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On September 19, 2017, Aung San Suu Kyi addressed the United Nations (UN) and gave her opinion as the State Counsellor of Myanmar regarding the grave conflict and displacement crisis in Rakhine State (OSC 2017). Suu Kyi's speech was widely criticised by the international community for failing to acknowledge the reality of the humanitarian and displacement crisis that had been unfolding since August 25 (ICG 2017). In early 2018, the UN estimated that over 700,000 Rohingya had fled to Bangladesh, joining 300,000 who were already there, having fled in 2012. Numerous studies estimate that more than 9,000 people may have died in the conflict in Myanmar. On the day of her speech, protests were held by pro- Suu Kyi supporters across major towns in Myanmar. In addition, the Burmese (Burman) diaspora organised demonstrations at sites around the world, such as in front of the Australian parliament house in Canberra. These demonstrations were organised under the slogan "We Stand with Daw Suu." The message was clear: many people in Myanmar support Suu Kyi's position of denial on the crisis in Rakhine State. These events suggest a major disconnect and polarisation between the views of the global community and local perspectives. The international community has been confounded by the strong, united response from within

Myanmar that largely denies the suffering of the Rohingya, a minority Muslim religious and ethnic community. The National League for Democracy (NLD) government and the Myanmar military deny the scale, scope and legitimacy of the suffering and the humanitarian crisis. What explains this collective denial of Rohingya suffering? What forms does denial take and to what effect? How do officials use law and legal institutions to effect and perpetuate denial?

Scholarly inquiries into the Rohingya crisis tend to focus on the issue of citizenship and ethnicity (Holliday 2014; Ferguson 2015; Thawnghmung 2016). This is one example of the use of law to deny the Rohingya as a part of the political community. Although it is in the *application* of the law, as Cheesman (2017: 473) notes, and not the mere enactment of the citizenship law, that many Rohingya are denied citizenship. Notions of race and ethnicity in Myanmar have been interrogated and the inherent privileges that come with being ethnic Burman have been identified (Walton 2008, 2013). The creation of ethnic categories of difference has been historicised and traced to the early years of authoritarian rule from 1964 (Cheesman 2017: 475). Anthropologists such as Anwar (2013) have looked beyond the borders of the nation-state to consider Rohingya communities in Pakistan and the attendant challenges they face to citizenship in light of discourses of illegality. Kyaw Zeyar Win (2018) considers the securitisation of the Rohingya. My article seeks to shift attention to the broader phenomenon of legal denial as a means employed by the state to deny the suffering of the Rohingya, and issues such as citizenship are but one example of this. My article also adds to the emerging interdisciplinary interest on Islam and the state in Myanmar (see Selth 2004; Wen-Chin Cheng 2014; Nyi Nyi Kyaw, 2016, 2017; Crouch 2016a).

In this article, I am concerned with how acts of denial operate to exclude the Rohingya from the political community and the role law plays in this process. Denial is paradoxical, as it captures a state of both knowing and not-knowing (Cohen 2001: 22). The

methodological presumption of my article is that law is a key tool in the process of interpretive denial, as identified by sociologist Stanley Cohen in his *States of Denial* (2001). The ground work for this inquiry involves revisiting Cohen's three forms of states of denial – literal, interpretative and implicatory – and expand upon his reference to the use of law in order to explain how law is often *central* to acts of state denial. The term "legal denial" is used to refer to acts of denial by the state that specifically use law and legal institutions to effect modes of denial. Cohen's forms of denial are illustrated through analysis of official Myanmar government and military responses to the violence that has taken place between 2012 and 2018. The analysis draws on Facebook posts, official government websites, state-run media, parliamentary records, court records and my observations.

The focus here is specifically on legal denial in Myanmar. Cohen (2001, 106) suggests that "the dominant language of interpretation (interpretive denial) is *legal*." I draw a link between Cohen's understanding of interpretation as denial and the violence of legal interpretation (Cover 1985; Minow 1995). This leads to an exploration of three forms of legal denial: constitutional reform; legislative reform; and judicial decision-making. On constitutional reform, I consider the 1950-1960s debate over a proposal to amend the Constitution to create Arakan (Rakhine) State. Through this debate, and the subsequent decision under Ne Win to recognise Arakan State in the 1974 Constitution, it is shown how constitutional reform acts as a means of legal denial. In doing so, the concept of "Rakhine State" as a given entity is destabilised. Second, I consider the role of the legislature and its dialogue with the Constitutional Tribunal over the decision to narrow the definition of who has a right to vote and run for office to exclude the Rohingya. This reform amounted to mass disenfranchisement and was another means of legal denial, excluding the Rohingya from the political community. This focus on law-making builds on work by Robert Cover and my earlier work on the violence of law reform in Myanmar (Crouch 2016). Third, political trials

are used to perpetuate narratives of legal denial about who is responsible for the conflict in Rakhine State. Judicial decision-making as interpretive denial can be seen at work in the 2017–2018 trial of two journalists who were investigating a massacre in Rakhine State, the importance of which will be explained against the backdrop of the government decision to designate the Arakan Rohingya Solidarity Organisation (ARSA) as a terrorist organisation.[1]

By offering an alternative perspective on the political exclusion of the Rohingya, I show the centrality of legal denial in responses to contemporary suffering.[2] This opens new possibilities for identifying and explaining how law and legal institutions are employed by the state in the act of denial.

SUFFERING, VIOLENCE AND STATES OF DENIAL

The official narrative of the state and society in Myanmar is based upon certain notions about who is a majority and who is a minority. The majority are Burman Buddhists, or Buddhists more generally.[3] Burmans are recognised as the pre-eminent national race (Walton 2013). The state has for decades placed its stakes on a racialised national ideology of national races or as Cheesman (2017: 476) has argued, the "*tainyintha* (national race) truth regime." This governance act of staking all on a particular racialised national ideology is the tipping point for repression of minorities (Appadurai 2006). This racialised nationalist ideology recognises 134 other races besides the Burmans. These national races are divided into seven sub-groups, and the Arakan are one of these seven. Outside of these official majority and minority groups are the invisible minorities, including the Rohingya. The invisible nature of the broader Muslim communities dates to the colonial era and British perceptions of who belonged in Burma (Keck 2008, 2015).

One way to understand how this regime of majority-minority recognition is reinforced is through state responses of denial. Cohen (2001) articulates a compelling thesis as to why

unspeakable atrocities, violence and suffering are invisible to, or rendered invisible by, some people. A statement of denial includes declarations that something is incorrect or false, did not occur, or in fact does not exist (Cohen 2001, 3). Yet at its heart, denial encompasses both knowing and not-knowing of an atrocity. States of denial encompass reactions of avowal, refutation and defiance. Cohen's exploration of what we do with our knowledge of suffering, and what suffering does to us, sheds light on the complex case of the Rohingya and the way domestic reactions compound the difficulties of action by the international community. Some scholars have focused on how law *understands* the suffering of others (Sarat 2001, 2014). My project instead considers how law rejects, hides, obfuscates and ignores the suffering of others and contributes to violence. The framework of denial helps us to understand how officials respond to the knowledge of the suffering of the Rohingya. This section deals with denial generally, while in the later section I deal specifically with the role of law in denial.

The Power of Literal Denial

The first and simplest form of denial is literal denial. Literal denial involves the blanket rejection of known and proven facts (Cohen 2001, 7). Such a response is the outright refusal to acknowledge the facts of a situation. It is often a reactive and defensive position. Such blanket denial can be difficult to sustain in the face of evidence proving otherwise. There are many levels on which literal denial is at work in relation to the Rohingya.

Before considering denial in respect of the conflict in Rakhine State, it is necessary to explain the preliminary act of denial in terms of the rejection of the identity marker "Rohingya" that this group uses to identify themselves (COI 2013, 55). The common state approach is to deny the use of the term "Rohingya" and instead insist either on the designation "Bengali" or simply "Muslims." There are numerous contemporary examples of

literal denial by state officials of the "Rohingya" identity. For example, in parliamentary debates in 2018 members of parliament denied that there had ever been any official use of the term "Rohingya" (PH2018-7:12; Cheesman 2017, 473). Many officials have repeated the belief that these people are "Bengali" and that there is no official recognition or designation of "Rohingya" as an identity. Prominent monks of the Buddhist nationalist movement espousing violence and hate speech, such as Wirathu, have suggested that the international community refers to the Bengali as Rohingya because it supports an agenda to Islamise Myanmar (*Frontier Myanmar*, October 15, 2018).

One act of literal denial may pave the way for another act of denial. The use of the term "Rohingya" facilitates a second claim, which is to deny that belong in Myanmar because they are considered to be "Bengali," not Rohingya. The implication is that "Bengalis" belong in Bangladesh. This form of denial is often linked to the association between the Rohingya and the idea and fears of the "Muslim world" (Aydin 2017). The political weight and persuasive value of this act of denial domestically is evident in the work of commissions set up to deal with the conflict. One example is the high-profile Commission headed by Kofi Annan, former Secretary General of the UN. The Kofi Annan Commission Report (2017) perpetuates the literal denial of the Rohingya as an identity marker by choosing the term "Muslim." Although the Report explicitly chose *not* to use the term "Bengali," its rendering of Rohingya as Muslims reduces their identity status to their religion, a religion perceived to be at odds with the Burman Buddhist majority (Kofi Annan Commission 2017, 12).

The events of 2017–2018 are a telling example of literal denial on multiple levels. On August 25, 2017, attacks took place against numerous police and border guard stations in Rakhine State, attributed to the Arakan Rohingya Solidarity Army (ARSA), and was followed by serious military retaliation. Hundreds of thousands of Rohingya began to flee to Bangladesh from late August. The initial response of government officials was to simply

deny that the numbers of Rohingya being displaced were as large as foreign media suggested. Reports on the website of the Commander-in-Chief, Senior General Min Aung Hlaing, claimed that foreign media reports were simply *exaggerating* how many people fled to Bangladesh (Min Aung Hlaing 2017a). This example of literal denial carried added weight because it was reported on the website of the Commander-in-Chief himself.

Literal denial is employed in other ways in relation to Rakhine State and is a common response by government officials to the claims of foreign news agencies. For example, Senior General Min Aung Hlaing's website alleges that the foreign press is *ignorant* of the real situation in Rakhine State and is spreading false news (Min Aung Hlaing 2017b). In this way, officials have questioned the credibility of media outlets reporting on events in Rakhine State in order to deny the events themselves. As reports emerged of serious injuries caused by land mines of those fleeing to Bangladesh, officials such as the Rakhine State Security and Border Affairs Minister, categorically *denied* the existence of land mines (*Channel News Asia*, September 9, 2017). This was despite survivors in Bangladesh showing injuries consistent with those incurred from the explosion of land mines.[4] The questions this evidence raises was not whether land mines exist, as the response of literal denial suggests, but who laid them, when and why. Literal denial functions to allow officials to ignore these questions. The flat denial of how many fled is a clear instance of literal denial.

Literal denial functions not only as an act of disengagement but may then cast doubts on the source of the claims being denied. Literal denial, even in a post-truth age, can be easy to detect and expose, and therefore harder to credibly sustain. Myanmar shows the persistence of the power of literal denial in a society that has only in recent years emerged from extreme political and social isolation.

The Flexibility of Interpretive Denial

The second type of denial Cohen identifies, interpretative denial, is about how meaning is given to facts. A situation may be interpreted in such a way as to deny the suffering and pain that has taken place. This has resonance with Cover's (1985: 1601) work and his classic summation that "legal interpretation takes place in a field of pain and death." Interpretive denial is often employed when literal denial is no longer plausible (Cohen 2001, 7).

Related to the above discussion on literal denial, it became apparent in the months following August 25 that the government could no longer deny the number of Rohingya who had fled to Bangladesh. This led to public debate about the reasons *why* the Rohingya were fleeing. Government officials offered a range of explanations while denying the possibility that they were fleeing from conflict or violence. For example, officials suggested that the movement of Rohingya may be motivated by feelings of linguistic, racial or cultural solidarity with Bengalis (Min Aung Hlaing 2017a). One of the most publicised acts of interpretive denial on this issue is Aung San Suu Kyi's speech to the United Nations, less than a month after the conflict began (OSC 2017). She suggested that the reason for Rohingya leaving was *unknown* and puzzling because some Rohingya (or "many Muslims" as she put it) had decided to stay. Her rendering of the Rohingya's flight as unnecessary promoted an interpretation that favoured the decision of the Rohingya who stayed (a number that rapidly diminished in the months following her speech), regardless of where they lived or the possible reasons why they were prevented from leaving. The position of the person enacting the interpretive denial is important and adds gravity and weight to the interpretation itself. Suu Kyi's position as a person of moral and political influence is derived from her status as a Noble Peace Prize winner, former political prisoner, State Counsellor, Minister for Foreign Affairs, member of the NLD and, perhaps most importantly, as daughter of General Aung San, Myanmar's independence hero and martyr. Her status lends credence domestically to the interpretation that the Rohingya were unnecessarily fleeing their homes.

Another example of interpretive denial and the violence it encodes is official responses to satellite imagery of villages burnt down, as documented by groups like Human Rights Watch (2017). When foreign journalists joined a state-run tour of Rakhine State several weeks after the conflict, there was evidence of houses and villages still burning long after people had fled and well into the monsoon season when heavy rains would quickly dampen any fire (*BBC*, September 7, 2017). Officials no longer deny that houses were being burnt down (literal denial), as the destruction had been captured by both international and domestic media. Instead, their response was that the Rohingya might have burnt down their own houses and fled (*BBC*, September 11, 2017). Interpretive denial in this example does not have to be logical and the question why someone would burn down their home is left open. It also does not need to offer a reason to justify the interpretive denial. In this regard, interpretive denial can be just as untenable as literal denial may be to certain audiences, in this context external audiences.

Interpretive denial may promote an interpretation that is favourable to that person or institution, but it may also go further in that it may specifically cast blame or fault on those who are victims. For example, some officials have denied the rape of Rohingya women. While this denial in part has seeds of literal denial, at the same time the response of some officials is to offer an interpretive denial couched in disbelief or indignation at the idea that someone would want to rape a Rohingya woman (*BBC*, September 11, 2017). This response is a form of interpretive denial, the implication being that Rohingya women are undesirable and could not be the victim of rape. This is also evidence of the Burman ("white") privilege at work, a privilege that casts all non-Burmans as inferior (Walton 2018).

Finally, to return to the example of land mines, rather than literally deny that there were no land mines, a form of interpretive denial is to allege that it must have been the Rohingya, rather than the military, who planted them. Zaw Htay, the spokesperson for Aung

San Suu Kyi, hinted that the Rohingya could be responsible for the laying of the mines (*BBC*, September 6, 2017). This would be unusual since the landmines were planted along the border with Bangladesh, preventing the only safe or reliable escape route by land in the event of conflict. Again, like literal denial, interpretive denial does not necessarily have a plausible basis for its claims.

The above examples of interpretive denial show several characteristics. Interpretive denial is employed either in conjunction with literal denial or when literal denial is no longer viable. The persuasiveness of interpretive denial, at least to some audiences, may be bolstered by the person doing the public denial. Interpretive denial may still be logically untenable and individual victims may become caught up in collective efforts of state denial.

Implicatory Denial and the Relationship between Forms of Denial

Finally, a third form of denial is implicatory denial. Implicatory denial is unlike literal denial in that there is no effort to deny the facts. Implicatory denial is distinct from interpretive denial in that the accepted or common interpretation is not disputed. Rather it is the denial of the need for action, or the implications of suffering, practically and politically. It is about the ways in which people remain unmoved and unaffected by suffering. Interpretive denial includes silence and a failure to act. Cohen (2001, 8) suggests that implicatory denial is at work when there is a refusal to acknowledge the possibility that suffering has occurred and therefore no response is required. Implicatory denial is about the effect that the knowledge of suffering has, or more to the point does not have, on the person, institution or group.

Many of the above examples of interpretive denial also have elements of implicatory denial. For example, the fact that over 900,000 Rohingya are now displaced in Bangladesh due to conflict since 2012 is not disputed. This does not necessarily lead to *action* by the Myanmar state in terms of humanitarian aid or realistic prospects of having their land, homes

and livelihoods returned. A year on from the onset of the conflict on August 25, 2017, UN agencies still did not have access to distribute aid in northern Rakhine State (*Reuters*, August 21, 2018). A memorandum of understanding has been signed between Bangladesh and Myanmar, although practically there has not yet been repatriation on a large scale. Meanwhile, the government remains unmoved – psychologically, morally and politically – by the knowledge of suffering of either refugees in Bangladesh or internally displaced people in Rakhine State. Further, the fact that the Rohingya are stateless is not denied, but implicatory denial means that the citizenship verification process that the government has attempted to implement since 2015 would be likely to exclude many Rohingya.

Understanding these states of denial is particularly pertinent in Myanmar as a society emerging from several decades of direct military rule. The contemporary expressions and modes of official denial are not confined to the present, but act to obstruct a particular view of the past and to revise the narrative of Rakhine State. Cohen (2001, 10) suggests that in restricting the historical narrative, the state increases the risk for those who attempt to speak or act in ways that acknowledge this suffering, past or present. The official denial in Myanmar is not just about the denial of suffering in 2016–2018, or concerning other periods of mass displacement from 1942, 1978, 1992 or 2012. It is about the state project of rewriting history, writing the Rohingya out of the official narrative. This revision has facilitated and enabled denial of the present suffering. The state itself, or in this case the military-state, makes it dangerous to admit to both the suffering of the present and the reality of past existence, as the assassination of lawyer Ko Ni in 2017 makes clear (Crouch 2019).

The state plays an important role in denial as the act of denial is not limited to the individual but is group-based. According to Cohen (2001, 10), denial has a corporate state identity: "denial is thus not a personal matter but is built into the ideological façade of the state." One example is Cheesman's (2017) work on citizenship in Myanmar, which

demonstrates how the concept of "national races" has been built into the ideology of national races. In offering a genealogy of race in Myanmar, Cheesman argues that the constructed concept of national races has superseded that of citizenship. He argues that this places the Rohingya in a bind, because to be recognised by the state, the Rohingya must play into this game of seeking recognition, the very game that operates to exclude them. This is the politics of national race identity that relies on several modes of denial as a strategy to exclude and ignore.

LEGAL DENIAL

Having canvassed and illustrated Cohen's three forms of denial, – literal, interpretive and implicatory – above, I now turn to legal denial as the use of law and legal institutions – whether constitutional, legislative, administrative or judicial – to deny suffering. While my concept of legal denial is closest to Cohen's notion of interpretive denial, it can also be seen as encompassing literal and implicatory denial. I am particularly concerned with the ways state actors use law and legal institutions as an instrument in interpretive denial, though of course non-state actors are also involved in these modes of legal denial. First, the role of constitutional reform in interpretive denial and the legal creation of Rakhine (Arakan) State is explored historically, before returning to the contemporary period to consider manifestations of legislative reform and judicial decision-making as forms of interpretive denial. These are illustrative rather than exhaustive cases that show the multifaceted ways that the state uses law and legal institutions to deny the inclusion of the Rohingya in the political community.[5]

Constitutional Reform as Legal Denial: The Creation of Rakhine (Arakan) State

Legal acts of denial can be important to territorial claims of belonging and efforts to exclude. Debate about who the Rohingya are is related to the question of where they belong and

references to Rakhine State as a given entity go unquestioned. The contemporary certainty about the existence of Rakhine State contrasts with its contested history. In this section reference is made to "Rakhine State" as "Arakan State." In 1989, the name of the state was changed from Arakan State to Rakhine State by the military regime, though the military often projects this new terminology back in time in histories of the region. The division of 14 Regions and States is neither self-evident nor a historical fact. These internal borders are creations of politics. This historical reflection identifies the *resistance* by the Rohingya to the creation of Rakhine (Arakan) State through parliamentary proposals to amend the 1947 Constitution and the eventual incorporation of Rakhine State in the 1974 Constitution. It identifies the proposals put forward by the Rohingya (who also refer to themselves as Arakan Muslims) about how northern Rakhine State should be constituted territorially and their objections to the proposal by Arakan Buddhists for a "Rakhine State." The intention is not to exhaustively review the history of this region, but rather consider the modes of legality at work since independence from colonial rule and how constitutional reform operates to render the Rohingya invisible.

The independence Constitution of 1947 grants territorial recognition to some ethnic groups, particularly those who were part of the Frontier Areas during colonial rule and not under direct British rule.[6] Ethnic groups from the former Frontier Areas were given some special constitutional recognition. The Arakan region was classified as part of lower or Ministerial Burma, and so the Arakanese were not given territorial recognition under the independence Constitution.[7] The Arakan, along with the Karen and the Mon, used the early years of independence to agitate for separate states named after their respective ethnic groups. In 1948 the Regional Autonomy Inquiry Commission was formed to consider the creation of states for the Karen, Arakan and Mon. The Arakanese had five representatives on

this 28-member Commission. This was part of broader public debate on whether and how these ethnic groups should be recognised territorially by the state.

The 1951 general election proved decisive, with 17 Arakanese members elected. All but three candidates from the Anti-Fascist People's Freedom League who contested these seats lost. The Arakanese members of parliament, led by Ba Myaing and Kyaw Min, formed what was known as the Independent Arakanese Parliamentary Group and articulated a clear platform for a separate Arakan State (Tinker 1959, 68-69). Around the same time, the Rohingya articulated their own competing demands for independence.

The proposal favoured by those who identified as "Arakanese Muslims" or Rohingya was for the existing Mayu Frontier District (the northern most area sharing a border with Bangladesh) to become a Muslim State and that this would be distinct from the creation of Arakan State (*The Nation*, October 27, 1960). That is, the Mayu Frontier District with its Muslim majority would not be subordinate to or subsumed by a new Arakan State with a Buddhist majority. Like some other ethnic groups, the British had promised the Arakan Muslims that they would support the creation of a Muslim state in return for their efforts to fight with the British in World War II (Yegar 1972, 95–96). In this way the idea of a Muslim state pre-dated Burma's independence and is connected to colonial rule. In fact, some Rohingya had pushed for two townships (Buthedaung and Maungdaw) to become part of east Pakistan, although this effort failed (Tinker 1956, 357).

By the 1950s, Arakan Muslims began to articulate their demands for constitutional reform. They sought to form a "free Muslim state" that would have similar powers and status as areas such as Shan State, Karenni State or the Chin Hills (Arakan Muslim Conference 1951). They sought a representative in the Chamber of Nationalities (upper house) to be called the Minister for Muslim Affairs.[8] Their demands ranged from equal representation of Muslims in a range of government offices to compensation for Muslim property that were

destroyed or looted in the 1942 violence that broke out during the Japanese occupation (Arakan Muslim Conference 1951). This proposal was perceived to be connected to the mujahid group that had taken up arms against the government (*The Sunday Nation*, June 13, 1954).

Another, less dramatic, option proposed by Arakan Muslims was to form a united Arakan State to appease the Arakan Buddhists, but to grant the Mayu Frontier District clear and meaningful protections within Arakan State as enshrined by law and the Constitution.

In contrast to the proposals to recognise the Mayu Frontier, either separately or as part of Arakan State, Arakan Buddhists demanded the creation of an Arakan State *without* recognition of the Mayu Frontier District. It has been suggested that as early as the 1930 London Roundtable Conference and again after the passage of the Government of Burma Act 1935 that some Arakan Buddhists proposed the formation of an Arakan State. In 1947, this was proposed in terms of demands for the formation of "Arakanistan" (Ministry of Culture 2011, 117). Buddhist monks played a leading role in the push for statehood for Arakan. From 1948, the Arakanese waged a separatist movement led by the monk Sayadaw U Seinda (Smith 1965, 198, 251). In the early 1950s, monks also staged protests and demonstrations in Rangoon in support of Arakan State and against Burman rule (Smith 1965, 199).

In early years of independence, the Arakanese were divided on this issue, with the Regional Autonomy Inquiry Commission receiving mixed responses on an Arakan State. By the mid- to late-1950s, Arakan Buddhist members of parliament were more united. Their constitutional proposal for an Arakan State sought to deny autonomy to the Muslim-majority area (*The Nation*, October 27, 1960; *Guardian Daily*, August 3, 1960).

In 1956, Ba Myaing, an Arakanese member of parliament representing Ramree, proposed a constitutional amendment bill for the creation of Arakan State (Ministry of Culture 2011). This proposal was supported by the Arakanese (Buddhist) National Unity

Organisation (Yegar 1972, 101). The objectives of the constitutional amendment were threefold. First, the creation of an Arakan State government was said to reflect the desire of residents of Thandwe, Kyaukphyu and Sittwe Districts (areas that are not part of the northern Mayu Frontier District and where most residents were Arakanese Buddhists). Second, it was argued that four ethnic groups – the Shan, Kayin, Kachin and Kayah – had already been recognised through the creation of states in the 1947 Constitution. By analogy, it was argued that the Arakan (Buddhists) deserved territorial recognition. This claim overlooked the fact that the area had been considered part of lower Burma and under direct rule during the colonial era, whereas the other four ethnic states had been part of upper Burma or the Frontier Areas and not subject to direct rule. Third, it was argued that the establishment of Arakan State would enhance the cohesion of the Union, although how such unity would be achieved was left unstated.

These Arakan members of parliament recommended the creation of an Arakan State Council, along the lines of the then existing Council for Karenni State. This State Council would have the power to pass law and these laws would then require the approval of the president. As for Karenni State and Kachin State, under the 1947 Constitution (ss 169-170, 185-186), the president could not refuse a bill, but could refer it to the Supreme Court to consider whether part, or all, of the bill was constitutional. A bench of at least three Supreme Court judges was required to respond in a timely manner, within 30 days. Only if the Supreme Court found part of the bill unconstitutional could the president return the bill to the State Council for reconsideration. This granted the State Council relatively robust legislative powers and ensured there would be little unwarranted interference by the central executive.

The constitutional amendment proposal by the Arakan members of parliament also sought to reserve 12 seats in the Chamber of Nationalities for Arakan State. The leader of the Arakan State Council was to be appointed in a consultative process whereby the Council

would choose from among themselves, this person would be nominated by the prime minister and then formally appointed by the president. The head was to be known as the Minister for Arakan State Council. The proposal also vested executive power in the Minister for the Arakan State Council and extended to matters where the State Council had legislative power. Other details concerned the operation of the State Council, its fiscal powers, the formation of a cabinet and the requirement that the head of the Council only act after consultation with the Council.

The proposal for Arakan State failed to gain the support of the national parliament, in part, because of objections from the Muslim community of Buthidaung and Maungdaw in northern Arakan State. Their basic fear was that they would become a minority among the Arakan Buddhist-majority area. They were concerned that as an ethnic and religious minority they would not have their rights and interests protected, and that this constitutional amendment would be detrimental to their community. This is also admitted in records compiled by the later military regime (Ministry of Culture 2011, 13–14, 136). These records do not acknowledge the earlier 1951 proposal by Arakan Muslims for a "Muslim Free State." The military's history of this period adopts Burman overtones of superiority by suggesting that the Arakan Buddhists were fortunate and privileged in introducing an amendment: "it was noteworthy that the privilege of introducing the Constitution (Amendment) Bill was ever permitted" (Ministry of Culture 2011, 138).

The debates about whether to create Arakan State constitutionally persisted throughout the era of parliamentary democracy (1948–1962). In March 1957, U Kyaw Min gave a controversial speech in parliament supporting the creation of an Arakan State. Efforts were made to redact the speech, but it became common knowledge after the British Ambassador reported on the matter (Allen 1957). In 1958, an unchanged Constitution (Amendment) Bill was again proposed, submitted by Hla Htun Phyu, member for Myoehuan.

On February 18, 1958, this proposal again failed.[9] Then prime minister U Nu agreed in principle to the future creation of Arakan State and in exchange for the guaranteed political support of the Arakan (Buddhist) National United Organisation and the Arakan insurgent group (Smith 1999, 176). In the early 1960s, a bill for constitutional amendment to create Mon State was also proposed. Similarly, the large Muslim minority in that region (who do not identify as Rohingya) opposed the creation of Mon State for fear of becoming a minority within that area (Ministry of Culture 2011: 240-49).

The debate over the creation of Arakan State took place not only in parliament, but extended to the broader public. Some Muslims voiced concerns that Arakan should not become its own state because it would lead to dominance of minorities by the Buddhist majority (Ali 1960). In the lead up to the 1960 elections, U Nu again pledged his support for the creation of a state for Arakan and the Mon (Tinker 1956, 92). Yet by May 1, 1961, the government granted concessions to Arakan Muslims through the creation of the Mayu Frontier Administration Area. The area included Buthidaung, Maungdaw and parts of Rathedaung, abutting the then East Pakistan (today's Bangladesh) (Tha Htu 1962). This designated area was directly under military control. Arakan Muslims preferred this arrangement to living under the control of Arakanese Buddhists. In 1962, a new Constitution Bill for Arakan State was proposed in parliament (Ministry of Culture 2011, 181). However, before this third constitutional amendment proposal went to a vote, on March 2, 1962, General Ne Win seized power. The Mayu Frontier Administration Area had a short lifespan and by 1964, two years after the coup, it was discontinued by Ne Win's regime.

It was not until 12 years into Ne Win's rule that Arakan State was recognised in the 1974 Constitution (art 31(k)). The Constitution took a homogenising approach. No longer were different ethnic groups treated differently. Now all major "national races" were to be treated the same. Each of the seven major minority ethnic groups would have a territorial

State named after them. The Rohingya became a minority within Arakan State. This was an act of legal denial that recognised the Arakanese to the exclusion of other peoples, namely the Rohingya.

The designation of Arakan – now "Rakhine" – State is retained in the 2008 Constitution as part of the division between seven ethnic-based States and seven Burman-dominated Regions. Some other ethnic groups do have special recognition within a State or Region if they form the majority in two adjacent townships, which are known as self-administered zones or divisions. However, this option was only open to official national races and was primarily granted to ethnic armed organisations that had agreed to ceasefires with the military. If the Rohingya were an official race, the townships of Buthidaung, Maungdaw and Rathedaung would have met the test of having a majority population in at least two adjacent townships to be designated as a self-administered zone. There is no indication of changes to either the territorial division between states and regions, nor of the designation of self-administered zones.

LEGISLATIVE REFORM AS LEGAL DENIAL: HOW THE ROHINGYA LOST THE RIGHT TO VOTE

The right to vote is a core component and indicia of citizenship (Baubock 2005; Shaw 2017). It is an integral part of political freedoms as protected under international law. There are, however, some countries where the right to vote is permitted for non-citizen residents allowing them voice in the political community (Shaw 2017). There are over 60 countries, many concentrated in the European Union, that permit voting in local elections by residents without citizenship (Baubock 2005, 684). Only a small number of countries allow voting by resident non-citizens in a national election (Shaw 2017). Myanmar was one of those countries until 2015.

Yet there are also histories of the weak and poor, the marginalised and minorities, being disenfranchised. Given that the right to vote constitutes a key part of political belonging, symbolically and practically, the focus here is on the disenfranchisement of "white card" holders in Myanmar, that is, those who were given a temporary identity card. In a set of calculated legal moves, the parliament, the Constitutional Tribunal and the Union Election Commission acted to ensure that "white card" holders (that is, primarily the Rohingya) could not vote in the 2015 elections. In the emerging literature on Myanmar's new parliament, scholars such as Chit Win and Kearn (2017, 21) suggest that in the period 2011-2015, parliament was "relatively ineffectual, neither acting as a peacebuilder nor source of violent conflict." However, their approach focuses on overt responses to conflict and does not consider the ways parliament is involved in acts of legal denial and violence. Contrary to their argument, I suggest that the role of parliament in amending the law to disenfranchise white card holders was an act of violence and denial that has excluded the Rohingya from the political community. I briefly contextualise the right to vote before considering the series of events from 2013–2015 that constitute legal denial.

The international community celebrated the 2015 Myanmar elections and the success of the NLD and its political icon Aung San Suu Kyi. The elections were hailed as a victory for democracy and human rights. It was remarkable that the NLD was then allowed to take office, given the history of the NLD being denied the right to form a government after the 1990 elections (Lidauer and Saphy 2014; Lidauer 2014). However, just prior to the 2015 elections, the Rohingya were disenfranchised by the parliament, the Constitutional Tribunal and the Union Election Commission. This was the final stage in their formal legal exclusion from the political community. As will be explained, this denial of political citizenship was executed through the deliberate denial of the right to vote or run for political office for those with temporary identity cards, exercised as an act of legal denial.

The right to vote is socially significant and politically loaded in Myanmar. After the demise of the regime established by General Ne Win, in May 1990 the military held elections that were presumed to be for the purpose of appointing a new parliament. Some Rohingya candidates ran in the elections, which the NLD won by a significant margin. This was a humiliating defeat for the military. However, on July 27, 1990, General Khin Nyunt claimed that a National Convention would be established (rather than a parliament) and it would have the sole task of drafting a new constitution. In effect, the military regime decided it would not convene parliament, but rather mandate that a new constitution be drafted as a prior condition to parliament. The military warned that the process may take five to ten years. In response, the NLD demanded that parliament be formed by September 1990. The military ignored this demand and refused to step down. None of the elected members of parliament could take office and many were arrested and put in prison (ABSDF 1996).

The next elections were not held until 2010, although conditions were not considered to be free and fair (UN Office 2011). The election was held according to the procedures and rules set out in the 2008 Constitution, although manipulation of the results was clear (Lidauer and Saphy 2014). From 2010 to 2015, the law permitted citizens, associate citizens, naturalised citizens and "other persons" eligible according to the law to vote and run for office. This appears slightly at odds with the Constitution, that requires candidates for parliament to be full citizens (that is, for both parents to have full citizenship, s 120). Nevertheless, in 2010 and the 2012 by-election, it appears that temporary identity card holders were permitted to vote and to run in the elections, as illustrated by Farrelly's (2016:109-115) case studies of three political parties. Indeed, in 2010, there were reports that some Rohingya were given cards to ensure that they could vote (*Democratic Voice of Burma*, April 9, 2010). The participation of the Rohingya appears to have varied depending on their location, with some barred from contesting the elections despite being approved to run in the

1990 election (Ko Ni 2013, 62). In 2010, three Rohingya members were elected to the Union Parliament as members of the Union Solidarity and Development Party to represent constituencies in the majority-Rohingya northern Rakhine State.

Against this political history, and the re-emergence of violence and displacement in 2012, concerted efforts arose to ensure that the Rohingya could not vote. These official efforts can be traced to the rise of the Buddhist nationalist movement and its influence on politics (Nyi Nyi Kyaw 2016). In August 2013, Dr Aye Maung, the chairperson of the Buddhist Rakhine National Development Party, proposed amendments to section 10(a) of the Political Parties Registration Law No 2/2010 (AH2013-7:26). The bill proposed removing the right of naturalised and associate citizens, as well as white card holders to be members of a political party or to vote. This proposal was suggested at a time when Rakhine State remained under a constitutional state of emergency, and anti-Muslim violence had spread to many major towns outside Rakhine State (Crouch 2017). In short, the broader political environment was hostile towards Muslims (with many non-Rohingya Muslim communities affected) and there were few if any efforts by law enforcement agencies or the military to prevent violence.

In September 2014, the amendment was passed to ensure that only citizens or naturalised citizens have the right to run for political office (Yen Saning 2014). In November 2014, a separate bill was submitted for the holding of a referendum on amendments to the 2008 Constitution in anticipation of a referendum in 2015. This bill would have allowed white card holders to vote in a constitutional referendum. Due to opposition by the Rakhine National Development Party, the provision was removed (*The Myanmar Times*, November 24, 2014). The bill was sent by parliament to the President's Office for approval. On February 9, 2015, the President returned the bill to the Union Parliament on the basis that white card holders *should* be allowed to vote because they voted in the 2008 Constitution.

The President's actions demonstrated that there was still some willingness at the elite level to permit white card holders to vote.

At the same time, there was a separate parliamentary motion to abolish white cards and instead undertake a final citizenship verification process. On February 11, 2015, the President's Office announced that white cards would no longer be valid effective from May 31. On the same day, the Speaker of the Union Parliament (Pyidaungsu Hluttaw) requested an opinion from the Constitutional Tribunal, a new judicial institution, on the matter of citizenship and the right to vote (PDH2015-12:14, 448–449). The Constitutional Tribunal hears and adjudicates on matters of constitutional dispute raised by select political elites (Crouch 2018: 427-31).

In the same month, Law No 2/2015 ("the Referendum Law") was passed in parliament to set out the process for a referendum on constitutional amendment and permitted white card holders to vote. As a result, a letter was sent to the Constitutional Tribunal challenging section 11(a) of the Referendum Law on the basis that allowing white card holders to vote in a referendum was unconstitutional. The Pyidaungsu Hluttaw sought clarification of the constitutional provisions concerning the right to vote, which mention that not only citizens but other persons may have this right (Constitution, ss 390-391).

On February 16, 2015, the Constitutional Tribunal responded in a written opinion, recorded in the parliamentary minutes. The Advisory Opinion of the Tribunal is short and only signed by the chairperson (not all nine members). The Opinion noted that its approach to interpretation must be guided by the provisions in the Basic Principles in Chapter I of the Constitution. It held that sovereign power comes from "citizens" and that only citizens have the right to vote and to be elected. The Opinion determined that "persons who have the right to vote" was only intended to mean other qualified citizens (such as associate citizens), but not temporary identity card holders. The Constitutional Tribunal declared section 11(a) of the

Referendum Law inconsistent with the Constitution. Questions were then raised about whether the Constitutional Tribunal's advisory opinion was final and binding. Some members of parliament were unsatisfied and applied for a full decision to the Constitutional Tribunal.

Meanwhile, on March 20, 2015, the Election Commission issued an order that required every political party to expel white card holders and associate citizens from parties (*The Myanmar Times*, March 20, 2015). This was an effective purge of white card holders from the political system, as well as demolition of political parties that consisted primarily of white card holders. Even the NLD had to expel 8,000 members from its party, although the NLD claimed it would help expelled members to gain citizenship.

A case in the Constitutional Tribunal was then brought by Dr Aye Maung, the same member of parliament mentioned above who initiated the proposal for legislative reform in 2013, and other members of the Amyotha Hluttaw (upper house or House of Nationalities). The applicants challenged the provision of the Referendum Law concerning who could vote in a referendum (s 11a). It was anticipated that a constitutional referendum may need to be held in 2015 if parliament approved amendments to the Constitution that required a referendum of the people. The applicants sought clarification of the constitutional provisions on the right to vote and to be elected, and the process and eligibility of a citizen to vote. They argued that the Constitution did not mention "temporary identity card holders" only citizens and so the Referendum Law was inconsistent with the Constitution and the Constitution should prevail.

The applicants also noted that sovereign power resides in *citizens* (Constitution, s 4). On this basis, they argued that only citizens should have the right to vote in a referendum on constitutional amendment as an exercise of sovereign power. Further, they emphasised that under the Burma Citizenship Act 1982, both associated and naturalised citizens must swear

an oath of loyalty and allegiance to the state, (ss 24, 46(a)) and observing that temporary card holders have not sworn that oath. These arguments resonate with Walton's (2013, 13) concern that non-Burmans are always potentially subject to claims of disloyalty.

There were differences of opinion among state officials and institutions. The Ministry for Immigration and Population argued that white card holders should be allowed to vote. The Union Attorney General's Office also made a submission that referred to the six categories of people who have no right to vote, including members of a religious order and those in jail (Constitution, s 392). The Attorney General pointed out that temporary identity card holders are not specifically listed in section 392 as a category of persons who have no right to vote. This could be taken to imply that temporary identity card holders can vote, but the Tribunal did not come to this conclusion. Instead, the Constitutional Tribunal noted that the 1982 Citizenship Law allows associate citizens and naturalised citizens to have the same rights as citizens, unless this right is limited by the state. It observed that the law does not, however, offer the same rights to temporary card holders. The Tribunal held that the provision of the Referendum Law was invalid because it was inconsistent with ss 38(a) and 391(a)–(b) of the Constitution.

The Constitutional Tribunal lent its authority to those in parliament pursuing an anti-Muslim, anti-Rohingya and anti-NLD agenda in the lead up to the 2015 elections. The decision paved the way for parliament to amend the law to disenfranchise white card holders. The decision was one more justification for the parliament to pass amendments to enact this form of legal denial over who could vote. As mentioned earlier, my point is not that all Rohingya had a meaningful right to vote in practice before 2015. But rather, those intent on denying the Rohingya the right to vote felt that it was necessary to amend the law to ensure there was no possible legal opening for the right to vote.

COURTS AND LEGAL DENIAL: TERRORISM, MASSACRES AND JOURNALISTS

The third form of legal denial is judicial decision-making. The courts are a public forum where claims of legal and interpretive denial are made and recorded. These acts of legal denial can have real and lasting consequences for those accused of crimes and send a broader message about how particular events should be interpreted. That is, courts may operate to legitimise a narrative of denial as first articulated and pursued by the administration. The courts have been drawn into the interpretive battle over the Rohingya crisis as the government seeks to impose its agenda of denial more broadly. Part of this denial and the space for courts relates to the passage of the Anti-Terrorism Law by parliament and the designation of ARSA as a terrorist organisation. The analysis begins by reflecting on how legislative reform and administrative pronouncements enable new forms of legal denial and compels courts to enact these denials.

Terrorism and Administrative Modes of Legal Denial

Periodic concerns of terrorism among the Rohingya has been a perceived concern of the state. Linked to the discussion of territory above, one of the reasons that a mujahid armed group emerged in the lead up to independence in the 1940s was because the proposal to include two townships as part of Pakistan rather than Burma failed (Tinker 1956, 357).[10] While this armed group was defeated by 1954 (Tinker 1956, 56), the perception of an Islamic threat has continued to function as a convenient official discourse.

On August 25, 2017, reports emerged of a wave of attacks launched against 30 Border Guard Posts in northern Rakhine State. Some police and border force guards were killed, although the reports were clear that many of these attacks were crudely conducted, using sticks and swords. ARSA claimed responsibility for the attacks. At the time, it was a relatively unknown group and its leaders unknown, although some reports say some are

foreigners or Rohingya from outside Myanmar (ICG 2017: 10). This occurred after the period from October 2016 to August 2017 when ARSA was said to have coerced villagers to join their cause or kill off local administrators and Rohingya leaders who refused to comply. As I spoke to a range of actors in the capital, Naypyidaw, a common thread emerged, typified in the following conversation. After discussing the grave violence and humanitarian crisis, one of my interlocutors alluded several times to "9/10." Initially I thought he was referring directly to "9/11," the 2001 attacks on the World Trade Centre in New York. But he persisted in referring to "9/10." "What do you mean by '9/10'?" I asked. "I mean 9 October 2016, the date of the first attacks [in Rakhine State]," he replied, "This is our 9/11." The parallel drawn between 9/11 and 9/10 in Myanmar is a form of interpretive denial. By casting these events as primarily a terror attack, this enables the denial of the primacy of the humanitarian crisis that followed. The initial October 2016 attacks, and the subsequent August 2017 violence, is perceived by the state to be Myanmar's 9/11 moment and is used to justify the response of the military.

ARSA was quickly declared a terrorist organisation. This is the first time a group was declared a terrorist organisation under the Anti-Terrorism Law. The declaration had far-reaching consequences and enacts new modes of denial. Even in the text of the law particular modes of denial are evident. Some of the provisions are translations from a global legal model, yet the Myanmar law has many unusual features. The Anti-Terrorism Committee is headed by the Minister of Home Affairs, who is chosen by the military. The Committee is not an independent body but is closely aligned to both the military and the government. The Committee's legal mandate is expansive and this provides room for interpretive denial in its role. As there are no requirements to be eligible as a Committee members, nor any limit on how many members the Committee can have, there are few restrictions on who might have power to enact the modes of denial encoded in the Anti-Terrorism Law. The term of office of

Committee members is unspecified. The extent, or more importantly the *limits*, of their powers are unknown. It remains unclear what investigative or evidential basis is needed to justify declaring a group to be a terrorist organisation.

Further, Anti-Terrorism Committee members and any member of the public stand to gain financial rewards if they report an alleged terrorist. This is an unusual incentive structure, as it presumes Committee members many not otherwise have an incentive to do the job required by their position. The law presumes that there will not be any need for the military nor Committee members to be held accountable, as the law contains blanket immunity clauses for both.

The consequences for individuals accused under the law are severe, with some offences under the law attracting the death penalty. There is also evidence to suggest that people accused of being complicit in the conflict in northern Rakhine State (that is, Rohingya) are also being sentenced to death under other laws (*The Irrawaddy*, February 14, 2017). As Cover (1985, 1608, 1622) has noted, the death penalty is one of the most visible and obvious acts of legal violence and itself is an interpretive act of violence.

The designation of ARSA as a terrorist organisation also means that it cannot be recognised as an insurgent group that has a right to participate in the ongoing peace process. The legislative introduction of the Anti-Terrorism Law opens the potential for future court prosecutions. More specifically, by casting ARSA as terrorists and enemies of the state, the state can pursue the prosecution of individuals, such as journalists, who are in possession of documents that allegedly relate to ARSA, as I explain next.

The Role of the Judge in Legal Denial

The situation in northern Rakhine State has led to ongoing claims of denial that are difficult to challenge because of restrictions that the government places on journalists. It has been

almost impossible for journalists to report accurately or comprehensively on the conflict in Rakhine State, the extent or scale of the violence and displacement, or the number of alleged (Rohingya) perpetrators arrested and detained or on trial. This makes it difficult to focus on trials of alleged perpetrators of violence and the way these trials may enact legal denial. Instead, the focus here is on the high-profile Yangon court case involving two local journalists working for Reuters who had been investigating and reporting on the conflict in Rakhine State (*The Guardian*, September 3, 2018). This case illustrates the role of the judge in legal denial through court submissions and court decisions. The case shows how the media and journalists are caught up in acts of legal denial through court proceedings. As these journalists challenged the military in Rakhine State, they found themselves put on trial as a spectacle and warning not to disturb the dominant narrative about perpetrators and victims.

On December 12, 2017, Wa Lone and Kyaw Soe Oo met with police on the pretext that the police were going to provide them with documents concerning the massacre of eight Muslim men and two boys that took place in Rakhine State. Instead, the two journalists found themselves arrested and detained for being in possession of the very documents the police had just handed to them. The two journalists were charged under section 3(1)(c) of the Official Secrets Act for obtaining official documentation that is classified as secret and that could be of some use to an enemy. The enemy here is presumed to be ARSA as a designated terrorist organisation. Despite this case, on February 8, 2018, Reuters proceeded to publish the findings of its investigation into the murders at Inn Dinn, with the journalists as two among four of the attributed authors (Wa Lone et al 2018). According to officials, the ten victims were allegedly involved with ARSA. Because the two local journalists worked for Reuters, a global media outlet, their trial quickly received widespread coverage.

As this court case developed, there were twists in the narrative. An example was when a police officer gave evidence that he and his colleagues were acting under orders to set

a trap for the journalists. The police were allegedly told by their superiors to arrange to meet the two journalists under the pretence of handing over secret documents regarding the massacre. This police officer was then himself prosecuted under the Police Disciplinary Act and sentenced to one year in prison.

Despite proceeding with the case against the journalists, the military admitted that its soldiers were responsible for the massacre that the two journalists had been investigating and a court martial was established. The courts martial are a separate judicial body with absolute jurisdiction over military personnel (Constitution, s 343) and do not fall under the supervision of the Supreme Court. The officers of the court martial come from the Judges' Advocates Office of the Ministry of Defence, and the Minister of Defence is selected by the Commander-in-Chief. The courts martial are therefore perceived to be closely related to the military and the entire process is under the control of the military. In this case, seven military officers were convicted for their role in killing the ten victims and sentenced to ten years in prison with hard labour (*The Myanmar Times*, February 12, 2018). There is no right to appeal from the court martial to the Supreme Court. A court martial hearing is one indication that the military wanted to deal with this case quickly and on its own terms.

The two journalists were charged under the Official Secrets Act, which dates to the colonial era and similar laws can be found in localities across the former British empire. One of the most high-profile cases in which the Official Secrets Act has been used in Myanmar is the 2014 case of the editors of Unity Journal who were prosecuted under this law after publishing a report on a weapons factory allegedly run by the military (Unity Journal Case 2014). On September 3, 2018, judges found the two journalists guilty of breaching the Official Secrets Act and sentenced them to seven years in prison. As Cover (1985, 1629) suggests, judicial decision-making is a form of "interpretive artefact." This judgment is an artefact of interpretive denial concerning the Rohingya and the Rakhine State conflict. While

judges are deemed to be authoritative voices, the act of legal denial occurs within the bounds of the jurisdictional role. Cover (1985, 1617) observes that judges are "bound at once to practical application and to the ecology of jurisdictional roles." In their judicial roles, the judges pronounce this authoritative interpretation, and leave it to the police and prison guards to enact this legal denial.

The case of Wa Lone and Kyaw Soe Oo is simultaneously a story of how legal denial deters truth-seeking. As journalists, they were seeking to uncover the truth of who was behind the massacre and how it occurred. For the authorities, the case was instead part of the broader complex of legal denial and the suffering of the Rohingya. The case implicated judges in this act of legal denial and compelled them to carry out the plan of setting up these two journalists. This is one example, among others, of ways in which the courts are part of the system of legal denial.[11]

CONCLUSION

We must attend to legal denial as the embodiment of modes of denial by the state through law and legal institutions. Law is caught up in acts of denial as a state of simultaneous knowing and not-knowing. Like Cohen, in this article, I am concerned with "the social organization of legal violence." I have shown how legal violence against the Rohingya takes place through acts of state-sanctioned legal denial. While legal denial is similar to Cohen's concept of interpretative denial, acts of interpretive denial may also be non-legal. Acts of legal denial embody a connection between law and violence and carry the authoritative and coercive force of the state (Cover 1985).

There are many levels on which the international community and scholarly inquiry should be concerned about the situation of the Rohingya. I have drawn attention to the different forms of denial at work, the reality that the official narrative may shift from one

form of denial to another, and the particularly pervasive use of legal denial to reject the scale, scope and severity of the suffering of the Rohingya. The use of law as a means of interpretive denial is identified with clarity in the seminal work of Cohen (2001). I have extended our understanding of legal denial and the way it illustrates suffering as a core part of legal life (Sarat 2014).

In Myanmar, constitutional reform is an instrument of legal denial. Re-reading Myanmar's legal history destabilises the territorial concept of Rakhine State, which forms a core part of arguments over the position of the Rohingya. The Rohingya are not only part of the Muslim minority in a Buddhist-majority state, they are an ethnic minority among the majority Arakanese Buddhists of Rakhine State. We know that, in Appadurai's (2006: 45) terms, "minorities are not born but made." He suggests that the existence of a minority is a reminder of the failure of the state project and of the betrayal of the classical nation-building process. In this light, we can see frames of legal denial at work to deny the suffering of this minority group. The very creation of Rakhine State laid the foundations for the political marginalisation of the Rohingya.

The legislative reform is also a means of political exclusion. By interpreting the right to vote and run for office as solely the prerogative of citizens, who have sworn loyalty to the state, the legislature and the Constitutional Tribunal reversed a previously held right. The case study of the right to vote illustrates that the legislature took the initiative, members initiated a request for an advisory opinion and the Constitutional Tribunal responded. The disenfranchisement of the Rohingya prior to the 2015 elections constituted the final means of their legal exclusion from the political community. Not all Rohingya had a meaningful right to vote prior to 2015, but my point is that those who opposed the Rohingya thought that it was necessary to amend the law to ensure there was no possible basis to allow them to vote.

Finally, the courts are a forum for enacting and reinforcing legal denial. While acknowledging the subordinate and weak nature of the courts, in comparison to military, police and administrative authorities, the trial of two journalists illustrates the way that this legal denial is played out. These forms of denial highlight how the responsibility for legal denial and violence is shared. When parliament agrees to pass a law, this is a collective act of interpretation. When a new constitution is made, this act is shared by the constitution-drafters. When judges pass sentence in criminal proceedings that were brought by the police and prosecutor and will be enforced by jailers, this is a collective act of denial.

In sum, states of denial offer a lens through which to understand the response of the Myanmar government to the Rohingya and the conflict in Rakhine State. Acts of legal denial operate to exclude the Rohingya from the political community and de-legitimise their suffering. Legal actors use constitutional reform, legislative reform and judicial decision-making as means of denial. These legal acts of denial have particular force given the connection between law and violence and operate to reinforce the exclusion of this minority community.

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[1] One account of the emergence of ARSA can be found in ICG (2017). However, since then, some have speculated whether ARSA even exists.

[2] This is not to suggest that the Rohingya are always victims nor that suffering has only been on one side. However, the focus is on state narratives of denial because of the added weight that state agencies and instruments lend to statements of denial.

[3] The 2014 census identifies 89% of the population as ethnic Burman.

[4] This was widely reported (see, for example, Amnesty International 2017). The clearing of villages and the laying of land mines (to prevent return) is a well-known military strategy (see, for example, Selth 2004; Maung Aung Myoe 2009).

[5] It is acknowledged that acts of denial may be used by the state against other ethnic or religious minorities and vulnerable groups. The focus on the Rohingya in this article is illustrative of the broader ways in which legal denial is employed and is at work.

[6] The 1947 Constitution acknowledges the Kachin State, Kayah State, Karen State, Special Division of the Chin and Shan State, see Chapter IX.

[7] There was recognition of "Arakan Division" at this time, but this was not in the Constitution.

[8] According to the Second Schedule to the 1947 Constitution, there were 125 seats in the Chamber of Nationalities and these were apportioned to different ethnic groups.

[9] Parliamentary Proceedings 1958, Vol IV Meeting No 25.

[10] At the time there were also armed communist groups and armed Arakan Buddhist groups fighting the government in Rakhine State.

[11] Cheesman (2016) offers an important example of how the Citizenship Law has been used against political opponents. Kyaw Min was voted into office in the 1990 elections but never permitted to hold office. Instead he and his family were found guilty and sentenced to prison for have falsely obtained citizenship as Bengalis, despite Kyaw Min's insistence that they are Rohingya.

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