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Understanding the Business of Transition in Myanmar

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A joke was going around about the impact of development in the country since Myanmar began its controlled transition to a quasi-civilian government in 2011. The word for 'to develop', 'to progress' or 'to improve' in Burmese is 'တိုးတက်'. This is made up of two words, which mean, respectively, 'to push, to advance or to go forward' and 'to climb up, to advance or to get on'. The joke would begin with one person commenting, 'The country is really *developing*.' To which another person would reply, 'Yes, now you have to *push* to get on the bus.' The play on the double-meaning of the word 'to develop' and 'to push' here is a telling sign of the illusive promise of development. The joke is a reference to the fact that the only thing that has changed for many people in Yangon is that the public buses are more crowded. This is not to mention that the traffic on the roads is often at a standstill because of the dramatic increase in car imports.

This book is oriented around the theme of the 'business of transition'. It is concerned with how to understand the 'business' that takes place in times of major political change. There has been growing recognition of the commercial stakes and business activities of the rule-of-law industry (Marshall 2014: xiv). This book identifies the way in which law creates new markets, law embodies hopes of social engineering and law reform is motivated by the goal of economic gain. This book is an invitation to think carefully and critically about the intersection between law, development and economics in times of political transition. This theme is one that has caused considerable angst and soul-searching in academia and public policy and amongst legal practitioners. It is hoped that by focusing on one specific context – Myanmar – as the latest site for law and development and rule-of-law reforms fresh insights can be gained. The importance of Myanmar cannot be underestimated, given its strategic location between China and India and the perception that it is the newest

frontier in Southeast Asia for foreign investment and law and governance initiatives. Building on recent work (Crouch and Lindsey 2014), the case of Myanmar can be used as a gauge of the current trends in the law and development movement.

This chapter introduces the Myanmar context by sketching out the contours of the business of transition, with a focus on local engagement and responses to law reform and rule-of-law promotion. Given that Myanmar finds itself as the latest site for law reform, the chapter situates developments in Myanmar within the broader trends in law and development. It argues that we must continue to grapple with the legacy of past law and development efforts, and remind ourselves of lessons learnt from past failures, because many of the concerns around court reform, legal education and model laws remain directly relevant to contexts such as Myanmar today.

The chapter first turns 'Back to Business', which is a reference to the failed attempt in Myanmar to shift from a socialist to market-based economy after 1988. The chapter argues that the past history of law and economic reform is shaping future efforts at reform. Many of the economic and business reforms since 2011 have built on these earlier foundations in some way. I emphasise the importance of understanding current reforms in light of past political, legal and economic practices. In short, law and development initiatives need to take into consideration the path dependency of a country's legal culture to support efforts that can build on or disrupt this trajectory.

The chapter then questions 'Whose Business?' is involved in the post-2011 reform frenzy of new rule-of-law and economic development initiatives. While so often attention is drawn to laws or institutions, it is of course people who are the actors and agents engaged in the business of law reform. This focus on agents is an intentional reminder that despite the persistence of legal technical assistance, these efforts all rely on and are determined by the people who inhabit and animate these institutions.

The chapter concludes with attention to 'Business Matters', that is, distinctive features or characteristics of debates on law reform and economic development as it is playing out in Myanmar. At a time when aid, diplomacy and business interests are closer than ever, there is an emphasis on greater transparency, participation and distribution of resources; the reform of legal texts and institutions; and the awareness of foreign involvement in the process of aid delivery, development assistance and

foreign investment. These concerns are addressed in more detail in other chapters throughout the book.

Myanmar in the History of Law and Development

This chapter repositions Myanmar in light of what is often referred to as the 'law and development' movement, a broad and contested term that is used to describe the use of law reform to pursue goals of political, economic and social development. In more recent decades, the field has been described by the less contested term 'law and governance', or through the prominence of overarching themes such as the globalisation of the rule of law (Morgan 2010). The literature on the history of law and development is largely dominated by a focus on Western actors and institutions, particularly the United States and institutions such as the World Bank and the Ford Foundation (Kleinfeld 2012; Carothers 1999; Carothers and De Gramont 2013). I acknowledge that, with more time and space, a broader perspective could also include law reform under Myanmar's period of British colonial rule (1885–1947). Nevertheless, I begin in the 1960s and seek to demonstrate modern Myanmar's paradoxical position within the law and development movement. I do so to highlight Myanmar's current curious status as the latest site for rule-of-law initiatives and foreign investment.

In the 1960s, Myanmar was in a paradoxical situation in terms of its connections to the law and development movement. On one hand, Myanmar was thrust onto the world stage of diplomatic peace-building and development in a very unlikely way. The unexpected death of the then–UN Secretary-General Dag Hammarskjöld created an opportunity for U Thant, a Burmese diplomat, to be appointed in his place (U Thant 1978). U Thant's term (1961–1971) was historic for many reasons, not least because this was the first time a non-European was elected to the position, and it was during a period when many former colonies had gained independence and were entering into membership of the UN. In December 1961, under the leadership of U Thant as the new secretary-general, the General Assembly declared the First Decade of Development. While this declaration did not place an emphasis on law, it did pave the way for international technical assistance in a range of areas and became the platform on which subsequent international development efforts were based. Just several months later in 1962, Ne Win executed a coup in Burma. In the ensuing years, General Ne Win shut off the country from

the outside world, driving out most foreign embassies and international organisations.

It was also in the 1960s when the law and development movement took off, driven by US lawyers and professors in Latin America and the United States Agency for International Development (USAID) (Scott 2008). The focus of these modernisation initiatives was on civic education, courts, the legal profession and legal education (Carothers 1999: 20–29). In short, the emphasis was on legal technical assistance (Arndt 1987). This first decade of practice was driven by a small pool of lawyers (Paul 2003). Some academic practitioners amongst these ranks were soon overcome with a sense of crisis and disillusionment due to the paternalistic and top-down approach taken, as articulated in a famous article by Trubek and Galanter (1974).

Trubek and Galanter suggest that legal reform efforts had been based on many wrong assumptions. They identify that many efforts had started from the assumption of an individualised view of society. Reform efforts had presumed that the state has control over individuals, that individuals would conform to legal rules and that the state was central to law reform. Practitioners had acted upon the belief that the design of laws can achieve social goals and that law can be used to justify injustice by the state. Yet of course law reform is not able to change behaviour in predictable ways. Efforts to train and support the legal profession ignored the fact that the growth in the legal profession is not in itself neutral, and may actually increase social inequality because the legal profession does not necessarily uphold the public interest. Further, while many technical assistance programmes focused on the courts as central to the legal order, it was often the case that courts were inaccessible and biased, while informal dispute resolution forums were overlooked. In response to these criticisms, Trubek and Galanter suggested that there was a need to enhance empirical understanding of local cultures and institutions, and the assumption that US law serves as an appropriate model needs to be questioned. Many of the assumptions about the role of the courts, legal education and the legal profession are still evident in contemporary rule-of-law programmes, and so Trubek and Galanter's critique remains an important reminder.

The year of publication of Trubek and Galanter's article, 1974, also marked the death of U Thant, the former Secretary-General of the UN (1961–1971). When his body was returned from New York to Yangon, a stand-off ensued between the military and students over whether he should be given a proper state burial. The conflict resulted in the military blowing up the student union building, causing an untold number of

deaths. Over the coming decades, the memory of U Thant and his service to the global community was suppressed in Myanmar.

The 1980s are often seen as the second moment in the Western liberal narrative of law and development. This time has been depicted as a period of law and the neo-liberal market, in which law took centre-stage in development (Trubek and Santos 2006). Globally, the belief that law enables economic growth comes with a standard set of requirements – protection of property rights, enforcement of contracts, banking regulations and intellectual property regimes, amongst others (see, for example, Ginsburg 2000; Pistor and Wellons 1999; Jayasuriya 1999). This period was also marked by an absence of accountability of donors and providers of law and development initiatives, such as the World Bank. This vacuum of accountability has been labelled the 'lawlessness of development' (Paul 2003: xiii). It was a growing industry, but one that was yet to enter Myanmar. The 1980s in Myanmar were a period of public dissatisfaction with the dysfunctionalities of socialist rule under Ne Win, such as the imposition of harsh demonetisation policies. In 1988, the democratic uprising in Myanmar began, only to be suppressed by another two decades of military rule.

The 1990s were marked by the ascendance of the rule of law as the dominant mantra of law and development. Law became both central to social and economic development and was seen as a remedy for market failures. This era ushered in a renewed emphasis on institutional reform, including courts, due to the impact of new institutionalist economics (North 1990). The number of international agencies that have rule-of-law programmes has grown significantly, and globally there are at least forty UN agencies alone that offer some form of rule-of-law assistance (O'Connor 2015). In Myanmar, the 1990s marked an attempt by the military to shift the economy from a socialist to a market-based system. Various legislative reforms on economic and commercial affairs were passed as the regime made a desperate effort to revamp the economy by attracting significant foreign investment and tourism. This failed, and Western sanctions remained a significant deterrent.

In the 2000s and beyond, at the international level there was a renewed focus on development through the Millennium Development Goals, and, more recently, the Sustainable Development Goals. However, it was only the latter goals that explicitly put law and justice on the global development agenda. These efforts were complemented by the 2005 Paris Declaration on Aid Effectiveness, which affirmed principles of local ownership and the need for greater accountability of the aid industry itself. While legal

technical assistance often remained a core part of rule-of-law programmes, ideas of legal empowerment and access to justice gained traction (Golub 2006). Further, a new industry of measuring the rule of law has emerged, although measuring the impact of rule-of-law programmes remains a complex and fraught endeavour (Engel Merry, Davis and Kingsbury 2015). At present Myanmar remains close to the bottom of most indexes, such as Transparency International's Corruption Perception Index (see Simpson, Chapter 3) or the World Bank's Doing Business report, although of course such rankings have been criticised.

The range of professionals now driving rule-of-law programmes is diverse, and this has drawn attention to the emergence of the global 'rule of law profession' (Simion and Taylor 2015). This profession has had to rethink the assumption that law can and does play a role in social and economic change, an assertion that is far more challenging than we have previously assumed. The results from socio-legal studies on whether law can engender social and behavioural change are mixed at best (Gillespie and Nicholson 2012: 2). In many ways, while the current phase in law and development may bear renewed emphasis on the rule of law as a good in and of itself, it still carries the remnants of old approaches such as the belief in the utility of legal transfers and assumptions about the desirability of recourse to best practice (Tamanaha 1995). There has also been a renewed turn to the political economy of rule-of-law reforms (Carothers and De Gramont 2013), and a re-emphasis of the role of law in development more generally (WDR 2017).

In Asia, much of this Western or internationally driven law reform frenzy primarily took place in the wake of the financial crisis of 1997. At times, loan agreements came with heavy conditionality clauses (Antons 2003; Antons and Gessner 2007). The law and development industry continued to pursue a standard core of activities – judicial reform, police and security sector reform, legal education, professional regulation, corporate and trade law reforms (Trebilcock and Daniels 2008) – although often infused with a new emphasis on access to justice, gender sensitivity and legal empowerment (Golub 2006).

Throughout the 1990s and 2000s, Myanmar remained under tight military control. The points of interaction on law and development with the outside world were minimal, such as the in-country work of the UN Office of Drugs and Crime to address the opium trade and the International Labour Organisation's work on the cronic problem of child labour. By the late 2000s, the British Council's Pyoe Pin programme was one of few to explicitly include a rule-of-law component. In 2012 the grandson of U

Thant (former Secretary General of the UN) gained permission from the government, and financial backing from donors, to renovate U Thant's former house as a museum in honour of his service to the global community through the United Nations. In the same year, many international organisations, businesses and foreign embassies once again began to set up shop in Myanmar.

By 2013–2014 Myanmar was the highest recipient of development assistance from the Organisation for Economic Co-Operation and Development (OECD). One does not need to go far on the OECD website to see the connection that is increasingly being drawn between aid and foreign investment, referenced in slogans such as 'aid for trade' or 'financing for sustainable development'. The largest donor by far to Myanmar is Japan, yet the efforts of Japan or other countries such as China in terms of their development impact in the region and around the globe are often overlooked. The role of law reform and economic development in times of political transition therefore requires particular attention.

In some respects, a conventional history of law and development would position Myanmar as largely absent from the picture. However, I have tried to demonstrate that in fact the legacy of U Thant as former secretary-general of the UN at a time when the First Decade of Development was launched is in fact a significant event in itself. Although the socialist regime of Burma ultimately denied his global contribution by refusing an official state burial, fast-forward to 2012 shows U Thant's legacy slowly coming to light. Further, it is essential to bear in mind the turbulent history of the law and development movement itself, as well as the recent avalanche since 2012 in Myanmar in order to understand the trends in law reform today.

I turn now to consider the two decades prior to Myanmar's official semi-democratic turn, to examine the local context and legal culture in which the contemporary business of transition is taking place.

Back to Business

All efforts at law reform take place against the backdrop of a particular historical trajectory. In Myanmar, efforts to kick-start a market economy and undertake law reform are not new. After the fall of the socialist regime in 1988, measures were taken to reorient away from a socialist economy towards a market-based economy. The abrupt change from socialism to a market economy was accompanied by a push to open up opportunities for foreign investment in Myanmar, as well as to establish

private banks (Turnell 2009: 256–260). In the 1990s, the abolition of the socialist economic system and the introduction of new laws on foreign investment followed. Yet the business sector remained under the control and surveillance of the regime, and there was little emphasis on innovation (Tin Maung Maung Than 2007). The post-1988 efforts to shift to a market economy were largely stillborn. This was made more difficult by heavy Western sanctions in the 1990s–2000s. As Renshaw points out (Chapter 9 in this volume), the example of US sanctions under military rule is one demonstration that targeted sanctions may simply exacerbate the situation due to a lack of legitimacy.

Many of the reforms introduced since 2011 – from the Central Bank Law to the Foreign Investment Law – began with the legal framework from the 1990s as a background template. These laws have created new tensions and new forms of conflict (Crouch 2016b). In this sense, 'Back to Business' in Myanmar is more about returning to the legislative foundations and regulatory practice laid in the 1990s on business and economic reforms, and expanding on and liberalising these measures. In many ways this is not surprising. While there are many international experts offering advice, the reality is that local legal drafters often stick with familiar strategies and procedures rather than introduce the radically unknown.

While the business of transition may involve an intensive effort at law reform, efforts at law reform are not new in Myanmar. In fact, every regime has placed some emphasis on the idea of law reform. For example, in the 1880s as Burma was being annexed to British India in several stages, authorities in the British Indian empire were appointed to various law commissions to draft the Penal Code, the Code of Civil Procedure and Criminal Procedure Code, and a range of staple laws that remain in existence today, including the Contract Act, Specific Relief Act, Evidence Act, Transfer of Property Act, Succession Act and Negotiable Instruments Act. After independence in 1947, the parliamentary government established a Laws Revision Committee in 1954 to compile and publish the thirteen-volume Burma Code. Many of the laws from the Burma Code still remain in force with few amendments today. After the coup of 1962 and the takeover by General Ne Win, a Laws Revision Committee chaired by the attorney general was established in October 1963 with the task of reviewing legislation. A similar pattern was established by the State Law and Order Restoration Council (1988–2010), which set up a committee in 1995 to review all laws and consider amending or repealing existing laws. The post-2011 governments have followed this pattern by establishing law reform committees with the task of considering laws that require amendment,

replacement or cancellation. This obsession with reform of legal texts shows no sign of abating, with the creation of Thura Shwe Mann's Commission for the Assessment of Legal Affairs and Special Issues and its primary mandate of legislative review.

The key distinction since 1988 is that the economic and legal system has been oriented away from socialism and towards a market economy. The current basis for economic reform is the 2008 Constitution. The emphasis on the market economy is in fact embedded in the Constitution. The Constitution specifies that Myanmar is based on a 'market economy', and this is explicitly attributed to the former State Peace and Development Council in the Preamble to the Constitution. While it may seem unusual to recognise the market economy in the Constitution, Myanmar in fact joins a growing number of countries that explicitly enshrine the market economy in the constitution. This list includes the Constitution of Afghanistan (2004), Albania (1998), Andora (1993), Angola, Bosnia and Herzegovnia (1995), Cambodia (1993), Guatemala (1985), Kosovo (2008), Laos (1991), Malawi (1994), Moldova (1994), Romania (1991), Serbia (2006), Slovakia (1992) and Spain (1978).[1] This long list of constitutions from Asia to Eastern and Central Europe to the Middle East is just one indication of the way in which the idea of the 'market economy' has embedded itself in constitutional law. This is particularly the case in countries that have made a shift from a socialist economy to a market economy. The inclusion of a 'market economy' provision in a constitution is an overt effort to distinguish economic reforms from the past and to enshrine the concept of the market economy in the Constitution, as a form of 'higher' law. Perhaps more distinctive to Myanmar is the constitutional promise not to nationalise or demonetise the currency, as the previous military regime had done with devastating consequences.

In terms of the intersection between the legal system and the economy in Myanmar, many new laws address economic reforms geared towards greater foreign investment and the market economy, including in the banking sector, establishment of special economic zones and potential reform of the Company Law. This churn in legal policies and regulations has created significant challenges for commercial lawyers, where responding to a client's request often requires investigative journalism as much as

[1] See the Comparative Constitution-Making Project: http://comparativeconstitutionsproject.org/. This is not including constitutions that recognise a qualified market economy, such as the 'socialist market economy' of the China Constitution 1982 and the 'socialist-oriented market economy' of the Vietnam Constitution 1992 (art 51).

it does legal research, given the challenges of finding and matching legal text with administrative practice.

In sum, law reform in Myanmar, as in any other developing context, is not new. The genesis of the market economy can be traced to post-1988 trends, and yet the post-2011 period with its relative freedoms is clearly marked by a greater effort to enshrine a market-based system, or to get 'Back to Business'. At the heart of this controlled reform process are local actors. I turn now to consider whose business is at the heart of the law and development agenda.

Whose Business?

Times of political change involve intensive efforts at economic and legal reform, and often raise concerns about who should be able to participate in and benefit from the business of transition. The chapters in this book pay particular attention to local actors in contemporary Myanmar. Amongst the most prominent are civil society organisations (CSOs) working in a range of sectors that advocate for and with local communities and interest groups. This includes advocacy on matters as important and diverse as land rights for farmers, labour rights for factory workers, protection from domestic violence for women and the right to education for children. There has certainly been an increase in scope and influence of CSOs in Myanmar in recent years, and many have traced this to the post–Cyclone Nargis recovery activities in 2008.

The renewed agency of CSOs in Myanmar is evident throughout this book, from Simpson's concern with the CSOs that form part of the Multi-Stakeholder Group for the Extractive Industries Transparency Initiative (Chapter 3), to Dale and Kyle's concern with social enterprise (Chapter 4), to Turnell's focus on microfinance initiatives (Chapter 5) and Nishimura's attention to CSOs that advocate for the rights of communities affected by special economic zones such as Dawei Watch (Chapter 8). CSOs face ongoing challenges in their efforts to participate in the law reform process, and some have had more meaningful opportunities than others in being able to engage in consultation with government agencies. While these chapters recognise the new space that has opened up for CSOs since 2011, they are also alert to the ongoing challenges and struggles that remain in the quest for genuine consultation, transparency and advocacy for social justice and equality.

A shift from authoritarian rule inevitably leads to renewed focus on the state as a key actor in law reform. In Myanmar, state actors include

various government departments that may be responsible for drafting laws, including the Union Attorney General's Office (as the de facto ministry of law), various ministries, parliamentary committees and members of parliament. Yet the focus on the state and its institutions is in tension with more recent scholarship that recognises that legal transfers and efforts at law reform must be decentred to include the role of non-state or hybrid actors. In Myanmar there is no shortage of non-state actors that seek to have an influence on the process of reform: from armed ethnic groups to the private sector to religious or ethnic-based social and political organisations. On many issues and in many sectors, the interests run across state and non-state lines. Ford, Gillan and Thein's chapter on labour standards (Chapter 2) is one demonstration of a sector where reform affects not only the government's Ministry of Labour Employment and Social Security, but involves the International Labour Organisation, unions and private companies local, regional and transnational.

The national parliament has been one of the most interesting and surprising developments in the post-2011 era. After the 2015 elections, the state and region parliaments will also potentially become more active in law-making. State and region parliaments have already raised questions with the Constitutional Tribunal regarding its capacity to raise taxes under the Constitution. The government administration plays a significant role in implementing many of the new laws and government policies. In particular, new research has demonstrated the significant, but at times subversive, role played by the General Administration Department, as the core of the administrative structure, and the Development Affairs Organisation (Arnold et al. 2013; Arnold and Kyi Pyar Chit Saw 2015). It is at the sub-national level that a range of administrative procedures take place in relation to business permits and licences for use of land and taxation, and it is imperative that these local governance institutions are recognised as key actors in development. The importance of regional regulations to enable local business is aptly illustrated by Arnold (Chapter 6, this volume).

In contrast to the legislative and executive branch, the courts have played less of a role in the business of reform in Myanmar. This is because many of the new national laws on business reforms do not allow disputes to be heard by the courts (Crouch 2017). Instead, disputes under a range of new laws are to be resolved by commissions established by statute. There are some exceptions to this tendency of preventing disputes from going to court, such as the Minimum Wage Law that specifically refers to the writs as an avenue to challenge unlawful decisions (Ford, Gillan

and Thein, Chapter 2 this volume). Supreme Court judges have, however, played an extra-judicial role because at times they have been asked to assist in drafting legislation according to the court's responsibilities under the Constitution. This includes the draft Insolvency Law, the Legal Aid Law and the Monogamy Law. The courts will begin to see more cases related to business disputes due to new legislation on aspects of commercial and corporate law being considered by parliament. While the courts have also been amongst the most resistant institutions to reform, they have begun to engage more with international donors. For example, the Union Supreme Court holds an annual Strategic Action Plan meeting to co-ordinate engagement with the donor community. There will potentially be significant changes to the court system, and the potential introduction of specialised courts as has occurred in other parts of Asia, in coming years.

The legal profession has been reinvigorated in its new-found role as a mediator of the business of law reform. Traditionally, in Myanmar the basic structure of legal practice includes a senior lawyer, who bears the title of 'advocate' and chamber master, and his chamber students, who are usually recent law graduates known as 'higher grade pleaders' (junior lawyers). Most lawyers in Myanmar are litigation lawyers, undertaking mostly criminal and to a lesser extent civil cases. The pool of local commercial lawyers is small but growing. In the 1990s a handful of commercial law firms were established during the military turn to a market economy. However, it was not until 2012, after the political shift under President Thein Sein, that foreign commercial law firms began to establish offices in Yangon in large numbers. The market is now, in the words of one lawyer, the most crowded legal market in Southeast Asia, and includes Korean, Japanese, American, UK, Thai, regional and global law firms. At present there are no regulations concerning foreign lawyers.[2] This area of practice is likely to undergo significant change in the future, because tensions between local litigators and commercial lawyers may lead to some form of regulation of foreign lawyers. In fact, many of the activities of foreign commercial law firms (such as offering pro bono training to the Attorney General's Office or the courts) at present are precisely an effort to win the favour of the government and therefore prevent a situation where foreign lawyers are regulated out of the local market.

[2] While there are many parallels between Vietnam's period of renovation after 1996 and Myanmar, one difference is that Vietnam set out clear restrictions on how foreign lawyers could operate in country (Rose 1998).

Law professors are another crucial actor in the business of transition. All universities at present are under the control of the government, and so all law professors are civil servants. Many law professors (all of whom are women) from the eighteen law departments across the country are regularly called upon by the government to assist in the drafting of legislation, the translation of laws, teaching in the judicial and military institutes, and marking judicial entrance exams, depending on their area of expertise. This has been the case in areas as diverse as intellectual property, children's rights and the national higher education law. Their position remains precarious, however, as professors must navigate their obligations to the institution and the government amidst calls for greater institutional and academic autonomy. Further, the issue of student activism remains a major concern, and, in the past, academics have been co-opted by the state to help contain and control student demonstrations. While students are still unable to form unions, in 2015 the arrest, assault and arbitrary detention of students were a reminder that many actors are still not free to participate in the process of transition.

The list of actors in law and economic development also includes the private sector. The business community is a diverse mix, including military businesses, state-owned economic enterprises and business cronies (Ford, Gillan and Thein 2015). It also includes newer actors such as social enterprises, as explained by Dale and Kyle (Chapter 4). The challenges of understanding the extent and scale of state-owned enterprises in Myanmar, and ways in which future policy should respond to them, are extremely complex (Rieffel 2015; Heller and Delesgues 2015). The sheer size and scale of some of the industries in which they are involved – such as the jade industry (Global Witness 2015) – suggest that even if these actors are not involved in official law reform, they clearly remain a major determinant of economic success.

As opportunities for foreign investment open up, foreign companies also vie for influence in this process. Other foreign organisations such as multilateral and bilateral agencies are also present in large numbers. A visit to the hotel zones in the capital city of Naypyidaw reveals the diverse international actors engaged in development – the alphabet soup of acronyms includes the United Nations Development Programme (UNDP) and United Nations High Commission for Refugees (UNHCR), to national aid agencies such as the United States Agency for International Development (USAID), the Japanese International Cooperation Agency (JICA) and the Korea International Cooperation Agency (KOICA), to supra-regional bodies such as the European Union, to international non-governmental

organisations (INGOs) such as the International Development Law Organisation (IDLO), and development banks such as the World Bank and Asian Development Bank (ADB). This is not to mention bilateral donors, foundations such as the Open Society Institute, other INGOs, quasi-INGOs or global network organisations such as the International Bar Association. Many of these organisations have now been involved in rule-of-law projects for decades in a range of other contexts around the globe. There have been some high level government efforts towards co-operation and co-ordination amongst donors. In 2013, the Thein Sein government established the Myanmar Development Cooperation Forum and issued the Naypyidaw Accord for Effective Development Cooperation. Under the NLD government from 2016, a Development Assistance Coordination Unit was established (known as 'DACU'). Yet the extent to which these agencies co-ordinate and share information, or fail to do so, in Myanmar is in part conditioned on their past interactions and institutional histories in other contexts.

This survey of the range of actors involved can be taken as a neutral and open-ended response to the question of 'Whose Business?' Alternatively, the question of 'Whose Business?' may provoke a more hostile response, suggesting that for some it is 'none of their business'. This more suspicious response has surfaced as part of the debates on economic law reforms in terms of nationalist and protectionist sentiment. Further, many local actors play multiple roles and therefore have overlapping ties of allegiance, and yet these ties will no doubt continue to shift with the political landscape under the National League for Democracy (NLD) government. Attention needs to focus on who can or should participate in, and benefit from, rule-of-law reform. While the rule-of-law industry is now a standard fixture in developing contexts, the necessity for locally driven initiatives remains paramount. In fact, on one reading, Cheesman's study of the rule of law may lead us to conclude that the rule of law can only effectively be promoted by local actors in Myanmar (Cheesman 2015). At the very least, his work points to the necessity of reform driven by those with an intimate knowledge and appreciation of local context.

Business Matters

This chapter now turns to consider the core contemporary issues at stake in the business of transition. The reform process reflects broader trends in the current phase of law and economic development, while also attesting to the persistent weaknesses and bias in law reform. Our attention needs

to focus on how local actors respond to and participate in law reform (Gillespie and Nicholson 2012), not simply focus on how legal texts have changed. I identify three trends that are evident in the business of transition in Myanmar. The first is the heightened demands for genuine participation, transparency in governance and equitable distribution of resources, and the benefits of democracy generally. The second is the technical reform of legal texts and institutions and the borrowing of legal models. The third is foreign aid, investment and expertise, with Myanmar now home to a large proportion of the law and development sector. These overlapping trends and concerns demonstrate some of the central issues in contemporary efforts of law and development. I explore these issues with reference to the chapters that follow in this volume.

Demands for Participation, Transparency and Equitable Distribution

One characteristic of the business of transition is the heightened expectations of public participation in business and economic reforms and demands for transparency in the reform process. Of course, all INGOs today, as well as most business activities, would claim to include some consultation as part of their process. Yet the challenge is often about how to ensure effective participation and consultation, and the inclusion of vulnerable groups such as women and youth in particular. Nishimura (Chapter 8) grapples with the issue of managing expectations and ensuring meaningful and genuine consultation on projects such as the special economic zones. In Myanmar, this has taken place as media restrictions have been lifted and limitations on civil-society organisations relaxed. The increase in public participation in law reform has taken several forms. There has been greater participation in the national law-making process for some draft laws, although more often the consultation process is too little, too late.

Another form of participation has been demands for local community consultation regarding business plans and foreign investment, particularly in areas such as the special economic zones. Special economic zones have been marked out for Dawei, Thilawa, Kyaukphyu and Kokang, and these are in varying stages of progress (see Nishimura, Chapter 8; Wood, Chapter 9).[3] The idea of special economic zones is one that has spread across Asia (World Bank 2008; Harding and Carter 2010), and the concept

[3] Myanmar Special Economic Zones Law No 1/2014; Kokang Economic Zone, Myanmar Investment Commission Notification 59/2014.

itself is not new in Myanmar (Turnell 2014: 194). While the original legislation was modelled on that of Vietnam and China, further detail was added to the expanded 2014 law in relation to income tax exemptions, land use and labour requirements. Wood demonstrates, however, that the difference between the regulations on the special economic zones and on foreign investment more generally is negligible, and that this may negatively impact the possibility for success of the zones (Chapter 7). The chapters in this volume seek to capture local perspectives and responses to legal change. All chapters show some concern with the role of civil society, with what people think the law is capable of, or what they expect it can or should do.

Access to dispute resolution mechanisms and the resolution of past grievances has been another area of demand. Restrictions on freedom of association have been lifted, although not completely removed, and it is now legal to form a union (with the exception of student unions, which remain illegal). Demands for dispute resolution have often revolved around the issue of land and natural resources. There has been renewed focus on labour standards (Kyaw Soe Lwin 2014) and the recent introduction of a minimum wage. As Ford, Gillan and Thein (Chapter 2) demonstrate, the minimum wage introduced by law in Myanmar in 2015 came close to meeting the expectations of CSOs, and claims by the private sector that this would negatively affect their business viability appear to be largely unfounded.

In addition, the demands for more meaningful and genuine public participation and consultation are often combined with demands for transparency. Such calls for transparency may be made by both local actors as well as foreign actors. For example, many have called for greater reporting and accountability in Myanmar's state economic enterprise sector (Rieffel 2015). The calls for transparency have also been made of the rule-of-law and aid industry itself, in part due to recognition that this is now 'big business' (Zurn, Nolkaemper and Peerenboom 2012). In 2014, Burma signed up to the International Aid Transparency Initiative (IATI), a voluntary code, and a website has been launched to manage aid data (mohinga.info). The site documents that at least US$5.31 billion in aid has been committed to Burma between 2011 and 2015 (*The Irrawaddy* 2015). The information the site contains on the amount and purpose of aid of course depends on the willingness of agencies to submit to the voluntary reporting requirements. This also raises the concern that the combination of aid and investment may swamp the demand-side of change, and distort priorities.

Further, there is an understandable and pressing concern that natural resources should not be subject to exploitation by outsiders or by local cronies, but rather be of benefit to local communities. The 'resource curse' is a well-known phrase in Myanmar, as a reference to the challenges facing the state in the management of natural resources (Humphreys, Sachs and Stiglitz 2007). Many are keen to use their new freedoms to avoid the resource curse. The post-2011 environment and the greater freedoms of speech and association have led to countless complaints about land grabs and resource allocation and distribution, past and present. This has been typified in local protests against the Letpadaung copper mine, a joint venture between a Chinese company and the military-owned Union of Myanmar Economic Holdings Ltd, as discussed by Simpson (Chapter 3).

Yet the law reform process has shown little signs of genuine improvement in how land is allocated, how disputes over land are resolved or how natural resources can be used in a more sustainable way. While parliament has passed several laws on the use of land, regulating farm land specifically and mandating environmental protection, many argue these laws do not go far enough in addressing the protracted issue of land confiscation.[4] While the vast majority of people in Myanmar depend on agriculture for their livelihood, little has changed in terms of their prospects for meaningful property rights.

In addition to land, Myanmar has an abundance of natural resources from oil and gas to gems and precious stones. Concerns over natural resource use and the exploitation of the environment and of workers in industries such as oil and gas have implicated foreign firms in the past and have had a negative effect on human capital. A major court case during the military era was filed in the United States against Unocal. In this case Burmese peasants brought claims against Unocal alleging violations of rights in the course of the natural gas pipeline project.[5] This case was possible because of the efforts of transnational legal actors and the social movements that energised this case (Dale 2011). After eight long years of winding its way through the courts, Unocal announced that a settlement had been reached with the plaintiffs. While this case was less about the environmental impact and more about the high human cost involved, the potential for foreign firms to face responsibility at home remains. This has led to a range of new regulatory initiatives in the resource sector, such

[4] Environmental Conservation Law No 9/2012; Administration of Vacant, Fallow and Virgin Lands Law No 10/2012; Farmland Act No 11/2012.

[5] See *Doe v. Unocal*, 395 F.3d 932 (9th Cir. 2002).

as the Extractive Industries Transparency Initiative (EITI), although as Simpson identifies this comes with a new set of challenges and problems (Chapter 3). These challenges are urgent given that industries such as the jade sector are worth an estimated US$31 billion per year on the black market (Global Witness 2015).

The concern over natural resources in Myanmar has often been generated at the local level, yet there remains disconnect between the powers of the state/region governments and the ability of these governments to use the resources for the public benefit. Natural resource governance has been a key theme of discussion and debate at the 21st Century Panglong Union Peace Conference, which began in 2016.

Reform of Legal Texts and Institutions

Law and development initiatives have fixated on the borrowing of ideas, and the reform of legal texts and institutions through legal technical assistance (Arndt 1987). This is certainly the case in Myanmar, as not only have a whole host of laws been passed, but a wider range of efforts are taking place to enhance legal education, establish an independent bar association, create rule-of-law training centres and open legal aid clinics.

In the same way that many development professionals have packed up their bags in Cambodia, Vietnam, Pakistan and Iraq and moved to Myanmar, so too have foreigners brought in their ready-made programmes and legal models from outside, often with little time to consider the local context and culture. Model legislation is increasingly promoted by specialised interest groups. Yet this preoccupation with legal models that embody 'international best practice' is more nebulous than it seems, as the idea of international best practice is never a neutral variable (Gillespie and Nicholson 2012: 6). Rule-of-law projects do not have inherent meaning, but rather the process of interpretation and contextualisation takes place on the ground by local actors (Gillespie 2014). This should lead to renewed attention to local context and meaning-making by local actors. This is particularly so because it is often local actors within government agencies who feel the pressure to have a new law for their sector.

One feature of legal reform is the tendency to look to common law models given the insistence by the government that Myanmar is a common law legal system. For example, the Company Act 1914 is still on the books in Myanmar and largely remains unamended up until now. There are efforts to revise and update both the Company Act and the Insolvency Act in co-operation with the Directorate of Investment and Company

Administration (DICA), the Union Supreme Court and the ADB (Tun 2014). In many ways Myanmar is a latecomer in the region in terms of corporate and commercial law reform, with organisations such as the ADB assisting in the reform of insolvency laws in at least eleven countries in Asia since 1998. Even once these draft laws are approved, it will take significant efforts to implement new systems and shift the mentality of government agencies from surveillance and restrictions on companies to one of facilitating business formation, innovation and growth. The preference to look to common law best practice must not overlook the reality that in many respects the legal system in Myanmar functions according to latent socialist principles and favours vested military interests.

Model legislation has been considered in relation to a range of areas of law. One example is the new Central Bank law that has been introduced.[6] In theory, this law grants independence to the Central Bank from the Ministry of Finance, reforms the position of the governor of the Central Bank and its board, and restricts the printing of money (Turnell 2013). Myanmar therefore joins a range of countries around the world that have taken steps to increase the independence of the central bank through legal reform (Polillo and Guillen 2005). However, in reality the Central Bank of Myanmar does not yet function independently. The future operation of banks, including foreign banks, will depend on the implementation and regulations under the new Financial Institutions of Myanmar Law 2016.

As Myanmar continues to open up and engage with the international community, this raises questions about the role and impact of international standards, upon which model legislation is sometimes based. Several chapters in this volume consider the relevance of international law in Myanmar. Myanmar is a dualist system, that is, any international treaty or convention must also be passed as a national law before it is recognised as law in the domestic context. One example is the Child Law No 9/1993, although this does not fully meet Myanmar's obligations under the UN Convention on the Rights of the Child. While Myanmar has signed the International Covenant on Economic, Social and Cultural Rights, it has not yet introduced legislation in this regard. Some select aspects of international law, such as the law of the sea, have been the focus of study in Myanmar as a 'safe' issue in light of Myanmar's success in its dispute over the maritime border with Bangladesh.

[6] The Central Bank of Myanmar Law No 16/2013.

In terms of rule-of-law programmes, some aid has gone to fund the involvement of foreign experts in law reform, although this does not necessarily equate to actual foreign influence in the draft law. This is not new, and some laws in the State Law and Order Restoration Council (SLORC)/State Peace and Development Council (SPDC) era were also drafted with degrees of assistance by foreign experts and institutions. The Anti-Trafficking in Persons Law No 5/2005 was drafted in consultation with international actors and with reference to international standards. More recently, several international organisations were involved in the consultation and drafting of the Small and Medium Enterprise Law. While engagement with foreign expertise creates more opportunities to consider best practice, it has also led to local concerns, perceptions and rumours of unwarranted foreign influence in the drafting process. This necessitates greater awareness of power disparities and greater transparency in the drafting and consultation process.

Many actors are pointing out the gaps between the situation in Myanmar and international standards and norms (regardless of whether Myanmar has actually signed on to these conventions), such as the standards expected of consultation on special economic zones (Nishimura, Chapter 8). Yet there is a need to go beyond this line of analysis to consider what meanings international law has in Myanmar, the areas in which it does or does not have traction, and to what extent it is useful to measure Myanmar against international standards.

Finally, regionalism is likely to have an influence on Myanmar's law reform process in the future. Myanmar became a member of the Association of Southeast Asian Nations (ASEAN) in 1997, although it was not until 2014 that it was finally permitted to take its turn as chair. Given the turn to ASEAN economic integration, this may influence future law reform efforts. More likely, in an informal sense, local actors in Myanmar often refer to or inquire about examples from ASEAN countries, regardless of whether legal models in the ASEAN region are of any use or relevance to Myanmar. This demonstrates a close affiliation with and desire to learn from successful legal reforms in the region.

Foreign Aid, Investment and Expertise

Law and economic development efforts are marked by an increase in foreign involvement. This may take the form of foreign aid, the involvement of foreign experts in law reform projects, foreign volunteers and foreign investment. While foreign involvement cannot necessarily be equated

with foreign influence, there has clearly been a major increase in efforts at foreign engagement. Structurally, some government aid agencies in the West have been collapsed into departments for foreign affairs, including in Canada, New Zealand and Australia. There has been a corresponding rise in the language of 'economic diplomacy' as a substitute for traditional aid programmes. Foreign aid is increasingly tied explicitly to foreign affairs, and while this aid may still also be in the interests of the recipient country, at other times it may have a neutral or negative effect (Carothers and De Gramont 2013).

Law and development initiatives also now involve a host of bilateral and multilateral actors. Foreigners involved in these endeavours are likely to export legal ideas and development concepts that they are most familiar with (Schimmelfennig 2012: 115). Some have questioned whether the sheer avalanche of foreign aid in Myanmar since 2011 is 'too much too soon' (Rieffel and Fox 2013). The politics surrounding the provision of humanitarian aid reached a new low in 2013 when aid organisations were forced out of Rakhine State due to tensions over aid delivered to the displaced Rohingya population (see Cook 2016). This highlights the precarious and highly contested nature of humanitarian aid delivery in Myanmar.

The programmes and agendas of these agencies are inevitably shaped by their political and economic interests (Schimmelfennig 2012). After Myanmar's historic 2015 elections, these forms of engagement are increasing. There was talk of Myanmar becoming a 'One UN' community in the future. The UN's slogan of 'Delivering as One' includes four aspects: one leader, programme, budget and office. In essence, it is a bureaucratic merger of all UN aid agencies on the ground, which requires the consent of the host country. The intention is to make it easier for the host country to deal with one centralised agency. While this bureaucratic merger has taken place in other countries at the invitation of the government, there is no available evidence yet of the merits of such an approach.

Discussions on trends in aid and technical assistance often focus on the West, and yet this fails to recognise different approaches taken by other foreign actors. For example, the Japanese have a long history of engagement with Myanmar, including the provision of various forms of financial assistance through JICA (Steinberg 2001: 253–258; Seekins 1992). The Japanese operate outside the Western law and development paradigm (Nicholson and Hinderling 2013; Taylor 2005). As the primary shareholder in the ADB, and the second largest shareholder in the World Bank after the United States, Japan has a significant influence through

the programmes of these multilateral banks. Japan has had an impact in the region through legal technical assistance in countries such as Vietnam, Cambodia and Mongolia. However, in Myanmar, the Japanese are less likely to directly influence the Myanmar model of law reform, due to the perceived gap between the civil law and common law heritage. This is not to discount the considerable informal influence that the Japanese have due to their long-standing ties and financial commitments to Myanmar.

The Japanese have a history of providing aid to Burma. In 1987, aid from Japan made up 20 per cent of Burma's national budget. After the coup of 1988, Japan was the first country to recognise the military government and continue aid relations (Oishi and Furuoka 2003: 898). Japan was the only government to continue providing scholarships to civil servants to study in Japan during the military regime. It has even been said that in 1998 SLORC released Daw Aung San Suu Kyi in part to please the Japanese, who had promised a significant amount of aid and financial assistance (Fink 2009: 78). Japan was amongst the first to establish ties with the University of Yangon Law Department, and to set up a Myanmar-Japan Legal Resource Centre on campus, with a particular focus on business law reforms. JICA has negotiated physical desk space in a range of government ministries, from the Union Attorney General's Office to the Ministry of Mining. In 2014, there were reports of a backlash in Myanmar against development plans in co-operation with JICA (DVB 2014). While the involvement of Japan in development is less well-known, it is clearly one of the major foreign actors in the business of transition in Myanmar because of the long-term relationships it has fostered amongst the civil service and the long-term commitment it has already demonstrated.

A final issue that many chapters in this volume touch on is the perceived need to attract foreign investment and the challenges of regulating it for the benefit of the people. Between 1989 and 2010, China, Hong Kong, South Korea and Thailand were the major investors in Myanmar (Bissinger 2012). Few Western countries invested at this time due to the imposition of Western sanctions (Pederson 2008). In 2016, curiosity about potential foreign investment opportunities has slowed, with many Western firms adopting a wait-and-see approach given potential changes under the NLD government. The Union Parliament has spent a significant amount of time over the past few years debating and then reconsidering the provisions of the Foreign Investment Law 2012, followed by a separate law relating to investment by Myanmar citizens.[7] In 2016, these

[7] Foreign Investment Law No 21/2012; Myanmar Citizens Investment Law No 18/2013.

two laws were combined and revised, passed by the new NLD-led government. This has potential implications for land use, labour and taxation, although given the broad terms of the legislation it often comes down to subsequent regulations to clarify the details.

The influence of foreign involvement through aid and humanitarian programmes, technical assistance and private sector investment is rarely black and white. But the grey shadow it does cast means that foreign involvement is ripe for manipulation or complaints from nationalists who wish to protect an aspect of the market or of the perceived national culture. This places greater weight on the need for transparency and accountability across these areas of foreign investment, and for sustained attentiveness and priority accorded to understanding local context.

Outline of the Book

The chapters that follow share a concern that Myanmar offers an opportunity for the international community to learn from past mistakes in terms of its involvement in the business of transition. The chapters in this volume speak to a range of common issues – land rights, access to finance, economic development, the role of law including its potential and its limits, and the intersection between local actors, globalised ideas and the international community. All chapters are based on new empirical evidence and insights from living, working and conducting field research in Myanmar.

In Chapter 2, 'Labour Standards and International Investment in Myanmar', Michele Ford, Michael Gillan and Htwe Htwe Thein focus on the critical issue of labour standards and the implications for international investment in Myanmar. They profile a case study of the garment industry, which is largely populated by Asian businesses, and the response of the introduction of a minimum wage. The fact that the garment sector was not exempt from the minimum wage law is significant. The authors note that international firms are keen to affiliate with international labour standards as a strategy to manage any possible reputational risk. In contrast, Asian firms are only now facing pressure from trade unions and civil society networks to comply with this labour regime due to their relative disconnect from global networks. The authors point to the future necessity of social mobilisation by unions and civil society to make real the minimum wage for all workers.

Similar themes are explored in Chapter 3, 'The Extractive Industries Transparency Initiative: New Openings for Civil Society in Myanmar',

where Adam Simpson focuses on the impact of the EITI international regulatory scheme and its operation in Myanmar. He intentionally considers the EITI as one of the most public, high-profile and globalised natural resource governance tools. Yet his chapter identifies a paradox inherent in this project. On one hand, the EITI process has a fairly narrow and carefully defined scope as a mechanism to check that government revenue lines up with company payments. On the other hand, civil society activists hold high expectations that the EITI must also act as a means of fair distribution of natural resources. Yet this is a task the EITI was not designed to address. Simpson's chapter suggests that the perceived success or failure of a particular development initiative is in part conditioned by the gap between what the project is designed to do and what local actors expect the project to be able to achieve. This points to the importance of understanding local expectations of development and accountability projects. His chapter also struggles with the important question of representation, such as in areas where a particular minority group is affected (for more, see Crouch 2016a), and the challenges of ensuring representation in a divided society.

Two chapters in this volume look at particular areas of innovation where law reform often lags behind. In Chapter 4, 'The Risky Business of Transformation: Social Enterprise in Myanmar's Emerging Democracy', John Dale and David Kyle consider the emergence of social enterprises, as both a global and a regional phenomenon, and one that has potential to empower entrepreneurs in the Myanmar context. As in many of the chapters, Dale and Kyle emphasise the broader trend in social enterprise and the regulatory responses that it has entailed in Malaysia, Vietnam and Thailand, as well as in established democracies such as the United Kingdom and United States. The value of emerging social enterprise in Myanmar at present might in part lie in its ability to avoid regulation to date. Dale and Kyle focus on the example of employment opportunities for former political prisoners in Myanmar and the way in which social enterprise initiatives have emerged to fill a gap in addressing this important social need. They focus on the need for development reforms to foster individual creativity and initiative, and for any future regulation of social enterprise by the state to be for the protection of workers and to foster rather than stifle innovation.

In Chapter 5, 'Microfinance in Myanmar: Unleashing the Potential', Sean Turnell assesses the state of the microfinance sector in Myanmar, which is of critical importance given the state of the banking sector. The leading scholar of Myanmar's economy, Turnell first highlights both the promise and the potential of microfinance, although he cautions us that

we should not overemphasise either its successes or its failures in other contexts. Turnell identifies two major benefits of microfinance: the way it can meet a critical need for poor people to be able to access financial services, and the way it can offer a tangible sense of institutional reliability that is otherwise out of reach of the poor. Turnell familiarises the reader with the history of microfinance in Myanmar and the recent efforts by the government to regulate the sector. He argues that the present environment for microfinance remains hampered by past 'myopic policy-making' practices. While he remains optimistic about the possibilities microfinance represents, he concedes that it remains no solution to a fully functioning financial sector. There are no short cuts to financial reform.

Critical for local business is the need to focus on local economic governance, rather than just foreign investment alone. In Chapter 6, 'The Governance of Local Businesses in Myanmar: Confronting the Legacies of Military Rule', Matthew Arnold considers the role and function of the General Administration Department (GAD) and the Development Affairs Organisations (DAOs), the two major administrative institutions in Myanmar that regulate the business and economic sector at the local level. Arnold notes that the law and development literature has in recent decades affirmed the importance of local governance and administration. In this chapter he identifies how local governance matters to development in Myanmar. By offering new empirical analysis of administrative realities in Myanmar, Arnold identifies the major shifts that are taking place in the role and function of the GAD and DAOs. He acknowledges the need to overcome the legacy of the military as a constraining factor on the potential contribution to economic development.

Two chapters in this volume consider the importance and implications of reforms to establish special economic zones (SEZs) in Myanmar. In Chapter 7, 'Special Economic Zones: Gateway or Roadblock to Reform?', Josh Wood focuses on the economic viability and the importance of the SEZs as forms of collaboration with China, Thailand and Japan, respectively. He situates developments in Myanmar within the broader trend in the Asia-Pacific to stimulate economic growth through the creation of SEZs, though he notes the difficulties with comparative exercises. Debunking the myth that these SEZs are 'new', Wood shows how the plans for these sites evolved over the past two decades. In addressing the question of whether SEZs can contribute to economic reform in Myanmar, Wood argues that each of the sites – Dawei, Kyaukphu and Thilawa – needs to be considered on their merits. His sobering final analysis suggests that poor economic plans may mean that the SEZs in fact place the

reform agenda in jeopardy, rather than bringing in economic benefits for the country as espoused. His chapter is a reminder that economic initiatives cannot be evaluated in isolation and that the relative success of an SEZ will depend on how it compares to the broader economic reform environment within which it is created.

In a separate chapter on SEZs, Chapter 8, 'Facing the Concentrated Burden of Development: Local Responses to Myanmar's Special Economic Zones', Lauren Nishimura takes a different angle by focusing on how local communities have responded to the development of SEZs and the way these plans have imposed a concentrated burden on these communities. This relates back to the core themes of the volume, including the demands for heightened and meaningful public participation, concerns over the distribution of land and the uncertainty created by the involvement of foreign investors. Nishimura examines law as one means that communities and civil society organisations use to influence the development of projects such as SEZs. Like other authors, Nishimura is concerned with the intersection between international standards, government policies and the concerns of local communities. She argues for the need to evaluate law from the perspective of its impact on local communities and the extent to which it facilitates, or impedes, participation and accountability. She also recognises that it is often non-legal strategies adopted by local communities that may have just as much, or even greater, impact than following legally mandated grievance procedures. Nishimura highlights the potentially devastating impact of SEZs on both individuals and the environment. She charts the way that local communities navigate national, regional and global advocacy strategies, enabled by the fact that SEZs involve the interests of foreign governments and donors, as much as national ones. This is a timely reminder of the challenges of ensuring that development works for local people.

In the final two chapters, there is a focus on the interaction between the international community and the Myanmar context. In Chapter 9, 'Top-Down Transitions and the Politics of US Sanctions', Catherine Renshaw looks at the impact of sanctions in Myanmar past and present. Focusing primarily on US sanctions, Renshaw draws on the overwhelming body of scholarship that suggests that sanctions did not engender political reform in Myanmar. Renshaw examines the legacy of US sanctions (1990–2010) in light of the contemporary transition to draw broader conclusions about the business of transition. She argues for the importance of timing in the success of political and economic reform, and stresses the moral imperatives bound up in the business of transition that go beyond a mere cost-benefit analysis. Renshaw suggests that US sanctions may be more of a

response to internal domestic sentiments than they are a rational and effective means of diplomacy. In doing so she undermines the belief of foreign countries that still hold to the view that they can influence the course of political change in Myanmar. As the volume went to press in 2016, the US had just made the decision to lift the remaining sanctions.

In the final chapter, 'The Politics of Aid in Myanmar', Tim Frewer identifies both the potential and the perils of aid, combined with the dramatic increase in CSOs, in Myanmar. Frewer charts how Myanmar has shifted from an aid orphan, largely denied access to aid under the military regime, to an 'aid hub' that may rival Cambodia as an aid recipient. This also means that Myanmar may run the risk of aid dependency, although it has access to far greater natural resources than a country such as Cambodia. Frewer identifies Cyclone Nargis in 2008 as a critical juncture that led to the expansion of aid and the activities of CSOs in Myanmar. Frewer remains cautious about the impact of aid in the contemporary period, given that the regime remains authoritarian at heart, despite the reforms that have taken place. Frewer identifies how bilateral and multilateral donors and their programmes are intimately entangled with geopolitical and economic concerns. He suggests that our focus should turn to the unintended effects of aid in terms of the relationship between elite interests and aid programmes, and the way aid is used to legitimise the pursuit of political and economic interests of the donors.

All of the chapters in this volume share a common orientation: a deep intellectual understanding and concern for the local Myanmar context, while acknowledging the pressing need to analyse the influence of regional and international engagement on the business of transition in Myanmar. At its core, the business of transition is concerned with the interaction between economic, business and legal developments in times of major political transition. Such efforts at reform often seek similar outcomes (such as access to the law and legal certainty) even if by different means. This volume offers critical insights about Myanmar as the latest site for development, and in doing so this timely contribution will stand as a reminder of the ongoing challenges posed by the intersection between business, law, economics and development in a globalised world.

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