated itself from possible budget uncertainties and scarcities through its own military enterprises, the Union of Myanmar Economic Holding Limited (UMEH) and the Myanmar Economic Cooperation (MEC). This form of ‘khaki capital’ has enabled the military to remain independent for decades (Bünthe 2017).

The commander-in-chief has full control over all aspects of the internal administration of the army. Legally, he is appointed by the president with the approval of the Defence Council, though he is not subordinate to the executive branch (Crouch 2019: 41). The lack of civilian control can be illustrated by the discussion about the tenure of current commander-in-chief Min Aung Hlaing: appointed in 2011 by outgoing junta strongman Senior General Than Shwe, he was about to reach the mandatory retirement age (of 60) in 2015. However, the Tatmadaw used Section 291 of the constitution, which allows the military to regulate its own role, to amend sections of the Defence Service Act in 2014. The Tatmadaw consequently used some of its ‘legislative powers’ to allow the senior general to continue in his position until 2021 (Crouch 2019: 41).

Civil–military cohabitation: a marriage of inconvenience

The constitutionally enshrined ‘cohabitation’ necessitates cooperation between the civilian and military arms of the government. In practice, however, Commander-in-Chief Min Aung Hlaing and Aung San Suu Kyi rarely meet directly and important government decisions are taken with little coordination between the two parties. There is a high degree of mistrust on both sides, since each does not recognize the other as the legitimate leader. Min Aung Hlaing questions the constitutionality of Aung San Suu Kyi’s position (as state counsellor), and she does not see him as a legitimate leader because he is unelected.

Aung San Suu Kyi, the *de facto* head of government, has described the generals in her cabinet as ‘rather sweet’ and overall relations with the military as ‘not that bad’ (Paddock 2018), though it remains questionable whether there is any coordination at all between the civilian and military arms of the government. On the one hand, Aung San Suu Kyi has taken over some of the military’s positions – for instance, in the peace process (Myoe 2018). She also seems to have taken over the military’s version of establishing a centralized Union under the domination of the Bamar-Buddhist majority.

On the other hand, Aung San Suu Kyi fears the actions of the military. For instance, she has avoided convening the National Defence and Security Council (NDSC), which is the institution responsible for discussing security matters. The 11-member body comprising the highest legislative, executive and military players has the right to take over power during a state of emergency (Crouch 2019: 47). Commander-in-Chief Min Aung Hlaing has repeatedly demanded that Aung San Suu Kyi convene the NDSC, while she has appointed her own security advisers. Arguably, the NLD feared being forced to call a state of emergency (e.g. over Rakhine state), which could allow the commander-in-chief to take over power

and dissolve parliament. In a demonstration of the current state of distrust, both the NLD and the military have (unsuccessfully) attempted to increase their power in the NDSC by bringing in constitutional amendments that alter the institution's role and composition in their favour.

Furthermore, the military has used its parliamentary representation to keep elected politicians in check. By establishing the USDP, a 'military proxy party' (Stokke 2019), the military was able to dominate the early years of political liberalization under President U Thein Sein (2011–15), thus putting Myanmar on the path towards a 'discipline-flourishing democracy'. Political freedoms were expanded, but only as long as they did not contravene existing security laws, which meant clear limits to freedom of association, movement and the press. Though the military bloc in parliament has often voted with the NLD in opposition to Thein Sein's policies, it has begun to act in opposition to the NLD government since 2016. The USDP and the military bloc in parliament have tried systematically to undermine the legitimacy of the elected government by highlighting Aung San Suu Kyi's lack of leadership qualities and the failures of the NLD administration to solve the 'national crisis'. In doing so, it has defied potential attempts by the administration to assert increased civilian control over it; according to the civil–military relations literature, a high level of regime legitimacy provides incentives for military subordination; it also increases the costs of military non-compliance (Croissant 2013: 270). In Myanmar, the politicization of the military, the weak regime legitimacy and the weak civil society have meant that the risk of coups has remained high.

The NLD has so far shied away from initiating bigger structural reforms which might limit the dominance of the military. To be fair, the constraints on the NLD are immense. Constitutional changes to the military's role need the consent of more than 75% of the parliamentarians and, consequently, the support of the military itself. The NLD has attempted to change the constitution twice: in July 2015 and in March 2020. The constitutional amendments which aimed to reduce the number of seats reserved for the military and the threshold for a veto were vetoed by the military delegates. General Min Aung Hlaing has justified the military's continuing role with the country's political instability, the immaturity of its democracy and the ongoing civil war. Needless to say, the military's idea of a 'discipline-flourishing democracy' as well as the vision of a centralistic state promoted by the Bamar-Buddhist majority has not convinced the ethnic armed organizations (EAOs) to sign the National Ceasefire Agreement and give up their weapons. The civil war not only keeps the military in the political arena, but also gives it a role in the system.

Until January 2019, the military also controlled the General Administrative Department (GAD), which forms the backbone of the country's administration and has a coordinating role among the government ministries which extends down to the 16,000 wards and village tracts (Chit Saw and Arnold 2014). By placing the GAD under the Office of the Union Administration, the NLD has laid the foundation for improved governance and better policy coordination in the future (Arnold 2019). So far, however, these reforms have had only limited effects, since the GAD is still staffed with former military officers. Reforms in this domain have been modest and have not been resisted by the military, since 'the generals [have] deemed these matters not worth squabbling over' (Barany 2018).

Civil liberties

In Myanmar, civil liberties remain weakly institutionalized, something which is reflected in the stagnating Freedom House scores for civil liberties over the last five years (Freedom House 2019). Moreover, the data from the Association of Political Prisoners Burma (APPB) show a drastic increase in the number of political prisoners since March 2018. Under President Thein Sein (2011–15), APPB data fluctuated between 70 and 200 political prisoners. In the first years of the NLD government, the figure remained at 200–300, but since March 2018 these figures have tripled, indicating a decline in both press freedom and freedom of association.

Press freedom

Myanmar's press is also not free. Though the country climbed 20 ranks in the Reporters without Borders press freedom index during the liberalization period from 2010 to 2017 and is now ranked 139 out of 180 countries in terms of press freedom, significant obstacles to a free press remain. Since 2017 we have also witnessed a slow reversal of the progress achieved. There are a number of older laws that severely limit the ability of journalists to cover issues in civil war areas or speak out freely, such as the Unlawful Association Act, which prohibits reporters from having contact with EAOs; the Telecommunication Law, which has provisions for defamation and sedition; and the colonial-era Official Secrets Act (OSA), which carries prison sentences for those who disseminate information related to national security, domestic tranquillity and racial harmony (Human Rights Watch 2019).

Surveillance of journalists by the military-controlled Home Affairs Ministry remains a common practice, and reporters covering sensitive topics risk harassment, physical violence and imprisonment. Criticism directed at the military is considered taboo, and if a publishing house crosses this line, it receives a warning from the military. If journalists overstep this line, they face repression. There are some prominent examples. In 2018, two Reuters journalists were sentenced to seven years in jail for violating the OSA in their coverage of a massacre of Rohingya in Rakhine state. In 2019, the army sued the monthly *The Irrawaddy* for 'unfair coverage' of the Rakhine conflict between the military and the Arakan Army (AA). In October 2019, a researcher was arrested after a Facebook post criticizing Commander-in-Chief Min Aung Hlaing. In March 2020, the military made criminal defamation complaints against Reuters over a report covering the Rakhine conflict. In April 2019, five members of the so-called Peacock Generation were arrested and jailed for one year for performing a satire in military uniforms. Again, this is only the tip of the iceberg and both the military and members of the civilian administration are using the existing laws to silence their critics (Human Rights Watch 2019). Between late 2013 and June 2019, civilian officials filed 27 defamation cases against perceived critics, while the military filed 16 (Aung 2019).

While military and intelligence agencies are not able to block or control the *dissemination* of certain content, they attempt to punish those responsible for producing the *substance* of the content. The military tries to systematically manufacture opinion that either does not harm the military as an institution or portrays it in a positive light. It can be argued that the military has even established an online dissemination network of media companies with more than 4.4 million followers to

disseminate pro-military information and cast a negative light on the NLD government as well as on Muslims in the country (Kyaw 2019).

Freedom of association

Whereas political parties were relatively free to organize during and after the 2015 elections, civil society organizations (CSOs) critical of the military (and the government) face ongoing repression in organizing protests and assemblies due to the Peaceful Assembly Law. This law was amended in 2016 but is still used by local authorities and the military to stifle public protests (Human Rights Watch 2019: 51). Workers, farmers and CSOs critical of ongoing land-ownership issues or resource-extraction projects, in which the military is often involved, are threatened by both military and civilian authorities (Bunte 2018). Although the freedom to organize and protest has increased compared with the situation under direct military rule, leading to an 'explosion of collective social action' (Prasse-Freeman 2016: 71), military and civilian authorities nevertheless try to avert public protests in an attempt to 'discipline' students, farmers and voices critical of the military. The NLD has been criticized for being 'authoritarian' and not liberalizing outdated laws (Petri 2019; Win 2020), though this is in line with the 'discipline-flourishing democracy' propagated by the military. Scholars have pointed to opinion surveys highlighting a lack of and incoherent liberal beliefs among both elites and the masses. Roman David and Ian Holliday (2018) have pointed out that this 'limited liberalism' is a property of the political culture of hybrid regimes.

Rule of law

In Myanmar, 50 years of military rule have systematically weakened the judiciary, compromised the independence of the legal system and imbued it with a variant that has emphasized public order and tranquillity (Cheeseman 2015). Melissa Crouch (2019) has shown that the military, not the judiciary, balances both the executive and the legislature. Both the executive and the military still exercise huge influence over the judiciary, and this influence has even increased during the past decade. As a consequence, the judiciary remains an essentially administrative institution. The newly created Constitutional Tribunal has been marginalized and lacks political influence (Crouch 2019). After five decades of militarized justice, which spanned from the police to the courtroom and the prison system, NLD leader Aung San Suu Kyi made rule-of-law reforms a priority. However, on the whole, the judicial system has improved only minimally.

In legal cases, external meddling remains prevalent. The police, who are still under the military-controlled Home Affairs Ministry, deny the basic rights of those arrested and continue to treat them as enemies of the state. Torture is endemic. A 2017 report found that among the many routine violations of fair trial rights, in 135 out of 155 observed cases in Yangon courts the defendant did not receive legal representation until the first day of the inquiry stage or later (Justicebase 2017). The most glaring example of the ailing justice system and of interventions in the judiciary was the case of the two Reuters reporters whose report exposed an army massacre in June 2017 in Rakhine state; both were

found guilty of breaching the OSA and were jailed for seven years, although convincing evidence suggested that they were entrapped by the police. Ironically, democratically elected state leaders did not intervene to support the judiciary and encourage it to enforce the rule of law (Dunant 2019). All in all, both the military meddling in judicial affairs and the exemption of military officers from state justice – members of the police force and the armed forces are generally tried in court-martial proceedings – have led to a decline in confidence in the judiciary and an ongoing culture of impunity.

Conclusion

This article has developed the idea of tutelary regimes as a form of hybrid distinct from electoral authoritarianism. Based on Adeney's idea of hybrids as a multi-dimensional continuum, the article has developed the concept of tutelary regimes by referring to the three domains of competitiveness, civil liberties and tutelary interference. It has conceived of tutelary interference as a spectrum of the possible and not mutually exclusive roles tutelary actors can perform in a political system. The case study of Myanmar demonstrates extreme 'regime heterogeneity' (Denk and Silander 2011), with relatively free and fair elections in 2015 (and beyond), a significant degree of electoral competitiveness, and limitations in universal suffrage and the right to be elected. If the focus were on elections alone, Myanmar could be considered an 'electoral democracy', though the reserved seats for military officers block the 'chain of responsiveness' (Schedler 2013).

However, if we broaden our view to include political institutions in general, we see the interplay of military interference, elections and civil liberties: due to the military's interference, civil liberties have declined in recent years, since their interpretation is often dependent on existing security laws. This has led to what the military euphemistically calls a 'discipline-flourishing democracy'. The analysis of tutelary interference has shown that Myanmar's Tatmadaw rules directly in the fields of security and defence – often with grave impacts on human rights and impunity. As a partner in government, the military straitjackets the government; coordination and cooperation are scarce, and a significant degree of mistrust is evident. The civilian government has taken on some of the military's positions and has tolerated the narrowing space for civil liberties and declining press freedom. Though the military has withdrawn from ruling directly, its decision-making autonomy on security and defence issues and its participation in government is taking a heavy toll on freedom, liberty and human rights.

The article has filled a conceptual void and defined tutelary regimes as a form of hybrid regime distinct from electoral authoritarianism. It has explored the functioning of tutelary regimes using the case of Myanmar, where the military looms large over the political system. In similar tutelary regimes we can identify similar outcomes. Adeney's (2017) analysis of Pakistan and Aurel Croissant et al.'s (2010) analysis of Thailand come to the conclusion that all these regimes exhibit a very low level of civil liberties. The military's stated mission as a provider of security and military ideology provides justifications for limiting civil rights and personal freedoms. The effects might be different in other tutelary regimes, where other types of non-elected political actors wield significant powers. In a regime like Iran, for instance, religious

institutions have a stronger influence on political policies. All in all, tutelary regimes are extremely rare. The origin of these regimes can be traced back either to a state-building mission (as in Myanmar) and the military's subsequent goal of defending its powers or to revolutions (as in Iran in 1979). They are also the result of civilian politicians' and political parties' lack of capacity to move these forces out of the political arena. However, a great deal more research on these tutelary regimes is necessary to fully understand how and when they emerge.

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Note

1 The term 'tutelary regimes' goes back to Levitsky and Way (2010: 14).

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