Open-air displays of cartoons and caricatures are new to Myanmar since press freedom was introduced in 2012. Recently, Aung San Suu Kyi, the ‘Icon of democracy’, has become a favourite target. This cartoon, which was displayed during a cartoon festival in 2013, depicts Suu Kyi staring at the country’s constitution while a famous love song plays in the background. With parliamentary elections due later this year and presidential elections next year, the former prisoner of conscience has devoted much of her energy – so far, unsuccessfully – to campaigning for an amendment to the 2008 constitution, which in its current form prevents her from being nominated as presidential candidate. The army, which dominates the legislature, has refused to accommodate her demands.

Aung San Suu Kyi is the daughter of much-loved General Aung San, who played a crucial role in the country’s independence from British colonial rule in 1948. Having spent much of her life under house arrest in her family home in Yangon, she returned to the political sphere in 2010 as the head of her party, the National League for Democracy. Since then, the Nobel Peace Laureate has pushed for legal reforms.

Meanwhile, in spite of some hard-won liberties, human rights violations continue. In this issue, Judith Beyer examines the difficulties citizens experience in locating the specifics of their legal rights amidst a confusing array of legal texts, many of which they do not have access to.
Finding the law in Myanmar

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Due to the construction of an overpass, traffic moves slowly and frequently grinds to a halt. Aimed at relieving the increasingly congested narrow streets of Yangon, the former capital of Myanmar, construction projects are going on all over this budding metacity of approximately 6 million people. The increase in car imports after the country adopted a new export-import law in September 2012, led to the now notorious traffic jams and air pollution. But on the upside, the congestion gives street vendors the chance to offer more motorists and passengers water, newspapers, snacks, and fresh jasmine flowers with which to decorate their cars.

The road is also the place where one might first come into contact with the law upon arriving in Myanmar – not so much embodied in police officers, but in the form of soft-bound copies of drafts of laws, mostly written in Burmese and sometimes translated into English. The street vendors offer these texts for 2,000 Kyat, around £1.20. Especially popular seem to be drafts of the new foreign investment laws, the new condominium law, and the import-export law. These copies are targeted at foreign and local actors who are trying to navigate not only through the city, but also through the emerging property market and growing investment business.

The regime set in place a new constitution in 2008 that allowed for limited democratic reform and paved the way for the 2010 parliamentary elections. In 2011, the military junta was officially dissolved and economic reforms were initiated since then. By 2012, international sanctions upheld by the United States, Europe and many other countries for more than two decades, began to be lifted and with this came the need to adjust and repeal old legislation and to draft new laws and regulations. International actors – ranging from members of non-governmental organizations, the UN, foreign states, business delegations and others – have taken a keen interest in finding out where Myanmar is heading politically, economically and socially, and what kinds of laws are being written to ensure the vociferously demanded transition to democracy. Many of these actors are currently involved in the process, as they finance projects and task forces, support initiatives, write reports on the current legal system, and work to support potential paths of reform, with the ‘rule of law’ prominent among them.

Recently, the widely publicized drafting of four laws by the Buddhist nationalist Organization for the Protection of Race and Religion (MaBaTha) drew global attention to Myanmar’s legislative landscape. But this landscape has another uncanny particularity: in many instances, it is far from clear what ‘the law’ is. While locals and foreigners can now engage rather openly in conversations on formerly sensitive topics such as politics and law, just knowing what the current legal status quo is, or even getting access to legal documents, continues to be a problem. There is no single location, institution, or individual person that can provide access to the country’s entire legal database.

The Commission for Studying, Examining and Reviewing Legal Affairs and Special Cases, a governmental body, is currently reviewing the various types of legislation in the country, starting from colonial times. This commission is concerned with the wide range of colonial-era laws enacted when Burma was part of British India, the most thoroughly colonized state in the region (Trocki 1992: 86; see also Huxley 2001: 22). Some of these laws were directly imported from India or modelled on the Indian legal system; many of them are still in force today – for example, certain personal status laws for non-Buddhists (e.g. Christians, Muslims and Hindus).

But the current complexity of the legal landscape does not result solely from unrepealed colonial laws. Like a palimpsest, the Burmese ‘lawscape’ has often been – and continues to be – overwritten, making for a fuzzy patchwork of rules and regulations. A review of Burmese legislation reads like a history lesson. Constitutional writs were in place from the time Burma gained independence in 1948 until the military coup in 1962. After the coup, the country became a socialist state. Between 1955 and 1988, several compilations of laws were published by the state; some annually, such as the Parliamentary Acts (1955-1962), others, such as the Revolutionary council laws (1962-1974), only every two years in total.

From 1962 onwards, Myanmar was under military control, and laws were issued to keep the population in check. Many of these are still in force today. In addition, there also exist collections of law reports such as The Rangoon law reports and The Myanmar (Burma) law reports, which only feature selected cases from the upper courts. The Myanmar law reports, for example, only include Supreme Court decisions after 1988. Thus, there is not only a very large and diverse body of available legal documentation, but also an equally large body of legal texts that has been difficult to access, particularly for citizens without connections to legal professionals.

In contemporary Myanmar, it is proving difficult even to find the law, a necessary precondition before one can hope for justice. The law in Myanmar is shrouded in an aura of secrecy due to the inaccessibility of the legal process. Owing to its entanglement with politics, it also has a reputation for serving only the powerful. In any case, knowledge about and of the law is considered precious and usually gets shared only within a small circle of legal experts. In order to find legal texts and legal scholars in Myanmar, one therefore has to take the patchy legal history of the country into account and spread one’s attention over a variety of different sources.

Law in the streets

The liberalization of various laws concerning free speech and the media has resulted in the creation of many newspapers, journals, magazines and other publications since 2012. At the same time, the still tentative (but increasingly tested) rights to free assembly and speech have encouraged the re-emergence of a lively arts and performance scene. In particular, cartoons – a specific political genre used for tongue-in-cheek criticism of the previous and current regimes – are today a site of reflection on the law.

Fieldwork took place in Yangon for a total of six months (January-April 2013 and October-December 2013). All direct quotes come from local informants who will remain anonymous. Their words have been transcribed from audio files. My research was financed by the Max Planck Institute for Social Anthropology in Halle, Germany. I thank Melissa Crouch, Brian Donohoe, Felix Cirkle, Gustaf Houtman and the anonymous reviewers for their helpful comments and suggestions on this article.
Fig. 2. Street seller peddling draft laws.

Fig. 3. Open-air displays of cartoons and caricatures have a long tradition in Myanmar, with annual public exhibitions taking place on Yangon’s 13th Street, named after U Ba Gyan (1902-1953), the country’s most famous cartoonist. During the time of the military government art was severely restricted, and the annual cartoon festival was prohibited entirely from 1997 to 2011.

Fig. 4. Copies of the Rangoon law reports on the pavement in downtown Yangon.

Fig. 5. The Rangoon law reports, published 1937-1942 and 1946-1947.

Fig. 6. Jumping up and down on the constitution, one man shouts ‘Won’t amend, won’t amend!’ as he crushes another man under the constitution who is shouting ‘Amend, amend!’

Fig. 7. Entrance to lawyer offices.
Even the most famous Burmese politician, Aung San Suu Kyi, who became an `icon of democracy' during the years of her house arrest, is now a target of such mockery. Suu Kyi's continued efforts to amend the 2008 constitution are interpreted as attempts to pave her way towards the presidency in 2016, while critics demand that she should be more concerned with speaking out against religious intolerance, resurfacing civil war, and poverty. Cartoonists have turned her `special relationship' with the constitution into a favourite subject.

Laws on the pavement

From the afternoon onwards, when the heat has given way to a light breeze, Yangon's pavements fill up with vendors offering everything from cut-up fruit and fried rice flour cakes to plastic toys and Chinese cleaning. Makeshift shutters are set up, where city dwellers huddle around small plastic tables, sitting on small plastic chairs, enjoying mohinga fish soup, samosa, and curries. The downtown pavements are the place to go to meet friends and shop – and to find the law. Carefully watching one’s step, minding the cracks and holes in the pavement, the puddles of betelnut spit, and the stray dogs, one can find one’s way to the booksellers on Pansodan Street and 37th Street.

In the many stalls that are set up in the afternoon, one can find not only the works of George Orwell, 20-year-old issues of Newsweek and Time, home-made copies of recent academic literature on Myanmar, and reports written by missionaries and army officials during colonial times, but also the current constitution, the civil procedural code, all 13 volumes of the colonial-era Burma Legal Code, and many other legal texts. Generally speaking, there are two different kinds of booksellers: those who set up make-shift bookstores on the pavement, by bringing self-made shelves onto the streets, displaying their wares on a large plastic cloth draped over the shelves, and a large book sliding down the asphalt; and those who own or rent a permanent space.

If necessary, the owners and their helpers can arrange to get copies of particular laws. But they also have on hand an impressive number of legislative texts spanning roughly three centuries. Most of the legal compilations are not complete, either because the seller has not obtained all the relevant issues, or because the reports themselves were never published as a full set. Even if you do find a complete set, the gaps in the law are as numerous as those in Yangon's pavements.

Why don't you go to the university library?

Having failed to find a particular piece of legislation in the streets of Yangon, I was directed to the university library by local acquaintances who assumed that the rich stock of law would have been preserved in what was once the largest university campus in Southeast Asia. However, higher education in Myanmar has been as difficult to access as legislative texts spanning roughly three centuries. There is confusion about who the owner is. One person said when they left the country, they just left the building behind. There is still an ongoing argument to prove whom it belongs to. There is still an ongoing argument about the status of the whole building. Perhaps it once belonged to an Indian who owned it because Indians had built it and when they left the country, they just left the building behind. But we all have our own offices here.

1. I do not discuss pre-colonial legal texts. These cover several centuries and include Pali documents, the legal code of the monks (vinaya), and ‘Burmese Buddhist law’, which was modelled on founding documents from the 11th to the 13th centuries and came in three different types of genres: legal codes (dhammasthan, legislation (vyarathat, lit. ‘the king's knowledge’) and case law (gyatoun). The late Andrew Huxley, Professor of Southeast Asian Law at the School of Oriental and African Studies (SOAS) in London, was one of the few experts who covered and analyzed this vast literature (see e.g. Huxley 1995, 2009a, 2009b, 2014; see also Hnin Aung 1962).

2. Ruled directly from Calcutta between 1866 and 1937.

3. For a recent overview of types of legislation from colonial times onwards, see Crouch and Cheesman (2014). For an excellent overview of the state of legal education in Burma between 1962 and 2005 see Myint Zan (2007).

4. Personal communication with Melissa Crouch, 9 March 2015 and input from an anonymous AT reviewer.

5. In 2015 January, student demonstrations protesting against the new National Education Law were initiated in a number of university towns all over the country. The demonstrations culminated in a march from Mandalay to Yangon, with meetings scheduled at universities along the way. While some students were marching under the watchful eyes of hundreds of police officers across the country, others negotiated with members of the government in Yangon over the reintegration of students who had been expelled from university for political reasons, the formation of student and teachers unions, and an increase in the national education budget. In March 2015, students demonstrated in Yangon with police and pro-government vigilantes who were granted the power to arrest several citizens on behalf of the government, in line with Articles 127 and 128 of the 1898 Criminal Procedure Code, which is still in force today.


Even though law can now be studied again, students, lawyers and legal scholars continue to be highly critical of the quality of (legal) education. 4 We are given only outdated textbooks and we only need to memorize answers to pre-given questions, complained one undergraduate student, pointing out general problems in the education system. ‘When they leave university, they know nothing’, explained a senior lawyer. ‘They learn everything about the law during their apprenticeships with us’.

Chamber masters on Lawyers’ Street

‘Chamber masters’, as the senior legal experts are commonly called, are responsible for the legal education of law graduates, who enter their offices with a degree but little practical knowledge. This graduate skill gap also exists in other disciplines, like medicine for example, where students do not receive enough practical experience during their university training and have to start out working as assistants to senior GPs (general practitioners) to gain the necessary knowledge and skills. The chamber masters often do not have the means to pay their apprentices, but if graduates prove themselves worthy of the profession, the chamber masters increasingly allow them to handle cases by themselves. If the chamber master is very well known, the students have to pay for their apprenticeship. Only after working with their masters for several years and after successfully arguing a range of cases in court by themselves, can the graduates open their own practices.

In Myanmar today there are a handful of experienced senior lawyers who practised under the previous regimes. They run their practices from turn-of-the-century houses located on ‘Lawyers’ Street’ (among others), where lawyers, notaries and others working in the legal profession have their offices. Many of them have taken over their current offices from their own chamber masters. They inherited not only the office and furniture, but also their masters’ collections of legal texts. The legal status of the buildings they reside in is paradigmatic of the legal status of their profession. One chamber master explained his precarious situation:

There is confusion about who the owner is. One person said they owned this building, then someone else said they did. There was a civil lawsuit. We do not have any documents to prove whom it belongs to. There is still an ongoing argument about the status of the whole building, Perhaps it once belonged to an Indian who owned it because Indians had built it and when they left the country, they just left the building behind. But we all have our own offices here.
(From left to right, above to below)
Fig. 8. Legal codes in outdoor bookstores.
Fig. 9. A Kachin Bachelor of Law student after her graduation ceremony.
Fig. 10. Lawyer’s office in downtown Yangon, 2013.
Fig. 11. A law graduate with her chamber master.
Fig. 12. Street at the back of the High Court.
7. The Office of the Attorney General provides English translations for the benefit of foreigners on an annual basis, but these would never be referred to in court (Melissa Crouch, personal communication, 13 March 2015).

8. Posted on 19 November 2014 to the Google group ‘Myanmar Law’.


Even the chamber masters lack the necessary legal documents to prove ownership of their offices; proof that there is little legal security even among those who are responsible for enforcing it.

Behind the chamber master’s desk was an enormous wooden cabinet overflowing with old legal texts. ‘I have tried to collect as much as possible’, he explained, nodding towards the books he was guarding behind him. ‘Many of them were given to me by my master, others I collect from the streets. We do not take care of documents in this country’. Within a week of our first meeting, he had arranged to have copies made of all the legal documents from his personal collection that I had been searching for.

Lawyers’ Street is located near the High Court, an impressive colonial-era building from 1911, the planned privatization of which has occasioned several demonstrations since October 2012, organized by those same lawyers. The protests were directed against government plans to invite tenders from investors planning to turn ‘their’ building into an object of speculation. The building had been the seat of the Supreme Court until the government relocated all government offices to the new capital, Nay Pyi Daw, in 2005, abandoning many erstwhile government buildings that are now in an increasingly dilapidated condition.

The government has begun to rent out former governmental offices in other buildings to INGOs (international non-governmental organizations), thereby turning empty buildings into a lucrative business. Girke (2015) shows how the lawyers initially demonstrated against the ‘desecration of their heritage’, but then concentrated on preparing formal legal action against the privatization plans. They realized that the ‘rhetoric of heritage’ (ibid.) would not help their cause because in Yangon today ‘heritage protection’ is usually understood in the narrow sense of protecting colonial-era buildings as such, but with no requirement to preserve their original function. To this day, the entire compound of the High Court remains off limits, surrounded by iron fences that in many ways mirror the way access to the law has been shielded from Myanmar’s citizens in recent decades.

Lawyers’ networks

Legal knowledge in Myanmar is orally and materially transmitted from master to student, and practitioners have set up a range of informal networks to share knowledge and stay in touch with colleagues. Such networks even existed during the previous regime: ‘We had these informal meetings secretly amongst each other’, explained a senior legal advocate who formed his law firm in 2006 and managed to travel to Indonesia in 2010 to meet with colleagues there. ‘We have always had these connections and underground activities. We worked like that’. In 2011, another group of lawyers, along with senior government delegates including a director from the Constitutional Tribunal and members from the Attorney General’s office, travelled to South Africa and studied the legal aid system there. In 2011, the Myanmar Lawyers’ Network launched a workshop on the strengthening of the rule of law. ‘It was a very sensitive topic in our country’, explained a lawyer who was involved in organizing the event. ‘I think it was the first workshop in forty years’.

The newly formed network also set up a justice centre in Yangon with a branch office in another town close to the Thai border, where they try to combat the human trafficking of migrant workers. These networks have not only become more formally organized and now incorporate government officials, they have also acquired a digital presence. For many foreign experts, online forums are a reliable source of information about the current status of draft legislation and, with the help of some senior legal experts, are a useful means to dig up colonial-era legislation. For example, the following question was posed in an online forum where legal experts from abroad and within Myanmar gather to exchange knowledge, legal texts and rumours about impending changes or the lack thereof:

I recently went to access the Myanmar Constitutional Tribunal website at http://www.myanmarconstitutialtribunal.org.mm, but it refuses to load. I’ve also heard from others that they have not been able to access the site for some time. Does anybody know if this is just a temporary problem? Has the site relocated?

Many of the lawyers provide their own English translations of draft laws or share unofficial translations by international organizations. Recently, the Myanmar judiciary itself has begun to publish laws online. The Office of the Attorney General and the Supreme Court both have their own websites now, where legislation is becoming available to anyone with access to the internet. However, the status of specific laws remains a guessing game, as another question posted to an online forum illustrates:

Does anyone know the status of the drafting of new laws relating to oil and gas? I’m told that new laws have come out, but I have not seen them on relevant ministries’ websites. A Myanmar official [who was] in Singapore to speak with law firms here on investment indicated that the laws were still in the process of being enacted. Also, if anyone has come across the 2012 Essential Supplies and Services Act, whether in Burmese or English, I would be very grateful if you could let me know.

Finding the law, then, under such conditions of uncertainty, only ever leads to tentative and preliminary successes. Not only is it difficult to access the various texts as such, but it is even more trying to determine whether a particular law is in fact in force – or, for those trying to reconstruct a historical development, to determine which version of a law was in force at any given time.

One person who did have a vast range of Burmese law texts within his collection was a former law professor who had studied in the late 1950s the development of Burmese legal education in Rangoon and graduated from the Rangoon Institute of Technology in 1955. He had planned to continue writing on Burmese legal history and on his personal involvement in Doe v Unocal, a case in which he had given expert testimony on behalf of villagers from Myanmar who had suffered forced relocation, forced labour and rape, among other things, when a pipeline was built on their land in 1996. Huxley died in November 2014 after a long illness. His knowledge and personal commitment to all things legal will be missed. His story is but one of many that shows how finding the law in Myanmar has been and continues to be a difficult and personal quest.

Conclusion

The complicated history of law in Myanmar and its entanglement with politics has had an unintended effect, namely that legal scholars living in Myanmar have acquired a particular critical stance towards their own profession and the role law has played or should play in society.

It remains a challenge for most people to get access to the law and legal experts; nevertheless, those lawyers who have successfully managed to carry out their professional duties in recent decades have done so through a variety of creative techniques, most of them highly individualized and deeply personal. Outsiders who wish to know more about the law in Myanmar have learned to tap into these networks and navigate through a legal landscape whose particularity is that in order to be able to engage with legal texts, one has to engage with people first.●