

*Law, Society and Transition in Myanmar* BY MELISSA CROUCH AND TIM LINDSEY, eds [Oxford and Portland: Hart Publishing, 2014. xx + 422 pp. Hardcover: £60.00]

The political “transition” in Myanmar in recent years has opened up unprecedented opportunities for access and sustained engagement with the “law” in Myanmar and its intersections with Myanmar “society”. This book serves two purposes. The first is to introduce Myanmar law in context to the interested student. Second, having observed that “[l]egal scholars took their eyes off Myanmar for too long” (at p 3), this timely book aims to provide the impetus for future research on Myanmar law and society.

Chapters 1, 2 and 3 form the opening backbone to the book. Melissa Crouch and Tim Lindsey in Chapter 1 summarise the book and frame the book within the field of Asian legal studies. Chapter 2 by Melissa Crouch and Nick Cheesman is a short research guide that sets out legal materials in the English and Burmese languages. These include legislation, court decisions, law digests and legal journals. This chapter would invariably be a useful starting point for any interested researcher unfamiliar with Burmese law, although I query the feasibility of substantial research without a working understanding of the Burmese language. In Chapter 3, Melissa Crouch traces the successive layers of Myanmar’s legal history—these layers include rule by different kingdoms, British colonial rule, parliamentary democracy immediately after independence, the Ne Win socialist regime, the military junta that followed, and, finally, parliamentary democracy today. She observes that legal power was often accompanied by military violence and that the multiple succession of regimes has left little space for Myanmar’s law to germinate (at p 52). Chapter 3 paints a historical backdrop that enables an appreciation of the socio-political complexities that underlie the substantive law that are dealt with in the later chapters.

The rest of the book is divided into five themes, with each theme comprising three or four chapters. The themes are the judiciary, the constitution, commercial law, law enforcement and conflict, and comparative law. First, Chapters 4, 5 and 6 investigate the courts system. In Chapter 4, the late Andrew Huxley, a heavyweight on Burmese legal history, closely examines the *dhammathats* (Burmese law texts). Huxley uses theft and the right to testate as case studies demonstrating the difficulty in describing Myanmar as a distinctively common law system. He argues that, prior to colonial rule, Myanmar’s legal system could be said to be Buddhist and therefore “favour[s] a case law approach combined with a virtue ethics” (at p 72). However, subsequent transplantation of colonial and socialist codes made codified law “the new normal” (at p 72). Chapter 5 by Nick Cheesman is provocatively titled “Bodies on

the Line in Burma's Law Reports, 1892–1922” and analyses colonial criminal cases in the Burmese Law Reports. Cheesman argues that the Law Reports themselves are socio-political artefacts that reveal the imposition of the colonial masters' legal ideals on their subjects and the corresponding resistance of the colonial subjects to their masters' control. Using the human body as a unifying theme, Cheesman critically explores the way in which the Law Reports record assaults, public order offences and rape. He notes that the Law Reports obscure depictions of race and gender, despite the prevailing nexus between race, gender and crime in colonial Burma. In the next chapter, Dominic Nardi and Lwin Moe analyse a set of 99 cases from the 2007–2011 Myanmar Law Reports by means of natural language processing. Their methodology involves creating “a latent topic model that calculates the amount of text in each judicial decision associated with each topic” (at p 95). The chapter provides empirically rich results, revealing criminal law as the most prevalent topic, followed by inheritance cases. Nardi and Moe acknowledge the limits of their research to observe meaningful trends, but the chapter has set the bar for future empirical research of a larger data set.

Chapters 7, 8 and 9 focus on constitutional and administrative law. David Williams in Chapter 7 offers an in-depth critique of the *Constitution of the Republic of the Union of Myanmar* (2008) [*Constitution*]. Williams argues that political power remains in the hands of the military elite and international pressure for constitutional change is at most vague and unfocused. Williams illustrates his critique by describing the *Constitution's* apparent decentralisation of power to the ethnic minorities. However, he observes that these changes are merely gestures to appease the international community and that state and regional governments remain “weak and dominated by the centre” (at p 133). Chapter 8 by Melissa Crouch discusses constitutional writs that allow for government decisions to be reviewed. She analyses the six reported cases in the 2011 Myanmar Law Reports, the unreported applications for *habeas corpus* and the draft writ bill debates. She questions the usefulness of the constitutional writs because reported cases to date have merely been confined to lower court decisions and *habeas corpus* cases have involved “significant time and expense without any tangible success” (at p 155). She also notes limited separation of powers in the sense that Parliament has been willing to second-guess the courts' practice and procedure. Anna Dziedzic and Cheryl Saunders in Chapter 9 reflect on the constitution-making experiences from other countries (such as Indonesia, Chile and Fiji) and consider how some of these experiences may be extrapolated to Myanmar's circumstances. The chapter raises a range of challenges in constitutional drafting, including whether to incrementally amend or to completely renew the pre-existing *Constitution*, how the *Constitution* may accommodate ethnic pluralism and the role of the Association of Southeast Asian Nations (“ASEAN”) and the international community in constitution-making. Dziedzic and Saunders remind Myanmar's constitutional drafters of the wealth of world experience that they may draw on for constitutional change.

The next four chapters cover legislative reforms that have taken place since 2011. In Chapter 10, Sean Turnell analyses a series of economic reforms, namely, the new *Foreign Investment Law*, *Central Bank of Myanmar Law*, *Microfinance Law*, *Special Economic Zones Law* and actions to repeal restrictions on foreign exchange. Turnell acknowledges that these reforms represent a promising start to a functioning market

economy, but there remain the uphill tasks of implementation, enacting complementary legislation and building credibility (at p 183). Chapter 11 by Michael Lidauer and Gilles Saphy turns our attention to Myanmar's electoral system. Lidauer and Saphy highlight some improvements in the conduct and in the outcome of the 2012 by-elections from the 2010 general elections and they attribute these advances to political goodwill rather than a sound legal and institutional framework. Additionally, Lidauer and Saphy propose a roadmap for electoral reforms, such as enhancing the independence of the Election Commission, introducing transparent procedures for election administration and preparing a new vote register. It would have been interesting to consider whether any of Lidauer's and Saphy's proposals for electoral reform were heeded in the 2015 general elections. Melinda Tun and Tun Zaw Mra, Myanmar lawyers with Baker & McKenzie, deal with specific aspects of company and securities exchange law in Chapters 12 and 13. Both authors analyse company and securities exchange law in Myanmar comparatively with reference to the United Kingdom, Australia, Singapore and Hong Kong. They point out best practices in these common law jurisdictions that can be applied to Myanmar's business law reform such as the leadership of a core steering group, the engagement of stakeholders by means of a structured public consultation process and collaboration across governmental ministries.

Chapters 14 to 17 are titled "Law Enforcement, Conflict and Dispute Resolution". In Chapter 14, Andrew Selth explores the role and function of the Myanmar Police Force ("MPF"). He observes the overlapping role of the MPF with the military and argues for more autonomy if the MPF is to succeed in reinventing itself. He further demonstrates the need for the MPF to change its professional culture and to weed out corruption so as to improve its public standing. Chapter 15 by Kyaw Soe Lwin reviews the labour dispute settlement practices over different political periods. Kyaw Soe Lwin argues that the design of and recourse to formal dispute resolution mechanisms have been heavily influenced by the political inclinations of each regime. Many workers felt that formal state dispute resolution mechanisms protected their labour rights under parliamentary democracy and socialist Ne Win, whereas the pro-capitalist State Law and Order Restoration Council/State Peace and Development Council government failed to effectively resolve labour disputes. Chapters 16 and 17 are concerned with the civil war between Myanmar's government and the Kachin Independence Army. Nicholas Farrelly in Chapter 16 explores the relationship between law and politics in the Kachin conflict. He explains that the war has operated beyond the ambit of legal norms—the Myanmar military has notional legal oversight and the legal status of the Kachin Independence Army is disputed. Instead the politics of negotiation would be pivotal in managing the war. Alistair Cook in Chapter 17 continues the discussion on the Kachin conflict by assessing the provision of humanitarian aid to forcibly displaced persons. In the chapter, Cook highlights the critical role played by local NGOs which have greater accessibility in providing immediate assistance and protection to refugee camps, compared to international NGOs and the UN.

Finally, Chapters 18, 19 and 20 authored by Tim Lindsey, Catherine Renshaw and Andrew Harding explore Myanmar from a comparative perspective. In Chapter 18, Tim Lindsey contemplates how Myanmar's political development mirrors Indonesia's trajectory from President Soeharto's authoritarian New Order to Reform

Era democracy. Despite some discernible differences in their respective transitions towards democracy, Lindsey points out that Indonesia's experience can illuminate the way forward for Myanmar's political future, especially with respect to ethnic reconciliation with Myanmar's minorities at the periphery. Chapter 19 by Catherine Renshaw argues that the role of ASEAN as a regional institution in influencing Myanmar's democratisation is very weak. Even newly minted apparatus like the ASEAN Charter are largely hortatory and provide no real consensus on what democracy really is. Last but not least, Andrew Harding concludes by reflecting on Myanmar's legal reforms during what he calls the "Burmese moment" of political transition (at p 377). He captures the views of participants at a National University of Singapore Centre for Asian Legal Studies workshop on the directions of Myanmar's law reform process. His chapter raises important questions for the law and development field and suggests that foreign efforts to assist Myanmar should be more closely aligned with local players and realities.

*Law, Society and Transition in Myanmar* is essential reading for anyone seeking to come to grips with Myanmar law in context. If there were one criticism I could offer to what is an otherwise well-written and comprehensive collection of essays, I would have liked to read about how discrete areas of private law such as tort and property have translated into Burmese common law. At the time of writing, Myanmar continues to be in political "transition" with Aung San Suu Kyi's National League for Democracy taking the reins of government following a landslide victory in the 2015 general elections. I eagerly anticipate future research on law, society and transition in Myanmar that builds on the foundations of this book.

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