

**Reforms, Protest, and Repression in Democratic Transition:  
A Hypothesis-Generating Case Study from Myanmar (2011–2015)**

(Working Paper)

Andy Buschmann\*

*Abstract:* Existing scholarship lacks important knowledge about how protest and coercion change during regime change. This study provides new evidence by studying legal reforms as well as patterns of protest and repression during the first 46 months of Myanmar's regime change. By examining law amendments and analyzing protest data compiled via a protest event analysis from local news resources, it can be shown that the *de jure* exercisability and *de facto* exercise of protest have changed considerably over time. Informal repression of protest, such as by arbitrary violence, have gradually made way for methods that are formally in accordance with the rule of law, but remained inconsistent with human rights standards. Additionally, repression has become more selective, demonstrating a continuous high state control over the civil society. I suggest that the observed changes may be general features of elite-controlled transitions to competitive authoritarianism, a hypothesis that merits future cross-national research.

### Introduction

*How do protest and repression alter during regime change, and what does it indicate about the prospects of democracy?* Contemporary Myanmar can provide tentative answers to these questions. In 2011, the country embarked on an unprecedented process of sociopolitical change. With the inauguration of President U Thein Sein, far-reaching political reforms were set in motion, paving the way for an internationally lauded general election in November 2015 and ultimately the transfer of governmental power to Aung San Suu Kyi and her party, the National League for Democracy (NLD). Despite the reforms, Myanmar's military has successfully safeguarded for themselves a wide range of prerogatives that are considered undemocratic<sup>1</sup>, causing skepticism among scholars about the sincerity of Myanmar's transition (e.g., Jones 2014, Selth 2018, Girke and Beyer 2018).

While doubts regarding democratization in Myanmar are pertinent, it is widely acknowledged that the reforms have made leeway available for a civil society to re-emerge (Egretreau 2012, 2016, Bünte 2016).<sup>2</sup> A civil society is one of the pillars of democracy, and as

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\* andybu@umich.edu; Department of Political Science, University of Michigan, Ann Arbor and Department of Politics and International Relations, University of Oxford

<sup>1</sup> For instance, a fourth of the seats in the parliament are reserved for military personnel, key ministries are under direct military supervision, and the parliament has no oversight of the armed forces. The recent campaign in Rakhine state, which has forced hundreds of thousands to flee into neighboring Bangladesh, demonstrates the continuous impunity of the military.

<sup>2</sup> Though, reports after 2016 indicate yet again a shrinking political space under the NLD government.

a large number of studies have shown, at times, a united civil society can challenge non-democratic regimes through collective action and render withholding further reforms increasingly costly (Collier 1999, Schneider 2010, Foweraker and Landman 1999, Slater 2009, Boudreau 2004). Empirical evidence that facilitates an assessment of Myanmar's civil society, however, has remained sparse at best and has mostly been limited to small-N case studies, often in consequence to missing data, which has prevented scholars from engaging in comparisons beyond a small set of cases (Prasse-Freeman 2012, Petrie and South 2014, Simpson 2013, Chan 2017).

In contrast, this study engages in a large-N analysis of civil society activity in Myanmar, especially civil society's engagement in protest. Protests are largely driven by civil society organizations, including NGOs and social movements, and can act as a proxy for the shape of a civil society. Moreover, protests can attest to the coercive assertiveness of the state. To the best of my knowledge, this study is the first that engages in such an analysis in Myanmar.

As this study reveals, protests and strikes in Myanmar have indeed undergone considerable change in quantitative and qualitative terms after 2011, which one may regard as positive.<sup>3</sup> In terms of repression, brute force tactics committed by the state have lessened in frequency from 2011 to 2015. However, a comparison between the decline in blunt repression with the number of formal charges brought about against peaceful protest participants makes it clear that the former has diminished to the same extent that the latter has multiplied. The inversely proportional relationship between bone-crushing violence and legal codification may suggest a mere shift in the means of repression rather than an overall decline in the percentage of it. I suggest that this could be a general feature of elite-controlled transitions from closed to more open forms of autocracy (in contrast to democracy). In the same vein, I suggest the hypothesis that increasing protest activity is possible amid thorough state surveillance and selective repression. These hypotheses are in line with the literature on competitive authoritarianism, which, at the most general level, notes that institutions that are commonly found in liberal democracy are often present in autocracies too (see, e.g., Gandhi 2008, Magaloni and Kricheli 2010).

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<sup>3</sup> However, a rise in numbers does not necessarily imply a change that is conducive to democracy, since protest activity can also jeopardize democratization, e.g., if antagonistic groups in the civil society mobilize against each other (Berman, 1997, Bermeo 2003, Bellin 2004, Way 2014, for a review, see Wnuk-Lipiński 2007). This could be well perceived to be the case in Myanmar, as hate speech by Buddhist nationalists against Muslim minorities have been frequently reported. Nonetheless, the data presented here suggests that those protests were rare during the observed time period. (Violent mobs were not treated as protests. See operationalization below.)

Even though this study builds upon a single case and provides new and rich primary data for scholars working on Myanmar, it is also relevant for both democratization and social movement scholarship. First of all, the effects of regime change on social mobilization have remained a domain that seriously lacks sufficient study and theorization with regard to both disciplines (Tarrow 1995, 221f., Teorell 2010, 101, Della Porta 2014).<sup>4</sup> To address this empirically and theoretically bleak situation, the present study aims to empirically examine (macro-) patterns of protest and repression during Myanmar's regime change. This ought to help generate hypotheses for future cross-sectional research, incrementally providing a better understanding of what role civil society and protest mobilization play during transition.

Studying the Myanmar case to this end has several methodological advantages. First, because its transition has only started in 2011, Myanmar allowed me to collect protest event data at a time much closer to the actual events, thereby reducing the risk of gaps in reporting, alleviating selection bias. Second, because the news sources were all online, the protest events could be digitally processed, coded and more thoroughly crosschecked, mitigating the likelihood of description bias, which may be more severe in situations where only print news are available (e.g., Earl et al. 2004).

Last, pre-2011 Myanmar can be described as a *closed* autocracy. Closed autocracy differs from more "open" forms of autocracy in that "[most] public expressions of discontent are either de jure or de facto outlawed" (Robertson 2010, 19). This puts 2011 Myanmar in a quasi-experimental setting, which allows the estimation of the actual effects of liberalizing reforms on protest and repression, while holding confounding factors, such as pre-reform protest movements, constant.

The present paper presents a hypothesis-generating case study, integrating two forms of primary data. To trace the extent of *de jure* reform in post-2011 Myanmar, domestic laws are examined and compared to international human rights law. For analyzing the *de facto* patterns of protest and coercion, a novel dataset, the *Myanmar Protest Event Dataset*, is utilized that I have compiled through an in-depth protest event analysis from local news outlets, covering N = 185 protests between February 4, 2011 (the election of President Thein Sein) and December 31, 2014 (see the methodology report in the supplementary material).

The structure of the paper is outlined hereafter. First, it will briefly examine theoretically plausible changes in the patterns of protest activity during regime change as well as discuss the meaning of repression in the context of protest. Second, the data, methodology, and

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<sup>4</sup> Notable contributions on protest and repression during regime change were made in the case of South Korea by Chang and Vitale (2013), Chang (2015), and Kim (2009).

operationalization of key variables will be presented. Third, the *de jure* reforms regarding civil liberties will be analyzed, and the *de facto* changes in protest activity and repression investigated in Myanmar. Last, learnings from Myanmar for broader scholarship on civil society, protest and repression during regime change will be discussed.

### **Protest Activity During Regime Change**

For students of regime change, O'Donnell and Schmitter's (1986) seminal work is a common theoretical point of departure. In this model, social protest plays a peripheral role in the actual process of bringing about democracy, which is rather the outcome of an inter-elite bargaining process. Nonetheless, protest is an important signaling device for the democratic opposition. Following the transition model, liberalizing reforms generate a mobilizing signal, causing an "...outburst of autonomous organization in the civil society" as people believe that "...at least some forms of autonomous organization will not be repressed" (Przeworski 1991, 56f.). If protests rise to a certain threshold, a snowball effect sets in (which Przeworski has called a "multiplier effect"). With growing mass protests, the costs of repressing and withholding further democratization increase, making splits and defections within the ruling elite increasingly likely. To safeguard some prerogatives, soft-liners from within the regime decide to reach out to society and agree to negotiating a pact. However, social mobilization needs to be moderated to avoid risking its failure due to concerns over security (O'Donnell and Schmitter 1986; cf. Bermeo, 1997). Thus, protest activity is expected to proceed as "boom and bust" during transition: reforms cause an outburst of protest activity, while subsequent moderation causes its decline.

In a similar fashion, social movement scholarship has conceptualized protest activity during regime change. Scholars have argued that protest activity is conditioned by political opportunity structures (POS), which Tarrow (1994, 85) defines as "...dimensions of the political environment that provide incentives for people to undertake collective action by affecting their expectations for success or failure" (cf. Eisinger 1973, Tarrow 1995, 1989, McAdam, Tarrow, and Tilly 1996, Meyer 2004). Similar to the transition model, Tarrow's (1994) protest cycle theory suggests that protest activity follows an inverted U-shape over the course of transition once political opportunities allow for social mobilization. While protest activity is at its peak during early regime change, referred to as liberalization, it is supposed to decline with the increasing institutionalization of democracy. However, this decline is not necessarily a result of moderation. Rather, protesters see their demands being met after

democratic institutions are installed, and use the new channels to voice discontent, or, alternatively, are disillusioned about the assiduous democratization process, leading them to withdraw from public into private life (e.g., Biggs 2003).

Arguably, the idea of a boom and bust cycle is of limited use for a non-revolutionary regime change as is happening in Myanmar. If an ever-powerful authoritarian (or military) elite introduces liberalizing reforms without facing an immediate threat to its survival, as is the case in controlled “top-down” transition such as the one in Myanmar, a boom and bust cycle is a rather unlikely scenario for two reasons: First, in general, a boom in protest activity has the potential to spiral out of control and develop into a revolutionary upheaval. With a functioning coercive apparatus at hand, authoritarian leaders are most certain to prevent such a revolutionary mass from emerging (as the Tiananmen Massacre in 1989 prototypically demonstrated). Second, reforms that come from the “top” are likely to be viewed as “cheap talk” by the citizenry, as the same people who previously answered dissent with blunt repression, suddenly pledge democracy. This is likely to have a psychological effect on citizens, which dampens their mobilization potential. For both of these reasons, a steep boom and bust trajectory is unlikely to be observed in Myanmar and in other countries featuring liberalizations from the “top.”

Other explanations suggest a linear rather than a bell-shaped development of protest activity during democratization. In some cases, the protest patterns observed following democratic reforms indicate that protest has become something of a *collective habit* which, as Ekiert and Kubik (2001) have argued, might even be beneficial for building trust in a new democracy. In Poland, for example, “collective protest [has] emerged as one of the most important forms of participation in public life and became institutionalized as a routine means of advancing grievances and pressing for policy changes” (Ekiert and Kubik 2001, 116). This may also apply to transitioning regimes. South Korea, as an example, has, until today, continued to see growing protest mobilization, despite (or because of) its good democratic performance (Kim 2009). Admittedly, the “normalization” of protest takes time to be (collectively) internalized (cf. Goldstone 2004, Kriesi 1989). Thus, protest normalization may be not a very compelling explanation for growing protest activity during early regime change.

Nonetheless, a linear and (relatively) steady growth of protest activity still seems most perceivable in cases such as Myanmar. This is because, on the one hand, even limited liberalizing reforms expand political opportunity structures, which, at least some, protesters may increasingly exploit, while, on the other, the state remains in a powerful position to prevent revolutionary forms of social mobilization by the use of force. Hence, it is perceivable that the

state allows certain protests to happen while curtailing others, most likely those that it perceives as a revolutionary threat.

Until now, I have only discussed theories that address mainly quantitative aspects of protest activity, such as the number of protests and protest participants. Other variables such as grievances, social groups, state response, and so on, are equally important. However, the literature has remained vague on the expected change in qualitative variables of protest. Even the literature on protest in (competitive) authoritarian regimes does not prove particularly useful in this sense, other than suggesting protests challenging dominant elites are more likely to be repressed (see, e.g., the debate on "rightful resistance", O'Brien 1996, O'Brien and Li 2006, O'Brien 2013, Lorentzen 2013). That existing literature is not more helpful is not least because transitions are contingent on various context-specific uncertainties, standing in stark contrast to consolidated democratic but also (semi-) authoritarian regimes. In consolidated hybrid regimes, Robertson (2010) argues, protests are "...permitted, controlled, and integrated into the broader political strategies of elites" (Robertson, 2010, 4). Even if one may believe this to be an overly elite-centric perspective, context-specific power dynamics, whether it is solely on elite- or elite-mass-level, matter with regard to change in protest and repression in transition too. Why, when, and how they matter however, is unclear. Thus, I prefer to accept that we do to large extent not know how protest and repression alter during transition, urging us to generate hypotheses, which I will do here inductively from my case study of Myanmar.

### **Repression During Regime Change**

Repression ought to be central when analyzing protest in terms of regime change, particularly with regard to transitions from the "top". As mentioned earlier, if an authoritarian elite remains in possession of an effective coercive apparatus, it is unlikely that it will permit all protest activity, particularly those that grow exponentially (because it may become a revolutionary force). At the same time, even in highly elite-controlled transitions, protest activity may increase, implying that the coercive apparatus undergoes change and repression becomes more permeable. I refrain from formulating explicit hypotheses about change in repression, for the same reason that I do not hypothesize how protest activity changes during regime change.

Nonetheless, operationalizing and measuring change in repression requires a clear understanding of what constitutes repression. Generally, I consider all methods which illegitimately violate or undermine and therefore repress the peaceful exercise of civil liberties and political rights, as constituting repression. Since repression is a multidimensional concept,

I differentiate between formal and informal repression, as subsequently discussed in more detail (cf. Davenport 2007).

*Formal Repression: Using the Law to Subvert Civil Liberties*

Formal repression includes the application of laws that are incompatible with the rule of law because they violate international human rights standards (cf. UN Human Rights Council 2016). These standards are pertaining in existing democracies and in international human rights law, enshrined internationally in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (Beetham 2004, Klug, Starmer, and Weir 2003, Alston 1999). Although these treaties require states to uphold certain human rights standards, international law allows the imposition of legitimate restrictions on the exercise of freedoms in order to protect the freedom of others and to ensure that other fundamental rights are not infringed. Nevertheless, there are limitations to these limitations (see, for example, Article 29(2) UDHR). Any restriction on fundamental freedom needs to pass the so-called ‘three-tier test’ in terms of legality, legitimacy and proportionality, based on grounds prescribed in Article 21 of the ICCPR. First, limitations need to be prescribed by law for them to be legal; second, limitations are only legitimate in the “...interests of national security or public safety, public order ..., the protection of public health or morals or the protection of the rights and freedoms of others”; third, measures are only proportional if they are necessary and sufficient to meet the prescribed goal in a democratic society. Restrictions that do not pass this test but are used to, for instance, prosecute peaceful protesters, are deemed to be undue obstacles to free expression.

Ginsburg and Moustafa (2008) famously called the subversion of civil liberties by legal means the “rule by law.” Rule by law involves methods that are formally in accordance with the rule of law (arrest and prosecution is based on legal codes), but are inadequate to a substantial degree because the protection of, and compliance with human rights standards is not given. Beetham (2004) termed illegitimate subversions of fundamental civil liberties “generic modes of subversion”. Some of the most typical subversions stated in laws with regards to protest, include unrealistic timescales for notification and inappropriate locations. However, they do not necessarily arise as tools for repression, but as a result of the failure of judicial processes to protect fundamental civil liberties, where courts are either incompetent or lack independence.

### *Informal Repression: Silencing Dissent Without the Law*

Informal repression includes all methods that violate the physical or psychological integrity of peaceful protesters without being based on legal grounds. They might include, but are not limited to, police harassment or intimidation of protesters and journalists, the presence of plain-clothed thugs, and the use of arbitrary violence against peaceful protesters. Informal repression is incompatible with the rule of law because, by definition, it is not based on legal grounds (cf. UN Human Rights Council 2016). Among the most typical informal generic modes of subversion are the harassment and intimidation of protesters and journalists by security forces or by state-sponsored thugs (Beetham 2004).

### *Selective Repression*

Lastly, it is commonplace to exclude certain groups from the protection of their rights and expose them to repression (Beetham 2004). Schmitter and Schneider (2002, 10), for instance, contend that "...many liberalized autocracies continue to imprison some categories of political opponents [...], even in otherwise thoroughly liberalized regimes". Thus, any assessment of macro-patterns of repression has to be aware of the possibility of selective liberalization with regard to certain protest characteristics such as sensitive issues and social groups. To uncover selective liberalism, I will specify logistic regression models below that allow testing the effects of key variables with regard to formal and informal repression.

### **Data, Methodology and Operationalization**

The subsequent analysis is twofold, and, in the first part, builds on a qualitative analysis of Myanmar's legal codes concerning protest, as well as, in the second part, the description and analysis of quantitative protest event data. Firstly, reforms and (potential) generic modes of subversion will be identified. Secondly, protest data from a novel dataset, the *Myanmar Protest Event Dataset*, are analyzed by means of descriptive and inference-statistical methods. The latter consists of two logistic regression models used to identify the determinants of formal and informal repression.

I collected the protest data from online news articles in early 2015 using quantitative content analysis (protest event analysis). At the moment, the dataset includes details of

demonstrations, protest marches, and labor strikes from February 4, 2011 (the inauguration of President Thein Sein) through to December 31, 2014 (N=185). I set the timeframe to capture the early period of regime change so as to avoid biases from the political campaigns before the November 2015 elections that I expect to have exercised an independent effect on protest and repression. While the sample size seems small at first sight, all protest events have been coded in terms of an extensive set of 100+ variables, including information on the actual event to its aftermaths (e.g., arrests and court rulings), thereby capturing events in depth. As the primary media source, the English online version of “The Irrawaddy”, a critical, formerly exiled news outlet, which has continuously published in English and Burmese since 2001, was used. Random crosschecks were conducted with the “Myanmar Times” and “The Global New Light of Myanmar.” While the Myanmar Times is another popular and privately-run newspaper, The Global New Light of Myanmar is a government-owned newspaper which is published by the Ministry of Information. Variables regarding arrests and charges against protesters were additionally crosschecked with data available with the Assistance Association for Political Prisoners Burma. The full methodology, discussion of biases, and other limitations are thoroughly discussed in a separate article I wrote to specifically introduce the dataset and which can be found in the supplementary material.

### *Operationalization*

The data collection was limited to protest assemblies (excluding other forms of protest, such as hunger strikes or protest letters, but including labor strikes). Myanmar’s law defines a protest assembly as “...a gathering of more than one person, [...] for the purpose of expressing their wishes and convictions” (Section 2(b), The Republic of the Union of Myanmar 2011a). This definition of protest has been followed. The following variables will be used in the analysis and have undergone re-coding (see the code sheet in Appendix II):

**Legal Prosecution:** The variable takes on the value of 1 if at least one protester was legally charged after a peaceful protest (otherwise 0). This variable aims to capture the incidence of formal repression and is used as the dependent variable in the first logistic regression model.

**Informal Repression:** The variable takes on the value of 1 if at least one protester was subject to one or more of the following (otherwise 0): intimidation, threat or arbitrary physical violence. *Intimidation or threat* is found if there were attempts to hinder protesters from proceeding with their protest, to hinder press coverage, if a massive presence of security forces was reported, or threats of consequences for protesters were expressed by officials such as the

police, to discourage protesters from exercising the right to assemble. *Arbitrary physical violence* includes violence from officials against peaceful protesters, either during a protest or a crackdown. This variable is used as the dependent variable in the second logistic regression model.

**Illegal-by-law:** This variable takes on the value of 1 if protests were illegal according to laws at the time. In Myanmar, this was the case if protesters refrained from requesting permission (before July 2012, enforcement of the Peaceful Assembly and Peaceful Procession Law), failed to give prior notice (after June 2014, first amendment of the same law), or when permission was not granted prior to the protest.<sup>5</sup>

**Key Date:** Repression could be less severe on key dates. In Myanmar, the two visits of President Barack Obama are suitable moments to control for key dates. The US lifted most of their sanctions against Myanmar after it initiated its reform process (U.S. Office of Foreign Assets Control 2015). Hence, one can expect that much hinged on the impression it gave to the US during the Presidents' visits to the country. This might have affected repressions around these dates. All protest events that were staged in the annual quarters during which Obama visited Myanmar, i.e. in November 2012 (Q4/2012) and November 2014 (Q4/2014) respectively, were coded with 1.

**Sensitive Issue:** This is a dummy variable containing all protests that address most sensitive issues: land disputes, calls for justice, forced army recruitment, human rights, disagreements with officials, and calls for peace (cf. Appendix I).

**Duration:** The reported duration is included as dummy set. Short protest events did not last longer than 12 hours (the reference category), medium-long protests lasted for more than 12 but less than 24 hours, and long protests lasted longer than 24 hours.

### **The Cause of Change: Legal Reforms in Myanmar (2011-2015)**

For almost five decades, Myanmar had been ruled by harsh military regimes. In 2003, the then-Prime Minister General Khin Nyunt proclaimed the “Roadmap to a Disciplined Democracy” (The New Light of Myanmar 2003b). The roadmap consisted of seven steps towards the establishment of a “disciplined democracy”, including, among others, the draft of a new constitution, the transfer of executive power to an elected civilian government, and the re-establishment of the Pyidaungsu Hluttaw, the Union Parliament, as the legislative body (The New Light of Myanmar 2003a, 52). The new constitution was adopted in 2008 after a rigged

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<sup>5</sup> I will discuss these laws in greater detail below.

referendum that officially had a turnout of 98.12% and 92.48% yes-votes. In accordance with the new constitution, a general election was held in November 2010, which saw the military's party proxy, the USDP, winning. Until this point, most people perceived the top-down reform agenda as mere window dressing (e.g., Kyaw Yin Hlaing 2012).

Nonetheless, as mentioned in the Introduction, the new government under President U Thein Sein that took office in 2011 turned out to be surprisingly reformist, and facilitated changes that were unthinkable only one year previously, and ultimately led to a relatively free and fair general election in November 2015, and the landslide victory of the NLD. The new constitution has also had far-reaching implications for fundamental civil liberties, which I will succinctly examine in the following section. Article 354 of the constitution states:

“Every citizen shall be at liberty in the exercise of the following rights [...]: (a) to express and publish freely their convictions and opinions; (b) to assemble peacefully without arms and holding procession; (c) to form associations and organisations; ...” (The Republic of the Union of Myanmar 2008)

Thus, the rights to freedom of expression, assembly and association have been constitutionally guaranteed since 2008. Nonetheless, up to 2012, the power to decide when a protest assembly was permitted had, typically, been in the hands of local authorities, and was often arbitrarily managed. Therefore, protest assemblies could only be staged on an exceptional basis. The first law that changed the legal status, even though only for labor strikes, was the Labour Organization (LO) Law (The Republic of the Union of Myanmar 2011b). The parliament passed the LO Law in October 2011, and granted freedom of association for trade unions, collective bargaining and industrial relations following its implementation by the Labour Organization Rules in February 2012 (The Republic of the Union of Myanmar 2012). The conditions for other protest assemblies were only legally defined in July 2012, with the implementation of the Peaceful Assembly and Peaceful Procession Law (PAPPL). However, this law has frequently been used to justify the legal prosecution of protesters.

The PAPPL, as it was first enacted, required organizers to apply for permission five days in advance, which prevented any kind of spontaneous reaction to political events. Charges with regard to violating the permission requirement or any other rule of the PAPPL carried draconian penalties of up to one year imprisonment. According to Section 12, protesters were not allowed to “...say things or behave in a way that could affect the country or the Union, race, or religion, human dignity and moral principles”, were legally liable for “...rumors or incorrect information”, and “...must not recite or shout chants other than the ones approved” (Section 12, The Republic of the Union of Myanmar 2011a). Violation of this led to a revocation of

consent, accompanied by the obligation to disperse, based on Section 18. In addition, violations could lead to up to six months' imprisonment and fines.

According to international human rights law, it is “unlawful” to arrest and detain protesters when they are peacefully engaging in exercising their fundamental civil liberties (Articles 20, 21 ICCPR). Moreover, holding protesters liable and breaking up protests based on broad verdicts such as sharing “incorrect information” are not legitimate reasons, and are too broad to be justifiable (Section E, UN Human Rights Council 2016, UN Human Rights Committee 2011). Additionally, charges that are brought based on the information spread, or the requirement to register all “chants” in advance of a protest, contradicts any understanding of the freedom of expression (UN Human Rights Committee 2011). Therefore, the PAPPL initially fell fairly short with regard to international human rights standards.

The law was amended in June 2014. Following the passing of the amendment, protesters were only required to give prior notice of assemblies, rather than needing permission, and the maximum sentence for violating the law was shortened to six months in prison and 30,000 Kyat (Section 18, The Republic of the Union of Myanmar 2014). The reform lowered the legal restrictions on protests, but it did not change the provisions that could still be used to disperse peaceful protests and prosecute protesters (Section 12, The Republic of the Union of Myanmar 2011a). Despite the continues reform of the PAPPL<sup>6</sup>, Myanmar's colonial-era penal code includes additional sections of law that have been used to crush dissent and prosecute peaceful protesters (see Appendix III).

Nevertheless, the reforms have improved the legal situation for protesters, which, as I will show in the following, has had consequences for the observed patterns of protest and repression.

## **The Effects of Reforms on Protest and Repression**

### *Changing Patterns of Protest Activity*

Table 2 shows the distribution of certain primary variables taken from the dataset. What becomes clear at the outset is that protest activity has generally increased over time. The number of demonstrations and strikes has increased more than fourfold from 2011 to the end of 2014,

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<sup>6</sup> The PAPPL has seen another reform in 2016. The legal punishment was reduced by half, and the notice requirement in advance of a protest was shortened from 48 to 5 hours (Thein Ko Lwin 2016).

albeit with a temporary drop in 2013. The total number of protest participants has almost doubled each year.<sup>7</sup>

Moreover, there is a high correlation between legal amendments and the number of protests, as shown in Figure 1. The first surge of protest activity in Q 2/2012 appeared after the adoption of the LO Law (see Policy 1 in the x-axis of Figure 1) and the passing of the PAPPL through the Parliament (Policy 2) in the previous two quarters. After strikes had been legalized, labor strikes even outnumbered demonstrations in that quarter. The second surge in the number of protests occurred after the commencement of the PAPPL in Q 3/2012 (Policy 3). The latest peak of protest assemblies, at the end of 2014, occurred after the first amendment of the PAPPL (Policy 4). The high-point in q1/14 can be explained by the anti-Letpadaung protest movement that will be discussed below.

*Table 2: Principal Variables of Protest Activity*

	2-12/2011	2012	2013	2014
N =185	17	62	33	73
Ø Participants per Protest	530	672	440	1062
Total Participants	8481	12767	26918	48815
Length of Protest (Mode)	< 24 h	24-48 h	5-7 Days	1-2 Weeks
Number of Groups Named as Organizers	3	6	6	30
Number of Issues (Categorized)	7	12	12	20
Number of Protests related to Sensitive Issues <sup>1</sup>	1	5	5	22
Serial Protests <sup>2</sup>	1	25	18	24
Arrested Protesters	4	115	51	140

*1: Includes: call for justice; forced army recruitment; call for human rights; disagreements with officials; opposition to government plans; 2: Protests directly related to previously held protests.*

<sup>7</sup> Biggs (2016) finds that in many protest datasets, the frequency of protests poorly correlates with the total number of participants, which is problematic when using only either of the two in analyses. In the *Myanmar Protest Event Dataset*, both variables correlate highly (as annual aggregates):  $r=0.99$  in case of demonstrations and  $r=0.47$  for labor strikes. Thus, I refer to the frequency of protest events rather than the number of participants when I exemplify increasing protest activity below.

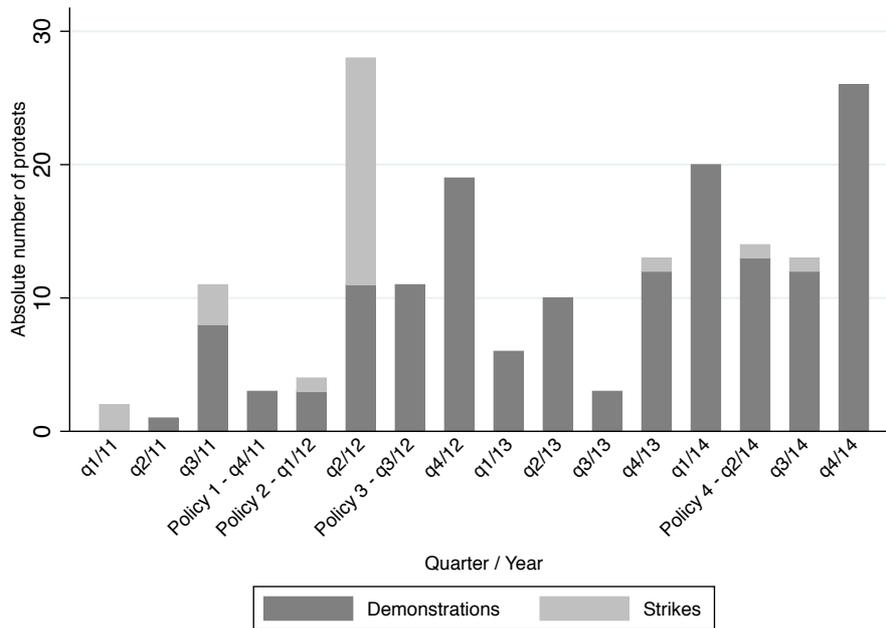


Figure 1: Number of Protests and Policy Changes by Units and Quarters

The correlation between legal amendments and increasing protest activity may suggest that reforms leading to the more secure granting of civil liberties actually led to changed political opportunity structures and, as a result, increased social mobilization.

This and the numbers shown in Table 2 imply that the right to protest has indeed been increasingly upheld, so that protest activity could grow. Over the observed period of time however, no clear inverted U-shape, as the protest cycle suggests, can be found. Rather, we note a volatile, and, if annual figures are compared (as opposed to the quarters in Figure 1), a linear growth of protest activity (excluding 2013, which will be explained below). The missing “bust” could imply that Myanmar until December 2014 had not sufficiently institutionalized democracy, so that protest remained an important participatory means for society during that time (see, e.g., Tarrow 1989).

Qualitative characteristics of protest have changed too. Particularly noteworthy is that, over time, more groups have openly stated themselves to be protest organizers, which may imply decreasing fear on the part of civil society. Although one might expect the then-opposition party NLD to have staged most of the protest events, in fact only 5.41% (10/185) of all protest events were staged or co-organized by the NLD. This is positive because, particularly in 2013 and 2014, an increasing number of local grassroots movements and initiatives emerged, demonstrating a developing plurality within civil society. Even “Single Issue Movements”, which are groups pursuing only one specific objective, emerged as organizing forces. An

example of such a group is the “Committee to Deter Moving of the Gems Marketplace” that aimed, in 2014, at preventing the re-location of a market in Mandalay. Figure 2 reveals that mobilization occurred throughout the country, despite the geographical shape of the border regions and the strong development gradient between the geographic center and the periphery.

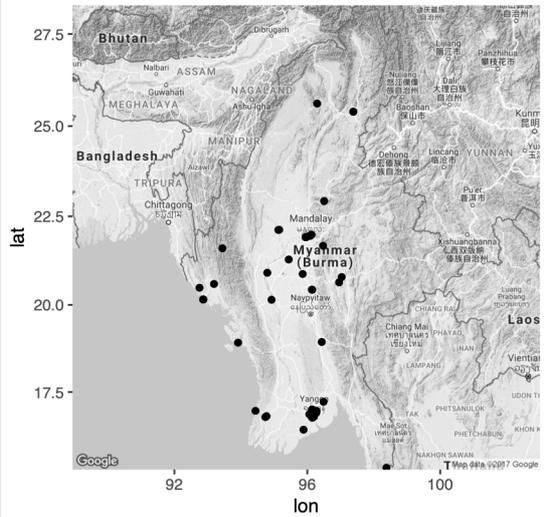


Figure 2: The Geographical Distribution of Protest

In terms of focus, there has been a trend towards critical topics and issues of pluralism (for a list of issues see Appendix I). Especially since 2013, protests have increasingly dealt with human rights and land grabbing, a finding that has been supported by recent single case study findings in Myanmar (e.g., Chan 2017).

The country’s liberalization has also strengthened radical voices in society. Ultra-religious and nationalist organizations such as *Ma Ba Tha* (“Association for the Protection of Race and Religion”) and the 969 Movement, have become increasingly popular, and have frequently incited tensions between Buddhists and Muslims. These tensions have sometimes led to violent riots and mobs, as seen, for instance, in the anti-Muslim riots in 2012 in Rakhine state (Zin 2015, Walton and Hayward 2014). From 2012 onwards, every year there have been large-scale protests against the Rohingya Muslim minority, in which, on average, double the number of participants turned out than in the protests that were addressing other topics (1375 and 720 respectively). However, only four protests were coded for the whole period of time. This might correspond to findings by Schissler, Walton, and Thi (2017, 2015). The authors question the common belief that Myanmar’s reforms were a door-opener for anti-Muslim sentiments that already existed but were repressed before 2011. Contrastingly, they argue that the “Muslim threat narrative” has been incrementally constructed in recent years “through reference to ostensibly reasonable and credible sources such as international news coverage of

global events” (2015, 17). If anti-Muslim sentiments had been as salient during the first few years of regime change as in 2017/18, I would probably have observed more such protests.

Nonetheless, while this argument is reasonable, the number cannot be safely interpreted as an indication of the (in-) significance of anti-Muslim protests, since many of the violent clashes between Buddhists and Muslims did not march this study’s definition of “protest assembly”. If instances were not initially aimed at expressing “wishes and convictions” or discontent, but started off as violent mobs or riots, they were not coded as protest events (as not covered by Section 2(b), The Republic of the Union of Myanmar 2011a).

*Changing Patterns of Informal and Formal Repression*

More protest activity implies less repression, though repression might have just transformed and become “better hidden.” As Figure 3 shows, brute force tactics targeting protesters and intimidation, which I call informal repression, have clearly declined. However, informal repression was still being deployed and had, in relative terms, even temporarily surged in 2013.

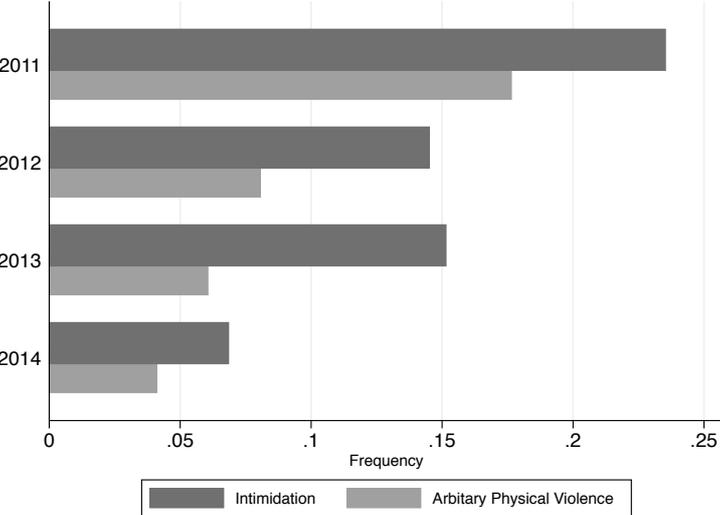


Figure 3: The Decline in Informal Repression

In 2013, but also in other years, targeted intimidation tactics were used, specifically in relation to demonstrations against the violent putdown of protest camps at the Letpadaung copper mine on November 29, 2012. In fact, all the countrywide protest events in 2013 in which protesters were intimidated, were addressing discontent with the authority’s handling of the Letpadaung protest camp. Also, the heightened level of informal repression in 2013 occurred the same year

that protest activity had declined, as noted earlier and shown in Figure 1. By 2014, the use of informal authoritarian methods had, however, decreased again.

This finding is obviously positive as far as it goes. Countering this, Figure 4 shows what amounts to an opposing trend in the number of protester arrests. A decrease in the use of informal repression, and an increase in the involvement of jurisdictions, could be a positive sign. Arrests for breaches of the law are first and foremost a formal tool of states, and those based on the rule of law.

However, the almost perfect negative relationship between informal repression and legal charges raises the question of whether or not these arrests and charges subvert the right to protest. If violence on the part of protesters had increased, the increased arrest rate could be a legitimate application of law. As a matter of fact, no increase in violence on the part of the protesters was reported.

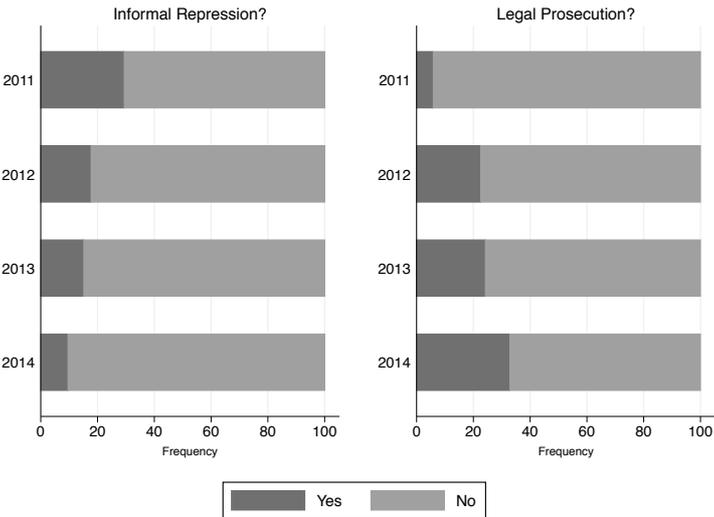


Figure 4: The Relationship Between Informal Repression and Legal Prosecution

Since previous legal discussion on Myanmar’s liberalization has pointed out shortcomings in the laws in terms of compliance with human rights’ legislation, a look into each case of potential formal repression would be necessary to test whether or not the increasing number of arrests and charges were intended to repress and, therefore, take the form of formal repression, or only a sign of incompetency on the part of the judiciary. As mentioned earlier, due to space constraints, I cannot discuss the potential intentions behind the legal prosecution of peaceful protesters here. However, in summary, the data actually provides evidence for both, which is consistent with the literature on the legal system in contemporary Myanmar (see, e.g., Crouch and Lindsey 2014, Cheesman 2015). It is also important to state at this point that not only official state agents file legal cases against peaceful protesters, but so too do private citizens,

companies or organizations.<sup>8</sup> This might either indicate a lack of understanding of protest on the part of these entities, or is another state-sponsored way to bring about formal repression. This is another open question worth digging into in future research.

### *Selective Repression?*

In more open forms of autocracy certain forms of protest may be tolerated, while others trigger state repression. To test selective repression among protest characteristics, two dummy variables were constructed, one for *informal* repression and one for (potentially) *formal* repression (that I call “Legal Prosecution”), which were used as dependent variables for two logistic regression models. Table 3 depicts the odds ratios accordingly.

Table 3: The Determinants of Repression

	(1) Informal Repression	(2) Legal Prosecution
Time	0.999 (0.001)	1.001 (0.001)
Location (1=center, 0=periphery)	2.119 (1.302)	2.006 (1.290)
Key Dates, Obama’s visits	1.203 (0.720)	2.193 (1.304)
Sensitive Issue	0.629 (0.427)	1.569 (0.945)
Serial Protest	2.422 (1.383)	1.243 (0.736)
Number of Participants	1.000 (0.000)	1.000 (0.000)
Duration: Medium < 24h	1.095 (0.422)	0.667 (0.334)
Duration: Long > 24h	6.345*** (4.107)	0.814 (0.636)
Illegal-by-law	3.784** (2.054)	10.26*** (5.835)
Staged by the NLD	0.695 (0.875)	
Violent Protesters		19.31* (29.62)
Constant	1.608e+06 (2.063e+07)	1.09e-08 (1.38e-07)
Observations	128	124

Odds ratios reported, seEform in parentheses; \*\*\* p<0.01, \*\* p<0.05, \* p<0.1;

**Goodness-of-fit:** *Informal repression model:* Nagelkerke, Cragg & Uhler’s R<sup>2</sup>: 0.271; Pearson’s  $\chi^2(114)=146.67$ ,

<sup>8</sup> I thank Renaud Egreteau for raising this point.

$p=0.0212$ .  $p<0.05$  and no. of covariates close to no. of observations, thus Hosmer-Lemeshow test:  $\chi^2(8)=13.28$ ,  $p=0.1027>0.05$ , indicating a good model fit. *Legal prosecution model*: Nagelkerke, Cragg & Uhler's  $R^2$ : 0.377; Pearson's  $\chi^2(110)=157.76$ ,  $p=0.0019$ . Again, Hosmer-Lemeshow test:  $\chi^2(8)=15.86$ ,  $p=0.0444<0.05$ , questioning the model's fit, as already indicated by the number of (in)significant odds ratios/logits.

Only long-lasting protests (lasting over 24 hours) as well as illegal-by-law protests increased the likelihood of protestors being exposed to informal repression. For long-lasting protests, the odds increase by a factor of 6.34, whereas they are about 3.79-times higher for "unlawful" protests than for lawful ones. These findings are intuitive: Breaching laws provide 'easy' (and potentially legitimate) justifications for bringing legal charges to protestors. Moreover, the longer-lasting the protest, the more attractive it is for security forces to apply even illegitimate tactics in order to disperse protest crowds. For what determines legal prosecution, illegal-by-law protests and violent protestors are the only significant protest variables. The odds for legal prosecution for illegal-by-law protests are 10.26-times higher than for legal-by-law protests, and, interestingly, almost threefold the odds to face informal repression, which may suggest that legal prosecution has been the preferred way to silence protestors. The factor with the highest odds to lead to legal consequences is violence committed by the protestors (19.31-times higher than for peaceful protestors), which may not constitute informal repression per se.

To test if certain groups were more likely to face repression, I decided to add only the biggest opposition group at the time, the NLD, to the model, as I expected the most serious contender to have a higher chance of facing repression than less-known oppositional groups. Especially with respect to the recent NLD government's backing of the Burmese military's campaign in Rakhine State, the opposite seems now conceivable as well: because the biggest opposition is the hardest (because most costly) to repress, ruling elites might have decided to better let the NLD do, and pursue a cooptation strategy instead. However, if one replaces the NLD with oppositional groups other than the NLD, and codes the variable accordingly, the regression coefficient remains insignificant. At least with the present method, no selective informal repression against oppositional groups could be found. Due to a lack of sufficient observations, the effect on formal repression could not be tested.

To test if patterns of selective repression have changed over time, I added *time* to both models. Time has no significant effect, meaning that the factors that caused informal repression/legal prosecution did not change with time. Not to find such time effect is surprising, considering the tremendous change observed in protest activity over time. One could expect that in transitions that are driven by civil society, the state loses its grip on repression, and caves in to expand democratic reforms. If this had been the case in Myanmar, however, one would have expected *time* to have had a significant effect on repression. This result, however,

adds to the overarching picture that, in Myanmar, the state persisted in controlling social mobilization at least throughout the observed time period.

### **Conclusion: What are the Implications?**

The findings in this study offer relevant insights for the Myanmar case and for the broader scholarship on protest and repression in regime change.

As the analysis has shown, repressive laws concerning civil liberties in Myanmar were incrementally reformed. Although these laws remained non-compliant with international human rights standards, protest activity has significantly increased in terms of frequency, duration and size, particularly following legal reforms concerning fundamental civil liberties. This lends support to the idea that liberalizing reforms actually changed political opportunity structures for civil society. Not only did quantitative aspects of protest activity increase, but also qualitative measures of such activity saw considerable change. Protesters' demands became increasingly pluralistic, as did the groups which engaged in protest, and issues diversified and became more sensitive, respectively. Thus, judging from protest activity alone, Myanmar's civil society seems to have become considerably more vocal during the first few years of regime change. The question is, however, whether this development was actually engendered by a civil society that continuously expanded its autonomy as a result of crossing the boundaries of "rightfulness" or if these changes were ultimately foreseen, and from the beginning, part of the autocrats' calculations.

The increased level of repression in 2013, and the decline in protest activity the same year despite growth in all other years, suggests that certain topics, as land confiscated by the military, possibly crosses a red line, causing (successful) state repression. This demonstrates that, at least until 2013, protest activity depended on state leniency. If topic boundaries were crossed, as happened in 2013 with protests against the Letpadaung crackdown, repression intensified and, in consequence, effectively reduced protest activity in the following quarter(s).

This is not what one would expect to see if civil society had gained momentum in terms of challenging an autocratic state. Moreover, the shift in methods of repression from blunt violence to informal means fits into the picture of a powerful authoritarian state controlling and limiting the democratic transition. The results from the regression models add more pieces of evidence to the puzzle, by showing that long protests were significantly more likely to be exposed to informal repression. Long protests were most often protests against land confiscation, linking the selective repression back to the Letpadaung protests and the Burmese

armed forces. The selectiveness of repression did not change over time, indicating that power dynamics have not sufficiently shifted toward the opposition.

It is difficult to conclude whether the changed patterns of protest and repression augured ill or good for democracy after 2015, since Myanmar has remained a somewhat “moving object.” However, the negative relationship between formal and informal repression and their selective application, could be indicative of a transition toward competitive authoritarianism (Levitsky and Way 2002, 2010). In competitive autocracies, or hybrid regimes, incumbents misuse state resources and exhibit power in violation of democratic procedures, but give space for opposition, particularly in the electoral arena, the legislature, the judiciary and the media. Elections, for instance, are held on a regular basis, and are to a great extent free of massive voter fraud, but impeded in terms of preventing the opposition from receiving adequate publicity and by intimidating the opposition as well as critical journalists, for instance, during public rallies. Competitive autocracies require more subtle and punctuated forms of stifling opposition than closed autocracies. Therefore, the changes described here might be part of a more general pattern one can observe in controlled transitions from closed to more open forms of autocracy. Future research should test this hypothesis across cases.

In conclusion, it is important to note that this paper has only investigated protest and repression until the end of 2014. Since the taking-office of the NLD-government in 2015, the number of political prisoners, often incarcerated for violations against Section 66(d) of the 2013 Telecommunications Law, has increased (Buschmann 2017). The law provides for up to three years in prison for “...extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person”, by using means of telecommunication such as the Internet. Whether the patterns of reform, protest, and repression found in this study have changed or sustained under NLD rule, merits future research.

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**Biographical Sketch:** Andy Buschmann is a Ph.D. student in the Department of Political Science at the University of Michigan, Ann Arbor. His work focuses primarily on regime

change and social movements, as well as public opinion, specifically in Southeast Asia. He can be contacted via [andybu@umich.edu](mailto:andybu@umich.edu). His website [www.andybuschmann.com](http://www.andybuschmann.com)

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