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978-1-107-08318-9 - Opposing the Rule of Law: How Myanmar's Courts Make Law and Order

Nick Cheesman

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OPPOSING THE RULE OF LAW

The rule of law is a political ideal today endorsed and promoted worldwide. Or is it? In a major contribution to the field, Nick Cheesman argues that Myanmar is a country in which the rule of law is 'lexically present but semantically absent'. Charting ideas and practices from British colonial rule through military dictatorship to the present day, Cheesman calls upon political and legal theory to explain how and why institutions animated by a concern for law and order oppose the rule of law. Empirically grounded in both Burmese and English sources, including criminal trial records and wide ranging official documents, *Opposing the Rule of Law* offers the first significant study of courts in contemporary Myanmar. It sheds new light on the politics of courts during dark times and sharply illuminates the tension between the demand for law and the imperatives of order.

NICK CHEESMAN is a Research Fellow in the Department of Political and Social Change at the Australian National University.

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In memory of Phyo Wai Aung

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ACKNOWLEDGEMENTS

This book began in 2003. I had been working with the Asian Legal Resource Centre (ALRC) in Hong Kong for over a year and had gone to Thailand to renew old acquaintances and make new ones. In Mae Sot, I met Min Lwin Oo. We sat and talked on the veranda of the Burma Lawyers' Council office. Leafing through the records of criminal cases brought across the border from Myanmar, we selected one. A court had wrongly convicted a teenage boy for allegedly throwing rocks at policemen. Back in Hong Kong, I wrote up the case, and publicised it. Radio stations picked it up and contacted the boy's family. His mother spoke out fearlessly. People in Myanmar and abroad expressed their support. Something happened that I had not expected. Within days, a government minister ordered the boy's release. It got me thinking.

Over the coming years, Min Lwin and I collaborated on many more cases. Now and then we had successes. More often we did not. But I learned a great deal along the way. And I had the opportunity to work closely with Basil Fernando, director of the ALRC and its sister organisation, the Asian Human Rights Commission. Basil pushed my thought from individual narratives to larger questions of politics, power, and violence. He posed questions both intuitively and intellectually. His lived experiences affected how he communicated. Although my experiences are not his, I hope a little of Basil's voice has carried onto the pages that follow.

I researched and wrote the book at the Australian National University (ANU). From first steps as a doctoral candidate until putting the finishing touches on the manuscript, I got all the support I needed. To my supervisors, Hilary Charlesworth, Robert Cribb, and one external supervisor, Myint Zan, I owe a lasting debt of gratitude. Above all, I am grateful to Ed Aspinall for chairing my panel. Ed did not know a great deal about Myanmar or the politics of courts, but he knew everything about how to guide a student to successful submission of a

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Back in the mid-1980s, my family moved to the Philippines. At the time, my parents might have wondered if they were doing the right thing for their two teenage boys. They were. In Manila, our family grew from four to five. There they awakened in their three children a lifelong love of inquiry, an enthusiasm for meaningful work, and a lasting interest in Southeast Asia: Jeremy for a time in Vietnam and Cambodia, Emily back in the Philippines. Thanks to Wendy and John, we lost any inhibitions we might have had to seek out and explore the unfamiliar. They opened the door; we walked through it. What more could we have wanted?

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Throughout this book I have used the BGN/PCGN 1970 Romanisation System for Burmese where transliterating Burmese words into italicised text. For capitalised proper nouns, I have Romanised place names as per official standard conventions for the relevant period, hence 'Rangoon' and 'Burma' up to and including 1988 and 'Yangon' and 'Myanmar' thereafter. I have transliterated the new capital's name as Naypyidaw rather than Nay Pyi Taw to be consistent with other place names, which I have also transliterated as single words, hyphenated where necessary to distinguish closing and opening vowels and consonants. Personal names I have spelled, wherever possible, as the person named prefers, even where these spellings are uncommon, hence 'U Aung Thane' rather than 'U Aung Thein'. Otherwise, I have followed common usage. After the first reference to a person, subsequent references omit honorific prefixes. Hence, for older women, 'Daw Aung San Suu Kyi' is followed with 'Aung San Suu Kyi'; for younger women, 'Ma Hnin Sanda' is followed with 'Hnin Sanda'; for older men, 'U Nu' is followed with 'Nu'; and, for younger men 'Maung Chan Kun' is followed with 'Chan Kun', and 'Ko Aung Hlaing Win' with 'Aung Hlaing Win', except where 'Maung' or 'Ko' are part of the man's name. All translations of materials from Burmese are my own unless otherwise indicated.