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### **Constructing statelessness: Migration, indigeneity and citizenship law in Southeast Asia**

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## **Abstract**

This paper examines how differential inclusion and statelessness are actively produced through clauses in the citizenship laws of Myanmar, while also highlighting broader trends in the Southeast Asian region. Myanmar was selected because of the extremely high rates of statelessness in the country and the dearth of literature on statelessness in the region. The paper examines *who* is excluded, *how* exclusion is carried out in law, and *why* such groups tend to be excluded. Using citizenship laws as primary evidence, the paper demonstrates that access to citizenship rights in these states is significantly premised on a group's ability to claim 'indigeneity' to the territory of the contemporary nation-state. The paper explicates grander historical patterns of migration and governance in the region to reveal three groups often excluded by these 'indigeneity' clauses: pre-colonial migrant communities, people 'moved' by colonial-era labor policies and governance strategies, and 'borderzone' minority groups who, despite often being 'indigenous' to the territory, do not have the political capital to make good those claims. The paper also examines some of the many repercussions of differential inclusion and statelessness, including obstructions to mobility and a lack of access to rights and services, and calls for further research in these areas.

**Keywords:** Statelessness, citizenship, indigeneity, exclusion, differential inclusion

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## I. Introduction

It's 2016. Nural, leader of a Rohingya village in Rathedaung, Rakhine State, Myanmar, sits handcuffed to a chair (Brinham, 2018)<sup>1</sup>. He looks down the barrels of four guns, held by officers of the Myanmar National Border Guard police. His crime? Refusing to acquiesce and accept Nationality Verification Cards (NVCs), which would force the people in his village to re-apply for Burmese citizenship. In his words, "these NVC cards make us into foreigners who are supposed to apply for citizenship. We are already citizens of this country." Nural was eventually released; he was not one of the 30 men arrested that day, nor the one shot dead, nor the one blinded in one eye after police beatings. His village was not burnt that day, though it was razed less than a year later.

Today, Nural is one of the hundreds of thousands of Rohingya residing in Bangladesh, part of a displaced community demanding the right to return and to be recognized as full citizens of Myanmar. However, at present, the Rohingya are not included in Myanmar's list of 135 *taingyintha* ('national races') considered indigenous to the country, and they are therefore not automatically eligible for citizenship. In fact, the term Rohingya is absent in government discourse, and the community—which historical evidence places in the Arakan (now Rakhine) State from at least the 1400s (Yegar, 2002)—are instead referred to as 'Bengali', 'foreigners', and 'illegal immigrants'. Unable to access citizenship in Myanmar without accepting the NVCs, the Rohingya community are non-citizens everywhere. The repercussions of their stateless status are diverse and severe. Members of the community are systematically blocked from sitting exams and receiving degrees, banned from trading in formal markets, and precluded from 'legally' crossing borders. They have no access to healthcare, retirement salaries or birth registration, the latter ensuring the vicious cycle continues. Worse, the production of their stateless status through exclusionary law-making was a harbinger for much worse to follow: Myanmar's treatment of the Rohingya has been so brutal that it has been termed a 'genocide' by the UN (2018). And while the Rohingya may be the most extreme example of the ramifications of statelessness, they are not alone.

An estimated 10 million people in the world are stateless, and figures may be even higher, given the challenges of collecting accurate information (UNHCR, 2014a; Staples, 2012). Of those estimated 10 million, just over 3.2 million are officially 'recognized' under UNHCR's statelessness mandate, of which nearly 1.5 million (45% of the official count) live in Southeast Asia (UNHCR, 2017). Within the region, populations are not evenly distributed. Over 95% reside in Myanmar or Thailand, which rank first and third in the world in stateless population size (Côte d'Ivoire is second). Meanwhile, smaller but still significant populations exist in four other states in the region (see Maps 1 and 2 in the appendix). In all cases, the numbers are disputed and the actual figures are likely to be significantly higher. Despite the magnitude of the issue and the significant ramifications of statelessness, a relatively small amount of

research has been conducted on statelessness in general, and statelessness in Southeast Asia in particular. Within this research, even less has examined *how* statelessness is produced, on *which types of groups* are made stateless while others are not, or on *why* those groups diverge. This paper seeks to fill those gaps—examining *how*, *who*, and *why*—by employing an analysis of regional citizenship laws and examining exclusionary clauses within those laws, which produce statelessness.

In doing so, this paper will demonstrate that statelessness in the region primarily effects three groups: precolonial ‘migrant’ communities (primarily Chinese and Muslim), colonial communities who were largely ‘moved’ through colonial practices and policies (primarily South Asian), and ‘borderzone’<sup>2</sup> groups who, despite often being ‘indigenous’ to the area, do not, for one reason or another, have the political capital to make good their claims of being native to the land. The paper further demonstrates how these pre-colonial and colonial migration patterns in the region, intricately interwoven in methods of governance and domination by ‘outside powers’, led to the writing of specifically-targeted exclusion clauses within citizenship laws at the moment of post-colonial independence, premised primarily on claims to indigeneity and belonging to the ‘national community’ of each state, excluding these three groups. Finally, the paper demonstrates how statelessness is being *actively produced* through these exclusion clauses, tracing the histories of citizenship laws and their implementations from independence and diving into clauses in which exclusions are made.

This paper contributes to the body of literature on statelessness and citizenship, and weaves in insights from migration studies literatures throughout. The paper brings together the three theoretical bodies and examines the primary evidence of constitutions and citizenship laws, particularly looking at ‘differential inclusions’ in citizenship (Ong, 1996; Ong, 2006; Rosaldo, 1994; Rosaldo, 2003; Casas-Cortes et al., 2015; Manby, 2009; Pailey, 2016; Pailey, 2017). These differential inclusions, at their most extreme, exclude certain groups altogether, rendering them stateless. When using the term ‘differential inclusions’, this paper draws from Stuart Hall’s (1986) work, which discusses how “specific, differentiated forms of *incorporation* have consistently been associated with the appearance of racist, ethnically segmentary and other similar social features”, leading to subordination and segmentation within the act of inclusion itself (25). As such, it recognizes that inclusion within a community is not homogeneous, but stratified. Along these lines, to a smaller extent, the paper will also highlight how those stratifications can be revealed through intersectional analysis (Crenshaw, 1989; Crenshaw, 1991), though a broad intersectional analysis of the citizenship laws is regrettably beyond the scope of the paper. Instead, it will primarily focus on ethnicity as a marker of exclusion, though it recognizes that ethnicity operates alongside a host of other positionalities in a complex web of “reciprocally constructing phenomena” which all create interlocking systems of exclusion and oppression (Collins,

2015: 1). The ways other intersectional positionalities also play into differential inclusion within citizenship will be considered anecdotally throughout the paper. However, the major connections made will be between ethnicity, citizenship, differential inclusion and statelessness.

## **Overview**

The inspiration for this research began with a simple puzzle: why are rates of statelessness in certain countries so high, when neighbouring countries have little or no statelessness? Diving into that question unveiled a much broader set of issues altogether, related to pre-colonial and colonial migration patterns and governance practices, a historical reversal in which communities historically avoiding the state suddenly desired state inclusion, the slippery yet powerful articulation tool of indigeneity claims, and the intentional exclusion of particular groups from citizenship.

This paper takes the following form. After this introductory overview and a note on methodological limitations, Section Two dives into the context of the region further, paying particular attention to historical governance policies and migration patterns of countries in the region prior to when they became independent nation-states. It highlights those patterns most relevant to understanding contemporary citizenship laws and the groups they exclude. The section is particularly critical to understanding why the three aforementioned main groupings of stateless people—pre-colonial migrants, colonial migrants, and borderzone minority groups—have been excluded, and how they have been conflated as ‘non-indigenous’ and therefore outside of the nationally accepted community. The section also historically traces the concept of ‘indigeneity’, particularly examining how, as a contemporary term, it is used as a legal tool of articulating claims against the state.

Section Three highlights the historical trajectory of Myanmar’s citizenship laws: as it has the highest rates of statelessness of any country, and as the Rohingya are one of the most actively persecuted stateless groups in the world, it is a natural choice for the main focus of this paper. A more extended version of this paper, submitted as my MSc. dissertation and accessible at the Oxford University Social Science Library, also considers the cases of Thailand and Malaysia, drawing out common themes and highlighting differences. Little existing literature demonstrates how clauses in citizenship law actively produce statelessness, and few studies on statelessness consider the role of the histories of political rule and related migration patterns in its production. This section highlights how, in the case of Myanmar, migration patterns have shaped citizenship laws, particularly clauses premised on the articulation of ‘indigeneity’, excluding some ‘non-indigenous’ groups from citizenship entirely. I look primarily at citizenship laws related to automatic citizenship attainment rights: while citizenship can be theoretically attained through naturalization, this route is often not an option for stateless populations due to the barriers it entails. Further, as illustrated through the case of Nural, for example, many feel

that having to re-apply for naturalized citizenship inherently undermines their claims to belonging in the nation-state.

Finally, a concluding section raises further questions emerging from the study, bringing other bodies of thought into the frame and calling for additional research.

### ***Methodological Limitations***

The ways citizenship is experienced in reality differs from what is written in text, as documented widely in work on cultural citizenship (Rosaldo, 1994; Rosaldo, 2003; Ong, 1996), graduated citizenship (Ong, 2006), differentiated citizenship (Young, 1989; Young, 1999; Smith, 2011) and blurred citizenship (Sadiq, 2009), for example. Given this paper's primary focus on legal texts, it will not explore these concepts greatly beyond anecdotal references. It will, however, show how many of these forms of citizenship are produced by legal texts themselves, in combination with outside factors. Kamal Sadiq's (2009) work is particularly worth mentioning so far as methodological limitations go, as he describes how 'illegal' immigrants are able to acquire citizenship through forged documents in Pakistan, India and Malaysia. In some cases, the initial forged documents provide access to further, legal documents, allowing citizenship to be accessed through informal channels by people 'illegally' resident. As such, oftentimes the 'illegal' immigrants will end up with greater access to citizenship and its rights and services than members of communities within the states, assisting the propagation of narratives of stateless persons as 'illegal immigrants,' which is fairly common discourse in the region (Allerton, 2017; Acciaioli et al., 2017; Allerton, 2018; Petcharamesree, 2015). Sadiq does not discuss the use of these methods by stateless residents, but they may also access citizenship in this way.

Second, while most citizenship laws have official translations, a few have only 'unofficial' translations, which could lead to some specific words being mischaracterized. In such cases, I have been careful to compare multiple translations wherever possible. For numerous specific critical words, I reproduce the word in the local language while outlining different ways it is translated and the various meanings it entails.

Third, the paper is limited to a specific geographic region, and is not necessarily generalizable to other situations worldwide or even within Southeast Asia, which has an enormous diversity of governance structures and citizenship laws. Given the scope and brevity of the paper, some comments and histories will be generalized—outliers exist. On the other hand, the specificity of the cases reveals some critical aspects of statelessness more broadly: that it is actively produced, rather than emerging as an 'unintended side effect'; that it is particularly prevalent among communities perceived to be 'non-

indigenous' and those on the geographic margins of states; and that areas with high rates of colonial migration tend to have particularly restrictive citizenship laws.

Fourth, for context, insofar as international commitments, Myanmar is party to the ASEAN Human Rights Declaration (2012), of which Point 18 grants every person the right to a nationality. However, like most countries in the region, it has not ratified similar relevant UN Conventions, including the 1954 and 1961 UN Statelessness Conventions, nor the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees. Thus, many of the tenets of Euro-centric moral claims on the basis of these conventions do not map on effectively.

Finally, many terms that feature throughout the paper are incredibly complex and have numerous divergent meanings—'indigenous', 'nation-state', 'ethnicity', 'citizenship' and others. Given the content of the paper, I must largely rely on legal or methodologically nationalist definitions, which are tied up in colonial histories and ongoing colonialities. In using these definitions, I do not mean to undermine any alternative definitions of the same terms, particularly definitions being used to decolonize the terminology, for example those occurring in the North American indigenous studies context (Lawrence and Dua, 2005). In an attempt to avoid this, I clearly spell out my definitions for each concept and use quotations to avoid naturalizing those meanings.

## **2. Migration, 'Indigeneity' and Constructed Citizenship**

In the first half of this section, I will briefly outline the *pre-colonial* histories, patterns of political rule, and key migration patterns of the region, primarily because such histories—pre-colonial, non-western migration patterns—are largely overlooked in migration studies literature yet have played a critical role in shaping the geographies of Southeast Asia. The subsection helps to contextualize why particular groups have been rendered stateless, while others have not. In almost all cases, stateless groups in Southeast Asia have some connection to migration: many of these movements occurred before European colonialism. This section will largely focus on three pre-colonial movements highly relevant to statelessness today: first, on the movement of peoples away from imperially-controlled lowlands to the highlands of mainland Southeast Asia; second, on the influx of Muslim communities in the region; and third, on patterns of Chinese immigration. Each of these provide critical context for how and why contemporary citizenship laws have been configured, revealing why certain groups have been excluded.

The second half of the section will outline *colonial* patterns of rule and movement, specifically the use of imposed migration as a form of control and governance by the British Empire. The scale of

imposed migration throughout the British Empire was unique and has major impacts on contemporary law. I thus give primary attention to the two former British colonies, 'Burma' and 'Malaya'. Though this paper lacks the space to elaborate on patterns within all European colonies, the most important feature of this period is the sheer scale of the colonial migration that happened within the British colonies, which dwarfed that of all others (Goscha, 2012; Christie, 1996). Manby's (2009) assertion that areas with significant colonial movements tend to have highly contentious citizenship laws is thus examined here.

### ***Pre-Colonial Politics and Migration Patterns***

Three major groups are excluded from citizenship in Southeast Asia on the grounds of indigeneity. Two of these have been resident in the region before European colonialism: non-dominant groups in contemporary 'border' regions, and pre-colonial migrant communities. The first major necessary contextualization is the movement of non-dominant groups to highland areas of mainland Southeast Asia, to explain *why* such groups live predominantly in contemporary borderzones, particularly in Myanmar and Thailand. 'Mainland' pre-colonial Southeast Asia, by which I mean contemporary Myanmar, Thailand, Cambodia, Laos and Vietnam, was for most of its history organized in relatively small and fluid units of political order, largely at local levels (Scott, 2009; Leach, 1954). This was effectively a 'state-less' and 'citizen-less' period, though not 'ethnic-less', as groups often self-identified and were organized by language and other cultural markers, in small polities based primarily on kinship (Scott, 2009). By the late eighteenth century, some of the small-scale state-like structures had formed into three major imperial dynasties in the lowland, rice-producing regions. The three major empires—the Burman (Bamar), Siamese (Thai) and Vietnamese—centralized their core state structures in the highly cultivatable, highly traversable, flat riverlands of contemporary Myanmar, Thailand and Vietnam (Scott, 2009). The dominant ethnic group of the empire (the Bamar, Thai and Viet peoples, respectively) was generally positioned in the central lowlands of the controlled areas, securing a core zone of governance. The imperial governments attempted to administer (often for the purposes of enslavement or taxation) a range of people living outside of that core zone, who were usually linguistically and culturally distinct from those core groups, and of whom many fled to and arranged themselves within the mountainous and more forbidding 'shatter zone' of highland territories, effectively resisting the power of the empires (Scott, 2009). Other groups similarly took refuge at sea or in wetlands, which posed comparable challenges to imperial governance (Chou, 2003; Sather, 1997).

This 'shatter zone' of smaller groups in the vast expanses of the Southeast Asian *massif* (approximately the size of mainland Europe) became a space of state-evasion, as it was harder for the empires to penetrate than the lowland areas (Scott, 2009). The harsh geography of the region made

large-scale governance unfeasible, and so the region became a culturally and linguistically diverse tapestry of semi- or fully-autonomous local groups. As European colonialism penetrated the region, starting similarly from the lowlands, the still-impenetrable highland regions became the borderlands between colonial powers, which largely remain unchanged as the boundaries of today's nation-states. The degree of diversity in those regions, now carved up by contemporary borders, still holds true, as does the persistence of significant ethnic majority communities within today's nation-states: the Bamar, Thai and Vietnamese ethnic groups make up significant majorities in each respective state. The location of other groups—contemporary 'minority' groups, as they comprise a demographically smaller and non-politically-dominant portion of the population—is often near or across border regions, rendering them at the geographic margins of the state, as well as the margins of political power. Many of these minorities are not among the 'recognized' groups of the nation-states. These unrecognized borderzone groups are, in many cases—from Myanmar to Thailand to Malaysia—stateless.

The second major 'grouping' of stateless individuals is pre-colonial migrants. These primarily include people from two groups: Muslims in Buddhist-majority states and Chinese migrants. Each requires contextualization. Islam had two distinct impacts in Southeast Asia. In mainland Southeast Asia, Islam remained secondary to Buddhism, and Muslim communities were usually officially tolerated, though often marginalized. In Myanmar, for example, Muslim immigrants were not allowed to fully integrate into the communities, and faced significant discrimination (Yegar, 2002). Discrimination continues into the modern day—the Rohingya are a clear example, and Patani Muslims in Thailand provide another.

Conversely, the impact of Islam was much greater in maritime Southeast Asia, by which I mean contemporary Malaysia, Singapore, Indonesia, Brunei Darussalam, and the Philippines. This region was largely governed at a small-scale level, particularly due to challenging geographies: the widely dispersed nature of the islands led to the absence of any major singular power (Christie, 1996). Persian and Arab traders brought Mediterranean merchandise and introduced Islam into the maritime regions from the 9<sup>th</sup> century, expanding throughout the region over a number of centuries, including in many of the islands that make up present day Indonesia and Malaysia (Yegar, 2002). Contemporary Indonesia has the largest Muslim population of any country in the world, and Islam is given special provisions in the Constitutions of Malaysia and Singapore. For example, in the Malaysian Constitution, Islam is expressly made "the religion of the Federation" in Article 3.1, just after the boundaries of the Federation are established, and before the 'Fundamental Liberties' section, demonstrating its perceived importance in the eyes of the drafters. In light of this, the influx of Islam is critical to understanding the construction of 'Malay-ness', which would later become essential to being included in community membership. Today, certain clauses

differentially include groups—indigenous or not to peninsular Malaysia—based on whether or not they are Muslim.

Another critical contextualization of pre-colonial movements is migration patterns from China. Chinese mercantile influence increased in Maritime Southeast Asia from the 15<sup>th</sup> century, and after the 1435 Ming dynasty decision to curtail overseas trade, many merchants settled in Southeast Asia (Hoerder, 2002). This led to the formation of numerous Southeast Asian Chinese diaspora communities, including in Malacca, Manila, and Batavia, which largely did not assimilate into the existing local communities (Hoerder, 2002). Chinese migrants rose into powerful roles in numerous communities, gaining political and economic prowess over local communities, creating tensions. Chinese migration has also remained prevalent throughout the later centuries, through the colonial period, and in contemporary migration patterns (Brown and Foot, 1994; Suryadinata, 1989; Intirā; 1994). In Singapore, for example, over the course of four decades leading up to 1864 (during the British colonial period), the population increased from 11,500 to 90,700, the new migrants comprised of 58,000 Chinese, 13,500 Malays, and 12,700 Indians (Hoerder, 2002). The significant population of Chinese Singaporeans would later be one of the major reasons for its separation from Malaysia. Today, there are also large Chinese minorities in many other nations, including Thailand (3.8 million), Indonesia (2.5 million), Malaysia (2.4 million), and Vietnam (1.0 million) (Hoerder, 2002). The influence of Chinese migrants and residents in economic and political spheres has led to tensions throughout history, and also played a large role in the formulation of indigeneity clauses in Malaysia, Singapore and Myanmar after independence. All of those policies relegated ethnic Chinese populations into a second-class tier of citizenship, excluding them from certain rights and sometimes citizenship entirely, on the basis of their ‘non-indigeneity’, though many families have lived in the regions for generations.

Though brief, this overview has highlighted the essential pre-colonial trends for understanding contemporary statelessness. The next part of the section outlines how European colonialism drastically shifted power dynamics and migration patterns—and how they shifted power dynamics through migration patterns—providing an explanation for why migrant populations became the target of exclusion clauses at independence.

### ***Colonial Rule: Migration as a Tool of Governance***

The arrival of French and British colonists in mainland Southeast Asia in the 19<sup>th</sup> century drastically altered the trajectory of the three major empires of the region. The Burman Empire was captured by Britain between 1824-1886 and became part of British India. The Vietnamese Empire was conquered by the French between 1862-1883 and became part of the super-state of French Indo-China (which also included the Kingdom of Cambodia and the Principalities of Laos). Siam became a beneficiary

and significant geopolitical piece of the *rapprochement* reached by the French and British at the turn of the 20<sup>th</sup> century, leaving it as the only uncolonized territory in Southeast Asia (Christie, 1996; Owen, 2014). The European powers drew hard borders for the first time, in places where there had previously been fluidity. This mapping “gave birth to Siam” (Thongchai, 1994) and to the other countries of Southeast Asia, making the territory ‘legible’ for administrative, military and economic operations, while crystallizing divisions and boundaries (Scott, 1998). These borders have largely remained unaltered to this day, despite numerous secessionist movements. Most highland groups were left at the margins, straddling the new borders—this had repercussions on their inclusion in the later emerging nation-states (Scott, 2009).

Colonial administration practices varied widely and had enormous impacts on the citizenship laws drafted after decolonization. Colonial migration practices also played a huge role in later formulations of citizenship law, particularly in the case of the British colonies. Migration patterns, for the purposes of labor or governance, largely occurred within the British colonial universe—of the 28 million Indian emigrants up to 1940, 27 million of them went to Ceylon (contemporary Sri Lanka), Burma, or Malaya (Amrith, 2011). This type of mass movement between colonies was rather unique to the British. It was also manipulated intentionally and strategically. This manipulation is documented in British colonial officer John Furnivall’s 1948 piece *Colonial Policy and Practice*, which describes how the British divided labour racially by importing a labour force and controlling the mobilities in society through racially-defined professional and status boundaries (Furnivall, 1948). This ‘divide and rule’ technique, termed the “imperial labour reallocation strategy” by Madhavi Kale, generated significant hostility towards the immigrant populations, though their movements were often forced and involuntary (Kale, 1998).

British Burma provides an excellent example. Upon capturing the territory, the British regime brought in workers from other distant parts of British India to fill administrative posts, act as police officers and soldiers, and, through mass immigration policies, create a new export labour economy (Christie, 1996). These strategies were considered ‘vital’ to British control and development (Clarke et al., 1990). However, the mass influx of a new, asymmetrically powerful population led to significant tensions. Indian soldiers conscripted into the British military, known as ‘colonial auxiliaries’, particularly caused outrage, as they were often employed to violently quell unrest among local populations. These practices had lasting repercussions.

Despite lingering tensions at the end of the colonial period, many members of these ‘colonial-era immigrant’ populations stayed, as families were often generations removed from their pre-colonial spaces of existence. The effects of this can be seen in the contemporary Indian populations of Myanmar (5% of the overall population), Malaysia (7%), and Singapore (8%), many the descendants of colonial

migrants. These three formerly British colonies are also the only contemporary countries in Southeast Asia with large Indian communities today (Pande, 2014). Further, in Myanmar, a significant population remains despite the fact that two major refugee movements back to India—first under the Japanese, and second under the military government in 1962, which expelled all ‘foreigners’—have occurred since (Hoerder, 2002; Ferguson, 2015).

The racially-defined stratifications imposed by these migration policies, which largely left non-immigrant communities at the bottom rung of society, have a particularly strong resonance in the formulation of the indigeneity clauses present in contemporary Malaysia, Myanmar, Singapore and Brunei—the four contemporary states which comprised British Burma and Malaya. Today, those four states are the *only* four to include explicit indigeneity clauses in their citizenship laws. In all of those cases, Indian communities are excluded from certain rights and privileges, and are sometimes excluded from access to citizenship entirely, leaving them stateless. In the Burmese case, as mentioned above, multiple ethnic cleansings of Indian communities have been carried out since independence (Ferguson, 2015; Hoerder, 2002). Clearly, the impacts of colonial era migration were not resolved by the end of the colonial period. In fact, it is that precise temporal moment—the end of colonialism and the rise of independent nation-states—that must be closely examined to understand the contemporary situation.

Above, we see that large colonial-era migrations *led to* and *occurred alongside* social and political changes, most of which were detrimental to the existing community. At the moments of independence, almost universally, a reversal of power occurred: ‘local’ populations who had been in control before the colonial period reclaimed power. Many of the initial acts, often written into inaugural constitutions as explicated later, sought to ensure power would not shift away again. Long histories of oppression by colonially-reallocated populations were responded to with clauses excluding members of those groups from rights, and in some cases citizenship entirely. Sometimes these exclusion clauses named particular ethnic groups, sometimes they were premised on religion, and sometimes on something else entirely. However, they almost always had the same underlying rationale for why the group in power deserved that power—an earlier claim to settlement in the territory. Given that tensions were highest with communities of ‘migrants’, the exclusion clauses were thus largely premised on the basis of migration’s antithesis—‘indigeneity’.

Critical questions emerge here: when does a community stop being a ‘migrant community’? How is ‘indigeneity’ defined? Migration has always been robust and complex in Southeast Asia, putting into question many of the sedentarist biases that underlie concepts like ‘indigeneity’ and ‘the state’. It is impossible to avoid generalization, but I have tried to highlight some of the major relevant trends above. Given the long and complex histories of movement, ‘indigeneity’ becomes a somewhat relative concept,

premised on competing claims that often predate documentation and are grounded in oral storytelling and mythologies. This is not to say that these evidence bodies are inherently less worthwhile than documented claims, but they are less 'legible' to the contemporary infrastructures which now make and enforce laws premised upon them (Scott, 1998). Through this lens, 'indigeneity' is not so clear-cut a concept as it first appears (Murray Li, 2000; Dove, 2006; Dunford, 2019; Gupta, 1998). At this point, it is worthwhile to begin closely considering the meanings of 'indigeneity', when and where those meanings arose, and how, in law, it is used as a tool for making claims.

Across the world and across history, numerous terms have used to describe a similar temporal concept: 'indigenous', 'aboriginal', 'First Nations', 'Native American', 'tribal', 'native', and 'autochthonous', for example, correspond to and arose out of different contexts, but all imply a priority in time, even 'immemorial occupancy' (Kingsbury, 1998). In recent decades, especially since the 1970s, 'indigeneity' has become commonly used in the field of international law and re-defined as a tool for making legal and political claims. Tania Murray Li (2000) writes that a group's self-identification as indigenous in this sense "is not natural or inevitable, but neither is it simply invented, adopted, or imposed" (151). Instead, it is an articulated position which emerges from and is utilized in specific contexts, as a concept and tool of international governance through which individuals or groups can make claims against the state. In this sense, it is a form of strategic essentialism (Spivak, 1993). This conceptualization of indigeneity, *as a tool for articulating claims*, largely emerged from a white settler colonial context (Kingsbury, 1998). It is not clearly defined: its international definitions vary widely, though all have a 'time' component. Its inclusion in international law was contested by major Asian nation-states, including China, India, Bangladesh, Myanmar and Indonesia, who made arguments to the UN that claims premised on indigeneity could *only* apply to white settler colonial contexts, thus rendering indigeneity claims against their states null (Baird, 2016). The opposite was argued by a large group of minority populations in those Asian states and others, including the Karen National Union in Myanmar, which raised attention to "the denial of some Asian governments of the existence of indigenous peoples in our part of the world" (Kingsbury, 1998: 417). The still-heated debate around the politics of indigeneity thus revolves around questions of who is making claims, who is able to make claims, who is included or excluded, and what evidence claims are premised upon.

The complex history of Southeast Asia, and of the peoples who occupy the area, makes claims to indigeneity somewhat indistinct. Given the tenuousness of legible historical evidence, often the groups able to make claims of indigeneity were simply those with the greatest political power at the moment of independence, nation-building and citizenship law writing. Usually, those groups were granted power or seized power from the former colonial power—the Burmese, the Malay, the Viet, Lao, and Khmer, for

example. This was based partly on historical precedent and partly based on demographic size. Those groups had largely been in power before European colonialism (though their territories had been smaller and more fluid), and they comprised the majority population of each new state territory. Now holding political power, they were able to reify and reinforce their position through the construction of law, often simultaneously precluding others from doing the same. This has led to some contradictions. For example, in states like Myanmar, indigeneity is enshrined in the Constitution (denoting the primacy of the Bamar and other officially recognized groups) yet denied as a tool of articulation for other minority group claims (for example, the Karen National Union).

The next section examines how exclusive indigeneity clauses were constructed from the immediate post-colonial moment, when colonies became independent nation-states, and demonstrates the ways they are deeply rooted in the patterns of migration and governance discussed here. It specifically focuses on how those clauses regulate access to the full rights and benefits of citizenship on the basis of numerous intersectional positionalities—differentially including some groups while excluding others entirely. Though this paper will specifically focus on ethnicity as a marker of exclusion, each law examined also has significant exclusions in other ways which are no less important, and which interact with ethnicity to create matrixes of exclusion (Crenshaw, 1989; Crenshaw, 1991; Collins, 2015; O’Connell Davidson, 2013). The section thus feeds into to the body of literature on intersectional positionalities and citizenship law, with a specific eye on ethnicity, in line with a range of previous authors (Byrne, 2017; Christensen, 2009; Coutin, 2000; Lomsky-Feder and Sasson-Levy, 2015; Moreau, 2015; Ogawa, 2017; Ramtohul, 2015; Rottmann and Ferree, 2008; Manby, 2009; Gutierrez Garza, 2019; Pailey, 2016).

### **3. Exclusion Clauses and the Production of Statelessness**

#### ***Theoretical Underpinnings***

Demonstrating that exclusion clauses exist is nothing new. All polities include and exclude; there is no such thing as universal inclusion, and citizenship is definitionally a formation of exclusion (Dzenovska, 2018). However, the dynamics of inclusion and exclusion diverge on a state-by-state basis as well as on different scales for individuals within states, based on the specific configurations of citizenship. This paper examines those configurations seeking to determine who is excluded, why, and how those differential inclusions are carried out.

Oddly, the bodies of literature on citizenship are often siloed from those on statelessness. I argue they are better read together, given that statelessness is produced through exclusions in

citizenship law, particularly in the cases examined in this paper. As such, first, I briefly juxtapose relevant theories of citizenship with those of statelessness, conveying a broader understanding of the production of statelessness on the whole. After, I examine a range of examples of contemporary citizenship laws, tracing their roots historically and demonstrating how particular clauses within those laws have produced various forms of statelessness today. In combination with the earlier section, this goes to show the linkages of citizenship law exclusion clauses with patterns of migration and rule. Migration fundamentally challenges the sedentarist biases which underly citizenship as an instrument of reifying the modern state system, and, as such, the two are often studied together (Anzaldúa, 1987; De Genova, 2002; Joppke and Morawska, 2003; Pailey, 2016; Pailey, 2017; Kymlicka and Norman, 1994; Sassen, 2003; Whitaker, 2011; Dirlik, 2003; Yuval-Davis, 2007; Sassen, 1996; Barry, 2006; Beaman, 2017; Coutin, 2000; Bloemraad, 2004; Bosniak, 2000; Bosworth, 2014). This section continues the strand of thought present in those literatures, while also bringing in literatures of statelessness.

#### *A Note on 'Citizenship' and 'Statelessness'*

At its core, citizenship is about political belonging (Lazar, 2013). T.H. Marshall's (1950) definition of citizenship is perhaps the starting point for most major work on citizenship, particularly in a 'nation-state' sense of the word, which is the relevant variant here. He wrote: "Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed" (1950: 253). His definition is rooted in liberal philosophy, and his definition is one of 'liberal citizenship'. However, liberalism has always demanded, paradoxically, simultaneous equality and inequality (Losurdo and Elliott, 2011). As such, the theoretically 'universalizing' citizenship which arose from those revolutions was bounded and fraught with exclusion clauses, to the point that the 'equality' and 'full membership' Marshall refers to were established only between white, male, property owners, while all others were disincluded to varying degrees.

Paradoxical liberalism remains engrained in many contemporary societies: Europe, and the formation of the European Union, are a quintessential example. Dace Dzenovska (2018) describes the "paradox of Europeanness—that is, the simultaneous demand for inclusion and exclusion, openness and closure, transcendence and erection of borders" (11). What emerges is professed inclusion for an expressedly exclusive group. These same dynamics apply to many citizenship policies and practices worldwide, and broadly to the entire institution of liberal citizenship. The institutions in Southeast Asia, which are largely built upon traditional, European, liberal foundations, carry the same exclusivities (Mamdani, 2012; Mamdani, 1996). Exclusivity is written into the laws of citizenship itself. It is within these 'exclusion clauses' that statelessness is actively produced—not indiscriminately, but targeting specific types of individual. Statelessness is not an unintentional by-product of citizenship, nor is it

random. It is actively produced and maintained (Kingston, 2017). Particular groups are excluded and, as I argue through the following cases, those exclusions are often closely linked to patterns of migration and governance.

‘Statelessness’ entails far more than simply not being ‘considered a national of any State’, or ‘lacking citizenship everywhere’, as it is often defined (UNHCR, 2014b; UNHCR, 2017; Staples, 2012). Statelessness is a legal and embodied space. It has significant ramifications on an individual’s access to political, social, and occupational rights, and to state-provided services such as education and healthcare (Acciaioli et al., 2017; Ahsan Ullah, 2016; Allerton, 2017; Bloom et al., 2017; Parsons and Lawreniuk, 2018; Staples, 2012; Weis, 1961; Weissbrodt and Collins, 2006; UNHCR, 2014a). Statelessness has enormous impacts on mobility, both horizontal (ie. moving across geographic space) and vertical (ie. ‘social’ mobility). It precludes access to ‘regular’ travel across borders and can limit movement within borders. Its effects are experienced on a day-to-day basis, and as mentioned earlier, it is also often a precursor of further oppression: the ongoing genocide of the Rohingya in Myanmar is just one example, and ethnic cleansings and forced displacements of stateless groups continue to occur around the world (UNHCR, 2014a).

Statelessness always entails an absence of citizenship, often a positively produced structural exclusion (Kingston, 2017). Until relatively recently, the *production* of statelessness was largely unresearched in most academic and policy circles (Kingston, 2013; Waas, 2008). A brief history of statelessness theory will prove enlightening. There have been three major periods of thought. First was the post-WWII moment, when statelessness was largely thought of as an exception to the rule of modern (European) citizenship and nationality. Hannah Arendt is the major author of the period, with her famous work on ‘the right to have rights’, which implied that the nation is the arbiter of rights and that, therefore, a person without a nation is a person without rights (see, e.g., Arendt, 1958; Zweig, 1964; Weis, 1961; Weis, 1962). A change in theory occurred in the post-Cold War moment and around the turn of the millenium, as the collapses of the Soviet Union and Yugoslavia led to a significant rise in denationalized stateless populations. A new discourse around statelessness began to emerge, viewing it as more pervasive than just an ‘exception’, and as an embodied legal space with repercussions on daily life—sometimes with reference to Agamben’s notion of ‘bare life’ (see, e.g., Agamben, 1998; Staples, 2012; Blitz and Lynch, 2011; Gibney, 2013; Kingston, 2013). Most recently, a new turn in statelessness theory is emerging which views the phenomenon as “endemic rather than exceptional...arising from the very structure of the international State system”, rather than as a problem that can be solved by the existing system (Bloom et al., 2017: 5). This new turn has further increased the focus on statelessness as actively produced, which this paper provides evidence to.

Statelessness is increasingly becoming an area of focus for governments and international organizations like UNHCR, which in 2014 began its ‘Global Action Plan to End Statelessness: 2014-2024’ (hereafter the GAP), seeking to “resolve existing major situations of statelessness” worldwide (UNHCR, 2014b). In the GAP, UNHCR (2014b) acknowledges that “the majority of the world’s known stateless populations belong to minority groups” and that “mass deprivation” continues to occur on the basis of existing policies. However, it does not actively call for significant political change. This paper demonstrates *how* some existing policies specifically deprive certain groups of membership entirely, and how others—while overlooked—only allow for partial access to *de facto* citizenship. By tracing the histories and contextualizing exclusionary laws, this paper hopes to shed light not only on *how* statelessness is produced, but also *why*.

*From Colony to ‘Nation-State’: Citizenship Reified, Statelessness Constituted*

Statelessness necessarily emerged, and continues to emerge, alongside citizenship. ‘Citizenship’ is a feature and tool of the ‘nation-state’. Most of the cases of statelessness in this paper have thus arisen as part of nation- and state-building processes, particularly ‘citizen-making’. Therefore, contextualizing the construction of ‘citizenship’ and the ‘nation-state’ in Southeast Asia is vital. Both are non-universal concepts, both emerged from a European context, and both have been heavily shaped by those European precedents (Chakrabarty, 2000; Mamdani, 2012). The nation-state model in Southeast Asia is largely premised upon European models, at least in law. Nation-states are constructed entities, and citizenship is a constructed category: statelessness in its contemporary meaning is thus clearly also constructed. Certainly, however, being ‘state-less’, or living and existing outside of the ruling ‘state’/polity, has been a feature of life for groups and individuals long before the modern concept took form. Further, living ‘outside of the state’ has not always entailed the same pejorative connotation or negative repercussions that modern ‘statelessness’ entails. Indeed, as demonstrated in the previous section, for most of history in the region, the ‘state’ was something to avoid and ‘state-less’ness was a desirable thing for most non-dominant groups (Scott, 2009). This is, without a doubt, no longer the case for most groups and individuals: at some point, a major switch occurred. I argue, building alongside James C. Scott, that this switch was concurrent with the globalization of the ‘nation-state’ model and the growth of ‘distance-destroying’ technologies which allowed the state to reach into every nook and cranny of its territory. The existence of modern statelessness thus emerges from the shadow of the modern state. Let us briefly examine the contemporary ‘nation-state’ for context.

‘Nation’—the politically constructed, ordered, bounded, imagined group that becomes engrained in the ‘habitus’ of the community (Anderson, 1983; Bourdieu, 1990)—and ‘state’—a constructed, bounded, territorialized, constellational assemblage of bureaucratic and human

infrastructures seeking monopolies over violence and movement (Weber, 1965; Torpey, 2000)—are connected by a hyphen. The hyphen implies simultaneous connectedness and separateness, further implying the necessity of some ‘glue’ by which to bring the nation and the state together (Reynolds, 2005). Others have focused on a wide range of types of ‘glue’, from the census (Hirschman, 1987) to the map (Thongchai, 1994) to museums (Anderson, 2016) to national monuments (Reynolds, 2005), and more. This paper specifically considers the vehicle of citizenship as one part of the ‘glue’. As a legal and embodied signifier of ‘belonging’, citizenship, in the formal sense, forms and delimits a body of nationals, institutionalizing ideas of shared commonalities and boundaries. Citizenship also produces differential inclusion and statelessness.

The territory comprising contemporary Southeast Asia is now divided into a network of ‘nation-states’, each pushing right up to the boundaries of its neighbors, leaving no space unchecked or unbound. However, most of the contemporary nation-states in the region have only existed since the 1940s or later—previously, non-state spaces were more prevalent. Most contemporary states in Southeast Asia are the results of *attempted triple alignments* of ethnic group, nation and state, with differing degrees of success. This chapter examines the logics of many of those attempted alignments, examining how self-defined ethnic groups have largely grounded claims to nation- and state-hood in the language of indigeneity to the space, often through comparison to other groups, as discussed in the previous section. These ‘others’ are thus branded as ‘migrants’ or ‘non-indigenous’, often despite having lived in the region for centuries (Hoerder, 2002), and are differentially included in, or entirely excluded from, the polity. In all cases, the primary instrument used for reifying these ethnically-defined nationalistic claims to the territory of the state—the tool used to align ethnicity, nation, and the state—is citizenship. But bounding citizenship through indigeneity claims raises numerous questions. Primarily: who has the political clout to reify those claims? And what happens to groups that are left out?

Almost always, claims of indigeneity in the pursuit of statehood were successfully made by the largest ethnic group in the territory, in consort with some groups but not others. These claims were possible because those groups were either granted power or seized power from their former colonial oppressor, and the writing of Constitutions and citizenship laws reflect the politics of those moments as well as the ramifications of history. The remainder of the section examines three particular cases where these dynamics and questions arise and factor into the daily lived realities of hundreds of thousands of people, in Myanmar and Thailand. These are by no means the only examples in the region or worldwide but have been selected because they are perhaps the most illustrative cases and also have exceptionally high rates of statelessness, giving practical reason to examine the cases closely.

## **Myanmar: The ‘Taingyintha’ and its Repercussions**

Perhaps the most extreme cases of statelessness in the world today are found in Myanmar, making its citizenship laws particularly pertinent to examine. Further, the restrictive citizenship laws in place today have clearly been shaped by migration patterns and are configured around excluding groups perceived as ‘non-indigenous’, including Chinese, Indian and other ‘migrant’ populations, though the definition of latter group is highly controversial. A former British colony, British Burma was closely interlinked with British India, and for most of its history was ruled as part of British India. The imposed importation of laborers and governors to Burma from other parts of British India played a major role in colonial methods of ‘divide and rule’ control. Partly due to this, contemporary Myanmar has had a bloody and turbulent post-independence history, with military juntas, ethnic cleansings, secessionist bids, and what has been coined an ongoing ‘genocide’ by a UN Fact Finding Mission (Council, 2018). The exact details of these events have been well documented elsewhere, so this paper will focus specifically on aspects that are relevant to understanding the progression of citizenship law, exclusion and the production of statelessness in the country.

Religion is of great importance for contextualizing Burmese citizenship law. Traditionally, the Burmese king was considered the defender of Buddhism, and the terms ‘Burmese’ and ‘Buddhist’ were so closely overlayed as to become “synonymous” (Yegar, 2002). It was a crime for a Bamar (Burman) person to convert to any other religion, which was patrolled and severely punished by a large caste of monks. Nevertheless, given Myanmar’s geographic location, Muslim traders arrived in the region by the ninth century and were allowed to settle in some places, particularly the north-west Arakan region, along the Bay of Bengal. Unlike in places like Malaysia and Indonesia, and perhaps based on some combination of rugged topography and the deep-seated Buddhist roots of the region, Islam never attained any great degree of primacy in Myanmar, and Muslim communities largely remained somewhat segregated in Burmese cities, though were officially tolerated and allowed to build mosques (Yegar, 2002). The primacy of Buddhism was written into the 1947 Constitution of the Union of Burma, reading, “The state recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union” (Article 21.1) (1947). The terminology of ‘special position’ evolves from British influence, and is also seen in the *Bumiputera* clauses in contemporary Malaysia, which can also be traced back to colonial histories (Ong, 2006; Mamdani, 1996). The same Constitutional article specifically forbids discrimination on the grounds of religion, but religious biases quite clearly come into play when examining Burmese Citizenship Laws and their concept of *taingyintha*.

Though *taingyintha* is translated somewhat inconsistently, it is usually translated as “national races” or “indigenous races” (in the 1947 Constitution), and it effectively serves as the marker of who is

included or excluded in the political community in Myanmar (Cheesman, 2017). The term itself has a long and political history, emerging from the colonial period, which is an important preface for the way it is used today. It first rose to prominence in the 1920s, with a primarily negative quality—nationalist movements demanded the barring of ‘non-*taingyintha*’ communities from owning or leasing land; to fit into the *taingyintha* in this case simply meant not being European, Chinese or Indian (Cheesman, 2017). The term was used twice in immediate post-independence papers, both in the citizenship section of the 1947 Constitution, in clauses 11.1 and 11.2, where it meant “the indigenous races of Burma”, though there is no clarification as to who this includes. It became of much greater significance due to its use in government documents and rhetoric under the regime of Ne Win in the 1960s, which published seven books on the ‘*taingyintha* of Myanmar’, one for each administrative region: Kachin, Karenni, Karen, Chin, Shan, and, later, the Arakanese and Mon (see, e.g., BSPP, 1967). These books sought to bring together major groups under a socialist regime, highlighting the “valiant” fighting the groups had collaboratively done against the British invaders (Cheesman, 2017). This was during a period in which the “Myanmafication” of the country was happening (Houtman, 1999), in which the government pushed hard for ‘Burma’ to transition into ‘Myanmar’. This nation-building move was carried out to help solidify ideas of solidarity amongst different groups, as ‘Burma’ references specifically the Bamar (or Burman) group while ‘Myanmar’ supposedly references all *taingyintha*—though colloquially it has strong associations with the Bamar people as well (Lintner, 2003). Indeed, despite the ostensible openness of this period, the only language and alphabets taught were the Burmese, and to be cultured and civilized ‘like Burmans’ was critical to being considered part of the *taingyintha* (Treadwell, 2014).

#### *The ‘Taingyintha’ and Burmese Citizenship*

Articles 3, 4 and 5 of the 1982 Burmese Citizenship Law—which is still in effect today—outline the critical importance of being part of the *taingyintha* for accessing contemporary citizenship, as only certain delineated ‘nationals’ are considered eligible to be Burmese citizens by birth. These Articles read as follows:

- “3. Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period prior to 1185 B.E., 1823 A.D. are Burma citizens.
4. The Council of State may decide whether any ethnic group is national [*taingyintha*] or not.

5. Every national and every person born of parents, both of whom are nationals  
[*taingyintha*] are citizens by birth.” (Burma, 1982)

Clearly, in law, concepts of ‘nationals’ and ‘citizens’ are so closely interwoven in Myanmar as to nearly be synonymous. Critically, both are largely premised on the notion of having been present in Myanmar before 1823 (the year before the first Anglo-Burmese War). This is thus the standard for being considered ‘indigenous’. It also reads as ‘present before European colonialism’. The wording of Article 3 is almost identically copied from the Union Citizenship Act of 1948, which was drawn up in the first year of independence.<sup>3</sup> However, Articles 4 and 5 are new. The 1948 Act read, “any person descended from ancestors who for two generations at least have all made any of the territories included within the Union their permanent home...shall be deemed a citizen of the Union” (Union of Burma, 1948). This allowed for relative *jus soli* citizenship—being *taingyintha* was not necessary for citizenship, just documented ancestry. Sections 4 and 5 of the 1982 Law ended that practice by drawing citizenship laws along *jus sanguinis* lines, and requiring not only one, but both parents to be *taingyintha* for citizenship to be passed on.

The Council of State, as per their directive in Section 4 of the 1982 Law, officially designated 135 ethnic groups as *taingyintha*, a number which has not changed since—these are comprised of ‘subgroups’ of the nine wider groups listed in Article 3. As such, indigeneity became not only socially constructed, but also bureaucratically defined and implemented (Nah, 2006). The number was never formally announced, nor was the decision-making behind which groups were included made public—its formulation is in fact rather mysterious (Ferguson, 2015). To this day, it is challenging to find which groups are even officially included, as the list was not added in any appendixes to the Constitution or other laws. Officials primarily pointed to the 1931 and 1953-54 censuses as precedent, the first of which was carried out by the British colonial administration, again bringing colonialism back into the frame. These censuses are thus very relevant to explain.

Citizenship laws, the census and colonialism are closely intertwined. The census was, at one point, how colonizers understood their dominions: today, it retains significance for nation-states seeking to understand—and shape—their polities (Anderson, 1983; Ferguson, 2015). Further, the census is a source of political fictions (Stoler, 2010). Census-makers claim to simply catalogue difference, while actually the act of cataloguing is itself producing difference. Census-makers also claim to solely document social membership, when in reality the census is creating affiliations and subject positions (Stoler, 2010). Combining and building off of these two insights, census officials also claim to simply ‘catalogue *indigeneity*’—that is, to catalogue who is indigenous and who is not—when in practice they are

simultaneously defining and delimiting indigeneity itself, determining who ‘has been here’ and who is ‘foreign’.

If indeed the 1931 and 1953-54 censuses are the basis for the now official 135 groups, as the government claims, there are major inconsistencies. The 1931 colonial census (the final completed colonial census) listed approximately 135 groups based on language, but those groups differed significantly from the 135 ‘National ethnic groups’ listed by the Council of State in 1982 (Cheesman, 2017; Ferguson, 2015). The 1953 census lists Burmese, Karen, Shan, Chin, Kachin and Karenni groups, along with “other indigenous races”. In a second section, Indian and Pakistani, Chinese, European and American are considered foreigners. The 1983 published data uses the same categories for national races, with the addition of Mon and Rakhine, but includes Indian, Chinese, Bangladeshi, Nepalese, “mixed foreign and Burmese”, and “other foreign” as non-*taingyintha* groups (1986). The 2014 Census, the first carried out in 30 years and the first under the new democratic regime, asked about ethnicity in its questionnaire, yet no ethnicity-related data were released in the Overview and Results (Ministry of Labour, 2018b), the Census Atlas (Ministry of Labour, 2018a), or the Census Main Report (Ministry of Labour, 2015). The reason behind this inconsistency was undisclosed, and little is known about what was done with the data. Within the 135 official *taingyintha* races, some groups are listed according to exogamous names, while others have endogamous names (Ferguson, 2015). Some are listed by language, others by general location. Some are listed twice. In short, the *taingyintha* list is the subject of near-continuous controversy, yet it maintains great power in limiting access to citizenship.

Perhaps most important for the purposes of this paper is examining which groups are *not* listed among the 135 official *taingyintha*, as those groups are effectively barred from citizenship by birth and struggle to attain it in any other way, rendering many of them stateless. In many cases, their non-inclusion continues despite significant evidence that they have lived in the territory of modern Myanmar since long before the Anglo-Burmese War, and thus should *definitionally* be included. These groups primarily include Panthay Chinese Muslims, other overseas Chinese communities, Burmese Indians, Gurkha, Pakistanis and Rohingyas (Ferguson, 2015). Legacies of pre-colonial and colonial migration merge together here—Chinese and Islamic migration patterns are swept up with British imperial migration and all of the communities are excluded from membership, despite often long pre-dating the 1823 A.D. cut-off date for potential inclusion in Article 3 the Citizenship Law. Here, ideas of indigeneity and religion also overlap. The largest and most controversial group among those excluded are the Rohingya, who have been primarily categorized as ‘Bangladeshi foreigners’, including officially in the 1983 census, and in a significant amount of government and media discourse since. The Rohingya are a Muslim-majority community living in a Buddhist-majority state, in a region of the country bordering a

Muslim-majority state (Bangladesh). As such, it is easy to see how such xenophobic discourses can maintain staying power, despite significant evidence that Muslim communities have lived in Rakhine state since the region was the Kingdom of Arakan in the early 1400s (Yegar, 2002). Troublingly, in the past few decades, discourses have often transformed into actions. Self-identification as a 'Rohingya' was not allowed in the 2014 census, and members of the community were forced to either self-report as 'Bengali' or not be counted (Ferguson, 2015). Acts of immense violence have been perpetrated against the Rohingya, including ethnic cleansing and, in recent years, to use the words of the UN fact-finding mission, full-fledged genocide (Council, 2018). While statelessness is not the cause of these acts per se, it is a harbinger and a simultaneous targeted cause and symptom of marginalization (Kingston, 2017). Tracing its roots historically allows us to see which groups are targeted, and, to some extent, better understand why. Sadly, it is difficult to imagine any just resolution to the situation in the near future, and, as highlighted in the introduction, even well-intended efforts from the international community, like the NVC program, often backfire (Brinham, 2018).

Clearly, relics of migration patterns, both pre-colonial and colonial—and especially the latter—have played an enormous role in the production of statelessness in Myanmar. Nevertheless, these histories are often overlooked in contemporary discourse on statelessness in the region. Bringing migration back into the fold contextualizes the situation more fully and reveals the inconsistency of the government's argumentation and the hypocrisy inherent within the application of current citizenship laws. It further illuminates how groups are intentionally targeted by these laws, and how migration and indigeneity are used as ways to frame the exclusions in a seemingly apolitical manner.

#### **4. Further Directions**

In the case presented, indigeneity is used to construct a particular exclusive national identity, which, when implemented in citizenship law, produces differential inclusion and statelessness for groups left on the outside. An extended version of this working paper, which can be found in the Oxford University Social Science Library, further considers the cases of Malaysia and Thailand in similar depth, shedding even greater light on the extent to which this is true. Three groups are typically excluded: precolonial migrants, colonial migrants, and groups in borderzones. These groups are not necessarily excluded for the same reasons. This section dives into that critical final question—why? Definitive answers prove elusive, but trends illuminate some possibilities.

The cases of precolonial migrant communities and colonial-era 'migrants' (whose mobilities were governed by the European colonial empire) are relatively clear. Pre-colonial migrants who

established economic or political power, particularly Chinese immigrant communities and religiously-defined groups (whether Muslim in a Buddhist-majority region or non-Muslim in a Muslim-majority region), are differentially included and sometimes excluded from citizenship altogether. For Chinese communities, it seems most likely that their non-inclusion is part of an attempt to weaken their influence in the economic sphere—this is especially clear in the *bumiputera* laws in Malaysia, but also holds up in Myanmar. Colonial ‘migrants’, often South Asian communities who worked as laborers, governors, or auxiliaries in colonial armies, were deeply involved in the power inequalities of the period, often with the effect of marginalizing the ‘indigenous communities’ in the region. The exclusion of colonial-period ‘migrant’ groups seems closely linked to compensation for historical political inequalities and oppressions. In both of these cases, the excluded groups are specifically targeted by legal clauses, seemingly with the goal of reparative justice.

For borderzone groups, however, the motivations are more complex, and each case is unique. In all three states, numerous borderzone groups are included in the community of citizens, while only some are excluded. This differentiation makes some trends possible to ascertain. First, excluded borderzone groups tend to not fit the ‘national’ archetype of each contemporary state, especially in regard to religion. Second, excluded groups are often nomadic, semi-nomadic, or have a history of nomadism, while those included are more often sedentarized. Such groups present a greater threat to states, particularly when moving often and collectively across boundaries. Further, nomadic lifestyles are less ‘legible’ to the state and interact with territory differently, often lacking permanent residences and the documentation residency entails, entailing logistical challenges (Scott, 1998). Third, many excluded groups had been ‘state’-averse for centuries, even posing threats to the ‘state’ as bandits or pirates, and did not register at independence, later finding the window of opportunity closed while the state simultaneously encroached further into the non-state spaces they occupied (Sather, 1997; Cheah, 1988). Finally, excluded groups tend to live in the hardest to reach spaces of the nation-state, whether in wetland areas or high mountains, and as such they were left off of early censuses and could not register at a later date. Often, some combination of these factors exists; they cannot be viewed exclusively. In each case, individual studies are necessary to best understand the context. Greater questions remain about the intentionality of borderzone group exclusions vis-à-vis the first two groups, particularly given the logistical challenges mentioned. Nevertheless, each state is hesitant to confront the presence of such groups directly, aside from largely grouping them into the ‘immigrant’ category as well, often referencing members of such groups as ‘illegal’ or ‘irregular’ immigrants (Petcharamesree, 2015; Acciaioli et al., 2017). In this way, being considered a ‘migrant’—at any point in history—seems to be reason enough to be differentially included or excluded entirely from citizenship.

The case studied in this paper was selected because of the enormously high rate of statelessness in Myanmar. Such a focus has obscured the fact that most countries in the region have effectively no statelessness, or at least much lower rates. There seem to be clear reasons why. In Singapore (Article 121 (1965a)), Lao PDR (Article 11 (1990)), Indonesia (Article 4 (2006)), and Vietnam (Article 14 (2008)), for example, citizenship is attained by birth, regardless of their parent's status: these *jus soli* principles put an end to hereditary statelessness. Similar laws could make an enormous difference in Myanmar, as well as in Malaysia and Thailand. In Indonesia, where President Suharto famously claimed that all Indonesians are “equally indigenous” (Murray Li, 2000), certain clauses specifically protect against statelessness, wherein, for example, citizenship can only be lost so long as “the incumbent does not become stateless because of such negligence” (2006: Article 23 (L.)).

For most of the history of statelessness theory, statelessness itself was considered to be an exception to the rule, a product of simple failed oversight (Bloom et al., 2017). This study has shown why this understanding is unacceptable and untrue. Statelessness is not inevitable nor accidental. Rather, the opposite is true. Statelessness is actively produced as a method of excluding particular groups from access to rights and resources. This clear demonstration then must be taken one step further: because statelessness is actively produced by states, it cannot be ‘solved’ apolitically—the mere existence of stateless groups and individuals demands political action. Until politics are brought back into the discussions on ending statelessness, all efforts will merely be window dressing.

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<sup>1</sup> The information throughout this section comes from Brinham (2018), who has changed Nural's name for security purposes.

<sup>2</sup> I use this term rather than ‘borderland’ to avoid a terrestrial bias, as many groups live along aquatic boundaries.

<sup>3</sup> In the 1948 Act, ‘racial group’ was used instead of ‘ethnic group’, and the Rakhine region was referred to as the Arakanese region (Union of Burma, 1948). All else is verbatim.

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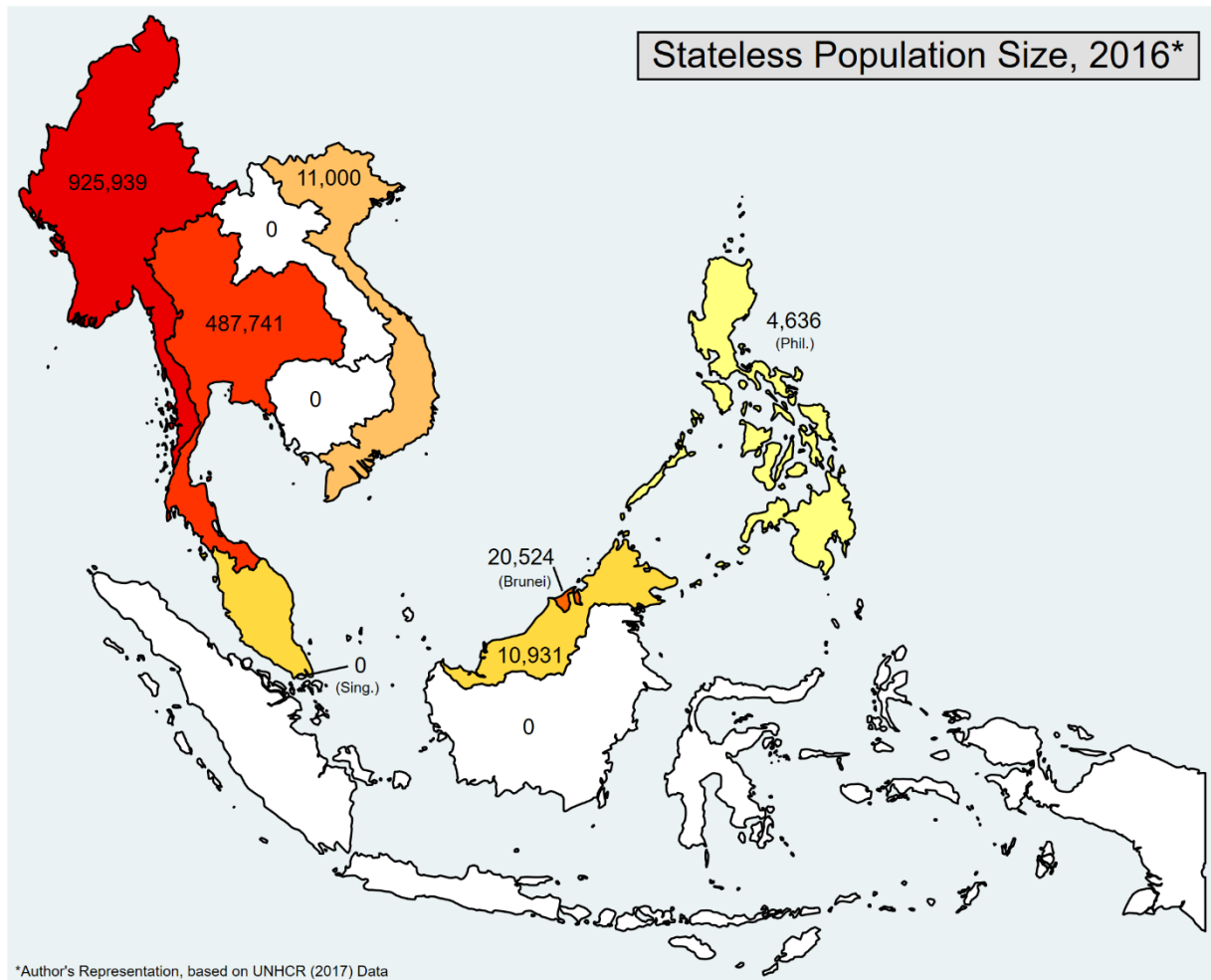
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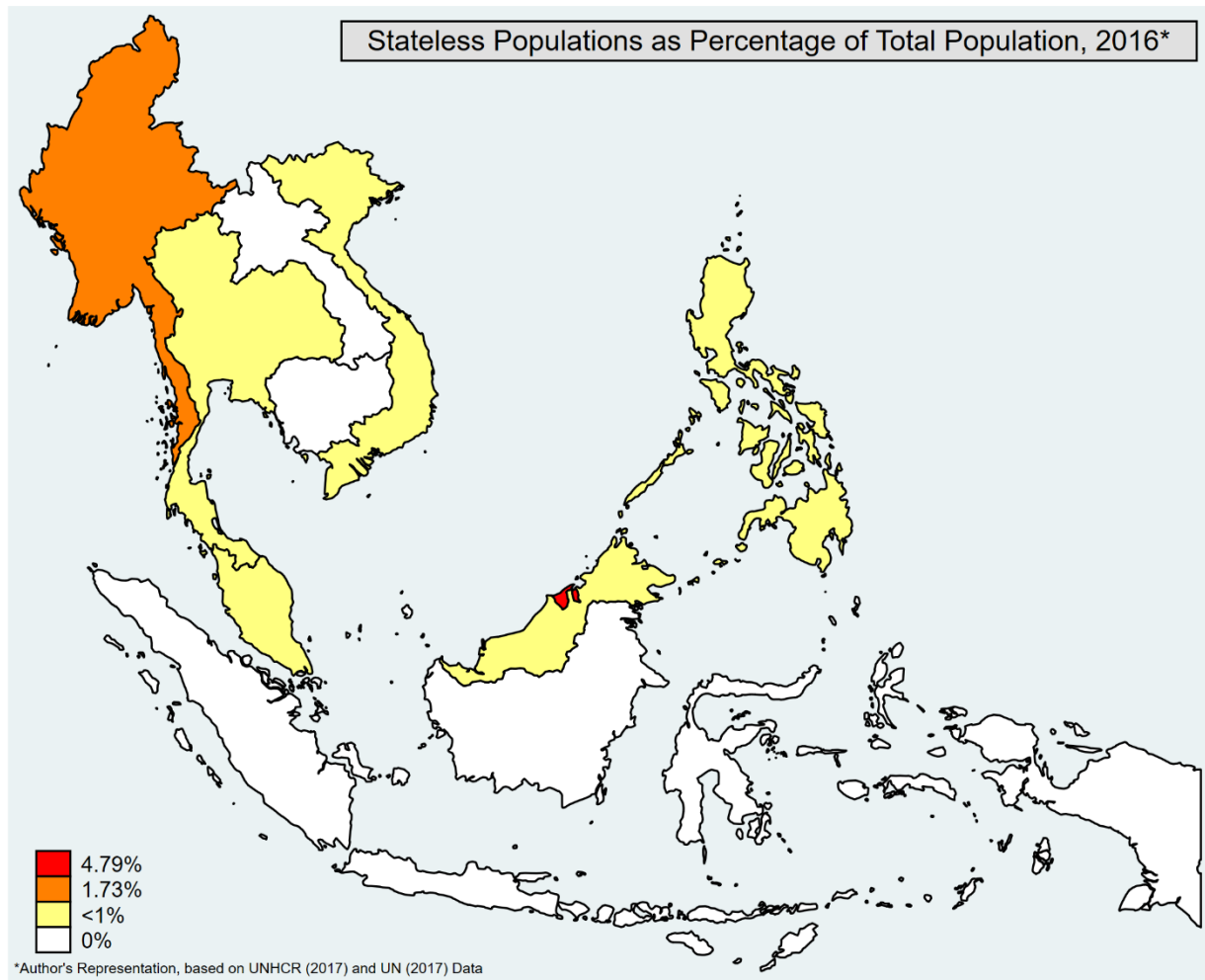
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## Appendix: Relevant Maps

Map 1



Map 2



Map 3

