



## Constitutionalism and Legal Change in Myanmar, Andrew Harding *and* Khin Hin Oo (eds) (London: Hart Publishing, 2017)

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**Constitutionalism and Legal Change in Myanmar**, Andrew Harding and Khin Hin Oo (eds) (London: Hart Publishing, 2017)

*Constitutionalism and Legal Change in Myanmar*, edited by Andrew Harding and Khin Hin Oo, is a collection of 12 chapters covering constitutional law in Myanmar (previously Burma). Delivered to press shortly after Myanmar's 2015 elections, the assembly of chapters centres on the issues in constitutionalism related to further progress towards democracy and the rule of law. The book follows a premise composed of two components: (i) in the wake of the 2015 election the country is passing through a critical phase in its political and legal transition which has the potential to carry Myanmar either forward towards or away from becoming a multi-party democracy observant of human rights; and (ii) the country's constitution is critical in directing its political and legal transition. In keeping with the premise, the book places its focus on recognising and examining changes in the 2008 constitution that are necessary to nurture democracy and the rule of law.

The structure of the book is a sequence of chapters addressing various components of constitutionalism in Myanmar. The first chapter, by Janelle Saffin, provides an overview of the political space driving the progression of the country's 1947, 1974, and 2008 constitutions, such that the reader has context that shows them as a reflection of ongoing efforts to resolve contests between diverse ethnic and political parties. Another political aspect is addressed by Priscilla Clapp, who analyses the leadership defined by the 2008 constitution. Two chapters highlight issues with the present 2008 constitution, with Bridget Welsh studying the subject of electoral integrity and potential reform and Melissa Crouch reviewing the topic of executive authority and emergency powers. David Williams and Marcus Brand explore the topic of federalism, respectively looking at changes that need to be made to the 2008 constitution to achieve lasting peace and to fashion a form of federalism that decentralises authority. To help clarify discussion about constitutional change, Andrew Harding devotes a specific chapter to the amendment process to the 2008 constitution. There are two chapters concentrating on the Constitutional Tribunal, one from Dominic Nardi discussing how the tribunal's jurisprudence led to a constitutional crisis that resulted in the diminution of its authority and another from Khin Hin Oo that prescribes suggestions to improve the tribunal. Another two chapters deal with the rule of law, with Myint Zan reviewing endemic conceptions of the rule of law and Janelle Saffin and Nathan Willis exploring the legal profession as an agent for supporting the rule of law. Catherine Renshaw provides a chapter assessing the state of human rights under the 2008 constitution.

In their preface, the editors assert that it is "the first book in English on constitutional law or constitutionalism" since Maung Maung's 1961 book *Burma's Constitution*. The claim should be clarified somewhat, as there are other books on constitutional law that encompass Myanmar in their purviews. For example, there are several edited collections, including Bunte and Dressel's, *Politics and Constitutions in Southeast Asia* (London: Routledge, 2016), Williams' collection *Social Difference and Constitutionalism in Pan-Asia* (New York: Cambridge University Press, 2014), and *Constitutionalism in Asia in the Early Twenty-First Century* (Cambridge: Cambridge University Press, 2014), edited by Chen. Each collection offers chapters dedicated to Myanmar. Within the field of Myanmar studies, there are works that also address constitutional issues among other topics, such as: Carey's collection *Burma: The Challenge of Change in a Divided Society* (London: Palgrave Macmillan, 1997), Holliday's *Burma Redux: Global Justice and the Quest for Political Reform in Myanmar* (New York: Columbia University Press, 2012), Moscotti's *Burma's Constitution and the Elections of 1974: A Source Book* (Singapore: ISEAS, 1977), Silverstein's *Burma: Military Rule and the Politics of Stagnation* (Ithaca: Cornell University Press, 1977), and Taylor's *The State in Myanmar* (University of Hawaii Press, 2009). There is also a growing body of scholarly

pieces appearing in academic journals and non-academic forums within the disparate fields of comparative studies, constitutionalism, and Myanmar/Burma studies. Examples include articles from some of the contributors to this collection – Crouch, Nardi and Williams, in particular – as well as many others including Maitrii Aung-Thwin, Nick Cheesman and Ron Egretau. Hence, placed against the existing literature, it is more accurate to say that *Constitutionalism and Legal Change in Myanmar* represents an effort to provide a book wholly dedicated to constitutionalism related to the 2008 constitution that draws upon perspectives representing the state of scholarship that existed at their time of compilation. On this basis the book constitutes an important contribution to the growing scholarly literature on Myanmar.

One of the challenges in assembling a volume like *Constitutionalism and Legal Change in Myanmar* is that the subject matter is dynamic: the transition conditions in Myanmar create a fluid environment undergoing political, legal, economic and socio-cultural flux. This creates a context of contestation between shifting forces and evolving interests engaged across a host of issues, making for an unstable discourse over controversial features such as Myanmar's 2008 constitution. It is not easy under such conditions to produce a work dedicated to offering assessments and prescriptions for current problems. The difficulty is compounded by having a book-scale project involving multiple authors, since such a project invariably requires time to coalesce into a coherent work. The present volume is no exception to such problems. *Constitutionalism and Legal Change in Myanmar* began as a workshop of the same name convened in February 2014 by the Centre for Asian Legal Studies (CALs) at the National University of Singapore. That workshop tied into a discussion on Myanmar's constitution that occurred during a previous December 2012 CALs workshop dealing with the reform process in the country. As a result, while the publication date is 2017, the bulk of the chapters for *Constitutionalism and Legal Change in Myanmar* arise from activities – and relate to events – that occurred several years prior.

To mitigate the issue of timeliness and to keep its findings and recommendations more current, the editors sought to update the chapters so that they matched conditions that existed at the time the book went to press in early 2016. The country's ongoing transition, however, warrants future treatments on the subject of constitutionalism to maintain relevance with the constantly changing conditions in Myanmar. Such a need justifies future editions of the book. Future editions could still be fresh, since they could readily follow the same ensemble format of disparate contributions but offer entirely new chapters addressing the latest constitutional developments in the country. In essence, *Constitutionalism and Legal Change in Myanmar* could serve as the initial volume in a series enabling followers of constitutions and Myanmar to track a shared topic of sustained importance in their respective fields.

If there are to be future updates, it would be prudent to note the composition of contributing authors. One of the continuing endeavours for developing countries like Myanmar is to nurture a domestic community of endemic expertise as part of development efforts. Such aspirations involve an increased engagement by Myanmar scholars with a larger global academic community. A subsequent implication is that books about Myanmar should invite the perspectives of local scholars to support the development goals of Myanmar academia. Beyond endogenous interests, however, there is also cause in terms of diversity, in that a greater presence by Myanmar scholars would help broaden the space for different perspectives – a prospect of particular value to a collection that is largely dominated by non-Myanmar authors. *Constitutionalism and Legal Change in Myanmar* hosts two out of 12 chapters written by Myanmar scholars who in turn constitute two out of 12 authors. It would further the interests of development and breadth in analysis to explore ways to involve more Myanmar authors in potential future volumes.

Another useful direction for the future would be a greater integration into broader scholarship on constitutionalism. The chapters in *Constitutionalism and Legal Change in Myanmar* largely work to explain and identify issues posed by ongoing events, and so are empirical in nature. This enables understanding, but it risks confinement of the book as a descriptive study. Future growth of Myanmar studies as a field requires an integration of descriptive and theoretical approaches in analysis. The implication is a need for more theory in the study of constitutionalism in Myanmar. Such a need goes beyond the scope of *Constitutionalism and Legal Change in Myanmar*, but it does reveal points for potentially useful associations with other bodies of scholarship for the future.

In conclusion, *Constitutionalism and Legal Change in Myanmar* is a valuable contribution to the literature in multiple fields: comparative studies, constitutionalism and Myanmar/Burma studies. It focuses on a critical topic for the future of Myanmar, and so reaches both academic and non-academic audiences. It provides an excellent introduction to the subject of constitutionalism in Myanmar. It also offers a model that serves as a starting point for future compilations that can maintain the book's focus on issues that are sure to change in the fluid environment of Myanmar's ongoing transition.

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### **Colonizing, Decolonizing, and Globalizing Kolkata. From a Colonial to a Post-Marxist City, Siddhartha Sen (Amsterdam: Amsterdam University Press, 2017)**

This book is an essentially chronological account of architecture and urban planning and design in Kolkata. Located on the Hooghly River, today it is one of India's most populous urban agglomerations. The book focuses on the development of the city from the period when the Nawab of Bengal granted the East India Company a trading licence in 1690, through its colonial experience to its current incarnation, labelled "Globalising Kolkata" by the author.

Sen contextualises architecture, planning and urban design in a broader political economy, delineating the ways in which colonialism, wealth and power are reflected in and imposed by physical forms that themselves reflect social and political control (22–23). To his credit, the author looks beyond the city, to a broader area around Kolkata, including Howrah/Haora on the west bank of the Hooghly, which the author views as an example of "defiance of the entire scheme of colonial urbanism" (131).

The author claims to develop an analytical framework that draws on "post-structuralism and theories of dependent urbanism" (24). Sen is influenced by Said's Orientalism and post-colonial perspective and by Foucault's writings on discipline, surveillance and control. However, Sen's discussion of these approaches is an accounting of ideas and observations picked from the literature on post-colonialism while failing to develop much theoretical coherence (24–30). This is not so much a criticism of Sen as of the lack of coherence in the diverse literature on post-colonialism. At the same time, the book is not overly burdened by this framework, adding a terminology to a historical recounting of the city's development. Sometimes, though, the use of this terminology is trite. For example, that the British should clear land around their fort to better "observe the approaching enemy" seems like standard