

## Book Review

***Opposing the Rule of Law: How Myanmar's Courts Make Law and Order.* By Nick Cheesman. Cambridge: Cambridge University Press, 2015. Hardback: 317pp.**

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Every now and then, a book comes along that offers a fresh take on a topic that has become commonplace. The rule of law is a ubiquitous theme running through the law and development landscape and the way we think about law reform in this era. The empire that has become the rule of law has few limits, and is bolstered by endless programmes, videos, fact sheets, checklists, reports, measures and metrics. Yet a new book by Nick Cheesman, *Opposing the Rule of Law*, challenges current conceptions of the political and legal ideal of the rule of law, and takes the conversation in an entirely new direction. This is a book of “firsts” in many respects, not least because it is the first major study of courts in Myanmar and the first to do so drawing primarily on Burmese-language documentation. Given the centrality of Myanmar to the current global rule of law project, the contribution and timing of Cheesman’s study on the rule of law in Myanmar is fitting.

The rule of law literature is daunting both due to its sheer size and the complexity of the debates, which range from the theoretical to the practical. Tackling this literature by going beyond the tired conceptions of the rule of law, Cheesman instead chooses to approach the rule of law through the notion of opposing ideas as a way of illuminating the elements of a concept (pp. 7-8). This theoretical orientation is then supported and reinforced with a methodology that is impressive in its empirical breadth and depth, encompassing a wide range of primary and secondary legal materials from the colonial period to the present. The appendix provides an exemplary model of a rigorous, socio-legal approach, fitting for this Cambridge Studies in Law and Society series.

Throughout, Cheesman’s primary argument is that, “law and order” as a concept is opposed to the rule of law, and yet these two ideas have become conflated. He associates the rule of law with the central role of the judiciary, and the transparency and predictability of law. On the other hand, the notion of ‘law and order’ is associated with arbitrary executive action, and therefore stands in contrast to the ideal of the rule of law. His argument is that not

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only have global ideas of the rule of law become confused with the concept of law and order, but that in Myanmar the two terms are semantically confused and conflated. This leads to the situation today, where the rule of law in Myanmar has been hollowed out by the government to simply mean law and order. .

Further, in this age of the global, Cheesman's book is a challenge to take the local seriously. He insists that "the rule of law does everywhere become embedded in local ideas, language and practices, and takes on meanings that adhere to those settings". (p. 260). The book therefore is an implicit warning to cultural outsiders involved in rule of law projects to slow down, put their rule of law tools aside for a moment, and spend some time to understand the local context.

Legal systems in Southeast Asia and other developing contexts are often too easily dismissed because they fail to meet international standards. However, Cheesman is clear that his purpose is not to show that Myanmar does not have the rule of law, but rather to take the study of the politics of courts in Myanmar seriously. Cheesman demonstrates that law has been a core part of the toolkit of successive regimes, despite the fact that English-language scholarship has largely ignored the legal system until recently.

Chapter 1 sets out the conceptual arguments on the rule of law as opposed to law and order, and gets to the heart of the linguistic distinction in Myanmar. Chapter 2 provides a careful rethink of the colonial legal apparatus and the legacy of criminal law in British India. Cheesman's characterization of Bentham's influence on the criminal law is an approach that resonates with the work of the late Professor Andrew Huxley. Chapter 3 turns to the post-independence era and considers the creeping use of policy and how courts became fused with the executive, particularly during the socialist regime. Chapter 4 advances three ways in which the rule of law as an idea became equated with law and order after 1988. This includes the draining of meaning from legal principles; the mutual equivalence of all forms of laws and rules; and the predominance of executive administration over the legal system. Chapter 5 deals with the power of the sovereign and focuses on the police and their use of "judicial torture". The three final chapters deal with particular elements of this "law and order" paradigm: the routinized and orderly nature of corruption in courts (Chapter 6); executive and judicial responses to unauthorized public assembly (Chapter 7); and the way those rendered powerless before the military regime of law and order have used complaints against government to advocate for the rule of law (Chapter 8).

Cheesman concludes this exploration of one opposing concept to the rule of law — law and order— still holding on tight to the rule of law itself and affirming its value as a

political ideal. In a similar way that Benedict Anderson offered a new understanding of the concept of nationalism with reference to Southeast Asia in his seminal book *Imagined Communities*, in the same way Cheesman has enhanced our understanding of a core political ideal of our age—the rule of law— through a close and careful study of the Myanmar legal context.

This book will appeal to scholars from a wide range of disciplines in the social sciences, but legal scholars and practitioners working in the global “industry” of the rule of law need to read this book in particular. It is a call to put aside the trumpets announcing the rule of law, and instead put our ear to the ground, to understand the rule of law currents that already exist in local contexts, and importantly the ideas that may run counter to the rule of law. Cheesman’s book is an invaluable and lasting contribution to scholarship on the rule of law, and an exemplary reminder of how the study of Southeast Asia can illuminate our understanding of the key political ideals of our time.

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