

CONSTITUTIONALISM AND LEGAL CHANGE IN MYANMAR. *Edited by Andrew Harding with the assistance of Khin Khin Oo.* Oxford; Portland, OR: Hart Publishing [imprint of Bloomsbury Publishing], 2017. xl, 266 pp. US\$102.00, cloth. ISBN 978-1-84946-790-2.

This edited collection of 12 chapters (and an editorial preface and note) originates from a workshop on “Constitutionalism and Legal Change in Myanmar” held at the Centre for Asian Legal Studies at the National University of Singapore. The book nicely gathers overviews of topics linked to Myanmar’s 2008 Constitution, all of which were extensively debated both before and after the country’s 2011 political transition: federalism and the peace process (chapters 1, 3, 7); criminal procedure, rule of law, and human rights (chapters 2, 8, 11, 12); political and constitutional change (chapters 4, 5); the Constitutional Tribunal (chapters 9, 10); and elections (chapter 6).

The book brings together contributions from both scholars and practitioners and as such provides an overview of key issues of constitutionalism (including tables of cases, legislation, and provisions) useful for both practice, education, and further research into Myanmar’s Constitution and its relation to ongoing political and social change in the country. It covers aspects of what the 2008 Constitution regulates, how it may serve as a tool to push change forward, and how it can be amended and improved.

Of particular interest is chapter 6, “Contesting the Rules: Myanmar’s 2015 Election and Electoral Integrity” by Bridget Welsh. The chapter is based on extended interviews by the author in combination with reviews of news reports. It attends to “major issues associated with electoral integrity in Myanmar” (106). The chapter is captivating in the way it presents central law and the regulatory reforms that were necessary to pave the way for the historical 2015 elections. It focuses on “relevant constitutional provisions, the electoral laws, and important administrative processes” (106). Welsh introduces readers to four elections that have been of central importance for the country’s political transition and reviews these in detail: the contested and critiqued referendum to approve the 2008 Constitution, the 2010 parliamentary elections that expanded the political power of ethnic minorities and triggered a generation change within the military regime, the 2012 by-elections that put the opposition leader into Parliament, and the 2015 elections. Especially, the chapter reviews the legal electoral framework, including candidacy, parties, and voters, voting process, campaigning, and adjudication. According to the author, all these components of elections and their integrity still require some improvement.

In chapter 4, Andrew Harding addresses potential avenues for constitutional change in Myanmar through a discussion of how and if there are ways to reform the amendment process as stipulated by the 2008 Constitution. Harding’s chapter skilfully demonstrates some of the core obstacles to constitutional amendment. One example is the military’s control

over constitutional changes as a result of the 25 percent of seats in Parliament that are reserved for them. In practice this means that “any constitutional amendment must be supported by at least one military member even if 100 per cent of the other members vote in favour of the amendment” (72). The chapter makes a compelling argument of law and regulation to illustrate the military’s intentions to use the 2008 Constitution as a tool for top-down managed transition. Harding draws on comparative examples from neighbouring countries to discuss various forms of constitutional amendment provisions, ways to limit military influence, and legal as well as political ways forward for the country in terms of constitutional reform.

“The Everyday Emergency: Between the Constitution and the Code of Criminal Procedure in Myanmar” (chapter 8) by Melissa Crouch reminds us that questions of constitutionalism and the Constitution in Myanmar need deeper analysis to be fully understood. The chapter presents a fascinating analysis of how, in Myanmar, officials have come to apply a section of the colonial Code of Criminal Procedure to impose restrictions during a state of emergency similar to those normally declared under a Constitution. Crouch draws on her ethnographic insights in combination with a thorough analysis of the relevant legal provisions to tell a story of how the government draws on these extended emergency powers as a constant threat for submission, especially for the political opposition and ethnic minorities. The chapter highlights lessons important for broader questions of constitutionalism in Myanmar, as Crouch concludes: “understanding of the importance and use of constitutional law in Myanmar needs to shift to incorporate the broader colonial legal legacy and the ways this legal framework is reinterpreted by the executive to exert control” (172).

Overall, the chapters offer important insights, and the book makes an important contribution to the English-language scholarship on Myanmar’s Constitution and questions of constitutionalism. It provides a brief snapshot of intricately complex issues, mainly from foreign scholars and practitioners (only two out of the twelve chapters are written by Myanmar scholars). It is anticipated that it will be nicely complemented by future publications from some of the contributors, such as Melissa Crouch, as they continue to investigate questions of constitutionalism and the Constitution.

Despite the book being written in the “constitutional moment” before elections in 2015 it is relevant today and will remain so as long as there is continued demand for constitutional amendment, federalism, and a peace agreement, under a framework that values universal rights and justice.

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