MYANMAR CONSTITUTIONAL DEMOCRACY WORKSHOP

8 - 10 May 2013, Yangon (Myanmar)

Report on Proceedings

SYDNEY LAW SCHOOL

THE UNIVERSITY OF SYDNEY

OVERVIEW

Sydney Law School's Constitutional Reform Workshop held in Yangon from 8-10 May, 2013, was, by all accounts, a highly successful event. It dominated Myanmar media in the days following the event, and (re)introduced into the national discourse important discussions regarding, among other things, mechanisms for constitutional change, the future of the military within Myanmar politics, and the nature of federalism as a panacea for ethnic conflict. The workshop was hailed as an exemplary model of a collaborative, country-specific, and locally focused development project. It brought together varied, and politically significant, groups to talk amicably and in good faith about Myanmar's stable and peaceable transition to constitutional democracy. There was a general agreement across the spectrum of participants that the current constitution (adopted in 2008) has weaknesses and inconsistencies that constitute obstacles

to Myanmar's transition to becoming a fully democratic and stable member of the global community. It was clear by the end of the workshop, that the discussions furnished there had cemented the project as an important building block towards improved constitutional governance and accountability in Myanmar. The workshop was a key first step towards deeper reflection over constitutional reform, and created a foundation for further projects of this type to create an ongoing conversation over Myanmar's transitional trajectory.

A diverse and extensive cross section of Myanmar society attended the workshop, including Daw Aung San Suu Kyi and other senior members of the National League for Democracy, as well as key figures within the Union Solidarity and Development Party and ethnic nationalities parties. Current and former members of the military engaged in in-depth discussions with representatives from most of Myanmar's ethnic groups, and international jurisprudence experts. A myriad of civil-society activists was also present, hailing from organizations ranging from Myanmar Egress, to the Institute for Human Rights and Business, to Action Aid Myanmar. Finally, the burgeoning academic sphere within Myanmar was well represented, with Professor Khin Mar Yee, the head of the University of Yangon Department of Law fronting a delegation of academics from both the University of Yangon and Mandalay University. In all, an impressive 75-80 political stakeholders were in attendance on each day of the workshop. The composition of these participants was pluralistic and heterogeneous, addressing diversity of gender, ethnic background and political affiliation. A full list of entities present is provided below:

Government

Pyithu Hluttaw (People's Assembly)
Amyotha Hluttaw (National Assembly)
Pyithu Hluttaw Commission on Special Cases and Legal Affairs
Myanmar Tatmadaw (Defence Services)
Myanmar National Human Rights Commission
Yangon Region Hluttaw
Palaung Self- Administered Zone

Political Parties

National League for Democracy
National Democratic Party for Development
Unity and Democracy Party of Kachin State
Shan Nationalities Democratic Party
Shan Nationalities League for Democracy
Kayin People's Party
Taaung (Palaung) National Party
Chin Nationalities Party

Non-Government Organisations

The Sun Institute (the main partner organization)

Myanmar Peace Centre
Myanmar Institute for Security and Development Policy
Australia-Myanmar Institute
International IDEA (Institute for Democracy and Electoral Assistance)
Action Aid
Youth Legal Clinic
Institute for Human Rights and Business
Kachin Baptist Convention
Kachin Women's Union
Tempapida Institute
Metta Development Foundation
Young Chi Thit

Educational Institutions

University of Yangon
Yangon East University
Yangon University of Distance Education
Mandalay University

Media Groups

Legal Affairs Journal
Street View Journal
Daily Eleven
Eleven TV
The Voice
Kamayut Media

This pioneering exercise in constitutional education was made possible by the generous support of the following institutions:

The Sydney Law School, University of Sydney
The University of New South Wales, Law School
The Australian National University, Regulatory Institutions Network
The University of Victoria (Canada), Centre for Asia Pacific Initiatives
National University of Singapore, Centre for Asian Legal Studies
Konrad-Adenauer Foundation
Australian Embassy - Direct Aid Program
DLA Piper
The Rotary Club of Lane Cove Inc.
Edu-Link Australia

The Australian Human Rights Commission was also a valued partner of the event.

Each of the sponsors was thanked during the workshop, and representatives present were given the opportunity to speak to the work of their organization, and

their role in partnering with the Constitutional Democracy Workshop in Yangon. Sponsors' logos were also present on Powerpoint slides, as well as on all conference materials distributed to delegates.

The workshop program was highly interactive, and used a mixture of intensive teaching (supplemented with Powerpoint and circulated materials) and small 'roundtable' discussions. Each day commenced with plenary addresses on key topics, followed by question-and-answer sessions. These addresses were adapted to the background and capacities – including English language proficiency - of the participants, and simultaneous translation was provided.

In the afternoon, small roundtables of 8-10 participants discussed the issues of the day, each with moderation by designated lecturers. The nature of the roundtable discussion was driven by the initiative of the participants, who aired strong views about priorities for constitutional change, and directed questions to moderators on issues of particular and pressing salience. On Day 3, Daw Aung San Suu Kyi participated in a roundtable discussion, actively exchanging ideas with, amongst others, a young woman of Rakhine ethnicity, and a Member of Parliament from Kachin State. Each day, a final plenary followed roundtable sessions where participants were invited to bring questions and comments raised during discussion to the floor. This became an important summation and sampling-plate of the varied discussions being engaged in across the room. It also allowed for participants to bring subject-specific queries to the attention of experts in that field.

Discussion during the workshop centered around issues which participants felt to be most pressing for Myanmar at this pivotal point in the nation's trajectory. It emerged that a majority of participants favoured reforming the unusually rigorous amendment provisions within the current constitution; as Professor Wojciech Sadurski stated in a press conference immediately following the workshop, "If there is an area of consensus emerging from this conference, it's that the amendment that is needed are the rules of the amendment [of the Constitution]." Other priority issues for which clear and urgent attention is needed included:

- Legal conditions of the rule of law, and in particular relaxing the executive control over the judiciary and providing conditions for judicial independence;

- More genuine federalism or stronger decentralization, with more clearly defined autonomy rights for ethnic minorities with practical effect;

- Strengthening of the separation of powers, including reducing the current imbalance in favour of the executive, and also relaxing the links between the military and the executive;

• Creating strong and independent regulatory institutions, such as anti-corruption bodies, and providing guarantees of independence for the Electoral Commission, with the view of ensuring free and fair elections

By providing key stakeholders with a series of "constitutional tools" required to design and sustain constitutional democracy, the workshop had a practical and positive impact on the local process of constitutional reform. The program ensured that a diverse group of participants in the reform process were appropriately informed and empowered to address the complexities of constitutional development. Moreover, a vast array of people were brought together to discuss vital, but divisive, developmental issues in a spirit of kinship and commonality. The process of 'deliberative democracy' was ostensibly present, as participants negotiated their way to consensus positions on several important issues. This was particularly striking in a country where hierarchical, top-down command systems have often prevailed.

The ultimate strength of the Myanmar constitution will be directly proportionate to the participation of an array of stakeholders in the reform process and the degree to which those participants have knowledge of constitutional issues particular to Myanmar and to transitional democracies more broadly. As we move forward, the team anticipates that the project will contribute to the stability and duration of democracy within Myanmar, as well as the strength of Myanmar-Australia relations.

This result was achieved by a employing a set of effective and interactive teaching techniques, which invited discussion and thoughtful deliberation. The project targeted decision-makers and opinion leaders who were likely to perform strategic functions in the transitional process. The goal was to drive home a message that constitutional design and the establishment and maintenance of democratic institutions are crucial for creating and consolidating democracy in a period of transition. We believe that this goal was successfully realised.

Indeed, there are already signs that the workshop has influenced the national debate within Myanmar. Myanmar's opposition leader Aung San Suu Kyi indicated in a speech on May 27, 2013 that the rule of law and internal peace should be given priority in amending the military-drafted 2008 Constitution. **"**All the ethnic people … want an authentic federal system and receive mutual rights. The National League for Democracy has to try to fulfill the needs of the ethnic people and this is related to amending the Constitution," she said. Moreover, Myanmar's Union Assembly circumscribed an extension of a state of emergency order in Meikhtila within a 60-day limit on May 22. Prescribing temporal limits for states of emergencies was endorsed as best practice by Dr. Melissa Crouch during the workshop.

The project has engendered positive cross-institutional and cross-cultural conversation between the Sydney Law School and all arms of government in

Myanmar, as well as with a variety of local counterparts in Myanmar, including the Department of Law of Yangon University and representatives of minority groups. All team members present felt that the workshop was an immensely rewarding and educational experience for both speakers as well as participants. The roundtable discussions in particular allowed speakers to deepen their knowledge and understanding of contextually specific concerns within Myanmar, which shape the application of constitutional theory in this remarkable country.

In contributing to this Report, each of the speakers summarized dominant themes of discussion emerging from their lectures, and these are set out below.

MAIN THEMES OF LECTURES AND DISCUSSIONS

1. The Role of the Constitution and the Processes of Constitution-Making

(Lecturer: PROFESSOR WOJCIECH SADURSKI)

It was generally agreed that the role of constitutionalism in democratic transition cannot be over-estimated: bad constitutional design can hinder, while rational constitutional design can help the process of transition. It is important to treat a constitution as a *par excellence* legal document: constitutions which are too "ambitious", and which include many provisions which by their very nature are non-enforceable (or under-enforceable) diminish the prestige and status of all constitutional norms. The 2008 Constitution of the Republic of the Union of Myanmar unfortunately, contains many such provisions. A good "transitional" constitution should focus on the fundamentals: separation of powers, the independence of the judiciary, territorial autonomy etc.

There are different ways of amending (or comprehensively changing) the constitution, and they should be sensitive to local conditions. But experience shows that big constitutional conventions are often "democratic" only in an illusory way because they are easily captured by powerful executive or military powers. It is often useful to take advantage of the existing parliamentary devices which (notwithstanding the often poor legitimacy of pre-transitional parliaments) can at least provide a good forum for rational deliberation, in a consensus-seeking setting. One should take note of a two-stages process which was popular in some transitional constitutional democracies (such as South Africa or Poland): this involves first adopting a very "thin" constitutional document, providing only for the absolute fundamentals, and then working on a more comprehensive constitutional instrument, and especially on a good charter of rights.

As transitional constitutionalism proceeds on the basis of the rules of constitutional amendment provided by an earlier constitution, it is very important that these rules for constitutional amendment are sufficiently flexible. In theory, constitutional "entrenchment" (rigidity) may be a positive feature of constitutionalism, contributing as it does to the stability and prestige of the constitution. In a transitional context, however, too much formal rigidity imposes irrational obstacles on the process of constitutional change. This is the case of the current Constitution of Myanmar: the threshold of 75 percent of members of parliament required for constitutional amendment is, within the political reality of Myanmar (and in particular within the context of the 25 percent "quota" of seats reserved for the military) almost impossible to meet. Hence, a process of constitutional change in Myanmar should begin by reconsidering, and changing, the rules for constitutional amendment. Ideally, this change should be a result of the political consensus among all major political parties in the country.

2. Constitutional Maintenance and the Constitutional Court

(Lecturers: PROFESSOR WOJCIECH SADURSKI and DR. SIMON BUTT)

Constitutional courts may play an important role, both transformative and stabilizing, in democratic transition. As the example of a large number of "transitional democracies" (in East and South-East Asia), in South Africa, in Central and Eastern Europe, in Latin America, etc.) shows, transitional democracies often make good use of constitutional courts set up in a fashion which follows an "Austrian" model of constitutional review, with a single court having the exclusive and monopolistic power of reviewing constitutionality of statutes. Three central matters which inform the success of such courts (success measured by their positive contribution to democratic transition) are (1) the modes of selection of constitutional judges (the most successful courts being those where the executive cannot dominate the process of selection); (2) the terms of tenure of constitutional judges (where a good design requires long tenure, not-coordinated with the parliamentary or executive terms of office), and (3) the breadth of access to constitutional courts (with as large a spectrum of entities authorized to lodge constitutional complaints as possible). In all these regards, the design of constitutional court in the constitution leaves much to be desired. Myanmar can do well in learning from examples of successful constitutional courts, especially in its own region.

Indonesia may provide a good model of reform for Myanmar. Indonesia was in a similar position just over a decade ago, as it emerged from military rule under Suharto. Like Myanmar, Indonesia had significant involvement of the military and politics, lacked democracy and protection for human rights, and had many ethnic and religious groups. Indonesia's solution was to engage in significant constitutional reform and to enact various statutes to allow for decentralisation, the removal of formal representation of the military in politics, the introduction of

free and fair elections, the establishment of an anticorruption commission and a constitutional court (both of which have been very successful). There seemed to be agreement that Indonesia provided a useful model for reform, provided that the particular circumstances of Myanmar were also taken into account.

In particular, participants appeared to be particularly interested in Indonesia's path towards effective decentralisation, or regional autonomy as it is called in Indonesia. The division of power between the national and provincial governments as provided in the Indonesian Constitution and regional autonomy laws was discussed in detail. It was noted that control over the exploitation of natural resources located in regional areas was a matter of some dispute and controversy in Myanmar and participants observed that the Constitution of Indonesia did not cover this issue (the issue is dealt with by statute). Discussants seemed interested in diverging from the Indonesian model in this respect so that natural resource distribution would be fairly distributed and regulated under any amended constitution.

Participants were very interested in Indonesia's Constitutional Court, established in 2003. This Court is recognised as having been very successful in ensuring that the statutes enacted by Indonesia's national Parliament comply with the Constitution. Participants raised issues such as the enforceability of Indonesian Constitutional Court decisions, the appointment of its justices (and ensuring they were capable), maintaining the independence of the Court, and the separation of powers. Although the focus of discussion was the model of Constitutional Court chosen by Indonesia, various alternative models were discussed, such as those employed in common law systems and continental Europe.

3. Bills of Rights and their Implementation; Human Rights Commissions and their Constitutional Role

(Lecturer: MS. CATHERINE RENSHAW)

The limitations of the rights provisions in Myanmar's 2008 Constitution were readily apparent to workshop participants. Many of the rights in the 2008 constitution, such as the right to life, the right to personal freedom and the right to freedom of movement, are constrained by references to "existing law", or provide that the right may be exercised "in accordance with law." Discussion during the workshop highlighted the ways that this constraint could potentially undermine the utility of a right as a bulwark against state abuse of power. It was also noted that in the current constitution, rights such as freedom of expression, freedom of assembly and freedom of association, could be limited in the interests of "Union security, prevalence of law and order, community peace and tranquillity or public order and morality." It was noted that while these limitations are common in constitutions and human rights instruments across the world, they are usually accompanied by requirements that any restriction must be: in pursuit of a

legitimate aim; provided for by law; reasonable and proportionate. There was some discussion in the course of the workshop about whether a court in Myanmar might interpret the limitations provisions in the constitution in a way that recognised international jurisprudence in this regard. Participants expressed the view that courts in Myanmar, at present, because of the many years of isolation, might lack the confidence and experience to be able to do this.

It was also noted, however, that to a significant extent the rights in Myanmar's current rights provisions (located in Chapter VIII: Citizen, Fundamental Rights and Duties of the Citizens and Chapter I: Basic Principles of the Union) reflected the influence of international human rights instruments, particularly the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It was noted that Myanmar's constitution is unexceptional amongst modern constitutions in its incorporation of economic, social, and cultural rights as a duty on the part of the state to 'promote' these rights rather than to 'guarantee' them. There was discussion in the workshop about the fact that in Myanmar, as a developing nation, economic rights are as necessary for the welfare of the people as civil and political rights, and that these rights should definitely be included alongside the more traditional rights. In Myanmar's constitution, as in many others, there is a section on 'duties' or 'the responsibilities of citizens' and workshop participants saw this as entirely appropriate. Towards the end of the workshop, some participants formed the view that it would be better if a bill of rights was located early on in the constitution, rather than, as in Myanmar's 2008 constitution, near the end of the document.

There was a significant amount of discussion about Articles 361-363 of the 2008 Constitution, which provide that: "The Union recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union"; "The Union also recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into operation of this Constitution"; "The Union may assist and protect the religions it recognizes to its utmost." The view of many participants, including Daw Aung Sang Suu Kyi, was that this article simply represented a statement of fact and that its inclusion in the Constitution was appropriate and desirable. Other participants, notably some who were from Kachin state, where Christians suffer discrimination, viewed this provision as divisive and unnecessary.

At a practical level, there was debate about the role and value of a bill of rights in circumstances where the institutional arrangements surrounding the enforcement of a bill of rights (an independent judiciary, a civil society that is capable of litigating rights claims) were not robust. There was some discussion about the role of a National Human Rights Institution (NHRI) in contributing to a culture of constitutionalism and about the importance of entrenching the constitution (Mynamar's National Human Rights Commission is not mentioned in the 2008 Constitution).

At a more general level, the idea was advanced that bills of rights are one of the

things that help to define the members of the political community who constitute the state. There was discussion during the workshop about the importance of citizenship in this regard - that members of the political community become rights-holders under the constitution because they are *citizens* – not because they are members of a particular race, religion or ethnicity. It was suggested to workshop participants that one of the functions of a bill of rights is to help transform the political self-identity of the people.

Overall, there was a sense that the 2008 Constitution was inadequate in terms of the content and form of its rights provisions. What changed notably during the course of the workshop was the perception of participants about whether or not this mattered. At the beginning of the workshop, there was a sense that the rule of law was so absent from Myanmar that whatever rights were contained in the constitution, and how they were expressed, was largely an irrelevance. At the end of the workshop, there was a sense that reform of the bill of rights provisions was an integral part of other essential reforms (political, judicial, economic).

4. The Horizontal Structure of the State in a Multi-Ethnic Society: Federalism, Regional Autonomy, and Minority Rights

(Lecturer: PROFESSOR JEREMY WEBBER, with additional remarks on situation in Myanmar by MS JANELLE SAFFIN, MP)

The presentation explored a series of responses to ethnically divided societies. It began by setting out the principles of toleration that form the foundation for any peaceful and well-governed ethnically diverse society. It noted that these principles did not require that members of the majority population accept the intrinsic worth of minority practices or languages, but they did require that members accept that diversity would continue to exist and that the society must extend rights of participation to all, without defining citizenship in a manner that excluded residents or limited rights to only part of the society. Thus, any peaceable ethnically-divided society recognized the rights to use minority languages, to practice one's religion freely, to continue to practice one's customs, and to participate in democratic governance.

The presentation then explored a series of structural adaptations that are often used to address cultural diversity: 1) decentralization; 2) federalism; and 3) minority rights. The principal focus was on federalism, where political power is divided between central authorities (the union government) and local authorities (states or regions). This differs from simple decentralization, where political power remains centralized, but the union government merely permits certain powers to be exercised on a local level. In a truly federal system of government, each level has its own constitutionally-guaranteed powers and each level has its own autonomous structures of government: its own legislature, its own executive, its own powers of enforcement, and its own financial resources. Local

institutions operate without interference from and without dependence upon the central institutions.

Federal institutions are often created in ethnically-divided societies. They generally allow members of cultural minorities 1) to participate fully in democratic self-government and freely access government services by creating jurisdictions in which the minority languages are languages of political debate and decision-making; 2) to govern themselves in accordance with their traditions of law and governance, including the ability to revise and reform their traditions in institutions controlled by the minorities themselves; 3) to allow decision-making to be responsive to local conditions in large and geographically-diverse countries; and 4) to facilitate democratic participation by ensuring that governments are close at hand, not located in a single distant capital.

Note that these benefits do not justify local jurisdictions acting as though they were themselves ethnically homogenous. The principle of toleration of cultural diversity must also be exercised by local jurisdictions, including respect for rights of language use and schooling for their own minorities. No state in a diverse country will be ethnically homogenous. State boundaries can only approximately conform to linguistic and cultural boundaries. The principle of cultural toleration must therefore extend through all the institutions in the country, including those of each state. Otherwise, states may simply reproduce the pattern of internal colonization that federalism itself is intended to prevent.

Federalism is not a stepping-stone to secession. On the contrary, a properly designed federal structure provides better management of cultural difference, with less violence and unrest, than the attempt to suppress cultural difference by force (as the restructuring of Indian authority in India's northeastern states has made clear). Federalism permits ethnic minorities to maintain their ethnic identity and to reconcile that identity with continued citizenship within the larger state. This does not mean that federalism removes all sources of conflict, but it allows better management of the frictions that inevitably arise in a culturally-diverse society.

Even in a federal structure it is important to provide effective means for cultural minorities to participate in central institutions: the right to vote, rights of political participation in minority languages, the right to argue for continued decentralization, sometimes the right to guaranteed representation in national institutions. The basic principle is that members of minorities remain citizens of the society as a whole, and they have a right to participate in the union's institutions. Such measures as language rights can involve expense, but the cost of having a permanently disaffected population, with no effective political rights, which believes itself to be subjected to internal colonization, is much greater. India has not been a rich country, but it has been able to support a truly multilingual political order.

A federal system is about building the willing participation of ethnic minorities in the institutions of the state. Federalism promises that

members of minorities need not give up their cultural or religious identities to be full members of the society.

In discussion, the question was raised whether Myanmar's 2008 constitution was genuinely federal. The consensus was that it was not. 1) The states do not have true legislative autonomy because there is very extensive overlap in legislative powers. As a result, the Pyidaungsu Hluttaw can legislate on virtually any subject, with its decisions taking precedence over those taken in the state legislatures. 2) The executive at the State and Regional level do not have autonomy. On the contrary, the executive power in the States and regions is subject to the control of the Union executive, with the Chief Ministers appointed by the President and the state bureaucracies being branches of the union bureaucracy. 3) The domination of the Union government over the States is still more extensive given that the Ministries of Home Affairs (which constitutes the state bureaucracy in ethnic states) and of Border Affairs are two of the Ministers appointed by the military. In effect, the ethnic states are under military administration, an administration that often does not operate in the language of the local people, therefore maximizing the impression that government is simply imposed by coercive force. 4) The state governments do not have their own significant sources of funding, and are therefore dependent on the Union government for the funds to operate.

For the constitution to become federal, an important first step would be to reduce federal control of the states' executive by removing the states' bureaucracy from military control, by removing their Chief Ministers and bureaucracy from Union appointment and control, and by encouraging state administration to operate in local languages. An important second step would be to expand the authority of the state legislatures and decrease the extent to which the Pyidaungsu can overrule state legislation. A third step would be to confer sufficient powers of taxation on the state legislatures to allow them to support their own activities. A fourth step would be to improve rights of minority political participation in central institutions, including greater use of minority languages.

The question was raised how control over natural resources might be handled in a federation. Because resources are often concentrated in particular regions, some form of revenue-sharing is often instituted, particularly for those resources, such as oil and gas, that tend to be concentrated in particular regions. It is important, however, to pay attention to the regulation of exploitation as well as to revenue-sharing, for it is common for local communities to bear a disproportionate cost in environmental degradation without receiving equivalent benefits. One approach adopted requires joint management of the resource, in which the concurrence of both central and local representatives is required in decisions with respect to the management of the resource.

Federalism is seen as an effective way to structure the state through constitutional means, seen through the lens of power sharing and self-rule, but

also other mechanisms are required such as political will and machinery of government.

A decentralised state was sometimes equated with a federal state, yet they are premised and built on a different ideology and agreement. One is a unitary state and the other is state comprised of many constituent and self-governing parts, with one being at the centre that has agreement across governing areas, such as foreign affairs, taxation, military affairs, etc. The 2008 Constitution of Myanmar provides for a unitary State with decentralised components, and the fact that the President chose the Chief Ministers of the states and regions and that the states and regions had no constitution of their own, is of itself enough to show that the 2008 constitution is not federal in nature.

Federalism needs to be studied, understood and demystified. It has long been feared and is a fault line of politics. Start with looking at different federal arrangements for structuring the state; how they divide and share power, and to discuss and determine how this could accommodate Burma's multi ethnic (Ethnic Nationalities), multi-cultural, multi-lingual and politically diverse peoples. It can be the means to help national integration-national reconciliation and not the means to disintegration, however move systematically, as the capacity to absorb self-rule is limited, but do it as part of a longer term plan, phasing it in stages. It was said that decentralise to build capacity, laying the groundwork for a federal type of state structure. Constitutional settlement cannot be had without getting this right. The idea of a Pyidaungsu Hluttaw Federalism Study Committee was flagged.

5. Separation of Powers: Defining and Distinguishing Executive and Legislative Powers

(Lecturer: MR. ANDREW MCLEOD)

Defining the content and scope of executive and legislative power is one of the great challenges in crafting a new constitutional settlement. This presentation explored the origins of the separation of powers and what dividing governmental power means in practice. Systems of constitutional government protect against the abuse of governmental power by vesting power in separate bodies independent of one another. Each portion of power is carefully defined and generally exercisable only by the body in which it is vested. The division of power sets up an arrangement that is designed to regulate itself – an overreach by one body should be opposed by the other bodies, for such overreach involves a diminution of those other bodies' power. As a result, it may take some time to establish adherence to the separation of powers. As this presentation emphasised, most established constitutional systems entrenched a separation of powers only by sustained identification and objection to breaches of the principle in the early years of a constitutional settlement.

The presentation explained that governmental power is traditionally split into three categories, named in accordance with the branch of government that usually exercises the power. The power of government is therefore conceived of as being legislative, judicial or executive. The legislative function centres on the creation of rules of general application. It is vested in a deliberative body that is representative of the body politic, such as a parliament. The judicial function encompasses the resolution of discrete, live disputes between identified parties by the application of an existing body of rules and principles. Judicial power is vested in the judicature, the collection of courts and other tribunals of a body politic.

Participants acknowledged that the executive function is the most difficult to describe because it has two contrasting facets. On one hand, it denotes the execution and enforcement of rules already declared; on the other, it represents the taking of unilateral actions, such as declaring war or entering into treaties (though there are also many other examples). The first depiction is of a responsive kind of power: it anticipates conduct that carries into effect the will of another branch of government. What the executive does is conditioned on, and its scope is defined by, action already taken. The second depiction of executive power is quite different: it anticipates the executive taking action of its own motion. As a result, the line between executive and legislative power is perhaps the hardest of divisions to draw.

The strictest understanding of the separation of powers is that only one branch may be vested with a power and only that branch may exercise that power. In practice, however, the strictness of the separation varies between one system of constitutional government and the next and there are overlaps between the three categories of power. Even so, the difficulty posed by the constitution adopted for Myanmar in 2008 is that it mixes these powers to a greater extent that is usually accepted. For instance, the executive branch is vested with powers that have judicial (§226) and legislative (§212) characteristics.

Three specific issues arose in the course of roundtable discussions about the matters raised in the presentation. The first issue related to in which branch the power of judicial appointment ought be vested. Participants debated the most appropriate model of judicial appointment for Myanmar. The options canvassed included direct appointment by the executive, nomination by the executive followed by ratification by the legislature and delegation to an independent body charged with selection and recommendation of judicial candidates. Though firm agreement was elusive, the trend of the discussions suggested a preference for involvement of more than one branch of government in the appointment process. The second issue was the entrenchment of a strong separation of powers at a regional level. Most participants agreed that currently an unequal division of power favoured the executive in state and regional governments and that this inhibited genuine autonomy within the federal structure. The third issue was a practical one: what concrete measures will facilitate the adoption of a strong separation of powers among the three branches of government? Participants

came to recognise that building a culture of constitutionalism can take time and that the process of establishing a separation of powers may initially involve breaches of the separation. Ultimately, participants concurred that the most important, concrete measure that will lead to a strong separation of power is the identification and discussion of breaches as they happen.

6. Constitutional Position of the Military

(Lecturer: DR MELISSA CROUCH)

It was agreed that there should be civilian control over the military and that it should be subordinate to the executive branch of government. Participants expressed the desire to remove the military from the legislature, and to ensure that it is accountable for its actions both past and present. All agreed that the military should be subject to the law and bound by any human rights obligations established in the Constitution.

In relation to military justice, there was discussion about the role of the courts, and whether special military courts were necessary to try cases involving the military. For example, in Indonesia, there is a system of Military Courts, and there is a right to appeal from the Military Court to the Supreme Court. The point was made, however, that there has been recent public debate in Indonesia about whether the Military Courts are the most appropriate forum, or whether these matters should be heard in the general court system. In contrast to Indonesia, there is no right to appeal from the Courts Martial to the Supreme Court in Myanmar, and so the decision of the Commander-in-Chief is not subject to review.

In relation to the 2008 Constitution of Myanmar, concern was expressed that the military has significant power and privilege under the Constitution. Participants expressed the desire to remove the military from any role in parliament by abolishing the seats reserved for the military. Further, it was agreed that the military should not play any role in the appointment of ministers, as they currently do in relation to the Ministers of Defence, Border Affairs and Home Affairs.

7. Constitutional States of Emergency

(Lecturer: DR MELISSA CROUCH)

It was agreed that a state of emergency should be defined narrowly and be subject to strict limitations. It was accepted that a declaration of emergency should not limit non-derogable rights. There was recognition among participants that a state of emergency cannot remain ongoing and must be subject to specific time limitations. There was also consensus on the need for checks and balances

on the power to declare a state of emergency, with the legislature and/or judiciary having the power to review such decisions.

The need for clear limitations on the power to declare a state of emergency was discussed in the context of the emergencies declared in Rakhine State in 2012, and in Meiktila in March 2013. This was a particularly timely issue because due to the then-impending requirement for the state of emergency to be discussed in the Hluttaw in May.

There was discussion about the current constitutional provisions on emergencies, which is complex and provides wide discretion to the President, the Commander-in-Chief, and the National Defence and Security Council in such situations. It was noted that the provisions allowing restrictions on any rights is of particular concern, and that it is preferable that only those rights which are derogable can be restricted and only to the extent necessary to restore order and stability. In sum, the discussions on states of emergency emphasised the need for clear boundaries on this power, to ensure that the rule of law is upheld even in times of crisis.

8. Political Parties: Constitutional Rules

(Lecturer: MS. JANELLE SAFFIN, MP)

Political parties should be part of the constitutional reform process. Issues to be reviewed are whether or not it is necessary to have constitutional inclusion and if so, to limit it to general principles of recognition of their rightful place in a democratic state. The ruling party-government should not dictate what a party's ideology is, but may restrict those parties that are not democratic, such as a communist party, as has been done in some post-communist states.

Electoral Management Bodies

The Union Election Commission was given broad and unchecked power, was not independent and the Chairman of the Commission was chosen personally by the President. Their power was that they were able to make directives, notifications, rules, procedures; in essence by-laws without reference back to the Hluttaws and without making them consistent with the Act – although the Act itself if broad and vague and lacking of detail. The UEC Chairman was highly visible, highly interventionist and made interventions in areas that may or may not be within power. E.g. the name of the country is an example, and how he reprimanded Aung San Suu Kyi for calling it Burma. There is no such provision for him to do so. There needs to be a right of appeal to a court of law, as is currently prohibited in the constitution and the corresponding Union Election Commission Law.

General Ideas

New Constitution or 2008 Constitution
The ideal was to have a new constitution, but it was acknowledged that the pragmatic political reality was to work to amend and reform the one that existed, that had established the current disciplined democratic unitary and decentralised state of Myanmar. Specific sections of the constitution were marked for change.

The amending procedures were marked for immediate change. It was agreed that without this change, no substantive constitutional review or reform could take place. There was also support for the criteria for eligibility to be President needed to change as well, as it was designed around one particular person – Daw Aung San Suu Kyi - and good design is not based on individuals, but for the common good.

It was agreed that people needed to also change their mentalities, and that the command and control model of the military-authoritarian state, needed people to lead in a co-operative-collaborative way to build political consensus and to start working out how they could share power and self-rule. One participant said that Chief Ministers and their state-regional bodies could start drafting their own governing documents, such as constitutions but none had at this stage, as they were waiting for the order from the top down, in this case the President. The model then needs to reflect the co-operative-collaborative, consensus model.

9. The Rule of Law and Constitutionalism

(Lecturer: PROFESSOR MARTIN KRYGIER)

There was general agreement that the rule of law was a key feature of a state committed to constitutional democracy. There was also agreement that the rule of law was extremely weak in Myanmar. Many examples of this, and reasons for it, were suggested. They included the following, starting from the social 'bottom' and moving to the political 'top':

1. **The view from the bottom:**

Many people, perhaps most people in rural areas had no idea what the provisions of the official law were. Many had far greater awareness of, and belief in, local mechanisms of dispute management than in official law;

Many people, particular those of non-Burman ethnicity, but also provincials generally, had no sense that the law was 'theirs.' They saw it as a tool of the politicians or the police, not as an instrument to protect and serve them;

Many officials, police and soldiers abused the law, using it to attack people not protect them. People do not trust officials to help them; they seek to avoid them.

2. The legal apparatus:

There was a widespread belief that the officials would simply do what they were told by superiors;
Judges were not at all independent of political and military superiors, and this was a deliberate policy of the political centre, institutionalised in the ways officials were recruited, trained and overseen;
Officials, including judges, were also not well versed in the law;
Nor were many practising lawyers;
Many proceedings against individuals have been carried out in secret;
Many involved bribes;
Police were often corrupt and abusive; military brutal and often ruthless, particularly in in relation to ethnic minorities.
A matter of key importance was strengthening the independence and competence of the judiciary

3. The political/military centre

At the moment the Constitution enshrines the dependence on the President of institutions that must be independent if the rule of law is to exist. The President's power to select the Chief Justice of senior courts, and Chief Ministers of states is an example of a pervasive lack of independence of key legal institutions. Until this is repaired it will be hard to speak seriously of the rule of law in Myanmar;
A great deal of everyday political and military practice over decades has been carried out in contravention of the law and without attention to its provisions. All of this standard and repeated behaviour contradicts the rule of law.

4. Remedies

While repairing chronic deficiencies in the rule of law was a long term and complex task which involved culture, expectations and routine ways of behaving, there was support for consideration of conditions of appointment, tenure and dismissal of officials, to ensure their independence, at least formally, from the executive. There was also support for extensive improvement in the education of lawyers, and of citizens in the basic content of laws that applied to them.

10. Regulatory Agencies: What Works?

(Lecturer: PROFESSOR VERONICA TAYLOR)

A constitution that promises citizens an accountable government fulfils that promise at the practical level by creating regulatory agencies that are independent, well-resourced and responsive to citizens' needs. This workshop

discussed two key examples of regulatory agencies that are important during political transitions: anti-corruption agencies and electoral management bodies (often called electoral commissions).

Anti-Corruption

Since January 2012 Myanmar/Burma has had a newly-formed Anti-Corruption Commission, made up of senior political figures. Workshop participants asked whether an anti-corruption body can be effective if it is composed of government officials. The answer, generally, is "No". Elsewhere in Asia we see two models: weak anti- corruption agencies with an advisory, preventative and coordinating role, and strong agencies with powers of prosecution, investigation, and prevention. Indonesia's Corruption Eradication Commission (KPK) uses the strong model, and has been particularly effective. The key to this has been the agency's independence and willingness to investigate high-level corruption in all branches of government. As a result it enjoys very strong public support. The government also benefits, even although having a strong agency is inconvenient in many ways. Indonesia was long regarded as an economy that was profoundly corrupt. This is a perception that Myanmar/Burma struggles with currently: it sits at the bottom tier of Transparency International's Corruption Perceptions Index. One key to reversing that perception among foreign investors, as well as citizens, is to show that government is willing to submit itself to strong anti-corruption scrutiny.

Electoral Management

Legitimate, constitutional government generally requires electoral processes that are free and fair. One key to this is establishing electoral management bodies that have the independence, the authority and the resources to conduct free and fair elections. Many countries in transition start with government-based electoral management, or use a mixed model (where government bureaucrats are supervised by an independent body or by another branch of government such as the judiciary). Indonesia's first post-reform election also used an electoral body that had representation from all the parties contesting that election. Ultimately, once some trust in the electoral process has been established, an independent professional electoral management body is the form of regulatory agency most likely to win the confidence of citizens, stakeholders such as political parties, and international observers.

The workshop discussed the recent general election in Malaysia, which was by no means a perfect electoral process, but which marked a significant improvement in transparency and accountability of that country's elections. Indonesia, too, has now met the "three relatively free and fair elections in a row" criterion that suggests electoral maturity that fulfils the requirements of its constitution.

Workshop participants asked serious and searching questions about how to prevent electoral fraud, how to ensure that regional and minority communities are actually able to fully participate in the electoral process, how to ensure security in areas where there may be conflict at election time, and how to monitor the vote-

counting process. One conclusion during plenary discussion was that there is now an abundance of information and technical expertise available on the creation of electoral management bodies and on the conduct of elections. Elections anywhere in the world are very closely monitored by civil society organizations, by political parties participating and by international observers. What this means is that there are no longer any plausible excuses for electoral irregularities – if elections are not free and fair, the excuse can no longer be technical – the explanation would have to be political interference. An independent electoral management agency, therefore, is part of the state's constitutional guarantee to citizens that government will be legitimate.

11. Constitutionalism and National Reconciliation

(Lecturer: PROFESSOR ADAM CZARNOTA)

The participants indicated during the workshop that transitional justice mechanisms are a long-term, rather than a short-term, priority issue for the Myanmar people. The mainstream of the opposition movement is beginning to talk about national reconciliation, but more within a constitutional framework, rather than a framework of transitional justice. In the short-term, they would prefer to introduce a more authentic federal system with autonomy for ethnic minorities, and in this way establish an institutional base for national reconciliation understood as a union.

The leader of the democratic movement, Aung San Suu Kyi, expressed this well when she stated that she is interested in the army returning to the barracks but in no way does she want to downplay the importance of the military.. Within the Burmese majority there is currently ambivalence regarding the implementation of transitional justice mechanisms. There were questions from delegates representing the democratic movement in relation to amnesty and non-retributive justice mechanisms.

There was, however, an interest in transitional justice mechanisms such as truth telling and compensation for victims from the ethnic minorities groups represented at the workshop. Groups from Kachin, Shan, Rakhine, Karen expressed curiosity about truth commissions, reparations for victims, programmes for victims, institutionalisation of memory issues, programme of inclusion of freedom fighters into society and, last but not least, money for reconciliation institutions.

With deepening and widening democratisation there will be greater interest in transitional justice mechanisms. After the conclusion of peace treaties between armed forces in border provinces and the government, there will be a need for transitional justice mechanisms.

CONCLUSION

It is clear that the workshop program succeeded in its goal to share and foster local ownership of "technologies of democracy" with workshop participants in Myanmar, including with representatives of government, opposition and civil society. The workshop contributed to the discourse of constitutional reform and constitutional design at a crucial time in Myanmar's transition to democracy. It also had an immediate and constructive impact on Myanmar's political agenda at a top, legislative level, but also at a community, grassroots level.

Organisers of the Myanmar Constitutional Democracy Workshop will continue the influence of the project through ongoing interactions with networks formed during the conference. A number of government and non-government organisations have requested soft copies of the workshop materials to distribute internally, and have remained in contact with the team. However, it was universally agreed that Myanmar would also benefit from further conferences and workshops of this type. All members of the team expressed a desire to follow up the important conversations created with another constitutional workshop in 2014.

Professor Wojciech Sadurski
Challis Chair of Jurisprudence, Sydney Law School
Director, Myanmar Constitutional Democracy Project

Annexes:

1. **Workshop program**
2. **The list and profiles of speakers and organizers**

WORKSHOP PROGRAM

Day 1 - Wednesday 8 May 2013
Constitutions and Constitution-making

8:15 - 9:00 AM	Registration
9:00 - 9:10 AM	Welcoming remarks MS JANELLE SAFFIN MP
9:10 - 9:50 AM	The meaning and the role of Constitutions What are Constitutions for? What belongs in a Constitution? Why are Constitutions important? Constitutions and Democratic Transitions PROFESSOR WOJCIECH SADURSKI
10:00 - 11:00 AM	Constitutional maintenance: Constitutional courts PROFESSOR WOJCIECH SADURSKI and DR. SIMON BUTT
11:15 - 12:30 PM	Bills of rights and their implementation; Human Rights Commissions and their constitutional role MS CATHERINE RENSHAW
12:30 - 1:30 PM	Lunch
1:30 - 3:00 PM	Roundtable sessions
3:00 – 3:30 PM	Tea/coffee break
3:30 – 4:30 PM	Final plenary

Day 2 - Thursday 9 May 2013
The Nature of the State

8:50 - 9:00 AM	Registration
9:00 – 10:30 AM	The horizontal structure of the state in a multi-ethnic society Federalism and decentralization in a unitary state; the types of autonomy and of minority rights MS JANELLE SAFFIN MP AND PROFESSOR JEREMY WEBBER
10:30 – 11:15 AM	Vertical structure of the state Separation of powers: Defining and distinguishing executive and legislative powers MR ANDREW MCLEOD
11:15 - 11:35 AM	Constitutional position of the military DR MELISSA CROUCH
11:35 - 12:00 PM	Constitutional states of emergency DR MELISSA CROUCH
12:00 - 12:30 PM	Political parties: Constitutional rules The conditions for registering and de-registering political parties; the rules regarding internal organisation of the parties; party funding and the funding of election campaigns MS. JANELLE SAFFIN MP
12:30 - 1:30 PM	Lunch
1:30 - 3:00 PM	Roundtable sessions
3:00 – 3:30 PM	Tea/coffee break
3:30 – 4:30 PM	Final plenary
5:00 – 6:00 PM	Workshop Informal Reception - Micasa Hotel

Day 3 - Friday 10 May 2013
The Rule of Law and National Reconciliation

8:50 - 9:00 AM	Registration
9:00 - 10:30 AM	What is the relationship between the rule of law and constitutionalism? What is the importance of the rule of law? What sorts of arrangements might help us generate the rule of law? The role and independence of the judiciary What is the role of the judiciary, and what sort of judiciary do we need, to support the rule of law? PROFESSOR MARTIN KRYGIER
10:30 - 11:15 AM	Building accountable governance institutions: What works? Anti-corruption commissions and on electoral commissions PROFESSOR VERONICA TAYLOR
11:30 - 12:30 PM	Constitutionalism and national reconciliation PROFESSOR ADAM CZARNOTA
12:30 - 1:30 PM	Lunch
1:30 - 3:00 PM	Roundtable sessions
13:00 – 3:30 PM	Tea/coffee break
3:30 – 4:30 PM	Final plenary

SPEAKERS AND ORGANISERS

Professor Wojciech Sadurski (Director of the Project)

Wojciech Sadurski is Challis Professor in Jurisprudence at the University of Sydney. He also holds a position of Professor in the Centre for Europe at the University of Warsaw, and was a visiting professor at the University of Trento, Italy and in Cardozo Law School in New York. Currently he is Global Visiting Professor at NYU Law School.

He was Professor of Legal Theory and Philosophy of Law in the Department of Law at the European University Institute in Florence (1999-2009), and served as head of department of Law at the EUI in 2003-2006. He also taught as visiting professor at a number of universities in Europe, Asia and the United States, including at the University of Trento, Italy and in Cardozo Law School in New York.. He is a fellow of the Academy of the Social Sciences in Australia (elected in 1990).

Wojciech Sadurski is member of a number of supervisory or program boards, including the Institute of Public Affairs (Poland), the Freedom of Press Observatory (Poland) and the Centre for International Affairs (Poland). He is also a member of several editorial boards, including the European Law Journal, Politics, Philosophy and Economics, and the Law and Philosophy Library (Springer Scientific). Since 2011, he has been Chairman of the Academic Advisory Board of the Community of Democracies. He also comments regularly in Polish media on public affairs, and has a popular blog (in Polish) on political and legal issues.

Professor Sadurski has written extensively on philosophy of law, political philosophy and comparative constitutional law.

E: wojciech.sadurski@sydney.edu.au
W: http://sydney.edu.au/law/about/staff/WojciechSadurski/index.shtml

Ms Janelle Saffin MP, Federal Member for Page (Patron of the Project)

Janelle Saffin is an Australian politician, and a patron of the Myanmar Project. She has been an Australian Labor Party member of the Australian House of Representatives since November 2007, representing the electorate of Page.

Janelle Saffin has been active in the Australian Labor Party since 1982 and served in the NSW Legislative Council from 1995 to 2003. From 2004 until 2007, Janelle was senior political adviser to His Excellency Dr Jose Ramos-Horta while the Nobel Laureate was Timor Leste's Foreign Minister, Defence Minister, Prime Minister and President. She was an official observer for the International Commission of Jurists at the 1999 independence referendum in East Timor.

In the Australian Federal Parliament, Janelle is a member of the Joint Standing Committee on Foreign Affairs, Defence and Trade and Chair of its Trade sub-committee. She has served for three years as Chair of the powerful Federal Parliament's Joint Houses Public Works Committee and, is a member of the Parliament's House of Representatives Selection Committee. Janelle is a member of the Petitions Committee and has also served as Government Whip.

Ms Saffin is a long time Myanmar activist, and has previously taught constitutional law within Myanmar. She is the Chair of the Australian Labor Party's International Party Development Committee, Chair of the newly formed Australia-Myanmar Parliament Group and Patron of the Australia- Myanmar Chamber of Commerce. She has visited Burma many times over the last 15 years and has been a member of the Burma Lawyers Council. She co- founded the website Gateway to Burma, and has helped hundreds of Burmese refugees relocate world-wide.

E: janelle.saffin.mp@aph.gov.au
W: http://www.janellesaffin.com.au/

Professor Veronica Taylor

Veronica Taylor joined the Regulatory Institutions Network (RegNet) in 2010 as Professor and Director. She also serves as the Director of the School of Regulation, Justice and Diplomacy.

Prior to joining the ANU she was Director of the Asian Law Center at the University of Washington, Seattle from 2001-10 and remains an Affiliate Professor of Law and Senior Advisor there. In 2010 she was the inaugural Hague Visiting Professor in Rule of Law – a chair funded by the City of the Hague and hosted by the Hague Institute for the Internationalization of Law (HiiL) and Leiden University's Van Vollenhoven Institute.

Professor Taylor has over twenty-five years of experience designing and leading rule of law and governance projects for the U.S. Department of State, the U.S. Agency for International Development, the World Bank, the Asian Development Bank and AUSAID.

Her previous academic appointments include periods as Visiting Associate Professor at the University of Tokyo, research affiliation with the Australia-Japan Research Center at ANU and as Associate Director of the Asian Law Centre, University of Melbourne.

Professor Taylor is a prolific writer on commercial law and society in Asia, regulation, rule of law promotion and challenges of governance and rule of law in 21st century Asia. Recent contributions include 'Legal Education as Development' in "*Legal Education in Asia: Globalization, Change and Contexts*", and 'Rethinking Rule of Law Assistance in Afghanistan: A Decade Later' in "*Judicial Explorations*".

E: Veronica.Taylor@anu.edu.au
W: http://regnet.anu.edu.au

Professor Jeremy Webber

Professor Jeremy Webber holds the Canada Research Chair in Law and Society atthe Faculty of Law, University of Victoria, in Canada. He is also Dean-designate of Law at the University of Victoria, where he will commence a five-year term on 1 July 2013. Prior to joining the University of Victoria in 2002, he was Dean of Law at the University of Sydney (1998-2002) and Professor of Law at McGill University (1987- 1998). He served as Associate Dean (Graduate Studies and Research) at McGill from 1994-1997. In 2009 he was appointed a Fellow of the prestigious Trudeau
Foundation.

Professor Webber is widely recognized as an exceptional scholar in the areas of constitutional law, cultural diversity, constitutional theory, federalism, and indigenous rights. He publishes widely in the fields of legal and political theory and comparative constitutional law. He is the author of *Reimagining Canada: Language, Culture, Community* and the *Canadian Constitution*, and co-editor of several collections of essays.

E: jwebber@uvic.ca
W: http://law.uvic.ca/faculty_staff/faculty_directory/webber.php

Dr. Simon Butt

Simon Butt is the current ARC Australian Postdoctoral Research Fellow and a member of Centre for Asian and Pacific Law at the University of Sydney. Prior to joining the faculty as Senior Lecturer, Simon worked as a consultant on the Indonesian legal system to the Australian government, the private sector and international organisations, including the United Nations Development Programme (UNDP) and the International Commission of Jurists (ICJ).

Simon Butt has taught in over 70 law courses in Indonesia on a diverse range of topics, including intellectual property, Indonesian criminal law, Indonesian terrorism law and legislative drafting. He is fluent in Indonesian. In 2008 Simon's thesis titled *"Judicial review in Indonesia: between civil law and accountability? A study of constitutional court decisions 2003-2005"* was awarded the University of Melbourne Chancellor's Prize for Excellence in the PhD Thesis.

Dr. Butt has published on Indonesian law and comparative law. Recent books include "*The Constitution of Indonesia: A Contextual Analysis"*, and *"Corruption and Law in Indonesia."*

E: simon.butt@sydney.edu.au
W: http://sydney.edu.au/law/about/staff/SimonButt/

Professor Adam Czarnota

Adam Czarnota is a Professor at the University of New South Wales School of Law and a Director of the Centre for Interdisciplinary Studies of Law. He is also a re-current visiting Professor at the Akademia Kozminskiego in Warsaw, Poland and a Senior Fellow of the Contemporary Europe Research Centre at the University of Melbourne.

Adam Czarnota was a Fellow of the Royal Flemish Academy of Sciences and Arts, and the Collegium Budapest. He had also acted as a visiting fellow and visiting professor at, variously, the Central European University, the Catholic University Leuven Oxford University, the University of Edinburgh and the European University Institute, Florence. He has lectured at universities in Australia, the United Kingdom, Belgium, Poland, South Africa and Georgia.

Professor Czarnota is a member of the editorial board of number of scholarly journals. He has previously served on the Board of the Research Committee for the Sociology of Law and as Chair of the Working Group on the "Transformation of law in post-communist societies". From 2013-2015 he will hold the position of Scientific Director of the International Institute for the Sociology of Law, in Onati, Spain.

Professor Czarnota has written widely on the sociology of law, legal theory, the philosophy of law and political theory. He recently co-edited "*Spreading Democracy and the Rule of Law? Implications of EU Enlargement for the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders"* and *"Rethinking the Rule of Law after Communism: Constitutionalism, Dealing with the Past, and the Rule of Law."*

E: a.czarnota@unsw.edu.au
W: http://www.law.unsw.edu.au/profile/adam-czarnota

Dr. Melissa Crouch

Melissa Crouch is a Postdoctoral Fellow at the Law Faculty of the National University of Singapore. In 2012, she spent two months as a Postdoctoral Fellow at the International Institute of Asian Studies in Leiden, the Netherlands. Prior to this, Dr. Crouch was a Research Fellow at the Melbourne Law School, the University of Melbourne, Australia. Her main area of teaching interest is public law, particularly administrative law, and she has taught in Australia and at the National University of Singapore.

Dr. Crouch's work has been published in journals such as the *Sydney Law Review, Asian Studies Review*, and *Singapore Journal of Legal Studies*. She has a forthcoming book on '*Law and Religion in Indonesia: Faith, Conflict and the Courts in West Java'* (Routledge). She is one of the Editors of the *Australian Journal of Asian Law* and is an Associate with the Centre for Indonesian Law, Islam and Society, the Melbourne Law School, the University of Melbourne.

E: melissacrouch@nus.edu.sg
W: http://law.nus.edu.sg/about_us/faculty/staff/profileview.asp?UserID=lawmac

Professor Martin Krygier

Martin Krygier is Gordon Samuels Professor of Law and Social Theory and a Co-Director of the Network for Interdisciplinary Studies of Law. He is an Adjunct Professor at the Regulatory Institutions Network (RegNet) of the Australian National University and a recurrent Visiting Professor at the Centre for Social Studies, Academy of Sciences, Warsaw. Professor Krygier is also a fellow of the Australian Academy of Social Sciences.

Martin Krygier is on the editorial board of the *Hague Journal on the Rule of Law* and the editorial committee of the *Annual Review of Law and Social Science*. In 1997 he delivered the ABC's Boyer Lectures.

Professor Krygier's work spans a number of fields, including legal, political and social philosophy, communist and post-communist studies, and the history of ideas. He is the author of "*Civil Passions: Selected Writings"*, a collection of essays, and most recently "*Philip Selznick. Ideals in the World.*"

E: m.krygier@unsw.edu.au
W: http://www.law.unsw.edu.au/profile/martin-krygier

Mr. Andrew McLeod

Andrew McLeod is a Adjunct Lecturer within the Faculty of Law at the University of Sydney, where he teaches and researches in constitutional and commercial law. Prior to joining the Faculty, he was a senior analyst within the Department of the Prime Minister and Cabinet, developing strategic policy for the Prime Minster on national priorities. Andrew studied at the University of Sydney, where he received first-class honours degrees in law and chemistry.

Following graduation, he served as Associate to the Hon Robert French AC, Chief Justice of Australia. Prior to pursuing a career in law, Andrew conducted research in biological chemistry that explored treatments for Type II diabetes and the metabolic role of vanadium.

Mr. McLeod is the co-author of the forthcoming book "*The Kercher Reports*". His recent journal articles include 'The executive and financial powers of the Commonwealth' in *The Sydney Law Review*.

E: andrew.mcleod@sydney.edu.au
W: http://sydney.edu.au/law/about/staff/AndrewMcLeod/index.shtml

Ms. Catherine M. Renshaw

Catherine Renshaw is a PhD candidate at the University of Sydney, focusing on human rights and democracy in the Asia Pacific. She is a former research fellow at the Australian Human Rights Centre at the Faculty of Law at UNSW where she coordinated the Human Rights Internship Program. Prior to this, Ms Renshaw held the position of Lecturer at the University of Newcastle.

Catherine Renshaw has formerly worked as New South Wales Convenor for the Australian Lawyers for Human Rights and as a legal journalist for the Newcastle Herald. Her previous professional appointments include acting as a solicitor in the Legal Aid Commission of New South Wales, and as a commercial litigation solicitor at Allens and Sparks Helmore.

The title of Ms. Renshaw's PhD thesis is: "*The ASEAN Intergovernmental Commission on Human Rights: Legitimacy and Potential*."

E: catherine.renshaw@sydney.edu.au

Mr. Philip Smyth

Philip Smyth is an Australian Human Rights Lawyer. He completed his schooling in Yangon and pursued legal studies at Yangon University, Myanmar, and at the University of New South Wales in Australia. He spent time in Thailand conducting human rights courses and completed a Masters course in Human Rights at Mahidol University in Thailand. He is a prominent member of the Myanmar community in Sydney, and currently President of a community based Myanmar association in Sydney.

E: lawsyd@tpg.com.au
W: http://www.lawsyd.com.au

Mr. Daniel Rowland

Daniel Rowland is currently the Law and Development Advisor at the Faculty of Law at the University of Sydney. Prior to taking up this position in late 2010, he was Senior Law and Justice Advisor in AusAID for 10 years, and before that, Principal Solicitor in the Australian Government Solicitor.

During the 1980s, Mr Rowland was involved in various film and television projects, including managing Metro Television as Sydney's first community television centre, and running the (then) Australian Film Commission. During the 1970s he practiced law in London and Amsterdam and taught public law at Adelaide and UNSW Law Schools.

E: daniel.rowland@sydney.edu.au
W: http://sydney.edu.au/law/about/international/index.shtml

Mr. Eugene Quah

Mr Quah is an Australian entrepreneur and legal consultant who has lived in Yangon, Myanmar for four years. He has worked in a variety of capacities with government officials, Members of the Hluttaw (Parliament), legal scholars, Myanmar lawyers and all major political parties. Mr Quah has been engaged by a number of international organisations for rule of law and law reform initiatives, such as Pyoe Pin's (UK DFID) legal aid law handbook projects, and Gender Equality Network's Anti-Violence Against Women Law initiative.

Mr Quah was a member of the University of Sydney scoping mission for the human rights capacity development initiative announced by Foreign Minister Senator Bob Carr during his visit to Myanmar. He was also a member of the Asia Pacific Forum of

National Human Rights Institutions scoping and assessment missions, and participated in the drafting of the Myanmar National Human Rights Commission enabling legislation.

Mr Quah occasionally writes the odd column for the Myanmar Times about legal issues in Myanmar andis moderator of an increasingly popular Myanmar Law Google Group (http://groups.google.com/group/ myanmarlaw). He also owns a successful education business and is a Founding a Member of the Australia- Myanmar Chamber of Commerce, of which he now serves as a Member of the Management Committee. Mr Quah has travelled extensively in Myanmar is able to speak, read and write Myanmar at an advanced level.

Ms. Mekela Panditharatne

Mekela Panditharatne is a recent graduate of the University of Sydney, and an incoming student at Yale Law School. She holds a first class honours degree in Government and International Relations.

Ms Panditharatne currently works as a research assistant to Professor Wojciech Sadurski. She is also a research assistant at the Centre for Peace and Conflict Studies at the University of Sydney.

Ms Panditharatne has previously interned with the International Commission of Jurists, Australia and the NSW Department of Attorney General and Justice. In 2012 she was the Editor in Chief of the Young United Nations Women's Newsletter in Sydney.

E: mekela.p@gmail.com