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Transnational Support and Legal Education Reform in Developing Countries: Findings and Lessons from Burma/Myanmar

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TRANSNATIONAL SUPPORT AND LEGAL EDUCATION REFORM IN
DEVELOPING COUNTRIES: FINDINGS AND LESSONS
FROM BURMA/MYANMAR

Jonathan Liljeblad*

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Abstract

Myanmar's current transition involves a concerted international effort to promote the rule of law. Legal education is integral to promoting the rule of law, and so calls for development aid that works to improve a country's legal education system. The nature of development aid, however, calls for some analysis of its efficacy. This paper contributes to this call by taking as a case study the state of transnational aid efforts to improve legal education in Burma/Myanmar, and finds issues that threaten the efficacy of international aid efforts to reform legal education in developing countries. The analysis concludes with recommendations to mitigate such issues.

I. Introduction

Myanmar's current transition involves a concerted international effort to promote the rule of law. This follows development philosophies that see the rule of law as a necessary condition to facilitate and support a legal system sufficient to sustain the flow of information, goods, and services that constitute political, eco-

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conomic, and socio-cultural development.¹ As a result, development aid requires some dedication of energy to ensuring the rule of law.

Legal education is integral to promoting the rule of law,² and so calls for development aid that works to improve a country's legal education system. For a country like Myanmar, which is criticized for suffering from a weak rule of law,³ this makes it imperative that foreign aid providers devote attention to the condition of law schools and their progress in the country's ongoing transition. Specifically, this calls for legal education development aid that expands the capacities and skills of law school faculty, staff, and students to contribute to the concurrent efforts to advance the rule of law.

The nature of development aid, however, calls for some analysis of its efficacy. While development aid has been effective in producing some improvements in education within regions like Southeast Asia,⁴ the history of development aid is rife with criticisms that it engenders complications harmful to its recipients, results in complex policies that are inefficient, fosters corruption by enabling actors with no accountability, and frustrates endemic reform efforts within the societies it is intended to help.⁵ Above all, it is charged with a failure to achieve its intended goals of easing underdevelopment.⁶ As a result, it is necessary to study aid to ensure its effectiveness.⁷

This paper contributes to this call by taking as a case study the state of transnational aid efforts to improve legal education in Burma/Myanmar. The objective is to provide analysis drawing upon perspectives of aid beneficiaries in a manner that informs potential aid providers. Particularly, this paper draws upon commentaries from Myanmar law schools regarding their experiences with Western

¹ See LAW IN THE PURSUIT OF DEVELOPMENT: PRINCIPLES INTO PRACTICE?, at 5-6 (Amanda Perry-Kessaris ed., 2010).

² Ronald Brand, *The Export of Legal Education: Its Promise and Impact in Transition Economies*, in THE EXPORT OF LEGAL EDUCATION: ITS PROMISE AND IMPACT IN TRANSITION SOCIETIES, at 2 (Ronald Brand and D. Wes Rist, eds., 2009).

³ INT'L BAR ASS'N HUMAN RIGHTS INST., THE RULE OF LAW IN MYANMAR: CHALLENGES AND PROSPECTS 16, 116 (2012).

⁴ Tun Lin Moe, *An Empirical Investigation of Relationships Between Official Development Assistance (ODA) and Human and Educational Development*, 35 INT'L J. OF SOC. ECON 202, 221 (2008) (providing examples of improvements development aid has assisted Southeast Asia).

⁵ See Alberto Alesina and David Dollar, *Who Gives Foreign Aid to Whom and Why?*, 5 J. OF ECON. GROWTH 33, 33-34 (2000) (providing a summary of the discovered patterns that occur during the allocation of foreign aid); see also DEBORAH BRAUTIGAM, EXPERT GRP. ON DEV. ISSUES, AID DEPENDENCE AND GOVERNANCE 33-34 (2000) (discussing aid intensity and factors that contribute to its dependence); see also David Chapman, *Assessing Directions for Educational Development Assistance*, 47 INT'L REV. OF EDUC. 459, 468-470 (2001) (discussing organizations and the ways they affect a country's development after they have provided a country with aid); see also Leif Wenar, *Accountability in International Development*, 20 ETHICS AND INT'L AFF. 1, 15 (2006) (explaining how providing a country with monetary aid actually hurts more than it helps).

⁶ Tomi Ovaska, *The Failure of Development Aid*, 5 CATO J. 175, 186 (2003) (explaining why institutions like the World Bank fail their intended goals); see also Ashok Kumar Pankaj, *Revisiting Foreign Aid Theories*, 42 INT'L STUD. 103, 114 (2005) (discussing historical evidence of countries which have made significant progress without foreign aid and discusses why they prevailed).

⁷ Tim Buthe et al., *Humanitarian Principles, Economic Development Objectives, and Organizational Interests in NGO Private Aid Allocation*, 66 INT'L ORG. 571, 575 (2012) (highlighting why studying aid is critical).

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development aid directed at assisting legal education reform. The analysis begins with a review of the research methodology used in this study. The discussion then offers a brief background section that describes the context of underdevelopment, political transition, and government treatment of universities that set the challenges for legal education reform in Myanmar. After this, the analysis organizes the commentaries of respondents to this study into a list of identifiable complaints that reveal deeper issues regarding the delivery of education development aid to Myanmar's law schools. A subsequent section uses such observations to generate potential solutions. The paper concludes with an admonition that the purpose of the analysis is to inform efforts to aid the reform of Myanmar law schools during this period in the country's transition, with an understanding provided by an academic perspective that is relevant for all parties—foreign or domestic—involved in the work of bringing Myanmar's legal education system to standards reflective of institutions serving a public interest in the rule of law.

To facilitate discussion, this study treats the terms “development assistance” and “development aid” as synonymous terms that refer to international efforts to provide training and resources to recipients, with the origins of training and resources usually coming from more developed countries and the recipients being located in less developed countries. “Development” is an expansive term encompassing a wide range of phenomenon such as political development in the form of democratization and elections, legal development in terms of statutory reforms and rule of law project, economic development expressed as infrastructure and business investments, or social-cultural development pursued via health services and school construction. However, “development” in this paper is focused primarily on “educational development aid” directed at providing training and resources to Myanmar law schools. Such training and resources constitutes “capacity building” or “capacity development” that develops “abilities to perform functions, solve problems, and set and achieve objectives”⁸ using skills acquired through “technical aid” or “technical assistance” that conveys “information and expertise.”⁹ “Aid providers” can be any entity, including non-governmental organizations (“NGOs”), universities, or governments outside of Myanmar, delivering training and resources intended to help Myanmar law schools in their process of reform.

II. Methodology

The bulk of this analysis involves an ethnographic study using participant-observer methods applied towards a capacity-building technical aid workshop conducted by Bridges Across Borders Southeast Asia Community Legal Education (“BABSEACLE”), an NGO operating under a United Nations Development

⁸ United Nations, *Definition of Basic Concepts and Terminologies in Governance and Public Administration*, U.N. Doc. E/C.16/2006/4 (Jan. 2006), <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan022332.pdf>.

⁹ *What is Technical Assistance?*, UNESCO, <http://www.unesco.org/new/en/culture/themes/cultural-diversity/cultural-expressions/programmes/technical-assistance/what-is-technical-assistance/> (last visited Feb. 17, 2017).

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Programme (“UNDP”) mandate. The workshop, one of an ongoing series extending over several years, was held over five days in May 2015 at Taungoo University and involved approximately 75 participants sent from 18 of Myanmar’s law schools, with each school providing a delegation of four faculty representatives of varying seniority. The workshop encompassed the experiences of campuses that ranged in geographic location, faculty and student size, community composition, and national academic ranking. While ostensibly focused on the implementation of community or clinical legal education programs, the workshop sought to maximize its outcomes by orienting its activities in recognition of the endemic contextual issues facing each law school. To accomplish this, during the course of the five-day program the workshop encouraged attendees to articulate and share their experiences with legal education development aid. This produced an aggregate commentary of Myanmar law school experiences with foreign aid.

The observations from such feedback are supplemented with work conducted in Myanmar under a United States Fulbright Scholar grant from 2014-2015 which involved placement as a lecturer at the University of Yangon with duties that included teaching, administrative assistance, curriculum review, and participation in several national conferences regarding university reform. This allowed direct, immersive, and sustained exposure to the challenges and issues faced by Myanmar university faculty in the country’s current transition.

This study does not claim to offer a comprehensive overview of education development aid for Myanmar’s law schools. Instead, this study endeavours to be an analysis of feedback from Myanmar law schools about their experiences with legal educational development aid, in hopes of identifying issues relevant to improving the outcomes of Western aid directed at helping reform Myanmar’s legal education system. In doing so, the discussion engages reflective study that follows the calls from scholars like Deborah Eade and Michael Edwards, who argue for greater self-awareness, self-criticism, and openness about the motivations, activities, and consequences of development aid.¹⁰

In drawing upon the experiences of Myanmar law school faculty, this analysis represents an attempt to highlight the issues that preoccupy aid recipients when they exercise the opportunity to express their perspectives. Such an approach is motivated by Franziska Dubgen’s observation that many of the failures of development aid result from a development literature dominated by the Global North that overlooks the views of the Global South.¹¹ The hope is that by presenting the issues that concern Myanmar’s law school faculty, staff, and students, it will be possible to better understand their perceptions and hence their subjective interpretation of the development aid being directed to them. This will help deter-

¹⁰ Deborah Eade, *Capacity Building: Who Builds Whose Capacity?*, 17 DEV. IN PRAC. 630, 633-37 (2007) (explaining why various forms of aid need to be more conscious of their actions); see also Michael Edwards, *International Development NGOs: Agents of Foreign Aid or Vehicles for International Cooperation?*, 28 NONPROFIT AND VOLUNTARY SECTION Q. 25, 37 (1999) (discussing factors NGOs should examine to determine what areas they can improve upon).

¹¹ Franziska Dubgen, *Africa Humiliated? Misrecognition in Development Aid*, 18 RES. PUB. 65, 70 (2012) (discussing the effects of the Global North and the Global South).

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mine strategies that allow such aid to fulfil the expectations of those most affected by its outcomes—and those who it presumably was meant to help.

In keeping with the principles of legal anthropology regarding ethnographic research methods, readers are advised of the subjectivity bias endemic to participant-observer methods wherein observations are interpreted and understood through the researcher's worldview.¹² Mindful of this, it should be noted that the author was a participant-observer engaged in aid directed at reforming Myanmar's legal education system to meet standards supported by the UNDP and law schools in the United States, Australia, and Singapore. The author balances this with a bicultural background as an academic born in Myanmar but raised in Sweden and the United States, which provides sensitivity to the differences in worldviews and associated socio-cultural, economic, political, and historical contexts between Myanmar and the West. In addition, to further mitigate subjectivity bias the fieldwork sought the perspectives of respondents by engaging and recording their impressions, observations, and critical comments of their experiences with foreign assistance. This involved unstructured conversations that occurred while the author was performing duties as a teacher and workshop instructor, supplemented with primary and secondary source materials collated from government documents, public statements of government officials, and broadcast or print interviews with government officials. Due to the sensitive status of the legal system and universities in Myanmar's history, which involved repeated shutdowns of higher education institutions that in some cases were lifted only as recently as 2012, a paramount concern is to protect the identities of respondents involved in this study. This means the omission of any information that might be attributed to specific individuals, law schools, or even universities.

It should also be noted that Myanmar continues to be a developing country in transition from an authoritarian to a democratic political system. This complicates the study of Myanmar's education system due to a number of factors. First, the country's transition involves a broad scope of political, economic, and social reforms that accelerated following the restoration of relations with the West in 2012 and which brought with it foreign technical assistance, foreign investment, foreign trade, and renewed diplomatic relations.¹³ For example, there are an array of new laws being passed or drafted across a range of areas, particularly in infrastructure, human development, energy, foreign investment, and education; a continuing peace process to end domestic conflicts with various ethnic groups; a reform process to promote rule of law, human rights, and independence of the legal and judicial professions; a growing number of infrastructure and human

¹² H. RUSSELL BERNARD, RESEARCH METHODS IN ANTHROPOLOGY: QUALITATIVE AND QUANTITATIVE APPROACHES at 22 (4th ed. 2006); see also Carlos Palacios, *Volunteer Tourism, Development, and Education in a Postcolonial World: Conceiving Global Connections Beyond Aid*, 18 J. OF SUSTAINABLE TOURISM 861, 865-66 (2010) (explaining subjectivity bias).

¹³ Mary Callahan, *The Opening in Burma: The Generals Loosen Their Grip*, 23 THE J. OF DEMOCRACY 120, 131 (2012); see Neil Englehart, *Two Cheers for Burma's Rigged Election*, 52 ASIAN SURV. 666, 666-86 (2012) (discussing Burmese election); see also Christina Fink, *How Real Are Myanmar's Reforms?*, 2014 CURRENT HIST. 224, 230 (2014) (discussing the reforms in Myanmar); see also N. Ganesan, *Interpreting Recent Developments in Myanmar as an Attempt to Establish Political Legitimacy*, 1 ASIAN J. OF PEACEBUILDING 253, 269-70 (2013) (discussing Burmese politics and the recent election).

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development projects; and efforts to promote improved governance, with technical aid to bolster capacity and reduce corruption.¹⁴ Attendant with all of this is a continuing process of democratization, with efforts to move the country in a direction free of military involvement in government.¹⁵ The sum of all these changes is a dynamic environment with fluid conditions that makes it difficult for analyses to stay current and thus relevant to understanding Myanmar. As a result, this paper is written with a caveat that the analysis herein is subject to the transient nature of Myanmar's ongoing transition, and so focuses on a state of reform in Myanmar's university system in general and its legal education system in particular during the period of time 2014-2015 that hosted field research.

III. Myanmar's Context

Some context is useful in discussing development aid in Myanmar. It helps to understand the need and role for aid, as well as to identify a basis for investigating the nature of aid and its consequences for the people it is presumably meant to help. With respect to Myanmar, this requires an understanding of the extent of underdevelopment, the dynamic and complex nature of the country's transition, and the resulting effect on Myanmar's legal education system.

A. Low HDI

Under British rule, Myanmar was among the wealthiest countries in Southeast Asia.¹⁶ Since that time, however, the country has descended to become one of the poorest countries in Asia. While the UN and World Bank provide promising data that show Myanmar's gross domestic product ("GDP") in 2012 as being approximately \$59 billion with an annual growth rate of approximately 8.5%,¹⁷ the UN also report an annual GDP per capita of US\$1,126¹⁸ and a Human Development Index rank of 150th out of 187 measured countries.¹⁹ Indicating that Myanmar is the poorest country in the Association of Southeast Asian Nations ("ASEAN").²⁰ Much of this is driven by the country's allocation of spending, with the government reporting a 2014-2015 fiscal year budget with only 6% spent on education and 3% on healthcare, which respectively represent the lowest

¹⁴ See Fink *supra* note 13; see Ganesan *supra* note 13; see also Kyaw Yin Hlaing, *Understanding Recent Political Changes in Myanmar*, 34 CONTEMP. SE. ASIA 197, 198, 203 (2012) (discussing various democratic changes occurring in Myanmar).

¹⁵ Hlaing, *supra* note 14, at 208-212.

¹⁶ DAVID STEINBERG, *Myanmar: The Roots of Economic Malaise*, in *Beyond Politics to Societal Imperatives* 86 (Kyaw Yin Hlaing et al. eds., 2005).

¹⁷ Myanmar, U.N. DATA (2015), <http://data.un.org/CountryProfile.aspx?crName=MYANMAR> [hereinafter Myanmar U.N. Data]; see also *World Bank Open Data*, THE WORLD BANK, <http://data.worldbank.org> (last visited Feb. 17, 2017).

¹⁸ *Id.*

¹⁹ Human Development Report 2015, UNITED NATIONS DEV. PROGRAM, http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/MMR.pdf (last visited Feb. 17, 2017).

²⁰ Peter Chalk, *On the Path of Change: Political, Economic and Social Challenges for Myanmar*, AUSTL. STRATEGIC POL'Y INST. (Dec. 2013), https://www.aspi.org.au/publications/on-the-path-of-change-political,-economic-and-social-challenges-for-myanmar/SR62_Myanmar.pdf.

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education budget and the third lowest healthcare budget in ASEAN.²¹ This contrasts with the Center for Strategic and International Studies extrapolations of data from the Stockholm International Peace Research Institute, which finds Myanmar devoting 13% of its government spending to the military²² compared to an ASEAN average of 9%.²³ Various governance indicators match such dubious rankings. For example, Transparency International's Corruptions Perceptions Index lists Myanmar 156th out of 175 countries in 2014.²⁴ In its Rule of Law Index, the World Justice Project factored in variables including constraints on government powers, absence of corruption, security, observance of rights, and enforcement, and found Myanmar ranked 92 out of 102 countries under study.²⁵ Working to address these challenges is a government that has been consistently recognized as lacking capacity in all areas and at all levels, with weak institutions, opaque leadership, dysfunctional civil service, poor infrastructure, inadequate resources, and insufficient skills.²⁶ While development and technical aid from the international community increased in the wake of the country's 2011 elections and initiation of political reforms, it continues to struggle against the scale of development issues.²⁷

B. Democratic Transition

Myanmar's path to democracy is what scholars like Larry Diamond and Francis Fukuyama describe as a negotiated transition to transfer power to civilian control in a way acceptable to incumbent military elites.²⁸ Brian Joseph finds that this is the preferred strategy among various factions within Myanmar's political system when they are given a choice between negotiated transition, regression to military rule, "Singapore" style economic reform at the expense of

²¹ Ei Ei Toe Lwin, *Military Spending Still Dwarfs Education and Health*, MYANMAR TIMES (Mar. 30, 2014) <http://www.mmtimes.com/index.php/national-news/10000-military-spending-still-dwarfs-education-and-health.html>.

²² *Id.*

²³ CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, *Analyzing Southeast Asia's Military Expenditures*, COGITASIA (2015), <https://www.cogitasia.com/analyzing-southeast-asias-military-expenditures/>.

²⁴ Corruption Perception Index 2016, Myanmar, TRANSPARENCY INT'L (2014), <https://www.transparency.org/country/MMR> (last visited Feb. 17, 2017).

²⁵ WJP Rule of Law Index 2016, WORLD JUSTICE PROJECT, <http://worldjusticeproject.org/rule-of-law-index> (last visited Feb. 17, 2017).

²⁶ See Chalk, *supra* note 20; see also MYANMAR'S TRANSITION: OPENINGS, OBSTACLES AND OPPORTUNITIES at 16-19 (Nick Cheesman et al. eds., 2012); see also LAW, SOCIETY, AND TRANSITION IN MYANMAR at 377-379 (Melissa Crouch & Tim Lindsey eds., 2014).

²⁷ See Chalk, *supra* note 20; See Cheesman et al, *supra* note 26; see Crouch & Lindsey, *supra* note 26.

²⁸ GRETCHEN CASPER & MICHELLE TAYLOR, NEGOTIATING DEMOCRACY: TRANSITIONS FROM AUTHORITARIAN RULE at 225-244 (1996); see also Francis Fukuyama et al., *Reconsidering the Transition Paradigm*, 25 J. OF DEMOCRACY 86, 100 (2014); see also Larry Diamond et al., *The Need for a Political Pact*, 23 J. OF DEMOCRACY 86, 100 (2012) [hereinafter *Need for a Political Pact*]; see also Fink, *supra* note 13; see also Brian Joseph, *Political Transition in Burma: Four Scenarios in the Run-up to the 2015 Elections*, 32 SAIS REVIEW 137, 149 (2012).

authoritarian government, or fragmentation into polarized conflicts.²⁹ Diamond and Fukuyama, however, observe that a negotiated transition may be effective in bringing civilian government in a gradual, deliberate manner but it comes with the risk of incurring a bargained exchange of conditions in which power is transferred to civilian authority in return for an enshrinement of corruption and dysfunction that benefits the departing military elite.³⁰ If such an outcome were to occur, it would increase the vulnerability of Myanmar's democracy to the fate of other governments that have experienced a "democratic regression" wherein democratic regimes slid into dysfunction and increased limitations on freedom as a result of continued, ingrained corruption within their political systems.³¹ Compounding this is a political landscape which extends beyond a simple dichotomy of military versus civilian voices to encompass a spectrum of multiple factions with distinct interests which at various times converge or diverge along the various fissures in the transition discourse that Larry Diamond characterizes as involving questions about the path "from authoritarianism to democracy, from military to civilian rule, from a closed and monopolistic to an open and competitive economy, and from an ethnically fractured and fissiparous state to a more viable and coherent union."³² Within such an environment, international efforts have to navigate ways that explore "third views" which do not antagonize either military or pro-democracy extremes.³³

C. Universities & Law Schools in Myanmar

Myanmar's legal education system reflects a Myanmar history of government restrictions on both universities and the legal profession, with both universities and legal professionals being treated by the government as centers of discontent fomenting public resistance to the state.³⁴ The legal system and legal education deteriorated in professional standards and public stature as a result of government reforms and military actions to suppress their perceived threats to state authority.³⁵ The law schools, in particular, were subjected to significant changes that resulted in a modern system that is widely recognized as suffering substantial

²⁹ Joseph, *supra* note 28, at 139-140.

³⁰ Fukuyama, *supra* note 28, at 91-92; *see also* *Need for a Political Pact*, *supra* note 28, at 140-145.

³¹ Larry Diamond, *Democracy's Third Wave*, 110 *CURRENT HIST.* 299, 307 (2011) [hereinafter *Democracy's Third Wave*].

³² Callahan, *supra* note 13, at 113-115; Renaud Egretreau, *Legislators in Myanmar's First "Post-Junta" National Parliament (2010-2015): A Sociological Analysis*, 33 *J. OF SE. ASIAN AFF.* 91, 124 (2014); Joseph, *supra* note 28, at 149.

³³ Hans-Bernd Zollner, *After an Election and a Symbolic Re-election in Myanmar – What Next?*, 42 *INT'L Q. FOR ASIAN STUD.* 47, 72 (2011).

³⁴ Nick Cheesman & Kyaw Min San, *Not Just Defending: Advocating for Law in Myanmar*, 31 *WIS. INT'L L. J.* 702, 733 (2014); *see also* Melissa Crouch, *Rediscovering "Law" in Myanmar: A Review of Scholarship on the Legal System of Myanmar*, 23 *PAC. RIM L. & POL'Y J.* 543, 577 (2014); *see also* Myint Zan, *Legal Education in Burma Since the Mid-1960s*, 12 *J. OF BURMA STUD.* 63, 107 (2008).

³⁵ Cheesman & San, *supra* note 34, at 702-708; *see also* Crouch, *supra* note 34, at 549 & 572-573; *see also* Thomas Fuller, *Myanmar's Opening Up Hasn't Loosened Graft in Courts*, *N.Y. TIMES* (Oct. 24, 2014) https://www.nytimes.com/2014/10/25/world/asia/myanmars-opening-up-hasnt-loosened-graft-in-courts.html?smid=pl-share&_r=0; *see also* Zan, *supra* note 34, at 50-52.

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deficiencies in research and teaching.³⁶ Myint Zan, in his study of Myanmar's legal education system, described a curriculum driven by ideology and which was rife with inaccuracies and distortions, lacking in subjects considered standard in most Common Law jurisdictions, afflicted by low admissions and matriculation requirements, and populated by poorly-trained teachers and students.³⁷ He detailed multiple-choice exams for which questions and answers were provided to students prior to exam dates, graduates who could not answer basic questions about Common Law legal principles, and the use of limited, often outdated textbooks or scholarly journals.³⁸ Zan warned that the scale of work necessary to restore the quality of Myanmar's law schools was extensive and should not be underestimated.³⁹

While not specifically directed in response to Zan's warning, the Myanmar government has been making efforts since the lifting of economic sanctions and diplomatic isolation in 2012 to reform Myanmar's universities, including the legal education system. Dr. Daw Yin Yin Nwe, an advisor to President Thein Sein, made a series of presentations in the early months of 2015 supporting the country's Education Law that detailed the government's commitment to increasing the education budget, increasing the number of teachers, and investing in university infrastructure and resources.⁴⁰ Attendant with this has been the introduction of foreign aid coming from a spectrum of entities representing a range of sectors and levels of international actors including governments, international institutions, non-governmental organizations (NGOs), and academic bodies. For example, participants in this study described examples of foreign government aid efforts such as the Australian Volunteers in International Development ("AVID") or the United States Fulbright Scholars program. Research participants also observed education development efforts sponsored by international institutions such as the United Nations Development Programme ("UNDP") and United Nations Education, Scientific, and Cultural Organization ("UNESCO"), both of which provided technical assistance and coordinated NGO activities for Myanmar's schools and Ministry of Education. In addition, they noted the efforts of NGOs like BABSEACLE and the Lericci Fondazione, which brought foreign experts to provide skills-training and education materials to Myanmar faculty and staff. Attendant with these other actors, they observed the activities of foreign universities like Australian National University ("ANU"), Deakin University, Oxford University, the National University of Singapore, Chung-An University, and Tokyo University, who supplied their own faculty, staff, and resources in partnerships with Myanmar schools.

The form of educational development assistance provided by this range of actors encompasses a range of services. Myanmar universities often receive di-

³⁶ Zan, *supra* note 34, at 4-32.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Yin Yin Nwe, Presentation at the Higher Education Leadership Programme II, The New Education Law: Implications (2015).

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rect support, with foreign aid workers performing university functions such as teaching classes, engaging in collaborative research with Myanmar counterparts, designing courses or curricula, and providing classroom materials. Foreign aid also involves infrastructure projects to construct or renovate university campuses to provide offices, classrooms, laboratories, libraries, or event venues. In addition, foreign assistance sometimes involves conferences meant to promote networking and collaboration between Myanmar faculty and staff with colleagues from the international community.

While important to the Myanmar respondents in this study, such forms of aid did not preoccupy their concerns. Rather, their attention seemed to focus primarily on their experiences with capacity-building and technical aid programs. Specifically, the issues they raised dealt with the strategies employed by aid providers. From the descriptions provided, it seems that the development aid receiving the greatest concern involved either capacity-building to improve academic resources, such as the renovation of classrooms or provisioning of internet access to web-based scholarly databases, or technical aid to increase skills, such as training programs for faculty and staff in research, teaching, or curriculum and course design. These forms of aid were both *in situ* in terms of involving foreign personnel traveling to locations within Myanmar, usually on individual university campuses, or *ex situ* in terms of involving Myanmar personnel traveling to foreign locales. In both cases, the strategies to deliver aid are of limited duration, occurring within trips lasting as briefly as a few days or as long as several weeks. Much of the content that the respondents describe dealt with topics such as critical analysis teaching methods, particularly in terms of departing from the predominant Myanmar use of rote memorization classroom lessons; research skills, including the use of scholarly citations, critical analysis, and university-level writing; or curriculum development with respect to subject requirements for undergraduate and postgraduate degrees and their associated syllabi and course materials.

Underlying these aid efforts is an apparent philosophy to endow Myanmar faculty, staff, and students with skills and resources commensurate with law schools in other countries. A common observation made by respondents was that foreign aid programs tend to claim a goal of providing concepts, perspectives, and methods employed by the legal education systems in the aid providers' respective countries of origin—usually the West—and that these are presented as reflecting global standards of professionalism. This exemplifies the phenomena Alan Watson, Melissa Crouch, and William Ewald refer to as “legal transplants,” or legal ideas that are borrowed from one country and applied in another,⁴¹ and which have been criticized for trending towards cultural imperialism.⁴² Respon-

⁴¹ Melissa Crouch, *Asian Legal Transplants and Rule of Law Reform: National Human Rights Commission in Myanmar and Indonesia*, HAGUE J. ON THE RULE OF L. 146, 146-77 (2013); see also William Ewald, *Comparative Jurisprudence (II): The Logic of Legal Transplants*, 43 AM. J. OF COMP. L. 489, 495(1995); see also ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* at 20-65 (1993).

⁴² Pierre Legrand, *The Impossibility of Legal Transplants*, 4 MAASTRICHT J. OF EUR. AND COMP. L. 111, 123 (1997); see also Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying*

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dents, however, noted that much of the foreign aid seemed to reflect a sincere desire to avoid such a risk, with foreign trainers stressing a strategy of “training the trainers” oriented towards teaching locals who would then presumably reflect, engage, interpret, and contextualize what they had learned in ways more appropriate to their needs and more readily shared with other locals, effectively generating a cascading propagation of increased capacities and technical skills.

Such an approach follows what David Ellerman refers to as a principle of “development-as-autonomy” that “respects, fosters, and sustains” the autonomy of aid recipients, particularly in their capacities to contribute to the development of their own societies.⁴³ For Ellerman, autonomy involves control over ideas, and it is important that control over the substance of aid is ultimately held by the locals since it respects the dignity of aid recipients by fostering their self-motivation and independence.⁴⁴ A strategy of “training the trainers” calls upon locals to take control, in that it looks to aid recipients to take power and responsibility for the local propagation of foreign aid. The apparent theme is one of empowerment of aid recipients, and so suggests a sincere desire to avoid Deborah Eade’s general criticism of the development industry as suffering from a tendency “. . . to ignore, misinterpret, displace, supplant, or undermine the capacities that people already have.”⁴⁵

IV. Aid Issues Raised by Myanmar Law School

In general, the workshop participants were appreciative of the educational development assistance given to Myanmar universities. They indicated that Myanmar’s post-independence history under military rule had incurred a decline in the quality of Myanmar’s schools—not just for law schools or universities, but for the education system as a whole, with almost universal acceptance that the country was in need of foreign assistance to redress the consequences of the past. As a result, the overall sentiment from the faculty, staff, and students was of deep appreciation for whatever contributions, foreign or otherwise, that served to improve the country’s education system.

Despite this, they also expressed a consensus regarding issues in educational development assistance, with Myanmar faculty, staff, and students expressing concerns about the manner in which aid was being provided. In particular, with respect to aid to Myanmar’s law schools, it was clear that aid recipients have experienced a range of issues that impair the apparent goals of foreign aid to empower Myanmar locals and thereby improve Myanmar’s law schools. While echoing the problems tied with what Deborah Eade labels as the Development

Law Ends Up in New Divergences, 61 *MOD. L. REV.* 11, 32 (1998); see also David Nelken, *Transplants and Beyond: Of Disciplines and Metaphors*, in *COMPARATIVE LAW IN THE 21ST CENTURY* at 19-34 (Andrew Harding & Esin Örüci eds. 2002).

⁴³ DAVID ELLERMAN, *HELPING PEOPLE HELP THEMSELVES: FROM THE WORLD BANK TO AN ALTERNATIVE PHILOSOPHY OF DEVELOPMENT ASSISTANCE* 6-7 (2006).

⁴⁴ David Ellerman, *Autonomy in Education and Development*, 7 *J. OF INT. COOPERATION IN ED.* 3, 4-9 (2004).

⁴⁵ Eade, *supra* note 10, at 633.

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Industry,⁴⁶ the complaints conveyed by respondents reveal deeper features about the foreign aid directed at Myanmar's legal education system. As such, while they may not be indicative of development aid in general or even development efforts within Myanmar in particular, they do constitute an insight into challenges that impede the work of education development aid from achieving an apparent goal of assisting Myanmar's legal education system—a system seen as integral to the promotion of human rights, democracy, and the rule of law in a country struggling to transition to those ideals.

A. Asymmetry

The first issue can be described as asymmetry in the distribution of aid. Deborah Eade, in a commentary on her experiences in the development aid industry, describes the phenomenon of asymmetric partnerships between aid providers and recipients in which aid providers retain control over financial and technical resources and treat aid recipients as marketing tools to recruit further contributions from international donors.⁴⁷ Eade criticizes these relationships for conducting uni-directional transfers of assistance, with aid entities dictating the content and distribution of aid and intended beneficiaries having little or no influence in what they receive.⁴⁸ Furthermore, Eade sees this as problematic because it does little to build local capacity in terms of independence among aid beneficiaries and tends to erode self-criticism among aid providers.⁴⁹ Eade's sentiments are shared by Ellerman, who sees aid programs that are controlled by aid providers as denying the dignity of locals as autonomous human beings and fostering relationships of dependency wherein locals are marginalized to foreign interests.⁵⁰

A symptom of this became apparent among the complaints of Myanmar law faculty, with respondents frequently citing inequalities in the outreach efforts of foreign entities among Myanmar universities. In particular, with respect to law schools, respondents observed that the majority of aid from foreign universities was directed at Yangon University and Mandalay University. These represent the two most prestigious universities in Myanmar, but overlooks the other law schools in the country, particularly those located in remote locations such as Myitkyina, Sittwe, or Magwe. Respondents noted that this inequality is reflected by the distribution in Memorandums of Understanding ("MOUs"), which set the terms of institutional relationships between universities in terms of technical aid, resource sharing, student and faculty exchange, and research collaboration.⁵¹ For example, at the time of this writing, respondents stated that Yangon University was contemplating more than 30 MOUs with foreign universities while other

⁴⁶ Eade, *supra* note 10, at 633.

⁴⁷ *Id.*

⁴⁸ Eade, *supra* note 10, at 635.

⁴⁹ *Id.*

⁵⁰ Ellerman, *supra* note 44.

⁵¹ Personal Interviews, Respondents 1-75.

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universities like Taungoo University or Sittwe University were offered little or no MOUs.⁵²

There are potential explanations for this disparity: some respondents indicated that the historically centralized education system continues to allow the Ministry of Education to direct foreign aid to select campuses; others indicated that the choices seemed to be made by foreign aid providers themselves. Either way, the decisions overlooked the wishes of the ensemble of Myanmar universities. Both explanations corroborated the experience of BABSEACLE, which finds that the vast majority of Myanmar universities express welcome for foreign assistance whenever it is offered. This suggests that the inequities in distribution are not a function of Myanmar recipients, but rather a result of decision-making power over aid distribution that is exercised without reciprocal discretion on the part of aid recipients. This is problematic in that it suggests a power imbalance skewed towards actors responsible for producing and distributing aid, and so raises a justice issue over the marginalization of universities within the development aid system—universities that ostensibly represent the population such a system is supposed to serve.

B. Abbreviation

Another apparent issue is the abbreviated nature of educational aid programs given to Myanmar law schools. David Chapman, in his studies of educational development assistance, finds that a recurring issue “was that project-level evaluations did not pay sufficient attention to whether the intended outcomes were actually achieved.”⁵³ He sees this as an extensive problem, noting that even though the question of long-term sustainability of aid was recognized as an important criterion it receives little attention in practice.⁵⁴ The value of ongoing relations is not minor, with scholars like Bruce Joyce, Beverly Showers, and Jan Berkvens noting that a transfer of skills in professional development programs—such as that provided by legal education training sessions—is hampered without provision of opportunities to practice or follow-up support to facilitate such practice.⁵⁵ This defeats the purpose of aid programs to empower aid recipients, and sustains conditions of dependency that leave locals reliant upon the presence of foreign workers to implement the lessons of aid programs.

Such a complaint was registered by respondents, with a substantial number expressing dissatisfaction with respect to the aftermath of educational aid programs. Specifically, respondents indicate that a frequent, if not prevalent, issue is that upon their completion the lessons and resources provided by such programs do not propagate further through the universities. Respondents referred to cases

⁵² Personal Interviews, Respondents 1-75.

⁵³ David Chapman, *A Meta-Look at Meta-Studies of the Effectiveness of Development Assistance to Education*, 56 INT’L REV. OF EDUC. 547, 555 (2010).

⁵⁴ *Id.* at 558.

⁵⁵ BRUCE JOYCE & BEVERLY SHOWERS, *STUDENT ACHIEVEMENT THROUGH STAFF DEVELOPMENT* (3rd ed. 2002); see also Jan Berkvens, *What International Aid Organizations Can Learn from International Adult Learning: Experiences from Cambodia*, 18 J. OF AGRIC. EDUC. AND EXTENSION 347, 351 (2012).

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in which representatives of their respective departments were chosen to receive training, either via *in situ* on Myanmar university campuses or *ex situ* in foreign locales, but then never proceeded to relay what they had learned to their colleagues, superiors, or students. To a degree, respondents cited this was due to the challenges of adapting new practices within the existing burdens of their work environments, but they also noted that such challenges were exacerbated by lack of opportunities for additional communication and assistance from aid providers to help implement the lessons of training into practice. The frequent result was that trainees would return to previous, more familiar modes of behavior, thereby defeating the original purpose behind the training. These types of outcomes are problematic because they run contrary to the aid philosophy of “training the trainers” that relies on trainees to carry their lessons to others in their place of origin.

Additional monitoring and support can prevent such issues, but the persistence of these problems indicates insufficient, if not absent, efforts to follow aid programs with ongoing evaluation and assistance to ensure that the goals of propagating education reform are achieved. Respondents affirmed this, with observations that for both *in situ* and *ex situ* programs the interactions with foreign aid workers last for fixed durations with little or no opportunities for further communication or instruction once the training is completed.

C. Reductionism

An additional problem is the reductionist nature of aid that ignores the endemic challenges posed by local conditions. Scholars like Jan Berkvens and Melissa Crouch observe problems in efforts to prescribe globally accepted reform solutions to Asian contexts.⁵⁶ Berkvens, in his study of adult learning education programs in Cambodia finds significant risks to aid objectives resulting from a lack of awareness regarding contextual issues.⁵⁷ Similarly, while Crouch studied the transplant of human rights institutions into Indonesia and Myanmar, she also notes that the introduction of legal concepts requires a need for more consideration of local context.⁵⁸ Specifically, Crouch finds that while the transplant of foreign solutions may be done out of a desire to emulate model strategies that were successful elsewhere they require a recognition of what is being transplanted, the origins from whence it came in comparison to the destination it is being applied, the consequences of such a transplant, and the motivations for such activities.⁵⁹ Both Berkvens and Crouch echo the sentiments of scholars like Pierre LeGrand, Gunther Teubner, and David Nelken, who see a risk in following positivist approaches that assume ideas and concepts are removed from social

⁵⁶ Berkvens, *supra* note 55, at 353; Crouch, *supra* note 41, 146-77.

⁵⁷ Berkvens, *supra* note 55, at 353-54.

⁵⁸ Crouch, *supra* note 41, 146-77.

⁵⁹ *Id.* at 148-52.

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context and instead call for the exercise of contextual approaches that are more culturally situated so as to be more relevant.⁶⁰

These observations are corroborated by the complaints of respondents, who observe that when they receive development aid it does not always seem applicable to Myanmar universities. One particular illustration was their experiences with the provisioning of access to on-line scholarly databases.⁶¹ A program lauded in the media and promoted by database companies and the Myanmar government, it was launched in 2014 with the intention of providing Myanmar students and faculty with access to a global body of scholarship while bypassing the comparatively greater costs associated with the physical acquisition of books or investment in infrastructure like libraries.⁶² Respondents, however, complained that: 1) there was little training given to students or faculty in how to use such databases, with insufficient time, explanation, and practice provided to trainees, especially for those coming from backgrounds with little previous exposure to internet resources; 2) what training was given to a limited selection of students and faculty, who were then overwhelmed with the demands of conveying newly-acquired and still-unfamiliar concepts and skills to their compatriots; 3) there was little continuing assistance for students or faculty in the skills associated with using on-line databases; 4) the databases were predominately driven in English and there was little English language support for Myanmar faculty and staff; and 5) internet access was a persistent problem at many Myanmar universities, with respondents frequently citing that internet bandwidth was limited or frequently inoperative, to a degree that database access was unavailable.⁶³ The sum result was that while there was internet access and on-line database access, such access was not functional in terms of being available for integration into academic practice.

Another notable example offered by respondents involved the apparent philosophy of some development aid programs to train a successive series of cohorts from faculty and staff in select university departments on the reasoning that it would allow those departments to incrementally build their expertise over time. However, this overlooks the existence of a faculty “transfer” system employed by Myanmar’s education system. In Myanmar, faculty members are subject to transfers to different universities twice per year for the ostensible purpose of allowing promotions or requests for relocation. The notice of reassignments can be as short as two days and at most two weeks, and frequently involve faculty being removed in the midst of teaching during a semester. For development aid programs, this poses a regular risk of aid recipients being relocated, effectively undermining aspirations of building department capacity. This phenomenon is

⁶⁰ LeGrand, *supra* note 42, at 116-117; *see also* Teubner, *supra* note 42, at 17-18; *see also* Nelken, *supra* note 42, at 19-34.

⁶¹ Personal Interviews, Respondents 1-7.

⁶² Yen Saning, *Rangoon, Mandalay Universities Get Information Age Boost*, THE IRRAWADDY (July 24, 2015), <http://www.irrawaddy.org/burma/rangoon-mandalay-universities-get-information-age-boost.html>.

⁶³ Personal Interviews, Respondents 1-7.

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known and understood to Myanmar faculty and staff, but was identified as a regular discovery to foreign entities working with Myanmar universities.

These kinds of problems illustrate the presence of assumptions held by development aid regarding the conditions within Myanmar's universities, and reveal a lack of sensitivity regarding the context of Myanmar society and its education system. It also reveals a more fundamental issue in terms of a lack of consideration regarding the existence of such assumptions and a lack of diligence about the need for such sensitivity. The consequence is that issues like internet access to scholarly databases and faculty recruitment and retention are essentialized as being identical to universities in other countries, and thus lead to formulaic solutions that are reductionist in their approach to endemic problems. This means that they risk being irrelevant to the people they are meant to aid.

D. Politicization

A further issue is one identified by scholars like Yash Tandon, who argues that development aid tends to be incorrectly treated as politically neutral or something that can be depoliticized.⁶⁴ Yash sees this as incorrect since it overlooks the effects of historical power relations that continue to operate in recipient locations.⁶⁵ Scholars like Jan Berkvens and Deborah Eade, who assert that aid programs frequently fail to recognize the relationships within which people of target aid groups are embedded, share Yash's concerns.⁶⁶ This is problematic, since it overlooks the impact of forces that may redirect or deny aid to the marginalized people it was meant to reach.

The imperative for contextual awareness was emphasized by the respondents, who described cases where Myanmar faculty and staff were chosen for development assistance based on processes that were not communicated or clearly explained. The lack of transparency raised concerns that selection was not based on past merit or future potential to implement development aid programs, but instead on personal preferences of university leadership. As a result, respondents indicated a tendency for faculty and staff to see grants of development aid—whether in terms of resources, access to *in situ* programs, or invitations to *ex situ* training—as awards made by their superiors in recognition of their good behavior. Ideally this would embody meritocratic principles, but the endemic cultural context of Myanmar creates of risk that such forms of aid are not based on merit but rather on ulterior motivations. Myanmar's society is based on a history of patron-client relations, wherein subordinates follow leaders not based on rank but rather on patronage, such that subordinates are embedded in dependent relationships comprising entourages that rely upon the whims of their leaders to dispense assets to their followers.⁶⁷ Inherent in such power structure is a constant impera-

⁶⁴ Yash Tandon, *Aid Without Dependence: An Alternative Conceptual Model for Development Cooperation*, 52 DEV. 356, 356-62 (2009).

⁶⁵ *Id.*

⁶⁶ Eade, *supra* note 10, at 623-33; *see also* Berkvens, *supra* note 55, at 350.

⁶⁷ Ashley South, *Governance and Legitimacy in Karen State*, in RULING MYANMAR: FROM CYCLONE NARGIS TO NATIONAL ELECTIONS 63-89 (Nick Cheesman et al., 2010); *see also* DAVID STEINBERG,

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tive for leaders to retain power and hence to discourage any threats to their authority, meaning that assets—such as invitations to travel to foreign countries for training programs—are invariably awarded based not on potential for future innovation or intrepid behavior but instead on proven records of past loyalty and compliance to power. In essence, aid distribution becomes less about recognizing talent or skill but instead more about rewarding adherence to a status quo. This is problematic for development aid that is directed at changing the status quo. This becomes even more problematic in cases where foreign aid providers rely upon local leadership to select candidates for aid programs, since this actually serves to reinforce endemic patron-client power relations and thereby strengthens the status quo.

E. Division

In her study of the role of development aid in Rwanda, Regine Andersen argues that aid programs sometimes serve to foster division within target populations.⁶⁸ This can arise as a result of a lack of coordination between different aid programs driven by what Deborah Eade observes as a desire by aid entities to accumulate and maintain power that displaces alternative motives to assist their partners.⁶⁹ Such dysfunction leads to waste, coverage gaps, and conflict between aid policies.⁷⁰

A symptom of this arose from respondents from universities receiving development assistance from multiple aid providers. One of their complaints is that there is a persistent lack of coordination among foreign partners, with little communication or effort to organize disparate aid efforts into a cohesive whole. Respondents cite this as being a cause of confusion, in that they find themselves interacting with multiple foreign entities utilizing different vocabularies, concepts, methodologies, objectives, and strategies with little reference to each other. This suggests that while the existence of different aid providers would seem to offer the promise of choice, such choice is not meaningful for aid recipients who lack a pre-existing understanding to distinguish the differences. Respondents noted that a frequent outcome of such scenarios is that faculty within universities eventually align themselves according to their loyalties to particular aid providers. This outcome is consistent with Myanmar's patron-client culture, which suggests that faculty in Myanmar's law schools tend not see the presence of conflicting aid entities not as a marketplace in which they as customers can choose from competing aid producers, but instead see them as situations of choice regarding potential patrons. The implication of this difference is that in the former there is some equality between consumers and producers that pressures aid providers to compete in providing services to aid recipients, and so

BURMA: THE STATE OF MYANMAR 38 (2001); *see also* ROBERT TAYLOR, THE STATE IN MYANMAR 8 & 26-28 (2009).

⁶⁸ Regine Andersen, *How Multilateral Development Assistance Triggered the Conflict in Rwanda*, 21 THIRD WORLD Q. 441, 442-55 (2000).

⁶⁹ Eade, *supra* note 10, at 635-637.

⁷⁰ Wenar, *supra* note 5, at 4-5.

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empowers Myanmar faculty with agency in finding value in aid, while in the latter there is a hierarchy of authority wherein aid recipients look to join entourage maintaining loyalty, and so fosters a structure of dependency by Myanmar faculty upon foreign patrons. To the extent that the ulterior purpose of educational development aid is empowerment of Myanmar's law school faculty, the risk of dependency contradicts the ostensible mission of aid providers.

F. Neo-Colonialism

In his study of volun-tourism education programs, Carlos Palacios identifies a constant threat of neo-colonialism.⁷¹ He sees this occurring whenever aid workers assume positions of privilege with respect to the people in beneficiary schools, in that this replicates colonial patterns of foreigners holding hegemonic positions over locals.⁷² This was readily apparent in Myanmar, with respondents describing *in situ* aid programs that place aid workers in expatriate accommodations and dominant positions within recipient universities. In developing countries like Myanmar, expatriate accommodations usually cater to Western sensibilities and foster isolated social networks of foreigners interacting in relationships removed from the faculty, staff, students, and communities meant to be the beneficiaries of development aid. Such divisions continue to the working environment, with aid workers accorded privileged positions as advisors or consultants holding responsibilities to direct the transformation of professional practices and policies in Myanmar universities. Respondents described foreign aid workers as guests deserving of attention and respect, echoing Myanmar colonial history in which the local populations of British Burma were taught that Myanmar (then Burmese) culture was inferior to Western civilization.⁷³ To a degree this is consistent with any measure of hospitality, but in a patron-client culture it risks scenarios in which foreign aid providers supplant local leaders without any attendant alteration of existing societal power relations. Such scenarios are problematic, since they allow foreign aid workers to assume *de facto* decision-making powers over university policies and thereby replicate neo-colonial patterns of behavior that do little to further goals of promoting practices of leadership, autonomy, and critical approaches in Myanmar's education system.

V. Potential Solutions

A cursory glance would suggest that the solutions for the problems presented in the preceding analysis can be rectified *ad hoc*. That is, asymmetric relations could be resolved by focusing more on engaging Myanmar law schools in equitable relationships. Similarly, abbreviated aid could be mitigated by sustaining development assistance over long periods. In addition, reductionism could be avoided by more inculcating greater diligence within aid workers and programs

⁷¹ Palacios, *supra* note 12.

⁷² *Id.*

⁷³ MICHAEL AUNG-THWIN & MAITRII AUNG-THWIN, A HISTORY OF BURMA SINCE ANCIENT TIMES: TRADITIONS AND TRANSFORMATIONS 210 (2013).

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regarding context. Further, politicization could be mitigated by more reflection on the consequences of foreign aid as it encounters endemic power relations. Moreover, division could be addressed by promoting more effective coordination and communication among the various foreign and local stakeholders tied to aid programs. Last, neo-colonialism could be ameliorated by bolstering efforts to prevent segregation and privilege in aid relationships.

These kinds of solutions, however, fail to address the underlying issues driving the above problems. Ad hoc approaches that follow self-prescribing solutions may offer some superficial alleviation of an apparent problem, but they are unlikely to ensure long-term, sustained improvement for locals unless they recognize and respond to the deeper causes driving aid problems. If the purpose of development aid is to bring lasting reforms to legal education, then aid programs need to pursue transformational change in terms of driving change in the contextual forces responsible for the conditions in Myanmar law schools.

The nature of these forces are made more clear by recognizing the situation of Myanmar's legal education reforms as involving a structure-agency dynamic, with Myanmar's law schools—and by extension their attendant universities, including faculty, staff, and students—constituting actors attempting to exercise agency within a structure of forces that determine their capacities for choice. These forces are historic, in the sense that there is a history of Myanmar's authoritarian government constraining the activities of universities to suppress a perceived threat of unrest. The forces are economic, with Myanmar's low levels of economic performance depriving the country of capital available for investments in its education system. The forces are political, with an ongoing political transition dictated by a military that continues to limit a fractious discourse with disparate, competing political voices. The forces are also socio-cultural, with a patron-client system that interprets reform efforts within a framework of hierarchical relationships, vertical power structures, centralized top-down decision-making, limited transparency, and uni-directional flows of information and resources.

Lasting reforms require a transformation of these structural forces. It is possible for actors to participate in the transformation of the structure around them,⁷⁴ but this requires the enabling of agency that allows faculty, staff, and students to respond in ways that alter their status. This means that educational development aid programs are more appropriate if they serve to facilitate the capacities of aid recipients to function as autonomous actors with the ability to find or develop, possess and understand, implement or exercise decisions and actions affecting their welfare. Others echo this sentiment in the development industry. For example, Deborah Eade observes that the core of capacity-building is to "support the capacity of local people to determine their own values and priorities, to organise themselves to act upon and sustain these for the common good, and to shape the moral and physical universe that we all share."⁷⁵ Tim Buthe, Solomon

⁷⁴ ANTHONY GIDDENS, *THE CONSTITUTION OF SOCIETY: OUTLINE OF THE THEORY OF STRUCTURATION* 4 (1984).

⁷⁵ Eade, *supra* note 10, at 632.

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Major, and Andre de Mello e Souza assert that aid providers serve as trustees with aid recipients, and so must behave in a principled manner according to norms that are reinforced on an ongoing basis.⁷⁶

As a result, admonitions for more equitable relationships are better understood as calls for arrangements that allow more involvement by Myanmar's law schools in decisions regarding the content and allocation of aid. Audrey Ottier gives an example of this with respect to program evaluation, arguing that evaluation requires participation in selection of evaluation tools, planning, and data analysis in addition to data gathering.⁷⁷ Expectations to maintain development assistance means sustaining relations sufficient to allow shared experiences and understandings not just with aid programs but also their consequences. This sentiment is expressed by Deborah Eade, who argues that development aid should involve both shared responsibilities and shared risks with mutual accountability indicative of committed partnerships.⁷⁸ The length and depth of such relations are reflected are commensurate with the complexities of reform, as Tanya Narozhna indicates in stating that:

“. . . development is a complex process comprised of multiple (often conflicting) interests, cultural perceptions, and inter-subjective understandings and beliefs, and that aid is ideational in nature, as it inevitably implies a transfer of symbolical resources. . . if Western assistance practices in developing countries are to be improved, the discursive form of aid has to be endowed with meaning that resonates with adequate understanding within the recipient culture.”⁷⁹

Narozhna's concerns also speak to the expectations for more diligence regarding context, with her recognition of the importance of meaning and understanding justifying culturally sensitive approaches cognizant of the contextual origins of change and mindful of her warning that, “construction of a new social reality is possible, but only from within the cultural framework of what has already been created.”⁸⁰

Addressing the presence of power relations is a more delicate issue, since a desire for contextual awareness implies a cultural sensitivity towards Asian proclivities for the hierarchical nature of patron-client relationships. However, scholars like Maurianne Adams and Jan Berkvens offer ways to redress the politicization of aid that arises in patron-client societies while still maintaining

⁷⁶ Tim Buthe et al., *The Politics of Private Foreign Aid: Humanitarian Principles, Economic Development Objectives, and Organizational Interests in NGO Private Aid Allocation*, 66 INT'L ORG. 571, 601 (2012).

⁷⁷ Audrey Ottier, *Participatory Evaluation in the Context of CBPD: Theory and Practice in International Development*, 20 THE CANADIAN J. OF EVALUATION 1, 123-48 (2005).

⁷⁸ Eade, *supra* note 10, at 636.

⁷⁹ Tanya Narozhna, *The Role of Culture in International Development Aid: Implications for Theory and Practice*, 11 CANADIAN FOREIGN POL'Y 3, 81 & 85-86 (2004).

⁸⁰ *Id.* at 85.

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cultural sensitivity.⁸¹ Cognizant that Western models of aid pursue liberal ideals of individualism and autonomy that are not always relevant to group-oriented Asian societies⁸², Adams and Berkvens suggest culturally relevant strategies of collaborative learning and dialogue that treat aid as a form of co-authorship producing a shared conceptual framework that enables mutual understanding.⁸³ Mel Gray sees this as particularly relevant to intercultural understanding in multicultural environments⁸⁴, making strategies of collaborative co-authorship useful for countries like Myanmar where there are an array of international and domestic entities engaged in ongoing development projects. Gray observes that such strategies are flexible enough to accommodate dynamic conditions where a country's current transition is driving changes in cultural sensibilities across a range of political, legal, social, and economic concerns—conditions that describe the context of Myanmar's political transition.⁸⁵

This extends the call for coordination and communication, albeit beyond the interactions of multiple aid providers to encompass aid recipients. This is not easy in Southeast Asian societies, where people exhibit a reluctance to engage in conversations involving unclear or unpredictable outcomes with others deemed as superior.⁸⁶ This requires investing in relationships that build social capital in the form of trust sufficient to provide a sense of a safe learning environment, translation that phrases foreign concepts in local modes of understanding, and familiarity that foster understanding of cultural cues in communication.⁸⁷ This ties in with the mitigation of segregation and privilege, in that such levels of social capital require a frequency and depth of interaction tied to an immediate presence not afforded by conditions that remove or distance aid providers from their beneficiaries.

It is understood that reforms brought by development aid constitute their own structure, but the question is not whether there is a structure but rather what kind of relationship exists between structure and agency. Specifically, does the structure enable the agency of aid recipients in their own aid? Strategies that utilize

⁸¹ MAURIANNE ADAMS, *PROMOTING DIVERSITY IN COLLEGE CLASSROOMS* (1992); see also Berkvens, *supra* note 55, at 354-358.

⁸² TALMADGE C. GUY, *CULTURE AS A CONTEXT FOR ADULT EDUCATION: THE NEED FOR CULTURALLY RELEVANT ADULT EDUCATION*, 5-18 (1999); see also Sharan B. Merriam & Gabo Ntseane, *Transformational Learning in Botswana: How Culture Shapes the Process*, ADULT ED. Q. 183-197 (2008).

⁸³ Adams, *supra* note 81; see also Berkvens, *supra* note 55; see generally, Munir Fasheh, *Rethinking Our Perceptions, Conceptions, and Values Concerning Learning, Education, and Development, Lecture at the Salzburg Seminar, Global Issues: The Roles and Responsibilities of Adult Education, Salzburg, Austria*, in *GLOBAL ISSUES IN ADULT EDUCATION: PERSPECTIVES FROM LATIN AMERICA, SOUTHERN AFRICA, AND THE UNITED STATES* (Courtney B. Merriam & R. Cervero eds., 2006).

⁸⁴ Mel Gray, *Dilemmas of International Social Work: Paradoxical Processes in Indigenisation, Universalism, and Imperialism*, 14 INT'L J. OF SOC. WELFARE 231, 231-38 (2005).

⁸⁵ *Id.*

⁸⁶ Berkvens, *supra* note 55.

⁸⁷ COLIN BEARD & JOHN P. WILSON, *THE POWER OF EXPERIENTIAL LEARNING: A HANDBOOK FOR TRAINERS AND EDUCATORS* 48-50 (2nd ed. 2002); see also Peter Malvicini, *Popular Education and Lifelong Learning: An Integrative Approach to Poverty, Development, and Change*, in *GLOBAL ISSUES IN ADULT EDUCATION: PERSPECTIVES FROM LATIN AMERICA, SOUTHERN AFRICA, AND THE UNITED STATES* 350 (2006).

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the above principles to address this requirement include direct, immersive, sustained programs that place foreign aid providers alongside Myanmar faculty and staff doing the same tasks of research and teaching in the law schools. Exemplars are programs like the Australian Volunteers in International Development (“AVID”) or the United States Fulbright Program, which provide the potential for foreign educators to work with Myanmar counterparts in extended partnership arrangements lasting as long as twelve months that facilitate shared experiences over legal education problems and which thereby build social capital fostering collaboration towards mutually acceptable solutions. While the processes and outcomes of such relationships may be dependent on the commitment, preferences, and flexibility of the individuals involved, they at minimum function to set conditions that encourage understanding that can better mitigate the issues raised by the respondents in this paper.

VI. Conclusion

The motivation for this paper was to improve educational development aid using self-reflective analysis tied to the experiences of Myanmar law school faculty with the delivery of such aid. The analysis referenced educational development aid literature to organize these experiences in ways that highlighted the concerns of Myanmar aid recipients to identify issues in the provision of aid to Myanmar law schools. While focused on addressing the situation of Myanmar’s legal education system, the analysis provides insights for more general educational development aid by illustrating the need for more contextual awareness and more sustained, egalitarian, sensitive relationships with aid recipients. Doing so enables greater agency for aid recipients not just in terms of working within the structure of choices offered by aid providers but in terms of going further to participate in the construction of such aid structure. This, however, requires a commitment to what Deborah Eade sees as the requisite preconditions for effective development assistance: self-awareness, self-criticism, and modesty about the complexities of development assistance among all parties involved.⁸⁸ These requirements are reciprocal, as Michael Edwards asserts:

“. . . it is possible to help others effectively, but only if we realise that in doing so they help us to grow to a fuller, more independent knowledge of ourselves. . . if our own practice is autocratic, closed, and chauvinist, it is unlikely that we will be able to encourage others to be democratic, open, and egalitarian.”⁸⁹

⁸⁸ Eade, *supra* note 10, at 635.

⁸⁹ Edwards, *supra* note 10, at 615.