

**Law and ‘race’ in the citizenship spaces of Myanmar:  
Spatial strategies and the political subjectivity of the Burmese-Chinese**

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Abstract: As Myanmar undergoes political and societal transition, observers are asking questions about citizenship and ethnic identity. How does one think about citizenship and people's negotiations with law in political-legal regimes that do not subscribe to liberal democratic norms? This paper investigates how law marginalizes the Burmese-Chinese minority in Myanmar and the nature of their legal participation. Since law asserts cultural power impacting the way people think and behave, we engage with the concept of legal consciousness to understand how perceptions of legal vulnerability shape political subjectivity ambivalently. The paper highlights the spatial strategies and everyday practices the Burmese-Chinese deploy to navigate oppressive laws, but signals that internal social divisions and geopolitical considerations deter collective action towards rights assertion. It argues that studying the multiple sites and scales through which law is engaged contributes towards recovering citizenship aspirations where engagement with power and authority are articulated differently from Western norms.

Citizenship, law, legal consciousness, ethnicity, ‘race’, Myanmar

**Introduction**

As Myanmar<sup>1</sup> undergoes political and societal transition, observers are asking urgent questions about citizenship and ethnic identity. Academic studies and popular representations of Myanmar portray it as a territorially divided country troubled by ethnic and religious violence, such as the sectarian conflict concerning the legal status of Muslim Rohingyas in Rakhine state. Yet valorizing ethno-religious violence occludes the struggles of groups that engage with legal oppression differently. This article focuses on how law shapes the citizenship spaces of the Burmese-Chinese and analyzes their spatial engagement with oppressive laws. Law is more than a juridical category found in formal

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institutions; it encapsulates cultural power that perpetuates power relations in space, but is in turn shaped by the spatial context in which law is implemented (Blomley 1994; Hyndman and Mountz 2008; Varsyani 2008; Coleman 2012; Staeheli et al. 2012). This socio-spatial constitution of law constrains the recognition and rights of certain social groups in spaces of citizenship (Painter & Philo 1995). Spaces of citizenship refer to the physical territory in which citizenship status is secured, and the sites where social groups express their identities and engage the state or other members of society (henceforth citizenship spaces).

“Burmese-Chinese” (*miandianhuaren*<sup>ii</sup>) refers to persons of Chinese ethnicity who are generationally settled in Myanmar and have adopted localized customs. Most have Burmese citizenship now but their quest for legal recognition has been protracted and remains conditional in several respects, as this paper discusses. The Burmese-Chinese accumulated significant commercial wealth, incurring the resentment of Burman nationalists which is accentuated by controversial investments representing China’s geopolitical and economic interests in Myanmar. The Burmese-Chinese seek to embed themselves in the local society as a means to gain greater acceptance while continuing to navigate oppressive laws and nurture their cultural identity, albeit in ways that reflect the heterogeneity of the Chinese population in Myanmar. The Burmese-Chinese use multiple emic identity labels to describe the different groups of Chinese in Myanmar (e.g. *laohuaqiao*, *yunnanren*, *xinhuaqiao*). These labels connote overlapping temporal and spatial dimensions such as the period of migration or locality of out-migration.

The contemporary situation of the Burmese-Chinese is less well documented compared to Chinese communities elsewhere given Myanmar's former isolationism. Unlike the Chinese in liberal democracies who mount legal resistance to achieve civil rights, resistance to oppressive laws appears absent amongst the Burmese-Chinese. The ostensible absence of legal resistance suggests the need for a more nuanced vocabulary to capture how marginalized groups that seemingly do not challenge the law in fact negotiate it in subtler ways than offered by framings of legal resistance that invoke civil rights. For this we engage with the concept of legal consciousness, namely the ways in which people understand and navigate the law (Nielsen 2004, 7), to examine how social groups respond to law even if legal mobilization seems imperceptible.

Our study illuminates how marginalized groups interact with oppressive legal conditions but flags up issues the Burmese-Chinese face because of their immigrant histories and ties with China. Their legal consciousness is characterized by vulnerability under the rule of an ethnocratic state and tenuous Sino-Myanmar relations, particularly given China's extraterritorial ambitions in the ASEAN region and beyond.

Our article resonates with Jazeel's (2014) call to grasp alterity that is not easily captured through extant knowledge structures.<sup>iii</sup> Informed by postcolonial perspectives on citizenship and subalternity (e.g. Roy 2011, Dajani 2012; Isin 2012), we show that the case of the Burmese-Chinese signals how political subjectivity and legal consciousness produce spatial strategies that are not reducible to resistance or passivity towards subjugation. In framing the Burmese-Chinese as subalterns, we are aware of counter-

arguments that portray them as wealthy elites, but these essentialize Chinese identity and gloss over multiple axes of subordination (e.g. ethnicity and migration genealogies).

To recap, this article considers how legal consciousness illuminates people's negotiations with law even when legal resistance is imperceptible. It argues that studying the citizenship spaces where social groups nurture their cultural identities reveals how they navigate legal oppression, thus contributing towards recuperating subaltern political subjectivity. The next section conceptualizes how law shapes migrant experiences in citizenship spaces and engages postcolonial and subaltern studies to contextualize the political subjectivity of subjugated knowledges. After the methodology discussion, we consider the social patterns of Chinese migration to Myanmar and laws that marginalize the Burmese-Chinese. Then we discuss the spatial strategies they deploy to circumvent and subvert such laws. Our conclusion underlines the geographical aspects of our analyses and the citizenship aspirations of subaltern subjects, while remaining attentive to the ambivalences wrought by the interplay of law, hegemony, and agency.

### **Law and political subjectivity in citizenship spaces**

Political institutions, social relations, and cultural systems constituting law is anchored in and shaped by spatial processes (Blomley 1994; Delaney et al. 2001). The extent to which legal recognition is given to the rights of social groups to express their identities spatially marks them as deserving or less deserving persons in citizenship spaces. Migration scholars argue that law can legitimize social exclusion or function equivocally to produce legality/illegality through spatial and scalar framings (Kobayashi 1990;

Hyndman and Mountz 2008; Varsyani 2008; Coleman 2012; Staeheli et al. 2012). For example, at the India-Bangladesh border the law works ambiguously to establish the extra-legal status of enclave dwellers as residents of a “home country” despite denying them recognition and rights, while the “host country” considers them citizens of another country and withholds legal recognition (Shewly 2013).

These studies show that the spatial deployment of law is integral to the experience of citizenship for those whose membership to a political community is precarious. The inconsistent application of laws by different legal actors and across legal systems adds to the complexities of citizenship (Staeheli et al. 2012). In Myanmar, law confers rights that maintain Burman hegemony over minority groups (Cheesman 2015). Of interest to our article is how the application or absence of law impacts the citizenship experiences of the Burmese-Chinese. Citizenship categorization in Myanmar is premised on the applicant’s ethnicity and period of settlement. Because of their Chinese identity and immigrant histories, the Burmese-Chinese are deemed less deserving of recognition and rights. Yet their legal responses are constrained by social divisions within the Burmese-Chinese population and tenuous Sino-Myanmar geopolitical ties. The “multitude of coterminous belongings” (Yiftachel 2009, 249) in which the Burmese-Chinese are embedded impact their political subjectivity.

Influential in law and citizenship scholarship are examples of how social exclusion in North America or Europe can be challenged through legal norms or extra-local networks (e.g. Varsyani 2008; Staeheli et al. 2012; Strunk & Leitner 2013). Such citizenship

aspirations are couched as overt or covert legal resistance (McCann & March 1995; Ewick & Silbey 1998; Chua 2012). However, scholars studying subaltern agency, especially in oppressive political contexts, argue that the intentionality and political consequences of actions have to be determined lest they are too easily framed as resistance (Bayat 1997). This approach speaks to Katz's (2001, 1220) argument urging researchers who set out "looking for resistance" to analytically separate different responses according to political conditions.

Bayat (1997) proposes the notion of quiet encroachment to describe the "silent, patient, protracted and pervasive advancement of ordinary people" (2005, 546) that seek to secure safety and gains, rather than challenge domination as suggested by the label "resistance". For Yiftachel (2009), spaces that exist partially outside the gaze of the state function as "bases for self-organization, negotiation and empowerment" (Yiftachel 2009, 243). In such "gray spaces", groups excluded arbitrarily from citizenship experience changing political subjectivities that range from quiet perseverance, to memory building for countering repression, and conspicuous political mobilization to institutionalize change. Roy (2011) observes that such ideas usefully trouble analyses that conflate subaltern agency with political modernity, underlining the tensions, contradictions, and ambiguities found in subalternity.

Although the above analyses offer more nuanced interpretations of subaltern responses to oppression, they remain bound to an ontological reading of social change prompted by collective action. Robins et al. (2008) critique the conceptual blind spots that come with

applying normative convictions from western institutions of “democracy” and “citizenship” to the developing world. They draw attention to political tactics of “strategic non-participation” and compliance with patron-client relations. Bringing to view the political subjectivity of alternative knowledges remains a critical project for citizenship researchers (Ho 2008), instead of taking western norms as a referent in projects to “modernize” rights-bearing subjects (Isin 2012; Sabsay 2012; Massoud 2013). Political subjectivity outside of recognized (Western) forms may be articulated differently and it is important to “uncover vocabularies [that interrogate] the domains of what has been extracted as legible politically” (Dajani 2012, 685). For Thawngmung (2011, 655), studying quotidian practices in Myanmar enable a better appreciation of the “multifaceted role of the political dimensions of life in authoritarian states”. The paradoxical aspects of marginalization, legal agency, and stasis in citizenship spaces form the subject of our article’s inquiry. We find that the Burmese-Chinese experience legal oppression and use spatial strategies to navigate the law, without intending to assert rights collectively. To understand this paradox, we turn to the concept of legal consciousness.

Across the multiple definitions of legal consciousness lies a common focus on how individuals and social groups draw on legal discourse to comprehend their life-worlds and engage with the law (Albiston 2006). Gramscian hegemony informs the study of legal consciousness wherein cultural symbols and institutional structures naturalize power arrangements through coercion and consent. Legal consciousness is not merely experienced individually, but operates as a social ontology and cultural system that contributes to “the collective construction of legality” (Silbey 2005, 334). It is at the

collective level that political subjectivities and legal responses (whether action or inaction) take form, impacting citizenship spaces. In studies linking subaltern agency to political mobilization (e.g. Yiftachel 2009; Bayat 2002), legal consciousness functions in the backdrop as the subjects' interpretation of the law leads them to incrementally advance what they consider legally permissible (Marshall & Barclay 2003).

Here it becomes tempting to equate legal consciousness with agency/action but consciousness about the limits of legal protection may equally deter rights assertion (Boittin 2013). Social situatedness impacts legal consciousness and whether social groups are willing to confront the law (Nielsen 2004). Studies of Chinese populations in North America or Europe usually foreground the civil rights advances made against racial exclusion (Kobayashi 1990; Cole and Chin 1999). Comparatively, Chinese minorities in several multi-ethnic Southeast Asian countries made few gains in claiming equal citizenship because of legal ideologies that privilege racial hegemony (e.g. Than 1997; Tan 2001; Harding 2012). Abject subjects refrain from seeking legal redress because they believe that the legal system is prejudiced or privileges the social groups to which the perpetrators belong (Bumiller 1988; Nielsen 2004).

But the absence of discernible political mobilization does not mean passivity. Orientalist discourses portraying the Chinese as subjects unable to comprehend individual rights deprive them of legal or political subjectivity, and culturally disqualified from citizenship (Ruskola 2002). In fact the interstice between action/inaction bears productive potential for understanding how citizenship spaces take shape for marginalized groups, like the

Burmese-Chinese who have limited recourse to justice claims. They navigate legal constraints in subtle ways under oppressive political regimes. Our empirical analyses show how legal consciousness shapes subaltern political subjectivity, thus advancing postcolonial endeavors to recuperate the political subjectivity of subaltern subjects (e.g. Isin 2002, 2012; Dajan 2012).

### **Methodology**

The research informing this article entailed ethnography and interviews in homes, schools, religious spaces, workplaces and other sites associated with Chinese populations in Yangon, Mandalay, and Lashio (from 2012-2013). Yangon and Mandalay were our initial field-sites but the research process directed us towards Lashio in Shan state, which figures prominently in the migration narratives of the Burmese-Chinese. Complementing our ethnography are semi-structured interviews conducted with 18 persons who identify as Burmese-Chinese and have leadership positions within the Chinese associations found in Myanmar. Each interview lasted 45 to 90 minutes. We did not record the interviews (as requested by the respondents) and took fieldnotes instead. The interviews were in Mandarin except when respondents expressed difficulty translating Burmese or Chinese dialect words; in such situations an interpreter helped. Given the small number of Burmese-Chinese associations in Myanmar, we will not identify the linguistic or regional affiliations of our respondents so as to protect their identities. By tracing the events narrated, we identified legal documents for analyses and cross-checked narratives of citizenship experiences.

Obtaining written policy directives on citizenship proved challenging in Myanmar. Processes of amending, repealing and enacting legislation or regulations remain opaque despite democratic transitions. Some Burmese Parliamentarians, judges and lawyers admit to difficulty keeping track of policy and legal developments.<sup>iv</sup> We recruited a Burmese research assistant to collect and translate Burmese language legislation and documents, and communicate with lawyers and Parliamentary contacts to verify our interpretation of these documents. We supplemented our fieldwork with analyses of English language news and Chinese language academic publications on the Burmese-Chinese. The ethnographic research provided opportunity to understand how the Burmese-Chinese interpret and live under the legal frameworks that shape their everyday lives, while the semi-structured interviews allowed the researchers to seek clarification and elaboration on past events and collective aspirations. Together these reveal the complex interplay of community politics as well as their national and cross-border apprehensions.

### **Citizenship spaces of the Burmese-Chinese**

Ethnic segregation found in Myanmar today is linked to the “divide and rule” legacy of British colonialism (Gravers, 1993); following decolonization, the political leadership under U Nu and Ne Win encouraged Burman nationalism and laws to justify unequal treatment towards ethnic groups like the Burmese-Chinese. The repressive laws affected the wider Burmese population but we show how certain laws and policies affected immigrant minorities like the Burmese-Chinese specifically. First we turn to the social patterns of Chinese migration to Myanmar.

### *Successive Flows of Chinese Migration to Myanmar*

Myanmar and China have longstanding economic and political ties. Dating to dynastic times, Chinese migrants arrived in Myanmar from adjacent Yunnan province as caravan traders by land and after 1949 as refugees or nationalists fleeing the Chinese communist regime. Others came from Chinese coastal regions by sea or via Southeast Asia, particularly during the late 18th and early 19th centuries as merchants (Roberts 2011; Chang 2014<sup>v</sup>). These successive migration flows contribute to the linguistic and cultural diversity of the Chinese in Myanmar (He 1993; Le Bail & Tournier 2010; Roberts 2011; Chang 2014). Today the Burmese-Chinese comprise about 3 per cent of the population in Myanmar. Attitudes towards them are checkered historically by communist and counter-revolutionary events in China (Than 1997; Tong 2011). Although generationally settled in the country, their immigrant backgrounds classify them separately from the officially recognized “races” because of citizenship regulations premised on lineage and period of settlement (see next section).

Our fieldwork identified three distinct populations of Chinese people in Myanmar.<sup>vi</sup> Those settled in Myanmar for three or more generations are concentrated in Mandalay and Yangon; we refer to them as the “old-timer” (*laohuaqiao*) Burmese-Chinese. They identify by dialect groups, mainly the Hokkien, Cantonese and Hakka, although these groupings cut across regional and other affiliations.<sup>vii</sup> A second group known in local parlance as the “Yunnanese-Chinese” (*yunnanren*) has become prominent in Mandalay and Yangon. They originated from Yunnan province and settled in Shan and Kachin

states after 1949 but moved to Mandalay and Yangon from the mid-1990s onwards (Chang 2014). Many claim longer-term ties or cultural attachments to Myanmar and identify as Burmese-Chinese too.

The old-timers label the Yunnanese-Chinese as the “new rich”, referring derogatorily to the suspected illegal wealth of the newcomers and to differentiate them from the old-timers who claim to “live more modestly” (interviews 2012; also see Roberts 2011). Purchase of landed property in Mandalay and Yangon by the Yunnanese-Chinese has allegedly driven up real estate prices, incurring local resentment (Reuters 2012; Chang 2014). In Mandalay and Yangon, we visited the posh neighborhoods where the Yunnanese-Chinese are said to own ostentatious properties. During one visit, a leader from the old-timer Burmese-Chinese community pointed out homes with Chinese lanterns or banners bearing auspicious Chinese characters and said, “The old-timers remove such symbols from our homes... in case of trouble we are less likely to be targeted”. When we tried to take photographs, he hastily stopped us and pointed to adjacent properties that had sentry posts with guards in uniform. He explained: “these homes belong to former military generals... if the guards stop us you would be safe because you have legal protection from your government but I am Burmese-Chinese and no one will protect me”. This “ethnographic encounter” underlined to us the heterogeneity of the Burmese-Chinese in Myanmar and signaled the theme of legal consciousness that would recur across our three field-sites.

Distinct from the Burmese-Chinese (i.e. old-timers and Yunnanese-Chinese) is a third group of investors and professionals from Mainland China. They have Chinese nationality and are temporary migrants in Myanmar (*xinhuaqiao*). There are also traders and lowly skilled migrants but it is the arrival of the former accompanying China's natural resource extraction and infrastructure projects in Myanmar to fuel China's national growth that causes controversy. Conspicuous displays of Mainland Chinese capitalism to advance China's national interests, such as building a gas pipeline that extends across Myanmar, exacerbate anti-Chinese sentiments that have long existed amongst Burman nationalists (Haacke 2010; Le Bail & Tournier 2010). To illustrate the perceptible presence of Mainland Chinese capitalism in Myanmar, one of the Burmese-Chinese leaders brought us to the car-park of a prominent hotel in Mandalay and gestured at the rows of shiny black land cruisers lined up in parking lots reserved for them by the hotel management. The sturdy cars with tinted windows are imported for Mainland Chinese employees of a large Chinese corporation to access difficult terrain in Kachin and Shan states where natural resource extraction is ongoing. The uneasy presence of this third group of Chinese people representing Mainland Chinese capitalism in Myanmar impacts the milieu in which the Burmese-Chinese are embedded.

The heterogeneity of the Chinese population in Myanmar and stereotypes signaled here is suggestive of how social problems associated with co-ethnics can affect the safety of the rest. The next section examines the national laws and historical events that compound the legal vulnerability of the Burmese-Chinese.

*Laws constituting Chinese identity in citizenship spaces*

Despite the heterogeneity of the Burmese-Chinese in Myanmar, oppressive laws produce a shared legal consciousness that situates them as vulnerable subjects in citizenship space. The 1947 Constitution of the Union of Burma<sup>viii</sup> conferred official status upon eight main groups<sup>ix</sup> (sub-divided into 135 “national races”), but excluded “immigrants” like the Chinese who are generationally settled in Myanmar. Citizenship law in Myanmar came into effect in 1948 and was amended several times until introduction of the 1982 Myanmar Citizenship Law<sup>x</sup>, which categorized citizens according to their ethnicity and settlement period. First, “Burma citizens” are those from ethnic groups that settled in the Union before 1185 B.E., 1823 A.D; second, “Associate citizens” are those born in British-ruled territories and have resided there for at least eight years before 1 January 1942 or 4 January 1948; and third, “Naturalized citizens” are those who applied for citizenship after 1948. Such national laws produce “spatially differentiated rights, responsibilities and sense of belonging” (Desforges et al. 2005, 440).

Only “Burma citizens” are entitled to the pink Citizenship Scrutiny Card, whereas the other two groups are given blue cards or green cards.<sup>xi</sup> “Associate Citizen” and “Naturalized Citizen” are secondary to “Burma Citizens” since the pink cards confer privileges in government employment, contractual transactions, and domestic travel (interviews 2012-2013). Older identification documents still used include the Union of Burma Certificate, National Registration Cards, and Foreigner Registration Certificate (FRC) for “foreigners” who are generationally settled in Myanmar but considered ineligible for citizenship.

The FRC status, which predates the “Associate” or “Naturalized” categories created by the 1982 Citizenship Law, used to be common amongst the Burmese-Chinese because it attested to their migration histories and “temporary” status in Myanmar (Fan 2012). Our ethnography and interviews across the three field-sites collectively indicate that precarious rights under the FRC status remain a recent and vexing memory to the Burmese-Chinese. First, bearing “foreign national” status excluded them from professional qualifications in law, medicine and accountancy (Wang 2008). This channeled more Burmese-Chinese into entrepreneurship and property ownership, which meant nationalization policies during the 1960s had greater repercussions for them. Second, they cannot qualify for a Myanmar passport so travelers carry an official document verifying their birthplace and travel permission. But their FRC cards are left with the immigration office prior to departure. A Burmese-Chinese respondent in Yangon who formerly had FRC status explained, “I was not allowed to have a passport and if I traveled I cannot be sure if I would be allowed to return... according to the law we should have citizenship rights but the military used directives to contradict it” (interview, 2012).

Although many of the Burmese-Chinese have switched to the “Associate” or “Naturalized” citizenship categories, they remain conscious of their conditional legal status in the past (as FRC bearers). “Associate” and “Naturalized” citizenship status are not equivalent to “Burma Citizen”. Immigration and citizenship laws impose legal vulnerabilities and act as tools of social control (Coleman 2012; Staeheli et al. 2012). Although such laws are applicable to the wider Burmese society, the settlement period

tied to citizenship categories marks the Burmese-Chinese as secondary citizens with “quasi-citizenship” (Shewly 2013, 3), which impacts their legal consciousness.

The implementation of laws by law enforcers and memories of repressive laws reinforce their legal consciousness of vulnerability. During Ne Win’s regime, multiple laws and policies served to nationalize assets. Under that period of intense societal change, the Burmese-Chinese leaders express difficulty recollecting which legal instruments were used to confiscate assets. Yet one law that stands out is the Enterprise Nationalization Law (1963). While it impacted private enterprises generally, its effects were felt most by the Chinese (Tong 2012).<sup>xiii</sup> Generations of Burmese-Chinese with FRC status had been excluded from employment in professional occupations, driving them to business and property ownership. Ne Win’s nationalization agenda confiscated Chinese businesses, property and land on which Chinese schools were sited. At one school in Mandalay, an elderly Burmese-Chinese leader recounted that the premises escaped confiscation only because it housed a Buddhist temple. Until today they fear that space would be retracted if anti-Chinese sentiments, such as the 1967 riots in Yangon (Luo 1997; Roberts 2011), stirred again (interview, 2012). Past disempowerment enacted through law, the spatial dispossession of schools and private property, and restricted rights cement in their legal consciousness both abjectness and fear of discipline.

Lastly, laws and policy directives curtailing the freedom of association constrain the willingness of the Burmese-Chinese to openly claim physical and cultural space for nurturing their identities. Under the former military regime, the 1908 Unlawful

Associations Act and Law No. 6/88 restricted associational activity.<sup>xiii</sup> Such legal instruments criminalized the formation of organizations without state approval and participation in such organizations. Reflecting on the reason for such laws, one Burmese-Chinese leader in Lashio opined, “the military worried about associations [being politicized]” (interview, 2013). Traditional village associations, funeral societies, and cultural groups could exist (South 2004), but the Burmese-Chinese express reticence about forming such associations because their legal consciousness is germinated by collective knowledge of ethnic discrimination by law and law enforcers (also see Fan 2012). Although such legal instruments are directed against political opposition, the discourse can be used to intimidate social groups deemed transgressing the norms advanced by Burman nationalists. As Cheesman (2015, 114) observes of Myanmar, “the public enemy is the person whose attempts to exercise conditional privileges ceases to be efficacious ... because the person is flawed politically.”

In Myanmar, the equivocal nature of juridical arrangements means any law can be used to derive advantage for a social group holding power over another. The laws discussed above apply to Burmese society generally, but the legal consciousness of the Burmese-Chinese is constituted by past incidents of ethnic discrimination through the use of multiple legal instruments, policies and norms. Nonetheless, the next section shows that rather than retreating into inaction, the Burmese-Chinese find other means of nurturing their identities socially and spatially in Myanmar.

### **Burmese-Chinese navigating legal oppression in citizenship spaces**

Citing Spivak (2005), Roy (2011) cautions against presuming that agency connotes political struggle for social change. This section first shows that cracks and opportunities (Ewick & Silbey 1998) amidst the uncertain imposition of laws allow the Burmese-Chinese to navigate legal oppression by circumventing and subverting the law in “gray spaces” (Yiftachel 2009). Circumventing the law, which refers to how groups sidestep the law, is analytically distinct from subverting the law where transgression contrary to the intention of the law happens. We distinguish between them but recognize that these processes feed into one another. The second part of this section is careful to underscore, however, that such spatial strategies are not aimed at confronting oppressive laws. Here we turn to the work of Cons (2013) and Shewly (2013) to situate our understanding of subaltern political subjectivity and show how legal consciousness acts against rights assertion.

#### ***Circumventing and subverting the law through spatial strategizing***

Myanmar’s citizenship law, compounded by the discriminatory laws on nationalization and the freedom of association, affects the legal consciousness of the Burmese-Chinese. Internal social divisions characterized by linguistic and/or regional affiliations inhibit collective claims to advance citizenly recognition. Nonetheless, across the different groups we observe similar strategies to substantiate their citizenship recognition and counter their vulnerability under the law.

Rather than confronting oppressive laws, different groups of Burmese-Chinese circumvent them by subscribing to cultural patterns of compliance (Robins et al. 2008). Circumventing the law outwits the intention of oppressive laws as these groups find spatial strategies that offer them recognition and protection: they carve out informal gray spaces, considered aberrant yet tolerated by the state (Yiftachel 2009). The different dialect groups (i.e. Cantonese, Hokkien, Hakka and Yunnanese) run Chinese temples that practise Buddhism. These meeting spaces enable the Burmese-Chinese to strategically align themselves with Buddhist monks. Buddhism helped the former military regime gain “moral and political authority”, promote “patterns of patronage” (Schober, 2005, 114 and 118) and subordinate ethnic and religious differences under a state religion (Philp and Mercer 2002). In this context, the Burmese-Chinese dialect groups secure good will by making religious donations and inviting the monks to preside over events at the temple spaces where the Burmese-Chinese celebrate their cultural identity. These represent more than acts of good deeds; the Burmese-Chinese see it as an informal alliance. A Burmese-Chinese leader in Mandalay said, “If anything happens to us, we hope the monks will stand up for us” (interview, 2012). Conscious of their vulnerability, the Burmese-Chinese circumvent their partial citizenship legitimacy by securing alliances with the monks in temple spaces.

But such tactics can be a double-edged sword. During the 1988 pro-democracy protests, the Burmese-Chinese leaders in Mandalay felt pressured to join the coalition led by the monks. An elderly Burmese-Chinese leader who witnessed the event, said: “It is not beneficial for us to refuse so about a hundred of us [nominated by the clan associations]

went to ‘show face’ then returned” (interview, 2012). The colloquialism, “show face” (translated from Mandarin), refers to a Chinese cultural practice of demonstrating respect. If they did not send their representatives, they would transgress a social hierarchy of patronage. Narratives like these articulate the political subjectivity of the Burmese-Chinese as citizens who are conscious that the law can be used against them rather than fortify their status. Their protection is contingent on strategic patron-client relations that substantiate their citizenship (Robins et al. 2008). Tactics to circumvent, or sidestep, the law may be construed as avoiding confrontation with the law, but they also serve to counteract oppressive laws and law enforcement.

Religious spaces also provide a platform to subvert legal restrictions on associational activity. The different groups of Burmese-Chinese we studied expressed a collective belief that seeking formal permission to form social spaces for promoting their cultural identities is unlikely to obtain official approval. Rather, their consciousness of how the law can be used to prohibit formal associations leads them to capitalize upon an exemption for groups with “purely religious functions” and present themselves publicly as temples. Like Roberts (2011) and Fan (2012), we found that the temples run by the Burmese-Chinese function as clan associations and Chinese language schools run separately from the compulsory Burmese educational system. The language schools organize classes for different age groups from as early as 5 a.m. until evening time. One of the schools was holding a singing competition for adult learners the evening we visited. As the competitors crooned Chinese pop songs, the principal proudly pointed out the Burman and other non-Chinese students amongst them. He explained that they desire to

acquire Chinese language skills because of growing partnerships between China and Myanmar. Efforts at preserving Chinese language and culture are akin to “memory building” that serves to counter hegemonic framings of national and cultural memory (Yiftachel, 2009, 251), but they also help cultivate cross-cultural ties that bolster social protection for the Burmese-Chinese (resembling the strategic alliances with the monks).

Using the temple spaces as clan associations and language schools risks contravening legal restrictions on associational activity. In one of the schools located further from the centers of power in Yangon and Mandalay, amongst the statues of Buddha on display (revered by the Burmese) is one of the Chinese scholar-deity Confucius. A government official who was invited there to participate in a religious ceremony (a tactic to secure strategic relationships with power-brokers<sup>xiv</sup>) questioned the legitimacy of paying spiritual homage to Confucius, but the Burmese-Chinese leadership deftly explained that Confucian philosophy teaches virtues akin to Buddhism. The Burmese-Chinese employ tactics that subvert and reinterpret the law in ways advantageous to them, even if contrary to the law’s intent. Their legal consciousness of what is permissible leads the Burmese-Chinese to advance their own version of legality (Marshall and Barclay 2003) in the temple spaces.

### ***Community politics and cross-border geopolitics deterring collective action***

The previous section demonstrates how the legal consciousness of the Burmese-Chinese prompts them to deploy tactics for circumventing and subverting the law using temple spaces. These spatial strategies outwit oppressive laws that subjugate their citizenship

status and capitalize upon legal exemptions to nurture their cultural identities. Nevertheless, they remain conscious of how their relationship to the political order and social world is structured by law (Albiston 2006; Silbey 2005). They do not see circumventing and subverting the law through communal spaces as a vehicle for collective mobilization because they fear legal recrimination. Under what circumstances does legal consciousness lends itself to stasis rather than engendering social change? Our study found that for the Burmese-Chinese, it has to do with social divisions amongst co-ethnics and how their legal consciousness of subordination under national laws intersect with fears of abandonment in the absence of extra-legal protection (Shewly 2013).

Despite collective narratives of legal oppression and survival tactics, indicative of the social divisions within the Burmese-Chinese population are efforts to create social distance from co-ethnics at risk of legal problems. A common trope told by the old-timer Burmese-Chinese is how the Yunnanese-Chinese allegedly obtain illicit identity cards from the black market (interviews 2012). The criminal activities associated with the Yunnanese-Chinese lead the old-timers to feel concerned that their illegal deeds would be “mistaken for ours” (interviews 2012). Our findings echo Roberts (2011, 87) who observes that the Chinese that lived in Lower Burma for several generations want to be seen as distinct from the Yunnanese-Chinese and “an integral part of the local Burmese society, not privileged foreigners”. The Yunnanese-Chinese leadership, however, say that the culprits are new migrants from Yunnan province in China rather than their community which has more “legitimate” means of being legally recognized (interviews 2013). They leverage on their ethnic affinity with the *kokang* (who have official status

under the Constitution) to obtain documentation “proving” their lineage and qualify for the coveted “pink” identity cards. Regardless of the citizenship “legitimacy” of the Yunnanese-Chinese, such contradictory accounts signal social divisions that impede collective mobilization.

Exploring their social relations in everyday settings further signal attempts to avoid suffering legal recrimination for the wrongdoings of co-ethnics. The old-timer Burmese-Chinese in Yangon and Mandalay are conscious of growing racial animosity and downplay their identity by removing cultural symbols from the exterior of homes, whereas in Lashio, populated mainly by the Yunnanese-Chinese, front doors bearing Chinese lanterns and banners are commonplace. Nevertheless, some remain cautious about public displays of cultural identity. A wealthy Yunnanese-Chinese businessman said, “Those who know the local political elites removed such symbols because they warn us about the sensitive perceptions the poorer Burmese have towards us Chinese now” (interview, 2013). Despite forging connections with local political elites to find protection, Burmese-Chinese like him remain conscious of their legal subjugation. The penetration of law and legal consciousness in everyday lives can be found in the narratives and social practices (Silbey 2005) used to create distance between them and law’s disciplining effects on co-ethnics.

The equivocal role of law also features prominently in their legal consciousness when ethnic and ancestral connections with adjacent Chinese populations in China are considered. China’s natural resource extraction and commercial activities in Myanmar,

supported by both national governments, have triggered geopolitical and societal tensions (Le Bail & Tournier 2010) that the Burmese-Chinese navigate carefully. Following Myanmar's economic reforms since the 1990s, business, educational and cultural ties with China have grown. Affiliations of the Burmese-Chinese to localities of ancestral origin remain significant at the provincial, country, and village levels (Roberts 2011). Their language schools send teachers and students to China for cultural exchange, oftentimes at the invitation of Chinese provincial governments (interviews 2012-13). Nonetheless, their activities are increasingly executed through institutionalized arrangements supported by the Chinese central government (e.g. teaching curriculum under the federal-funded Confucius Institute).

Such interplay of localized and centralized relationships between the Burmese-Chinese and China is difficult to pin down, resulting in the conflation of relationships that take place at a variety of scales or across different social affiliations. As with Shewly's (2013) study of cross-border dwellers trapped in a space of lawlessness, the Burmese-Chinese are conscious of how the law can become suspended in the interstitial space they occupy culturally between Myanmar and China. In Myanmar they are politically and legally subjugated, and disadvantageously associated with China, the larger neighbor divesting Myanmar's natural resources. Chinese expansionism in the ASEAN region also deepens the suspicion of Burman nationalists towards the Chinese minority in Myanmar. Yet without citizenship status in China, the Burmese-Chinese are not entitled to legal protection by their ancestral homeland.

Several Burmese-Chinese leaders add that China did not intervene when Ne Win persecuted the ethnic Chinese in Myanmar (interviews 2012-2013). They compare this with China's intervention during the anti-Chinese violence in Vietnam and Indonesia. Such comparative histories lead them to feel unable to count on China for protection. In a study of Chinese cyber-nationalism following anti-Chinese violence in Indonesia during 1998, Ong (2003) observes that Chinese minority populations do not want to invoke a transnational Chinese identity that creates divisiveness in their host societies. Likewise the Burmese-Chinese are conscious of how legal oppression in their natal homeland can be detrimental under the abandonment of the ancestral homeland even as its extraterritorial presence looms over them.

Rather than advancing social transformation through quiet encroachment (Bayat 1997) or autonomous politics (Yiftachel 2008), the Burmese-Chinese case resonates with Shewly's (2013) argument that a sense of vulnerability and abandonment inhibits resistance. The symbolic nature of law gives it an illusion of stability but it is open to manipulation by domestic and foreign governments (Massoud 2013), leading the Burmese-Chinese to guard against how law can foreshadow political violence. However, the Burmese-Chinese are not passive subjects; rather, alongside engaging inventively with law and hegemony, they remain conscious of the legal limits to rights assertion. Their political subjectivity is shaped by a legal consciousness that deters rather than prompts collective mobilization. In subaltern spaces where oppressive political conditions prevail, stasis can co-exist with the agency of citizenship aspirations.

## **Conclusion**

Focusing on the Burmese-Chinese in Myanmar, this article underscores, first, the socially situated ways in which actors interpret and engage the law in citizenship spaces. Our analysis highlights the historical and geographical conditions that contribute to how law, society and space interact to produce ethnic marginalization in citizenship spaces. Second, the article underscores the spatial strategies used to circumvent and subvert oppressive laws. The Burmese-Chinese capitalize upon religious spaces to create strategic alliances with powerful actors and use those spaces as clan associations and language schools to carve out political legitimacy and maintain their cultural identities. Third, the article demonstrates how internal heterogeneity and cross-border relationships (associated with China's unwelcomed extraterritorial presence in Myanmar) influence their legal consciousness to impede collective action despite shared narratives of social exclusion through law.

The article underscores the multiple spaces and scales through which law works to govern subaltern agency and citizenship aspirations. In the narratives of social relations found in everyday spaces such as homes, schools, community spaces, and workplaces (Cons 2013; Ehrkamp & Leitner 2003; Staeheli et al. 2012), we find clues for making sense of the purported absence of legal resistance. At the local level, strategic alliances (Robbins et al., 2008) are forged with influential social actors – monks, government officials, and local power-brokers – to circumvent restrictive laws, while “quiet encroachment” (Bayat 1997) tactics are found through legal subversion in “gray spaces” (Yiftachel 2008). What this article also underscores is how the equivocal nature of law in

zones of cross-border sovereignty limits the traction of citizenship aspirations amongst the Burmese-Chinese. As a greater array of international actors strive to influence Myanmar's domestic politics, the interplay of the spatial framings highlighted here will gain significance for other types of social and political issues, contributing to the complexity of how law is experienced and perceived ambivalently by the social groups concerned.

These findings derived from the Burmese-Chinese case have wider applicability for understanding how other social groups in Myanmar and elsewhere engage with law under oppressive conditions. Quotidian efforts to negotiate official legal barriers are significant forms of politics because they bring to view complex aspects of social life and legal maneuvers typically occluded by macro-political concerns (Thawngmung 2011). The concept of legal consciousness that we engage in this article helps in analysis of the way subaltern subjects negotiate the law, without privileging an ontological reading of social change. This endeavor contributes to drawing out the political subjectivity of subjugated knowledges and citizenship experiences (Dajani 2012; Isin 2012; Massoud 2013; Roy 2011).

Our study reveals a paradox where although subaltern subjects are aware of the cracks and opportunities afforded by the law, they are constantly guarded about the punishing effects of the law or the risk of lawlessness in zones of legal exclusion and abandonment (Shewly 2013). The specter of legal oppression haunts them and immediate bonds to family and clan take precedence over advancing rights-based claims. Nonetheless, even

at the most minimal, tactics to navigate the law enable the creation of spaces to maintain cultural identities and the safety of their families and clan. Making visible these subtler ways of engaging the law in citizenship spaces attest to the ingenuity of the human spirit, showing that oppressive conditions resulting from the socio-spatial constitution of law are neither impregnable nor absolute.

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<sup>i</sup> We recognize the contestation attached to the “Burma” and “Myanmar”.

<sup>ii</sup> The label “Burmese-Chinese” (*miandianhuaren*) underlines Myanmar as the country where the Chinese have settled generationally. This article refers to the majority Burma population as “Burman”.

<sup>iii</sup> Representational issues arise when constituting the subaltern as a subject of study (Spivak, 1988/2010), but trying “harder to interpret, to listen, to translate” (Jazeel, 2014:95) remains important for advancing recognition of subjugated knowledges.

<sup>iv</sup> Personal communication with research assistant in Myanmar.

<sup>v</sup> See Roberts (2011) on the Chinese from coastal China that settled in Yangon and Chang (2014) on the Yunnanese-Chinese.

<sup>vi</sup> Bearing ethnic affinity with the Chinese are the *kokang* settled along the Burmese side of the Sino-Myanmar border. They are amongst the “national races” constitutionally recognized in Myanmar.

<sup>vii</sup> For example, some Burmese-Chinese identify as Christian or Muslims (Panthays).

<sup>viii</sup> Available from: <http://www.burmalibrary.org/docs07/1947Constitution-facsimile-red.pdf>. Accessed 16.7.2014.

<sup>ix</sup> Colonial categorizations of “tribe” or “race” based on language classifications (Scott 2009) were continued by the former military regime.

<sup>x</sup> Available from: <http://www.ibiblio.org/obl/docs/Citizenship%20Law.htm> Accessed 26.3.2013.

<sup>xi</sup> The identity cards must be renewed at ages 18, 30 and 45.

<sup>xii</sup> Many immigrant Indians that suffered from the nationalization law left Myanmar (Cheesman 2015).

<sup>xiii</sup> The Association Registration Law came into effect on 20 July 2014 and superseded these laws. It does not criminalize non-registration (The International Center for not-for-profit law, NGO law monitor: Myanmar (Burma) (25 Oct. 2014), <http://www.icnl.org/research/monitor/Myanmar.html>). However, it is too early to assess the new law’s impact.

<sup>xiv</sup> Roberts (2011) highlights that Burmese-Chinese businesses forge alliances with power-brokers in government offices. Our article focuses on how law is negotiated through temples spaces that function as schools and clan associations.

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