

RESEARCHERS AT THE INSTITUTE OF SOUTHEAST ASIAN STUDIES SHARE THEIR UNDERSTANDING OF CURRENT EVENTS

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Ethnicity, Federalism, Citizenship and Politics in Myanmar

*By Robert H. Taylor**

*“Oh, what tangled web we weave . . .
when first we practice to deceive.”*

- Sir Walter Scott, *Marmion*, Canto VI, XVII (1808).

EXECUTIVE SUMMARY

- The confusion over the meanings of ethnicity which has vexed Myanmar politics since independence has its origins in the many misunderstandings which were perpetrated, unwittingly, by the Panglong Agreement and its subsequent interpretations. Written as a hastily agreed constitutional arrangement to ensure the unity of the entire colony prior to independence, it has been reinterpreted as a set of constitutional principles guaranteeing rights to ethnic groups. It did not and, in law, it could not.
- If, however, there is a ‘spirit of Panglong’, it is to be found in Clause VII of the Agreement which promises the rights of citizenship to the residents of the Frontier Areas, in effect putting them on the same legal basis as all other citizens of Myanmar. The ‘rights and privileges which are regarded as fundamental in democratic countries’, to quote from the Clause, guarantee human or civil rights on a non-discriminatory basis in keeping with the United Nations Universal Declaration of Human Rights.

- Advocates of a more federal system of government for Myanmar, such as that of the United States, need to understand how that system works. Ethnicity has nothing to do with federalism. Federations are federations of subordinate territorial administrations. In the United States, there are no ethnicities identified with the fifty states and four additional jurisdictions.
- The currently ongoing peace talks between the government and ethnically designated armed groups need to go on as long as necessary in order for a fuller realisation of the reality, as opposed to the mythology, of tangled web of ethnicity and territorial administration in law and politics. Similarly, in an election year it behoves politicians to choose their words carefully so as not to encourage impossible demands, but to educate the citizenry as to the meaning of human rights in the context of modern statecraft.

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INTRODUCTION

On 12 May 1947, General Aung San, as deputy chairman of the Governor of Burma's Executive Council, signed the Panglong Agreement along with seven British-recognised hereditary leaders (or their alternates) of administrative units and twelve political activists and self-appointed leaders from the northern regions of the Myanmar. Since that day, confusion has prevailed over the role of ethnicity in discussions about the nature of modern constitutional rule in the country. The primary purpose of the Panglong Agreement was to incorporate, by constitutional arrangement, what were then referred to, under the 1935 Government of Burma Act, as the Frontier Areas, under the legal authority of an increasingly politicised Governor's Executive Council, prior to independence for the entire colony.¹ Before this agreement, which was made effective by appointing Sao Shwe Thaik as the Governor's Counsellor for Frontier Areas, the Frontier Areas were administered from the capital separately from the rest of the colony, Ministerial Burma or Burma-proper, where prior to World War Two a limited political form of government prevailed. Thus, the entire territory of Myanmar became incorporated legally under one authority, the prospective state of the Union of Burma, under the authority of the Governor's Executive Council dominated by the AFPFL. The Panglong Agreement terminated in law, if not in politics, within months of it being signed.²

¹ "The Panglong Agreement, 1947", Hugh Tinker, ed., *Burma: The Struggle for Independence, 1944-1948*, Vol. II, *From General Strike to Independence, 31 August 1946 to 4 January 1948* (London: Her Majesty's Stationery Office, 1984), pp. 404-405. This was in keeping with the agreement reached between a delegation led by Aung San and the British government the previous January. According to section 8. Frontier Areas of the Aung San-Atlee Agreement, "It [was] the agreed objective of both His Majesty's Government and the Burmese Delegates to achieve the early unification of the Frontier Areas and Ministerial Burma with the free consent of the inhabitants of those areas." "Conclusions reached in the Conversations between His Majesty's Government and the Delegation of the Executive Council of the Governor of Burma, January 1947. Cmd. 7029, p. 381. This, in turn, had been necessitated by the British government's "Burma: Statement of Policy by His Majesty's Government, May 1945, Cmd. 6635, " normally referred to as the "White Burma on Burma", which concluded: "The administration of the Scheduled Areas, that is the Shan States and the tribal areas in the mountainous fringes of the country, inhabited by peoples differing in language, social customs and degree of political development from the Burmans inhabiting the central areas, would for the time being be subject to a special regime under the Governor until such time as their inhabitants signify their desire for some suitable form of amalgamation of their territories with Burma proper." *Ibid.*, Vol. I: *From Military Occupation to Civil Government, 1 January 1944 to 31 August 1946*, p. 264.

² In the meantime, it was clogged with so many legal requirements that, in *extremis*, it could be overruled by the Governor. As Arthur Bottomley, MP, the representative of the British government at Panglong, wrote immediately after the conference:

ORIGINS OF THE TANGLED WEB . . .

The confusion generated by the Panglong Agreement has been exacerbated ever since by the nearly continuous demand by politicians for the so-called rights allegedly promised in 1947. One often reads or hear expressed the view that “Over 60 years later, the promises of the Panglong Agreement remain unfulfilled and ethnic conflict continues to plague the nation, but the elusive ‘spirit’ of Panglong still affects Burmese of every ethnicity.”³ Within the past decade there have been repeated calls for holding a Second Panglong Conference.⁴ However, like long married couples considering renewing their vows, upon reading what they had previously agreed, the idea seems to have been abandoned more recently.

The purpose for which the Agreement had been reached was achieved at independence, but the confusion the document generated then and subsequently has been allowed further to confuse the ongoing debate in Myanmar about the appropriate recognition of different ethnicities in the constitution of the country. This debate is particularly intense presently as it is a key part of the three dominant issues in Myanmar domestic politics following the restoration of constitutional rule in 2011: (1) a search for a nationwide ceasefire agreement between the government and various ethnically designated armed groups leading to further political talks; (2) demands for constitutional amendment including the establishment of a “genuine” federal system; and (3) the country’s second national elections under the 2008 constitution. Though analytically distinct processes, in reality they are tightly interlocked.

Since few people have ever read the Panglong Agreement, and it was not even considered sufficient by the British government for the task of public consultation for which it was to achieve, as a further Frontier Areas Commission of Enquiry (FACE) was required, the myth of Panglong is stronger than the reality. The FACE met and reported in April, 1947.⁵ Like the Panglong Agreement, the FACE report was not careful in defining its terms clearly. Confusion reigned and continues to do so. It is no wonder that now, after five decades under

Both sides clearly understand that the agreement is for the interim period only and must operate within the sphere of the 1935 [Government of Burma] Act (I took the opportunity in private conversations both with Aung San and Frontier representatives to stress these two points which they readily accepted). Discretionary powers of the Governor therefore remain unaltered in law and special responsibility of the Secretary of State to Parliament is fully protected.

—Telegram, Arthur Bottomley to Lord Pethick-Lawrence, 14 February 1947, *ibid.*, pp. 285-287, paragraph 7, p. 413.

³ Matthew J. Walton, “Ethnicity, Conflict and History in Burma: The Myths of Panglong,” *Asian Survey*, Vol. 48, No. 6 (2008), pp. 889-910, p. 889.

⁴ “MDBF Joins with Aung San Suu Kyi in Calling for a Second Panglong Agreement”, *Mon News*, 18 November 2010; “Minister Calls for ‘Panglong’ Type Meeting,” *Mizzima*, 29 June 2012.

⁵ “Report of the Frontier Areas Committee of Enquiry: Chapter III, Recommendations and Observations,” 24 April 1947, in Tinker, *Burma: The Struggle*, Vol. II., pp. 483-490. Tinker chose not to include the entire report, including the testimonies of the frontier area leaders with whom the committee met. These prove to be illuminating of local opinion, or the lack thereof, on the issues of concern to those seeking a way of integrating the frontier areas, whose population at that time was only one-sixth of the population of the remainder of the country, but accounted for 47 per cent of its territory, with what until then was known as “Burma-proper”. *Ibid.*, p. 484. A separate study would be required to do it justice.

military or militarily-dominated one party rule, when these matters could only be discussed in private, public debate is now confused and therefore threatening the success of the current attempt to consolidate a civilianised constitutional order. Therefore, the Panglong Agreement, as the original text in the debate over the nature of federalism in Myanmar, perhaps deserves to be analysed more closely than is usually the case. After all, its implications are a key issue in the attempt to reach a ceasefire agreement, whether national or bilateral, with the many armed groups with ethnic designations.

It is not surprising the Panglong Agreement causes confusion. It was a hastily drafted agreement designed to reach foregone conclusions. It does not define its terms as a legal document might, but stands rather as a political agreement in the common English of the day. It was drafted and signed in English. The Agreement commences thusly:

*A conference being held in Panglong, attended by certain members of the Executive Council of the Governor of Burma, all Saohpas and representatives of the Shan States, the Kachin Hills, and the Chin Hills, the members of the conference, believing that freedom will be more speedily achieved by the Shans, the Kachins and the Chins by their immediate cooperation with the interim Burmese Government, have accordingly and without dissentients agreed as follows:*⁶

The document commences by noting that the representatives are representatives of administrative units, territories or jurisdictions, defined by the 1935 Government of Burma Act as the Federated Shan States, the Chin Hill District, and the Kachin Hill Tracts of Myitkyina, Bhamo, and Katha Districts. These were territories and administrative orders created by the state, in this case the colonial state. The ethnic terms Shan, Kachin and Chin were used as adjectives to distinguish one unit from another, implying there were differences between them as to how they were internally configured and their differential relationship with the central administration of the colonial state.

... AND THE CREATION OF DECEPTION

The preamble goes on to state that it was believed that “freedom will be more speedily achieved by the Shans, the Kachins, and the Chins by their immediate co-operation”. Shan, Kachin and Chin, now in their plural forms, were then used as nouns, imply that they are ethno-linguistic or cultural groups which may or may not have incorporated all of the people who resided in the previously mentioned administrative units. Almost certainly not everyone who lived in the Federated Shan States, the Chin Hill District, the Kachin Hill Tracts of Myitkyina, Bhamo and Katha Districts would have considered themselves Shan, Chin, or Kachin. There were a variety of ethno-linguistic labels used in those territories by members

⁶ Tinker, *Burma: The Struggle*, Vol. II, p. 404.

of the indigenous population plus Chinese, South Asian and other immigrants previously residing outside of Myanmar and their descendants.

Immediately a problem is posed for the careful reader. Is this agreement which establishes rights and privileges for administrative territories or ethnic groups? Almost certainly the former, because it is discussing the powers a state may conduct via law and administration, including changing the legal status of a territory. However, to the untutored but politicised eye, in an age when notions of race and nationality were and are dominating political discourse, most readers then and now believe the document was discussing the gaining of freedom by the three ethnic groups. However, what this meant in reality was bringing the territories named after these ethnic groups under the jurisdiction for the government of Burma prior to that government gaining its independence, i. e., ‘freedom’, from the United Kingdom and Northern Ireland. Freedom meant freedom from colonial rule, not freedom from organised government.

After four clauses setting forth the appointment and powers of the Counsellor for the Frontier Areas and his two deputies, Clause V states:

Though the Governor’s Executive Council will be augmented as agreed above, it will not operate in respect of Frontier Areas in any manner which would deprive any portion of these areas of the autonomy it now enjoys in internal administration. Full autonomy in internal administration for the Frontier Areas is accepted in principle.⁷

What was meant by this was that as soon as the new arrangements were put in place, and the Frontier Areas were placed under the purview of the Governor’s Executive Council, the Council would be bound to respect the existing administrative arrangements which were managed by the Burma Frontiers Area Administration. This meant that the Saohpas, under the supervision of the Frontier Service Officers, would continue to administer their respective states under the Shan State Council; the Kachin duwas (British-recognised ‘traditional’ leaders) and Chin chiefs, who also owed their appointment to Frontier Service Officers, would remain in place for the duration of the agreement. While full autonomy in administration was recognised in principle, this did not mean it was administration in the name of or under the control of any one ethnic group. Government and administrative exist to protect and promote the lives of all the people who live within its jurisdiction regardless of ethnicity or how the administration is legally constituted.

The sixth clause set out the desirability of establishing a state named Kachin but any decision on that matter was left to an eventual Constituent Assembly established to draft a constitution for independent Myanmar. The final two clauses deal with the maintenance of the existing fiscal relationships between the central government and the administrative authorities in the Federated Shan States and the Kachin and Chin Hills. Clause VII, however, introduced a

⁷ *Ibid.*, p. 405.

completely new element in the notions of politics and administration in the Frontier Areas. It reads, in its entirety, as follows:

*Citizens of the Frontier Areas shall enjoy the rights and privileges which are regarded as fundamental in democratic countries.*⁸

The available records are not forthcoming on the discussions that lead to the inclusion of this clause, but it clearly fit with the egalitarian ideals of the left leaning elements of the AFPFL and the members of the Shan State People's Freedom League. The saohpas and other 'traditional' leaders should have been less pleased for it spelled the eventual end of their hereditary powers if it were actually implemented. Their subjects were soon to be regarded as citizens in an egalitarian society.

The FACE recommendations, which the Executive Council accepted in establishing the constituent assembly to draft the constitution, abandoned two of the key principles of 'regarded as fundamental in democratic countries', the right to vote and the equality of representation the constituent assembly. The Committee abandoned the ballot box for doubtless good reasons relating to the time available if independence was to be achieved by January 1948⁹, the distances and conditions involved, and the unfamiliarity of the population with electoral processes. In place of a balloting process on a one-person, one vote basis, various procedures were recommended for indirectly choosing persons to attend the assembly. All, in one manner or another, favoured the existing office holders.¹⁰ On the point of equal representation, as the elected Legislative Assembly of Ministerial Burma had a membership of 210, on a proportional population basis, an additional 35 members should have been added when all the previously excluded territories were included. However, the FACE report recommends 45 members, thus over-representing these areas in the constituent assembly.¹¹

ESTABLISHING NON-DISCRIMINATORY CITIZENSHIP FOR ALL

However, for those who persist in believing that the Panglong Agreement, or at least its 'spirit' continues as a principle of state, Clause VII had further implications for thinking about the problem of administration and ethnicity in Myanmar after independence had been

⁸ *Ibid.*

⁹ As required by the Aung San-Attlee Agreement.

¹⁰ The Federated Shan States Council, composed half of representatives of the Saophas and half chosen on an unelected basis from commoners, would chose 26 members; in the Kachin Hills, the duwas were involved along with district and sub-district councils to choose 7 members; mass meetings arranged by administrators were be the procedure dominating in the choice of 6 members from the Chin Hills with the Arakan Hill Tracts, 2 from Karenni, 2 from Salween District, and 1 each from the Homalin Subdivision and Somra Tract. Ethnicity was to have no determining role in choosing the representatives to attend the constituent assembly.

¹¹ Details are set forth in paragraphs 2 and 3 of Part II of the FACE report, Tinker, *Burma, The Struggle*, Vol. II, pp. 484-486.

achieved. It became, of course, the basis on which the so-called ‘feudal’ powers of the Shan Saohpas were abandoned in exchange for state stipends in 1958, but it contains other implications. It establishes the concept of citizenship. Prior to then, residences of the Frontier Areas were subjects of the British crown which delegated authority to rule to the saohpas, duwas, and administrative officers of the Frontier Service via the Governor of Burma. Citizenship confirms legal rights as a human being. Another document from 1947 which is pertinent to any discussion of ‘rights and privileges’ of citizenship is the United Nations Universal Declaration of Human Rights. There we find it states, in Article 2, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

How do persons get their rights and freedoms ensured and enforced? Who or what is responsible for guaranteeing our fundamental rights and privileges? In law and in fact, it is the state of which a person is a citizen which has that obligation. If this were not the case, international law, which attempts to regulate and control the behaviour of states in their obligation to ensure the rights of their citizens would have no basis for existence.¹² States have an obligation to ensure a citizen’s rights ‘without distinction of any kind.’

How does the insistence on fundamental, non-discriminatory, human rights and citizenship impact on the ongoing meetings to attempt to achieve a ceasefire agreement between the central government and the armed ethnically designated groups to be followed by a political dialogue which is expected to lead to a revised federal state constitution? Take for an example a recent claim by a spokesperson for one of the many self-proclaimed ethnic groups within Myanmar. This is a commonly heard statement and one which poses a great obstacle to achieving universal peace and order in the country. The Joint Chairman of the New Mon State Party, who is also the head of the Nationwide Ceasefire Coordination Team (NCCT), the collective of ethnically designated armed groups negotiating with the government on the ceasefire and related issues, stated as follows on 11 May 2015:

We want to have an American style [of governance], where we can run our own state, and we can have our own army. We agree to have one army in the country, but our state will have our own army because we need it to protect our ethnicity. They are trying to eliminate our ethnicity in order to fully control the whole country, that is why we ethnic groups need our own armies to protect our people.¹³

Like the Panglong Agreement, this statement deserves to be closely examined for its implications.

¹² For an explanation of this argument, see Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2013).

¹³ “NCCT Leader: Federalism Proposals Should Include Ethnic Army Guarantees”, Lawi Weng, *Irrawaddy*, 11 May 2015

CONFLATING AND CONFUSING ETHNICITY AND ADMINISTRATIVE UNITS

First of all, the statement indicates the speaker knows little or nothing about the political system of the United States or the legal status of the 54 National Guard units which are organised on the basis of the 50 federal states, the District of Columbia and three dependent territories. The status of the 54 jurisdictions which he implies he wishes to see emulated in constitutional future of Myanmar is very different from what he implies. They have absolutely nothing to do with claims to ethnicity or differential or discriminatory practices of rights. There is no Ohioan or Californian ethnicity. These are subordinate governments with specific duties and responsibilities in particular geographic areas established in a complex web of subordinate (state) and dominant (federal, central) laws and regulations. Furthermore, the armies which he implies he seeks to see emulated in Myanmar are not separate from, but integral parts of the armed forces of the central government under the command of the commander-in-chief, the President of the United States. They are, in effect, the reserve forces of national government which can be used, with the permission and authorisation of the national Department of Defence, to aid state governments in maintaining order or providing other assistance on a non-discriminatory basis.

Second, under international law, the law which recognises the independence of the Myanmar state, from which the NCCT members say they have no desire to secede from, the central and subordinate governments have an obligation to apply the law regardless of ethnicity. All citizens are to be treated equally and non-citizens are to be given the protection of the law. Otherwise, there would be no means of redress when person's civil or human rights are violated. In the case of the United States, which the head of the NCCT extols as the model to be emulated, when southern states such as Arkansas, Alabama, and Mississippi refused to admit black citizens to state funded schools and universities in the early 1960s, in violation of their court protected rights, Presidents Kennedy and Johnson called out those respective states' National Guard units and ordered them to ensure that black students were admitted to formerly all-white institutions. This was, of course, against the wishes of the governments of those states but they had no choice in the matter. Federal law prevailed and the National Guard was mobilised by the President to ensure that that was the case. The law is ignorant of ethnicity.

The confusion between differences between modern citizenship under a legally constituted, territorially defined, administration or jurisdiction and the social construct of ethnicity is not unusual. Though we can trace it back to the original Panglong Agreement in the case of Myanmar, as done above, the same can be done for many other countries in the past. Discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status has been common throughout history. It is the basis upon which many of the evils of the past were based: slavery, colonialism, segregation, xenophobia, pogroms, genocide, and religious extremism. The modern state system exists to ensure that these causes of war and mass suffering are eliminated. To do so, however, requires the development of tolerance on the part of those who govern as well as those who are governed. The state cannot be partial toward one group of persons over another.

THE EDUCATIVE ROLE OF POLITICS

Daw Aung San Suu Kyi, the leader of the National League for Democracy (NLD), said recently that in her opinion

. . . to have a successful federal system, everyone must nurture goodwill. We must be broad-minded. Racism is too narrow-minded to sustain a federal union. As the Bamar are the majority in our country, Bamar people [must] nurture more goodwill. However, other national races must also contribute. In the end, unity must start from goodwill. Only when there is unanimous goodwill can a united federal system be established. If there is no unity in establishing a federal system, the future of the country will not have a good ending.¹⁴

While it is doubtful that unanimity is possible within a population of over 50 million people, surely her sentiment is correct.

For that near unanimity to be achieved, first however, clarity of thought and understanding the obligations of governance are required by all political actors. Someone who is the head of the group of armed ethnically designated political groups will have to give up his mistaken idea that armies exist to defend ethnic groups. They exist to maintain order at home and protect its legally constituted territory from foreign invasion. Similarly, the persons in authority within the government of Myanmar must ensure that the manner in which they organise and lead the institutions of the state, including the bureaucracy, the armed forces, and the educational system is done so without discrimination based on race, colour, sex, religion, or other alleged marker of human difference. While competence and loyalty to state is essential, race or others markers cannot be used as a test of qualification for employment or services.

Moreover, closing down debate and stifling the expression of misguided or blatantly contentious views, as in the past, will not lead to eventual understanding and reconciliation. Undermining politically corrosive myths and educating the public is the responsibility of political leaders. They must first, though, understand the meanings and import of their own words. It may sound trite to say that a national dialogue is necessary to establish peace but something like it may be necessary. The ongoing ceasefire talks may be seen as part of that process. The forthcoming election campaign will test to the limit whether the political leaders of Myanmar can manage to make their positions based on reason and reality, rather than venom and narrow factional arguments not based on anything other than prejudice or fear. In the meantime, the ongoing talks about a ceasefire are better than not talking about a ceasefire. As Winston Churchill said, “to jaw-jaw is always better than war-war.” However, while words may not kill, they can confuse and encourage enmity. Jaw-jaw from a basis of reason and a knowledge of the reality of the past, and not the myths, is also required for peace to be long lasting. Let us hope that those on all sides of the ongoing debates in Myanmar do not practice to deceive.

¹⁴ “Suu Kyi: Federal Union Only Possible with Unanimous Goodwill”, *Eleven News*, 13 May 2015.

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