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Labour Formalisation as Selective Hegemony in Reform-era Myanmar

Stephen Campbell¹

With the general elections of November 2010, state rule in Myanmar entered a process widely seen as a transition—if stalled—to democracy and rule of law. Such transition narratives have posited normative rule of law and arbitrary rule outside law as opposing logics, and opposing practices. A similar dichotomy is found in studies of labour informalisation in the global South, where informal labour is understood as antithetical to legally protected employment. Arguing otherwise, this article employs interview and ethnographic data to pursue an anthropology of state formation as a means of reading formality and informality as complementary, rather than conflicting, logics of state practice. Drawing on Gavin Smith's notion of selective hegemony, I hold that state actors in Myanmar have pursued varied projects of rule over a heterogeneous landscape of labour relations. In this respect, rule of law is always selective, and informality exhibits not so much an absence of state rule as an indirect modality of rule.

Keywords: labour, informality, hegemony, Myanmar

At first glance, Myanmar¹ appears anomalous to global narratives of labour market flexibilisation. On the heels of the country's 2010 elections, and following decades of direct military rule, Myanmar's newly elected national legislature promulgated the 2011 Labour Organisation Law and 2012 Settlement of Labour Disputes Law (see Park 2014). Whereas the former legalised trade union formation, the latter institutionalised tripartite collective bargaining between employers, employees, and government through newly established industrial dispute resolution bodies at the township and state/region levels. These laws have since facilitated a surge in unionisation; by early

¹ Stephen Campbell is an assistant professor in the School of Social Sciences at Nanyang Technological University, Singapore, and a research fellow in the Department of Social Anthropology at the University of Bergen, Norway. His research covers labour issues in Myanmar and Thailand. Correspondence to: Stephen Campbell, 140 Carlton St., Apt. 2104 Toronto, ON CANADA M5A 3W7. Email: stephen.campbell@ntu.edu.sg

2018, well over 2,300 ‘basic labour organisations’ (enterprise-level trade unions) had been registered.² At the same time, Myanmar legislators addressed the lack of a daily legal minimum wage by enacting a Minimum Wage Law in 2013, with the specific amount (3,600 kyat; AUD 3.28) set in July 2015, and increased to 4,800 kyat (AUD 4.37) in May 2018. Meanwhile, a draft occupational health and safety law has been circulating among government ministries (Nyan Lynn Aung 2016).

Bracketing for the moment the actual conditions of workers’ employment, the trajectory of labour regulation in post-2010 Myanmar diverges—in form, if not content—from that found in most other countries globally. Seeking to attract capital investment and stimulate growth under the competitive pressures of a more globalised labour market, governments across the global North and South have since the mid-1970s weakened or repealed existing labour protection laws, liberalised trade and investment regulations, and curtailed union activity. The result has been a radical restructuring of labour relations toward more ‘flexible’ conditions of employment. This has, in practice, entailed a shift to fixed-term, part-time, sub-contracted and non-unionised work, alongside increased employment of migrant workers and greater use of labour market intermediaries (Standing 2011; Vosko 2010). The consequently weakened position of organised labour has led to a global ‘crisis of tripartism’ (La Hovary 2015), and a growing proportion of workers around the world are now labouring *de jure* or *de facto* outside formal employment protections—their terms of work increasingly precarious.

Conventionally, labour market flexibilisation has been understood as central to a broader process of neoliberalisation—the latter entailing a shift from greater to lesser formal regulation of markets and trade (Harvey 2005). In David Harvey’s (1989, 147) historicisation, labour flexibilisation emerged as a capitalist response to the employment ‘rigidities’ that characterised

the more unionised and legally-protected status of workers in mid-twentieth-century Fordist-Keynesian welfare states. While there is now a vast literature on the rise of flexible and precarious work in Asia (for example, Deyo 2012; Kalleberg and Hewison 2013), the Myanmar case has so far escaped interrogation in these terms. This is not simply empirical oversight; the country's rather anomalous history of protracted military rule raises questions about whether narratives of neoliberalisation would really have analytical purchase in this context. The point is that we cannot assume a priori that the trajectory of labour regulation in Myanmar has followed the same route as that of North-Atlantic welfare states during the latter half of the twentieth century. As a regional precedent, Donald Nonini (2008) has contested the claim, put forth by Harvey (2005) among others, that China has followed an unambiguously neoliberal path. From a different angle, Frederic Deyo (2012) suggests that, while employment relations in East and Southeast Asia have indeed been marked by labour market flexibilisation, recent initiatives in social protection—in China, South Korea, the Philippines, and Thailand—indicate a Polanyian counter-movement, whereby governments have sought to redress the precarious conditions of flexible work.

Putting aside for the moment the broader question of neoliberalism's analytical relevance in Myanmar, I do find that 'flexibilisation' provides a useful gloss for certain regulatory changes introduced in Myanmar following the end of military/socialist rule in 1988, as I will discuss below. However, the recent legislation and (partial) enforcement of labour protection laws in Myanmar calls for a more nuanced account of the disjuncture we now find between formal regulation and the informal reality of so many employment relations on the ground. While legal practice in Myanmar exhibits historically sedimented 'layers of development' (Crouch 2014), these layers are not spatially uniform; they are patchy, but not haphazard. How, then, should we make sense of the

variegated landscape of labour regulation in Myanmar—a landscape marked by recent and dramatic formalisation, alongside persistent informality?

To address this question, I propose that we first understand labour formalisation—the promulgation, that is, and enforcement, of legal labour protections—as a consent-seeking hegemonic project. In reform-era Myanmar, as in all liberal polities, this formalisation has been wilfully incomplete; state agents have targeted choice sectors of the economy and the most troublesome sections of the domestic labour force. Formalisation, consequently, has here entailed what Gavin Smith (2011) calls selective hegemony; despite the current government’s expansive claims regarding ‘rule of law’, formalisation has on the ground in Myanmar been a highly selective practice. To wit, state actors have pursued varied projects of rule over a heterogeneous landscape of labour relations. But this does not make Myanmar unique. For rule of law is always and everywhere selective. Moreover, to select that which is to be formal is to select as well, if only by omission, that which shall remain informal. Informality, consequently, exhibits not so much an absence of state rule as an indirect modality of rule.

In order to track over time changes in the regulation of employment in Myanmar, I focus in this article primarily on the case of Yangon-based construction workers. My analysis draws on ethnographic research that I have, since 2016, been conducting at an industrial zone on the outskirts of Yangon, and on interviews with Yangon-based workers, labour activists, and government officials. While I focus primarily on the construction sector, I draw for comparative material on research I have done on the regulation of light manufacturing in and around Yangon (see Arnold and Campbell 2017). My analysis is also informed by previous research—some 20 plus months of ethnographic fieldwork between 2011 and 2016—that I conducted on the regulation of Burmese migrant labour in Thailand (Campbell 2018).

As method of exposition, I lay out my argument through an historical tracing of state formation in Myanmar divided into three periods: the military/socialist era from 1962 to 1988; the post-socialist era of direct military rule from 1988 to 2010; and the reform era inaugurated by Myanmar's November 2010 elections. While this tripartite division maps clearly onto common sense narratives of political change in Myanmar, it is significant that I was prompted to adopt this historical breakdown by veteran workers who had been employed in Yangon's construction sector since the early 1980s—the point being that, in terms of workers' everyday experiences of state rule, these are locally meaningful historical distinctions. Whereas I foreground ethnographic detail in the final section covering post-2010 developments, I draw on interview data to inform the earlier historical narrative. Both the historical and contemporary accounts are important for highlighting areas of continuity and change in the development of state rule in Myanmar's ethnic Burman-majority lowlands.

Pursuing Consent Under Military/Socialist Rule

On seizing state power in Burma in 1962, the military's post-coup Revolutionary Council nullified the previously legislated role for trade unions—facilitating, thereby, their de facto prohibition. This the Council did by promulgating the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers. And yet, pursuing, as well, consent to its rule under an explicitly socialist banner, the military positioned—ideologically, at least—workers and peasants as privileged social classes pivotal to the country's prosperity. The junta may not have been sincerely committed to socialist ideals, as Mary Callahan (2003, 209) suggests, but to secure its rule it nonetheless 'needed strong public support from the working masses [and thus] felt it necessary to introduce new, pro-labour policies' (Kyaw Soe Lwin 2014, 292). And so, while at

once rendering trade unions legally obsolete, the Revolutionary Council replaced these unions, in the 1964 law, with mass-based People's Workers' Councils, which were granted a representative role in township-level industrial dispute tribunals (*wanaikza patipekkha khonyone*). Although the law granted no legal space for workers to strike, the tribunals did provide workers with an official channel through which to pursue state-backed redress for violations of labour rights, such as are enumerated in the country's 1951 Factories Act. Officially, at least, the 1964 law aimed to establish a state of affairs in which there would 'be no exploitation of the working people' (Revolutionary Council 1964, Preamble §3.2). More instrumentally, state authorities introduced these juridical mechanisms as means to entice workers to join the government-backed Workers' Councils, and to 'promote production through smooth tripartite relations between workers, the state and employers' (Kyaw Soe Lwin 2014, 293).

Beyond rhetoric, the tribunals do actually seem to have been effective juridical means for workers to realise legislated labour rights, within circumscribed limits. Such, at least, was the opinion of my sixty-one-year-old informant U Nyein,³ a veteran labour activist who had come of age under socialist rule in Burma. Employed as a construction worker in the early 1980s, U Nyein had directly experienced these tribunals, whose functioning he described like so:

Prior to '88 [when socialist rule ended], it was difficult to fire workers because of the Workers' Association [formerly "Council"]. Before '88, [workers] could in most cases submit complaints. Before '88, if a problem arose for workers, [the workers] would submit a complaint to the Workers' Association. The Workers' Association would then submit a complaint to the industrial dispute tribunal [on the workers' behalf]. If the case concerned a civil servant and the government, the

government would win. But if the case concerned a worker and private employer, the worker would win and the employer would lose. That's because it was a socialist system. And workers could demand compensation for being discharged.

Kyaw Soe Lwin (2014, 295) likewise reports, based on his own interviews, a sectoral selectivity in the otherwise broad formalisation of labour rights via these tribunals—a selectivity whereby workers employed in private and cooperative enterprises commonly won their claims, whereas civil servants typically did not. For construction workers, this sectoral selectivity was significant, as state restrictions on large-scale capitalist enterprises, along with direct state implementation of public works, meant that most socialist-era construction workers were, in fact, government employees. While such workers could not, as government employees, typically win claims pursued via the tribunals, many of them could nonetheless obtain job security and employment benefits by virtue of their status as civil servants, or *wundan* in Burmese.

According to U Nyein and several other veteran construction workers with whom I spoke, construction employment on public works during the military/socialist era was segmented, in practice, into three tiers. At top were managers and engineers—civil servants with job security and monthly salaries. Next came skilled construction workers hired on full-time, open-ended job contracts, earning daily wages paid out monthly—a system known as *nesalashin* in Burmese. This was de facto stable, full-time government employment, but job security was not formalised. After a year or two of such employment, workers could gain promotion to the government's 'muster roll' (an adopted English term), sign up to join the ruling Burma Socialist Program Party (BSPP), and attain membership to the government-backed Workers' Councils. While not limited to the construction sector, some 1.5 million workers held membership on these Councils by 1970

(Steinberg 2001, 101). So promoted, such workers became officially *wundan*—permanent government employees entitled to job security, pensions and other civil service benefits. In the words of U Sein—another veteran of Myanmar’s construction sector—such permanent employment allowed workers at this time to have ‘hope’ (*hmyawlinkyet*) for their future.

At the bottom of this three-tiered employment hierarchy were casual labourers hired for specific infrastructure projects in rural areas. Unlike the employment categories listed above, these workers were short-term hires and not considered *wundan*. Yet unlike, as well, the proletarianised casual workers of the post-1988 period, most casual construction workers during the socialist era were members of agrarian households whose access to land ensured they were not wholly dependent on the labour market for their livelihoods. This semi-proletarian condition was due to widespread agricultural smallholdings—an effect, in part, of postcolonial land redistribution and socialist-era export controls (Brown 2013, 96-104). To secure, then, the needed number of casual labourers, state authorities would dispatch, from the relevant department in the Ministry of Construction, a ‘worker head’ (*alokthema gaung*) to recruit and manage local villagers for temporary work on the project in question—typically road construction. Since these projects were commonly carried out in the dry season, otherwise competing agrarian labour demands were slack. While precise figures are unavailable, U Nyein estimates, based on his own experience, that some forty per cent of government-employed, socialist-era construction workers were casually hired in this way. Genealogically, the socialist worker-head system entailed a conceptual borrowing and organisational reworking of a pre-existing method of recruiting labour gangs for rice transplanting and harvesting (Nash 1965, 228).

By the 1970s, Burma’s economy was stagnating under the military’s autarkic rendering of socialism (Brown 2013, 142-147). Government-run cooperatives, which distributed subsidised

staple goods, were often short of supplies, and workers' wages were, on the whole, insufficient to purchase basic necessities. It was such conditions of want that catalysed the 1967 rice riots in Yangon's Insein Township, and the country's 1974 multi-city general strike—crises of hegemony for the military, to be sure. But the truly transformative rupture in military rule was to arrive on the streets in 1988. It was in that year that a popular uprising, catalysed by the government's recent demonetisation and removal of price controls on agricultural commodities, brought BSPP rule to an end. In its place, a new junta took power—retaining at once the authoritarianism of the country's erstwhile 'socialist' rulers, while jettisoning any pretensions to popular welfare provisioning.

For the moment, however, formalisation, understood as the promulgation and enforcement of labour rights, was under military/socialist rule an unabashedly instrumental project—a project of seeking working-class consent, a pacified social order, and 'smooth' relations of production. What determined rights and punishments under this 'socialist legality', argues Nick Cheesman (2011, 86), was 'the extent that subjects served the interests of the state economically, complied with socialist morality, and were productive in their respective stations'. But for all this, formalisation nonetheless provided a juridical space, however circumscribed, in which select populations could challenge employers and realise claims to legislated employment protections. By virtue of the materiality of these gains, formalisation here was no mere mystification. Yet neither was it unambiguously emancipatory. It was, rather, a consent-seeking hegemonic project—a material concession to workers, and thus the fruit of struggle, but also a channelling of workers' grievances into restrictive bureaucratic mechanisms.

But crucially, labour formalisation under the BSPP was also clearly selective; the juridical space for claiming labour rights was circumscribed sectorally, leaving state workers excluded, and casual workers even more so. In this sense, we can speak of a selective hegemony, as Gavin Smith

(2011) calls it. For Smith, this selectivity is characteristic of the fragmented neoliberal hegemonies of the present, as compared to the expansive hegemonic projects he associates with mid-twentieth century socialist or Fordist-Keynesian welfare states. Smith's framing of hegemony's selectivity is quite useful here, but primarily in a relative, rather than an absolute sense. For hegemony is *always* selective. Even mid-twentieth century North-Atlantic welfare states commonly excluded women and migrant workers from full access to legislated employment benefits. The 'standard employment relationship', with all its legal protections, 'was never universal', writes Leah Vosko (2010, 1), 'nor was it meant to be'. The BSPP's legal selectivity was for this reason no qualitative aberration from a liberal-democratic norm. It was but a variation on the theme of state rule. When, however, the economic base of BSPP rule finally collapsed, the generals found themselves with an irremediable crisis of hegemony—they could neither deliver on promises made, nor contain popular demands, as became evident in the popular uprising of 1988.

Labour Flexibilisation in Post-socialist Myanmar

Amid widespread domestic calls for political liberalisation, the State Law and Order Restoration Council, which reasserted military control in 1988, initiated, in lieu, a series of liberalising economic reforms, including the incremental removal of export controls and of restrictions on large-scale capitalist enterprise (McCarthy 2000). It was as part of this economic liberalisation that the junta established conditions for post-socialist labour flexibilisation. In the construction sector, which ballooned under an extensive public works initiative, the government introduced a new practice of outsourcing state construction projects to private sub-contractors. At the same time, it also instigated a massive expansion in unpaid forced labour on infrastructure projects (Horsey 2011, 15). Construction workers employed as civil servants were gradually dismissed, while

private construction employment increased substantially. Employed in construction during these years, U Sein was witness to the post-1988 turning of public goods into private capital. ‘You could say it like this’, he narrated,

Immediately after ‘88, there was no private sector. There were no private engineers or companies. There was no one who had their own company or their own equipment. However, when the government began implementing a lot of construction projects, they gave these projects to the people who were close to them. You could call these people their clients [*dabè*], or their cronies [he uses the English word], or their proxies [again, he uses the English word]. The government advanced the project money to sub-contractors who would arrange the job with that money. So the capital was all government money.

The introduction of sub-contracting at this time served, as well, to privatise the earlier worker head recruitment system. Whereas socialist-era worker heads had been civil servants, those who took on this role after 1988 were independent contractors, temporarily hired for a given project. Brokers (*pwesa*; a figure predating the colonial period [Brac de la Perrière 2014, 77]), also began operating as private labour market intermediaries, contracting out workers without labouring themselves. In this way, brokers contrast with worker heads, who labour alongside the workers they recruit. Whether hired by brokers or worker heads, construction workers were provided no written contracts. Construction employment thus became, across the board, distinctly casual work (*kyaban alok*).

With this post-socialist growth of casual employment, the meaning of *wundan* shifted. During the socialist era, when the bulk of stable, waged employment had been in government, the term *wundan* held the limited meaning of civil servant. However, with the expansion of casual work, *wundan* came to mean not only civil service employment, but non-casual employment of any sort. It is this meaning that remains current today. One thus often sees—at present and throughout the country—job advertisements stating ‘*wundan* needed’ hanging from shop fronts and factory gates.

In U Nyein’s reading of the situation, site engineers overseeing construction projects preferred—and still prefer—the worker head system over direct employment because it removes the hassle of directly recruiting and managing workers. ‘The site engineers just calculate the cost, and then shut their eyes’, explained U Nyein. ‘They can’t manage each and every worker, so they just deal with this one [worker] head’.

While the government retained the bare bones of the industrial dispute tribunals in the years following 1988, it abolished the socialist-era Workers’ Association. Workers were thus left with no institutionalised body through which to pursue collective redress for employment grievances. As consent-seeking labour relations were effectively thrown out the window, the military aligned itself with the nascent capitalist class and repressed, often violently, workers’ attempts to protest, strike, or bargain collectively (Kyaw Soe Lwin 2014, 296). The outcome of all this was a widespread informalisation of employment. By no means unique, the shift to informal subcontracting in Myanmar’s construction sector parallels regional trends over this same period (for the case of China, see Swider 2015).

Along with changes in the organisation and regulation of construction labour, post-socialist economic liberalisation catalysed, as well, an expansion of agrarian capitalism. Essentially, the

removal of export restrictions fuelled land speculation and a consolidation of agrarian holdings, thereby exacerbating rural inequality and proletarianisation (Fujita 2009; Okamoto 2008). Terminating, in addition, socialist-era provisions of subsidised basic goods, the government pursued a re-commodification of subsistence. Among the effects of this politico-economic shift was increased urbanisation, as dispossessed peasants sought out waged employment in the country's larger towns and cities.⁴ Women were notable among the burgeoning urban proletariat and their employment in construction grew, U Nyein estimates, from 10 per cent during the socialist period to 30 per cent in the years after 1988.

All of this is to say that employment flexibilisation characterised the years following the end of socialist rule in Myanmar. The military shifted its hegemonic aspirations from workers and peasants to an emerging domestic capitalist class—a capitalist class that the generals themselves cultivated through a plundering of state assets. For most of the population, however, state rule in these years was experienced as something akin to Ranajit Guha's (1997) reading of British rule in colonial India—a 'dominance without hegemony'. Lacking popular hegemony, military rule rested on a meagre base of support. It was this narrowness of support that subsequent labour law reform, as part of a selective hegemonic project, sought to address, as I examine ethnographically in the following section.

Informality as Indirect Rule in Reform-era Myanmar

On a Monday morning in February 2017, I watched a case unfold from my seat at the back of a cramped mediation room in the Sinphyu Township Conciliation Office. In 2012, this office had opened as a frontline agency tasked with mediating employer-employee disputes under the terms of the country's 2012 Settlement of Labour Disputes Law, and with making decisions on rights

enshrined in existing labour protection laws, such as the 1951 Factories Act, in response to claims that aggrieved parties could submit for redress. This office, in other words, was a space in which to observe the everyday formalisation of labour as one component of Myanmar's post-2010 'transition to liberal democracy'.

In the case at hand—not in construction, mind you, but illustrative nonetheless—Ma Ni and Maung Phyu had brought claims for severance pay against the water bottling company in whose factory they had, until recently, been employed. The week prior, they told me, their supervisor had yelled at them over an incomplete task. Calling Ma Ni a 'bitch', the supervisor had told the two of them to 'get out', and had threatened Maung Phyu that she (the supervisor) would have him arrested if he ever returned.

With this claim for severance now being made, however, the supervisor was backpedalling on her earlier statements. Admittedly, she told us—for she was sitting there as well—she had been angry on the day in question, but had not actually fired these workers. Instead, she claimed, the workers had quit—forsaking, thereby, their claims to severance. But if such was the case, asked the conciliation officer, could the two claimants not simply return to their former jobs, thus obviating the need for severance pay?

Ma Ni would have none of it. Work at the factory was a constant headache, she declared, and the supervisors and manager relentlessly harassed the workers. Just thinking about her former employment, Ma Ni burst into a torrent of contempt for the factory supervisors and manager, listing a litany of grievances. The supervisor who sat across the table tried to counter, and the two parties filled the room with a barrage of accusations and counter-claims. To my left, Ko Tin, a labour activist who had accompanied us that day, intervened and asked the supervisor how long

children employed at the factory were made to labour. Eight hours a day, the supervisor responded. (Ma Ni later told me 12 hours was more common.)

Hearing this, a curious subordinate officer who had until then remained silent inquired into how many children actually worked at the factory. His question stilled the room. There were 20 children, the supervisor replied, rather awkwardly. (Ma Ni later told me there were 25 children aged 12 to 15—about a quarter of the factory’s workforce.) At this point, the senior conciliation officer brought the proceedings to order: ‘We’re not discussing that issue now’, he stated, unruffled by this glaring violation of the Factories Act.⁵ And he was correct, of course. For procedurally, the issue of child labour was out of line, as the case at hand concerned severance pay. At any rate, the conciliation officer rescheduled further deliberation for the following week, as the absent manager, he said, should really be present.

Outside, Ko Tin explained that the factory in question was unexceptional. For as far as he knew, all water bottling plants in Myanmar employed child workers. In this regard, the decline of child labour in garment and footwear factories producing for export was something of an exception—a result, in large measure, of pressure from high-profile Western distributors wary of having their brands tarnished. When employed, child workers in Myanmar typically get lower pay than adults, work unpaid overtime, and get no days off. According to Myanmar’s Ministry of Labour, Immigration and Population, there are close to 1.3 million child workers in the country, who work an average of 52 hours per week (Pyae Thet Phyo 2016). The ethical bind for labour activists, Ko Tin felt, is that such children are overwhelmingly from impoverished households that have little means of support and few other options. Demanding an immediate end to child labour would not, therefore, in the short term anyway, be an unambiguous gain for these children or their families—this, at least, is how Ko Tin saw it. Stated otherwise, the reality of poverty—or more

specifically, inequality—has created structural conditions for a widespread informality of employment, leaving reform-era formalisation a rather selective endeavour.

But insofar as labour formalisation has occurred at all, this too demands explanation. Why, in short, did the quasi-civilian government of President U Thein Sein enact the 2011 Labour Organisation Law and 2012 Settlement of Labour Disputes Law, and then open labour conciliation and arbitration offices at the township and state/region levels—promising, thereby, a more neutral, legal regulation of social conflict? To many of the workers with whom I spoke, the government passed these laws simply to placate potential investors—both to ensure a clean image for their investments and to provide the stable industrial relations environment needed for uninterrupted production. And indeed, the new laws—drafted with help from the International Labour Organisation following a surge of labour unrest at industrial zones in and around Yangon—were explicitly framed to ‘amicably negotiate disputes and ward off strikes’ (Zaw Zaw Htwe and Barron 2015; see also Arnold and Campbell 2017). Formalisation-as-rule-of-law has thus been employed here, like its socialist antecedent, to cultivate ‘smooth’ tripartite relations—a governmental modality of rule pursued through a legal idiom.

In its effects, however, formalisation has been inconsistent. For almost as soon as these new laws were rolled out, another wave of strikes hit Yangon (Campbell 2013). ‘Everywhere’, recalls U Sein, reminiscing about this moment in 2012, ‘conflicts were proliferating’. It was once this unrest had begun that U Thein Sein’s government pulled back from its initially more liberal stance, or so it appeared to many workers at the time. According to Daw Hla, president of a construction workers union in Mingaladon Township, when her union applied for registration in 2012 it took just over a month to obtain registered status. By the time of our interview in 2017, however, it was commonly taking five to six months for the Ministry of Labour to return such

status confirmation. The reason for the delay, U Nyein believed, was that ‘the government doesn’t want the workers to be powerful’. Indicative of the increasingly restrictive climate, in February and March 2015, Yangon authorities dispatched police and deputised vigilantes to violently crush a strike of workers from five factories in the Shwepyithar industrial zone (Arnold and Campbell 2017).

Given this shift in regulatory practice, initially sanguine scholarly assessments of Myanmar’s reform-era labour politics appear from the present simply overstated (for example, Henry 2015). But what is analytically needed now, along with attention to the restrictive turn in Myanmar labour regulation, is a sectoral disaggregation of regulatory practice—attention, for example, to the persistence of informality in the construction sector as compared to the selective formalisation seen in export manufacturing. Consider, then, a recent case: the death of Maung Zaw in early 2017.

I learned of Maung Zaw’s fate when I visited his family in February of that year. By then, Maung Zaw—only 15 years old at the time—had been dead five days. I had gone to his home with Ma Cho, a union organiser whom Maung Zaw’s family had contacted for help in pursuing compensation. It was Maung Zaw’s uncle who told us what had happened; his mother, while present, remained mostly silent.

Maung Zaw had been a good boy, his uncle told us, but stubborn. Three years prior, at age twelve, the boy had quit school to seek employment as a casual labourer at a nearby construction site, wanting, in so doing, to contribute to his family’s meagre income—this despite his mother’s protests. Since then, he had moved from project to project, working most recently on the site of a new, multi-storied hotel being built in his home township. For a daily wage of 7,000 kyat (AUD 6.37) Maung Zaw had lugged sacks of mortar around the construction site. It was at this site that

Maung Zaw had stepped, five days prior, into a puddle of rainwater electrified by a loose wire hanging negligently from an uncovered electrical box. Despite his co-workers rushing him to a nearby hospital, Maung Zaw was pronounced dead on arrival. The employer had shortly thereafter contacted the boy's mother and offered her 1,500,000 kyat (approximately AUD 1,365) in compensation—this on condition that she sign a waiver forsaking further claims or criminal charges. She had refused, finding this amount offensively insufficient, which is why she had requested Ma Cho's assistance.

We therefore took this case, first, to the township's one-stop service centre. The government official in charge heard us out politely, but in the end sent us away on grounds that the matter should be dealt with by the police. When we took the matter to the nearby police station, the officer on duty told us the case would have to be pursued at the police station where Maung Zaw's death had been registered. It was at this point that Ma Cho complained, 'the problem in Myanmar is that no government office wants to take responsibility'. Eventually, on visiting the police station where Maung Zaw's death had, in fact, been registered, we were able to schedule a meeting for the following week, facilitated by the police, to negotiate with the employer. In the subsequent meeting, the officer overseeing the negotiations clarified that, as a casual construction labourer, Maung Zaw's employment was not covered by the 1923 Workmen's Compensation Act, or its 2005 amendment,⁶ and his family thus had no legal standing under these laws to demand compensation; they were, however, free to pursue a (costly and time-consuming) civil suit against the employer. Seeing little hope in this latter option, Maung Zaw's mother decided to accept the employer's earlier offer and sign the waiver forsaking further action.

The violation of laws restricting child labour in Myanmar's construction sector is but one aspect of informality—understood here as employment outside legal labour regulations. Unpaid,

or incompletely paid, compensation for workplace injury or death is another. Likewise, non-provision of legally required safety equipment and disregard for workplace safety measures—an uncovered electrical box, for instance—are widespread (Nyein Su Wai Kyaw Soe 2017). Gendered disparities in pay for construction employment are also standard, in violation of Section 14 of the 2013 Minimum Wage Law. The most pervasive grievance, however, among construction workers with whom I have spoken, is the non-payment, delayed payment or partial payment of wages—in other words, wage theft.

Consider the case of Ko Zaw, a 42-year-old worker head based in Yangon. In late 2016, a private contractor hired Ko Zaw—without written contract—to recruit 20 construction workers to build the foundations of a government bridge in rural Kachin State, just outside the state capital, Myitkyina (approximately 1,180 km from Yangon). Ko Zaw and the workers he recruited made their way from Yangon to the construction site, covering their travel and initial food expenses with money Ko Zaw had secured on credit. Upon arrival, the site engineer managing the project informed Ko Zaw that he and his crew would be paid a rate 30 per cent less than what had been verbally agreed upon in Yangon. Now in debt, at an isolated location in rural Kachin State, and confronting the prospect of traveling back to Yangon with no wages at all, Ko Zaw and the workers he had recruited felt compelled to accept the reduced rate. Subsequently, upon completion of the project, the engineer skipped out without paying the workers' final wage instalment. As Ko Zaw told me a month later, 'The work was finished, and the engineer left, so we came back from the Myitkyina site. The engineer didn't pay us in full, and I don't know whether we'll ever get the money. So it was left to me to pay the workers'.

While not his experience in the case at hand, Ko Zaw recounted how site engineers have at times employed thugs to threaten construction workers against challenging arbitrary wage

deductions. In other cases, it is the worker head or broker rather than the site engineer who ‘eats’ workers’ wages and then skips out, leaving the workers dispossessed and at a loss to locate the offending party—the company meanwhile denying any responsibility. ‘When workers are recruited by a broker’, explained U Nyein, ‘if there’s a problem because the workers are paid too little, and the workers protest, the way the company deals with it is by saying, “It doesn’t concern us. They’re his [the broker’s] workers, it concerns that labour broker”’. And this is correct as far as the law is concerned, for it is the broker in such cases rather than the company who acts as employer—the party, that is, ‘responsible for the payment of wages’, as the 2013 Minimum Wage Law defines it. It has been for this reason that the Sinphyu Township Conciliation Office has repeatedly refused to formally mediate wage-theft claims that sub-contracted construction workers have brought against construction companies under which they had been employed—a point that the senior conciliation officer explained to me during an interview in March 2017. Despite, then, the introduction of new labour laws and enforcement mechanisms, the formalisation of construction labour in reform-era Myanmar has been in practice undermined by the structures of employment relations—sub-contracting, in particular—that were introduced as part of the post-socialist flexibilisation of labour. In other words, sub-contracted construction workers remain largely outside labour formalisation, with formalisation understood here as a selective hegemonic project.

Additional barriers to construction workers’ pursuit of legal redress have been the lack of written contracts, the temporary and itinerant character of casualised construction employment, and the ease with which informal construction workers can be dismissed—conditions that, like sub-contracting, expanded in the years following the end of socialism in Myanmar. Such conditions of employment have likewise hampered construction workers’ efforts to unionise under

the terms of the 2011 Labour Organisation Law. Where constructions workers have unionised—as in Mingaladon Township—they have typically not been migrants and have thus been able to organise around a shared locality. Crucially, none of the construction workers’ unions in Mingaladon Township have ever gone on strike, and the members I spoke with told me they did not believe such an action would be possible given the casual character of their employment. All of this is to say that construction workers in present-day Myanmar have frequently met with frustration in their efforts to formalise their de facto informal conditions of employment.

At this point, I want to push forward the argument that the informality I have been discussing can be understood as a logic of state practice complementary, rather than antithetical, to formalisation. This is because informality, like formality, enables a political ordering of subject populations while stabilising capital accumulation. And insofar as it reduces labour costs, the informality of construction employment, in particular, delivers subsidised public and private infrastructure development in Myanmar. We can thus see in this informality what Michel Foucault (1995, 82) identified as the ‘margin of tolerated illegality’ under the *ancien régime*—meaning by this, ‘the non-application of the rule [and] the non-observance of the innumerable edicts or ordinances [that] were a condition of the political and economic functioning of society’.

This understanding of informality—being, that is, a complementary modality of state rule—does not easily square with enduring notions of informality as lying effectively outside state rule. Consider, for instance, Nancy Peluso’s (2018, 400) recent study of small-scale gold mining in Indonesian Borneo, where, she argues, ‘entanglements’ of formal and informal authority have produced ‘informal sector frontiers’. Constitutive of such frontiers, she writes, are self-disciplining governmentalities ‘that emerge without the imposition of formal state institutions, policies or laws’ (Peluso 2018, 401). In keeping with a spatial idiom, Peluso (2018, 404) sees territory not only as

‘space claimed within state domains of authority’ but also as a space that moves, by virtue of its informality, ‘outside of state power’. It is here that Peluso falls back, I suggest, on what Christopher Krupa (2010, 347) calls the ‘dominant conventions of state realism’—conventions that ‘locate state power only in those objects or agents bearing its seal of approval’. What gets missed by such conventions are the ways in which informal actors come to serve as ‘state-by-proxy’, complementing formal state authority by facilitating the ‘spread of governmental agendas’ (Krupa 2010, 347). It was in this vein that U Sein identified the individuals and companies sub-contracted by state authorities to build the physical infrastructure of post-socialist Myanmar: ‘you could call these people’, he said, ‘their proxies’. Informality in such cases is not so much a space outside state rule, as an indirect modality of state rule.

The relevant lexical precedent for the claim I am making here is the indirect rule of the colonial order. Consider, as Mamoud Mamdani (1996) has argued in the African context, how colonial authorities introduced indirect rule as a means to overcome the limits, from an imperial perspective, of an earlier strategy of direct rule. Initially, Mamdani points out, European colonial powers privileged forms of direct rule in their African colonies. In the rhetoric of colonialism’s ‘civilising mission’, European powers sought to implement a European code of law and incorporate colonised peoples as (subordinate) citizens of the colonial state. Over time, however, colonial authorities retreated from the project of expansive direct rule, and shifted instead to a policy of ‘legal dualism’ involving both direct and indirect forms of rule. The reasons for this shift, Mamdani suggests, are, first, that the administration of direct colonial rule became too costly; second, indirect rule became a means of advancing a divide and rule strategy; and third, and most significantly, colonised peoples living under direct colonial rule began to demand rights, not only as citizens of the colony, but also as citizens of the empire. Indirect rule, by contrast, precluded

such claims. Colonial authorities therefore restricted direct rule to a relatively privileged minority of urban citizens, while the majority rural population was relegated to subjugation under a ‘decentralised despotism’ of indigenous chiefs who were themselves subsumed as intermediaries in the colonial order (Mamdani 1996, 37). In colonial Burma, the British operated a similarly bifurcated administrative system, distinguishing between directly ruled Ministerial Burma and indirectly ruled Frontier Areas.

My proposition here is that the rationale of indirect colonial rule, as Mamdani illuminates, can shed light on the logic of informality’s persistence in contemporary Myanmar—in particular, informality’s preclusion of claims to legal rights. Just as direct and indirect rule were complementary modalities of colonial power, so too, formality and informality are complementary modalities of rule in contemporary, postcolonial Myanmar. That is to say, informality serves as condition of possibility for formalisation; rule of law rests on legal exclusion. And since formal and informal relations of rule are mutually imbricated, we cannot ultimately treat informal labour as operating outside state rule.

Conclusion: Beyond Transition Narratives

I have pursued in this article an historical tracing of everyday relations of rule in Myanmar’s construction sector—relations constitutive of and constituted by the sector’s periodic restructuring. Understood as an adaptive project of rule, the regulation of labour in Myanmar has at various moments entailed efforts by state actors to extend legal labour protections through processes of formalisation. In this sense, labour formality indexes workers’ incorporation into a hegemonic project, whereas informality indexes their exclusion. While Myanmar’s socialist era saw an expansive formalisation of wage labour, this hegemonic incorporation was then, as now, still

selective. Labour formalisation, in short, has always been a project of selective hegemony, in Myanmar as elsewhere. Although largely debarred at present from this hegemonic project, informal construction workers in Myanmar are not, in their employment, outside state rule. They are but subjugated under an indirect modality of rule—a decentralised despotism of construction companies, sub-contractors, labour brokers, and worker heads. It is in this way that formality and informality operate as complementary logics of state practice.

Myanmar's post-2010 political conjuncture has been widely regarded as a transition from military authoritarianism to liberal democracy—stalled and incomplete perhaps, but a transition nonetheless. Against such narratives of rupture, I have pointed to continuities in the practice of state rule in Myanmar, despite periodic political restructuring. This approach allows for analysis of the present conjuncture as a protean political formation in its own right, rather than merely a transitional waystation on the road to liberal democracy, or to a neoliberal utopia of uniformly eviscerated labour rights. For whatever the expansive claims of its ideologues, liberalism has only ever been a negotiation of hegemony, and a selective hegemony at that.

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¹ In this article, I employ 'Burma', following official use, to refer to the country up to 1989, and 'Myanmar' for the years that followed.

² "alokshin/alokthema aphweasi susubaung," Republic of the Union of Myanmar, Ministry of Labour, Immigration and Population, n.d., accessed March 22, 2017, <http://www.mol.gov.mm/mm/departments/department-of-labour/dol-manpower-statistics-division/emp-asso-lists/>.

³ Names of informants and one township included herein are pseudonyms.

⁴ "Myanmar - Urban population as a share of total population," *Knoema*, n.d., accessed September 16, 2018, <https://knoema.com/atlas/Myanmar/Urban-population>.

⁵ In Myanmar, according to Sections 75–79 of the 1951 Factories Act and Section 32 of the 2016 Law Amending the 1951 Factories Act, children aged 14–18 may be employed in a factory for a maximum of 4 hours per day on

condition that they have obtained a certificate of fitness verifying their physical capacity to perform the work in question.

⁶ Section 2(n) of the 1923 Workmen's Compensation Act excludes from its definition of 'workman' any person whose employment 'is of a casual nature'.