

DEMOCRACY, RULE-OF-LAW, AND LEGAL ETHICS EDUCATION IN CONTEXT: DIRECTING LAWYERS TO SUPPORT DEMOCRATIZATION IN MYANMAR

Jonathan Liljeblad *

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* Jonathan Liljeblad is a Senior Lecturer at the Australian National University (ANU) College of Law. He holds a Ph.D. and J.D. from the University of Southern California, and a B.S. from the California Institute of Technology. His research focuses on rule-of-law, drawing upon cases from human rights and environmental issues. His field work is in Myanmar. He wishes to acknowledge the comments and support of reviewers and editors at the *Georgia Journal of International and Comparative Law*.

I. INTRODUCTION

Legal education in Myanmar's higher education system is undergoing reform as part of the national government's New Education Strategic Plan 2016-2021 (NESP).¹ In the NESP, higher education is viewed as inherent to the country's development in terms of producing the human capital necessary for economic growth and engagement with the international community.² The NESP articulates strategic goals for Myanmar's universities in terms of improved governance, more equitable access, and higher quality that rises to the status of "a world-class higher education system" appropriate for a "knowledge-based economy."³ As part of these goals, the NESP presents a comprehensive agenda that raises government spending, increases faculty numbers, implements capacity-building programs to improve faculty teaching and research, builds and modernizes infrastructure, encourages relationships with foreign partners, provides greater university autonomy and academic freedom, promotes access to a global internet, applies performance evaluation and quality assurance mechanisms, and expands support for students from disadvantaged backgrounds.⁴

In setting goals, the NESP looks to the international community. The NESP places itself within a larger twenty-year Ministry of Education (MoE) plan that seeks to have Myanmar's universities meet both Association of Southeast Asian Nations (ASEAN) and international standards.⁵ In addition, the NESP uses such standards not just as benchmarks but also as instructional references, with the text of the NESP calling for Myanmar to develop "world-class national universities" that follow the lessons of other ASEAN countries.⁶ In essence, the NESP seeks to draw upon other countries for guidance in developing Myanmar's higher education system.

The ambitions for national reform provide an opportunity to alter legal ethics education in Myanmar to follow international standards. Myanmar's legal education has suffered in the course of the country's post-independence history, with successive military regimes weakening both universities and the legal system over multiple decades to leave the country's law schools bereft of resources and skills in research and teaching.⁷ The NESP's goal for "world-

¹ The Gov't of the Republic of Myan. Ministry of Educ., *National Education Strategic Plan 2016-21: Summary* 1, 55 (2016), resources.mmoe.myanmarexam.org/docs/nesp/NESP_SUMMARY_English.pdf [hereinafter NESP 2016].

² *Id.* at 48.

³ *Id.* at 25.

⁴ *Id.* at 5-50.

⁵ *Id.* at 12, 44.

⁶ *Id.* at 49.

⁷ Myint Zan, *Legal Education in Burma Since the Mid-1960s*, 12 J. BURMA STUD. 63, 107 (2008).

class” higher education directs Myanmar’s law schools, and by extension their instruction in topics like legal ethics, to match the performance of law schools in other countries.⁸ Concomitant with such aspirations is a rising global demand for legal ethics to help lawyers understand the issues of justice and advocacy as countries become increasingly engaged with an international community.⁹ Hence, to the extent that they seek to satisfy the purposes of higher education reform, Myanmar’s law schools have a reason to reconsider the delivery of legal ethics education in relation to foreign standards.

The following analysis explores directions for reform of legal ethics education in Myanmar’s law schools and argues that pedagogical changes in legal ethics education towards existing ASEAN and international standards is insufficient. Specifically, the analysis asserts a need to direct the pedagogy of legal ethics education in support of the country’s democratization. The discussion begins with an introduction to legal ethics pedagogy, followed by a brief background regarding Myanmar’s law schools and legal ethics instruction. After this, the discussion reviews legal ethics education in other countries to provide some reference for Myanmar against law schools in both the ASEAN region and the United States. The analysis then proceeds to investigate the context of Myanmar’s democratization, noting the issues posed by the country’s transition and the resulting implications for legal ethics education. This Article finds that the context of Myanmar’s democratization calls for an expansion in legal ethics pedagogy that nurtures law graduates to be better able to serve the country’s transition. This Article finishes by noting further directions for research and conclusions for legal ethics education in other countries with contexts similar to Myanmar.

The following analysis draws on field notes collected during 2016-2017 in the course of field research on rule-of-law and university reforms in Myanmar. During this time period, the author taught at law schools in Myanmar and participated in the work of several international non-governmental organizations (NGOs) engaged in capacity-building efforts in Myanmar’s legal education system. The author was self-funded and worked pro bono. Due to the sensitivities associated with the country’s ongoing political transition, the names of the law schools, government offices, and non-governmental organizations are withheld to protect the identities and activities of vulnerable parties. Moreover, interviews are avoided in favor of observations, government documents, and existing scholarly literature. Field observations are supplemented by primary source materials in the form of government documents made available to the public and which were acquired either via the internet or, when not available for download, via in-person contact with Myanmar

⁸ NESP 2016, *supra* note 1, at 194.

⁹ Bjorn Fasterling, *The Managerial Law Firm and the Globalization of Legal Ethics*, 88 J. BUS. ETHICS 21 (2009).

ministries. The analysis also makes use of secondary sources in the form of published scholarly literature relevant to the discussion of Myanmar, legal ethics, rule-of-law, and democratization.

In keeping with the principles of legal anthropology regarding 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.¹⁰ Mindful of this, it should be noted that the author is an academic trained in both law and social sciences by a U.S. university and so operates with the perspective of an American legal and social science scholar. The author is mindful of a potential bias induced by such a perspective for American conceptions of law and politics and the resulting risks of reductionism in extending American approaches to other contexts. The author endeavors to balance the potential bias with a bicultural background as someone born in Myanmar but raised in Sweden and the United States. Through a bicultural lens, the author exercises sensitivity to the differences in worldviews and associated socio-cultural, economic, political, and historical contexts between Myanmar and the West.

A. The Pedagogy of Legal Ethics Education

There are a range of pedagogical approaches regarding legal ethics education, with differences involving questions of content and manner of delivery regarding the topic within a law school curriculum.¹¹ Gonzalo Villalta Puig, Head of the School of Law and Politics at the University of Hull, organizes the various approaches using a typology that varies across two dimensions: (1) the constitution of legal ethics education in terms of content and (2) the structure of legal ethics education in terms of its placement in a degree program.¹² With respect to content of ethics taught in a legal education curriculum, Puig posits a difference between approaches that see "ethics-as-law" versus those that see "ethics-as-judgement."¹³ The ethics-as-law approach holds to a canon of sources—statutes, case law, or professional organizations—that

¹⁰ See generally, HARVEY RUSSELL BERNARD, RESEARCH METHODS IN ANTHROPOLOGY: QUALITATIVE AND QUANTITATIVE APPROACHES (4th ed. 2006); F. Higgins-Desboilles & G. Russell-Mundine, *Absences in the Volunteer Tourism Phenomenon: The Right to Travel, Solidarity Tours and Transformation Beyond the One-Way*, in JOURNEYS OF DISCOVERY IN VOLUNTEER TOURISM (K. Lyons & S. Wearing eds., 2008); Carlos Palacios, *Volunteer Tourism, Development, and Education in a Postcolonial World: Conceiving Global Connections Beyond Aid*, 18 J. SUSTAINABLE TOURISM 861, 865-66 (2010).

¹¹ Helena Whalen-Bridge, *The Lost Narrative: The Connection Between Legal Narrative and Legal Ethics*, 7 J. ASS'N LEGAL WRITING DIRECTORS 229, 239-41 (2010) [hereinafter Whalen-Bridge 2010].

¹² Gonzalo Villalta Puig, *Legal Ethics in Australian Law Schools*, 42 LAW TEACHER 29, 32-34, 40-43 (2008).

¹³ *Id.* at 31, 34.

present an identifiable corpus of specific rules for legal practitioners to follow; in contrast, the ethics-as-judgement approach seeks to develop within individual legal professionals “ethical reasoning that connects . . . rules about ethics, the skills necessary for everyday legal practice, theories, values, and policy and personal beliefs” to deal with the complexities that frequently arise in legal practice.¹⁴

With respect to structure, Puig distinguishes between “discrete” and “pervasive” modes of legal ethics education.¹⁵ The former makes legal ethics a discrete subject, with dedicated courses separate from others within a degree program.¹⁶ The latter integrates legal ethics throughout a curriculum, with teachers calling upon students to recognize legal ethics issues in the course of studying different subjects.¹⁷ Puig sees the pervasive perspective as combining discrete legal ethics courses with an ongoing opportunism that highlights legal ethics questions in the body of other classes.¹⁸

Puig’s typology provides a pedagogical framework that clarifies a range of options in the delivery of a legal ethics education. Based on the two dimensions in his typology, law schools have multiple choices regarding the treatment of legal ethics in a curriculum. For countries like Myanmar, the existence of choices poses uncertainty as to the most appropriate decision to achieve the goals of improving legal education. Accordingly, there is a need to find guidance that can ensure the implementation of legal ethics within Myanmar’s law schools fulfils aspirations for legal education reform.

B. Legal Ethics and Legal Education in Myanmar

In the decades following the country’s 1962 military coup, Myanmar’s universities—including their law schools—were treated by a succession of governments as sources of protest and resistance against state power.¹⁹ A sequence of authoritarian regimes consistently sought to suppress perceived threats to state power and so made efforts to weaken the higher education system by centralizing control of universities under the Ministry of Education,

¹⁴ *Id.*

¹⁵ *Id.* at 40, 43.

¹⁶ *Id.*

¹⁷ *Id.* at 43.

¹⁸ *Id.* at 44.

¹⁹ Nick Cheesman & Kyaw Min San, *Not Just Defending: Advocating for Law in Myanmar*, 31 WIS. INT’L L. J. 702, 733 (2014); 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); Maung Maung, *Lawyers and Legal Education in Burma*, 11 INT’L COMP. L. Q. 285 (1962); Zan, *supra* note 7, at 107.

limiting academic freedom, suppressing dissent, constricting funds, proscribing educational materials, and closing schools.²⁰ The Myanmar state's treatment of the legal education system served an attendant effort to weaken the legal system by reducing its professional standards and shrinking its public stature.²¹ The law schools, in particular, were subjected to significant changes that resulted in a modern system widely recognized as suffering substantial deficiencies in research and teaching.²² Myint Zan, Professor of Law at the Multimedia University in Malaysia and native of Myanmar, in his study of Myanmar's legal education system, described a curriculum driven by ideology that 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.²³ 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 textbooks and scholarly journals that were in limited supply and largely outdated.²⁴ According to Zan, the result has been several decades of law graduates with inadequate skills.²⁵

During the period of field research (the June to September semesters of both 2016 and 2017) for the present study, law schools in Myanmar consisted of law departments housed within eighteen universities throughout the country.²⁶ Administration and finance of universities are centralized, with the MoE overseeing sixty-six higher education institutions.²⁷ Management is done

²⁰ Zan, *supra* note 7, at 4-32.

²¹ Cheesman & San, *supra* note 19, at 702-08; Crouch, *supra* note 19, at 549, 577-73; Thomas Fuller, *Myanmar's Opening up Hasn't Loosened Graft in Courts*, N.Y. TIMES (Oct. 24, 2014), <http://nyti.ms/1z3nbMN>; Janelle Saffin & Nathan Willis, *The Legal Profession and the Substantive Rule of Law in Myanmar*, in CONSTITUTIONALISM AND LEGAL CHANGE IN MYANMAR 235, 240-46 (Andrew Harding & Khin Khin Oo eds., 2017); Zan, *supra* note 7, at 50-52.

²² Zan, *supra* note 7, at 4-32.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 51.

²⁶ Jonathan Liljeblad, *Transnational Support and Legal Education Reform in Developing Countries: Findings and Lessons from Burma/Myanmar*, 14 LOY. U. CHI. INT'L L. REV. 133, 135 (2016) [hereinafter cited as Liljeblad]; field work for this project was supported by Bridges Across Borders Southeast Asia Community Legal Education (BABSEACLE), which is engaged in capacity-building programs for Myanmar law schools, and they identify eighteen law schools throughout Myanmar see *Myanmar*, BABSEACLE (2019), <https://www.babseacle.org/justice-initiatives/myanmar/>.

²⁷ *Id.* at 140-41. Po Po Thauang Win, *An Overview of Higher Education Reform, in Burma/Myanmar in Transition: Connectivity, Changes, and Challenges*, INT'L

through the Department of Higher Education for Lower Myanmar and Department of Higher Education for Upper Myanmar, and policy is set by the Universities' Central Council, which coordinates broad university policies, and the Council of University Academic Bodies, which is responsible for academic regulations.²⁸ Faculty appointments are made by the MoE, which, twice per year, conducts a transfer system that decides promotions as well as the relocation of faculty from one university to another.²⁹ In Myanmar's higher education system, curriculum decisions for a university discipline are made by a board comprised of the heads of departments responsible for granting degrees.³⁰ For legal education, this means that decisions regarding the curriculum, course syllabi, reading materials, and teaching methods for law schools are made by a Board of Legal Studies whose membership is comprised of the Head of Department and Deputy Head of Department from each of the various law departments in Myanmar.³¹ Hence, as a component of the university system, legal education in Myanmar is largely centralized and uniform, with common policies and regulations shared across universities.³²

C. Myanmar Legal Ethics Compared to Regional and International Trends

The aspirations of the NESP prescribe a direction for legal ethics education in Myanmar's law schools towards ASEAN and international standards. There is a justification for comparison against foreign standards, since legal ethics education in other countries can provide points of reference that offer guidance for potential reform of legal ethics within Myanmar's law schools. Because of Myanmar's origin as the former British imperial colony of Burma and the country's continuing use of common-law elements in its legal system, it is more readily feasible to compare Myanmar's law schools with legal education in other countries that share similar origins as former British colonies and whose legal systems hold a similar basis in common law.

In Myanmar's law schools, the curriculum does not provide for a discrete course focused solely on legal ethics.³³ Instead, legal ethics is treated as one

CONFERENCE ON BURMA/MYANMAR STUDIES (July 24-25, 2015) at 3, http://www.burmali-brary.org/docs21/Education/Popo-Thaung-Win-2015-An_Overview_of_Higher_Education_Reform_in_Myanmar-en.pdf.

²⁸ *Id.* at 4.

²⁹ Field notes, Bridges Across Borders Southeast Asia Community Legal Education (2016) (on file with author).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Gov't of the Republic of Myan. Ministry of Educ., Syllabus for LLB Degree (2017) (on file with author); Gov't of the Republic of Myan. Ministry of Educ., First Year Textbook: Module No. Law 1101 (2014) (on file with author).

of a range of topics within a broader course entitled Introduction to the Study of Law that covers both semesters of the first year in the Bachelor of Laws (LLB) program and encompasses concepts deemed fundamental to students of law.³⁴ The training provided by an LLB program, however, is insufficient by itself for legal practice. Entrance into the legal profession involves a candidate progressing from a “pleader,” who is limited to appearances in subordinate courts at district and township levels, to an “advocate,” who is allowed to appear in all courts.³⁵ A law graduate who seeks to practice must go through a process of “reading chambers” involving an internship of at least a year under an advocate holding at least five years of experience, who then provides testimony for the candidate’s application to become a pleader.³⁶ After at least one year of continuous practice, a pleader with the requisite testimony can apply to become an advocate.³⁷ Applications are reviewed by the bar council and the supreme court, with licenses issued by the supreme court.³⁸ In granting a license, the supreme court includes good character, and hence some sense of legal ethics, among the required elements taken into consideration of a candidate’s qualifications.³⁹

1. Malaysia

In Malaysia, the status of legal ethics is recognized as a discrete subject, but its treatment differs between law graduates from non-Malaysian schools and law graduates from Malaysian schools, as well as among law graduates from different Malaysian law schools. Graduates from non-Malaysian universities seeking to practice in Malaysia are required to gain a Certificate in Legal Practice (CLP), which includes an examination on legal ethics as part of a professional practice course.⁴⁰ In contrast, graduates from Malaysian universities are not required to hold a CLP, and there is no national form of legal ethics instruction, since the law school curriculum varies across Malaysian universities. For example, the University of Malaysia places legal ethics within a compulsory course on professional practice for its LLB program.⁴¹

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Supreme Court of Myan., *Courts Manual* 5, 18 (1999), http://www.burmalibrary.org/docs14/Courts_Manual-ocr-en.pdf; Zan, *supra* note 7, at 13.

⁴⁰ See *Certificate in Legal Practice*, THE MALAYSIAN BAR, <http://www.malaysianbar.org.my/c.l.p.html> (last visited Jan. 1, 2018).

⁴¹ Whalen-Bridge 2010, *supra* note 11, at 240.

This differs from the National University of Malaysia, which has a dedicated legal ethics course for the first year of its LLB program.⁴²

2. Singapore

In Singapore, admission to the bar requires that candidates complete and pass the Postgraduate Practical Law Course (PLC), held by the Board of Legal Education. The PLC includes legal ethics as a core element.⁴³ Education in legal ethics differs among the LLB programs of Singapore's universities. For example, the National University of Singapore (NUS) applies a pervasive approach, addressing legal ethics within the content of courses throughout the LLB program.⁴⁴ To the degree that legal ethics is a discrete subject, the NUS LLB curriculum includes it as a topic in a mandatory course on legal analysis, writing, and research, and also offers a dedicated legal ethics course as an elective.⁴⁵ At Singapore Management University (SMU), there is no specific course on legal ethics, although the LLB program includes a course on ethics and social responsibility as part of a university-wide set of compulsory core courses.⁴⁶

3. The Philippines

In the Philippines, standards for admission to legal practice are set by the supreme court, which requires candidates to pass a bar examination covering a mandatory slate of topics, including legal ethics.⁴⁷ As a result, while there is some variation among law schools within the Philippines, most adhere to a common core of mandatory courses, with legal ethics among them. Under the supreme court's rules, legal education is post-graduate in that it requires completion of a prior bachelor's degree.⁴⁸ Law degrees in the Philippines vary,

⁴² *Bachelor of Law (LL.B)*, UNIVERSITI KEBANGSAAN MALAY. (NAT'L UNIV. OF MALAY), <http://www.ukm.my/fuu/llb/> (last updated Sept. 11, 2017).

⁴³ *Admission to the Singapore Bar*, SING. INST. OF LEGAL EDUC., <http://www.sile.edu.sg/part-b> (last updated Dec. 17, 2018).

⁴⁴ Whalen-Bridge 2010, *supra* note 11, at 240.

⁴⁵ *Id.*

⁴⁶ *Curriculum*, SING. MGMT. UNIV. SCH. OF LAW, <https://law.smu.edu.sg/llb/curriculum> (last visited Feb. 18, 2019).

⁴⁷ *Rule 138 – Attorneys and Admission to Bar*, THE LAWPHIL PROJECT, http://www.lawphil.net/courts/rules/rc_138_bar.html (last visited Dec. 28, 2017).

⁴⁸ *Id.*

with some schools offering an LLB and others a Juris Doctor (JD). For example, the University of Cebu College of Law offers an LLB, with compulsory courses on the legal profession and legal ethics within the first year of the curriculum.⁴⁹ In contrast, Ateneo de Manila University offers a JD, with a core curriculum that contains a course on legal ethics in the second year.⁵⁰

4. Comparison

Based on the common-law countries within ASEAN, it is apparent that there is inconsistent pedagogy both in terms of ethics-as-law versus ethics-as-judgement and discrete versus pervasive approaches. As a result, there seems little pedagogical guidance regarding Myanmar's goals to meet ASEAN standards of higher education. There is, however, an identifiable consistency among Malaysia, Singapore, and the Philippines in that all countries ultimately make legal ethics compulsory in their legal education systems. While the treatment of legal ethics within law schools varies across all three countries, the position of legal ethics in each country's legal system as a requirement for admission to practice effectively serves to make legal ethics mandatory for all law students seeking to become lawyers.

The status of legal ethics in the law schools of Malaysia, Singapore, and the Philippines reflects ongoing regional trends driving an evolution in legal education in ASEAN countries. In particular, the progression of the ASEAN economic community is spurring a convergence of higher education among ASEAN member states, with the growth of transnational trade accompanied by harmonization of business, trade, and finance laws, cross-border flows of labor and capital, and an attendant need for cross-border transfer of knowledge and skills.⁵¹ As a result, legal professionals and academics in organizations

⁴⁹ *J.D. Non-Thesis Program*, UNIV. OF CEBU SCH. OF LAW, <http://uc.edu.ph/school-of-law/index.php/admission/curriculum-juris-doctor-j-d-non-thesis/> (last visited Feb. 18, 2019).

⁵⁰ *J.D. Curriculum*, ATENEO DE MANILA UNIV. SCH. OF LAW, <http://ateneo.edu/aps/law/jd-program-law/jd-curriculum> (last visited Dec. 28, 2017).

⁵¹ See generally Kumaralingam Amirthalingam, *The Role of Legal Education in ASEAN Integration*, ASEAN LAW ASS'N (2016), <http://www.aseanlawassociation.org/12GAdocs/workshop1-singapore.pdf>; ALICE BA, (RE)NEGOTIATING EAST AND SOUTHEAST ASIA (2009); Pasha Li-Tian Hsieh, *ASEAN's Liberalization of Legal Services: The Singapore Case*, 8 ASIAN J. WTO & INT'L HEALTH L. & POL'Y 475, 486-88 (2013); Chew Seng Kok & Yeap Suan Hong, *Liberalization of Legal Services—Embracing a World of Opportunities in the ASEAN Region*, 10 U.S.-CHINA L. REV. 141, 144-47 (2013); Molly Lee, *Contemporary Education Policies in Southeast Asia: Common Philosophical Underpinnings and Practices*, 17 ASIA PACIFIC EDUCATION REV. 465, 473-74 (2016); Huon Ly Luu, *Regional Harmonization of Competition Law and Policy: An ASEAN Approach*, 2 ASIAN J. INT'L L. 314-15 (2012); Laurel Terry, *Transnational Legal Practice (International)*, 47 INT'L LAW 485, 489-93 (2013).

such as the ASEAN Law Association have called for standardization of university standards, cooperation between universities on academic programs, and collaboration in research and teaching between universities.⁵² The inertia behind these efforts is reflected in the formation of the ASEAN University Network (AUN), whose charter was signed by the ministers of higher education from member countries for the purpose of promoting transnational institutional relations to promote solidarity in support of ASEAN regional objectives.⁵³ Legal education, as part of higher education, is consistent with university trends in ASEAN countries, with legal professionals and academics supporting the development of an ASEAN legal education core curriculum.⁵⁴ As a result, while the delivery of legal ethics education may be inconsistent across Malaysia, Singapore, and the Philippines, its effective status as a mandatory subject is consistent with ASEAN regional trends that aim for future convergence towards a common legal ethics pedagogy.

Such a future for ASEAN—and by extension Myanmar—law schools connect to larger global shifts in legal education. Beyond Southeast Asia, the globalization of international trade has spurred increased needs for multinational legal regimes and transnational legal services,⁵⁵ placing law schools across multiple countries under pressure to provide graduates capable of addressing the demands of an international legal environment. As a result, there is an international convergence across different legal education systems towards common principles and skills.⁵⁶ With respect to legal ethics, states and professional organizations are driving law schools to consolidate values and rules about the legal profession.⁵⁷ Much of the evolution in law school curricula centers around a U.S. model,⁵⁸ which is itself undergoing a transformation in pedagogy and substance that encompasses ideals of professionalism

⁵² Danilo Concepcion, *Educating the ASEAN Practitioner: Legal Education in the Time of the ASEAN Economic Integration*, ASEAN LAW ASS'N (2016), <https://www.aseanlawassociation.org/12GAdocs/workshop6-philippines.pdf>; Tan Cheng Han, *Legal Education in ASEAN*, ASEAN LAW ASS'N (2016), http://aseanlawassociation.org/9GAdocs/w2_Singapore.pdf; Shilpa Pyakurel, *ASEAN Economic Community and its Effects on University Education and Job Market: A Case Study of Skill Verification by the Means of Professional Certification Examination*, SOC. SCI. RESEARCH NETWORK (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2521032.

⁵³ ASEAN UNIV. NETWORK, <http://www.aunsec.org/> (last visited Dec. 10, 2017).

⁵⁴ See Liljeblad, *supra* note 26.

⁵⁵ Simon Chesterman, *The Globalization of Legal Education*, 2008 SING. J. LEGAL STUD. 58, 63 (2008); Robert Lutz, *Reforming Approaches to Educating Transnational Lawyers: Observations from America*, 6 J. LEGAL EDUC. 449, 449-54 (2012); Terry, *supra* note 52, at 494-98.

⁵⁶ Chesterman, *supra* note 55, at 63-65; Lutz, *supra* note 55, at 449; Terry, *supra* note 51, at 494-98.

⁵⁷ Fasterling, *supra* note 9, at 27-30.

⁵⁸ Chesterman, *supra* note 55, at 65-66; John Flood, *Legal Education in the Global Context: Challenges from Globalization, Technology, and Changes in Government Regulation*,

and integrity that require students to internalize ethics into their daily conduct.⁵⁹ In the United States, there is no mandatory national model regarding legal education, since different states have different requirements for admission to practice and law schools have the autonomy to craft their respective curricula to match state requirements.⁶⁰ Minimum standards exist in the form of accreditation rules set by the American Bar Association (ABA).⁶¹ The ABA, as part of its accreditation system, expects each law school to provide legal ethics education that “prepares its students . . . for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession,”⁶² with learning outcomes that include “exercise of proper professional and ethical responsibilities to clients and the legal system; and other professional skills needed for competent and ethical participation as a member of the legal profession.”⁶³ Such a scope points to a comprehensive approach involving both ethics-as-law and “ethics-as-judgment.” For U.S. law schools, however, legal ethics is accorded a specific course that conforms to a discrete approach.⁶⁴ Hence, if U.S. law schools function as a model for global trends in legal education, then the future for international standards of legal education involve a broad treatment of legal ethics as both law and judgement that is treated as a discrete and compulsory element of a law school curriculum.

A summary comparison of the above cases is presented in Figure 1 below. Myanmar’s NESP calls for Myanmar’s legal education system to rise to ASEAN and global standards. Hence, if the legal education trends in Singapore, Malaysia, the Philippines, and the United States are representative of

SOC. SCI. RESEARCH NETWORK 1 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1906687; Rosa Kim, *The “Americanization” of Legal Education in South Korea: Challenges and Opportunities*, 38 BROOK. J. INT’L L. 49 (2012); James Moliterno, *Exporting American Legal Education*, 58 J. LEGAL EDUC. 274, 278 (2008); Wolfgang Wiegand, *Americanization of Law: Reception or Convergence?*, in LEGAL CULTURE AND LEGAL PROFESSION 138-39 (Lawrence Friedman & Harry Scheiber eds., 1996).

⁵⁹ Barbara Glesner Fines, *Three Views of the Academy: Legal Education and the Legal Profession in Transition*, 51 TULSA L. REV. 478, 503 (2016); Wayne Hyatt, *A Lawyer’s Lament: Law Schools and the Profession of Law*, 60 VAND. L. REV. 101, 109 (2007); Thomas Morgan, *The Changing Face of Legal Education: Its Impact on What It Means to Be a Lawyer*, 45 AKRON L. REV. 812, 822-24 (2011); E. Thomas Sullivan, *The Transformation of the Legal Profession and Legal Education*, 46 INDIANA L. REV. 145, 147-48 (2013).

⁶⁰ *Id.*

⁶¹ Whalen-Bridge 2010, *supra* note 11, at 239.

⁶² AMERICAN BAR ASS’N, *ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017* 15 (2016), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_standards_chapter3.authcheckdam.pdf [hereinafter ABA 2016].

⁶³ *Id.*

⁶⁴ Fines, *supra* note 59, at 503; Hyatt, *supra* note 59, at 390-92; Morgan, *supra* note 59, at 822-24; Sullivan, *supra* note 59, at 147-48.

ASEAN regional and global standards, respectively, then they constitute models for reforms of Myanmar's law schools. With respect to legal ethics, they affirm the requirement in Myanmar's legal system for legal ethics as a mandatory element for admission to the legal profession. They also provide standards for Myanmar's law schools to make legal ethics a compulsory subject for law students. They leave, however, unresolved questions for Myanmar's law schools as to whether legal ethics should be taught as ethics-as-law or ethics-as-judgement and whether it should be delivered via a discrete approach with a dedicated course or a pervasive approach that embeds legal ethics throughout a curriculum. The apparent inconsistencies in pedagogy reflect an underlying emphasis on choice of pedagogy, in that across the disparate legal systems of Singapore, Malaysia, and the United States, individual law schools exercise autonomy in the choice of pedagogy. Hence, while there may be little guidance from other countries for legal ethics education in Myanmar's law schools, there is, at minimum, direction in terms of a framework allowing each of Myanmar's law schools to choose its own legal ethics pedagogy.

Figure 1: Summary Comparison of Legal Ethics Education Across Common-Law Countries in Southeast Asia, with the United States Included for Reference

<i>Country</i>	<i>Status of Legal Ethics in Legal Education</i>
Myanmar	Curriculum standardized across country by Board of Legal Studies; legal ethics is a topic within first-year Introduction to Study of Law (LAW 1103, two semesters) Bar examination in disuse and admission to practice via sponsored application to supreme court, legal ethics part of AGO requirements for profession
Malaysia	Depends on the university (e.g., University of Malaysia: part of compulsory "Professional Practice" subject for LLB; National University of Malaysia: first-year Legal Ethics course for LLB) Foreign law graduates must gain Certificate in Legal Practice (CLP) which has legal ethics component
The Philippines	Depends on the university (e.g., University of Cebu: compulsory course in first year of LLB; Ateneo de Manila University: compulsory course in second year of JD) Legal ethics mandatory topic of bar examination

Singapore	Depends on the university (e.g., NUS: topic within mandatory course on Legal Analysis, elective on Legal Ethics for LLB; SMU: university-wide course on Ethics & Social Responsibility) Admission to bar requires Practical Law Course (PLC) which has legal ethics as core component
United States	Depends on the law school, but considered compulsory for ABA accreditation

Source: Liljeblad 2018

II. CONNECTING LEGAL ETHICS TO DEMOCRATIZATION

Despite the guidance offered by ASEAN regional and global trends in legal education, some caution should be exercised in applying Puig's pedagogical legal ethics framework to Myanmar's law schools. Specifically, scholars like Terry Buss, Thomas Carothers, Robert Groelsema, and Louis Picard warn of the failures of positivist approaches that insist on applying single-development models to diverse cases, noting the historical failures of foreign aid programs that did not address the challenges posed by local nuances.⁶⁵ Similarly, scholars like Alvaro Santos, David Trubek, and Anthony Ware call for efforts that are more responsive to context.⁶⁶ The implication from such approaches is that reform efforts in Myanmar are better served through context-sensitive strategies that place greater attention to the challenges specific to the country. Therefore, to the extent that legal education is part of university reform efforts, the framework of pedagogical choices for legal ethics education should be responsive to the nuances in the issues endemic to Myanmar.

Prominent among the issues in Myanmar's context are the challenges of its ongoing transition, particularly with respect to its struggles over democratization.⁶⁷ The connection between legal ethics and democratization follows from the arguments of Kenneth Rosen, who asserts that lawyers in a demo-

⁶⁵ Thomas Carothers, *The End of the Transition Paradigm*, 13 J. DEMOCRACY 18-19 (2002); LOUIS PICARD, ROBERT GROELSEMA, & TERRY BUSS, FOREIGN AID AND FOREIGN POLICY: LESSONS FOR THE NEXT HALF-CENTURY 230-31 (2015).

⁶⁶ See generally DAVID TRUBEK & ALVARO SANTOS, THE NEW LAW & ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL (2006); ANTHONY WARE, CONTEXT-SENSITIVE DEVELOPMENT (2012).

⁶⁷ Larry Diamond, *The Need for a Political Pact*, 23 J. DEMOCRACY 138 (2012) [hereinafter Diamond 2012]; Jonathan Liljeblad, *The Efficacy of National Human Rights Institutions Seen in Context: Lessons from the Myanmar National Human Rights Commission*, 19 YALE HUM. RTS. & DEV. L. J. 95, 110 (2018).

cratic system have a duty of competency that includes expertise in the operations of democracy.⁶⁸ Rosen directs his focus to the United States, but his comments are applicable to lawyers in other countries seeking to support democratic forms of government. Rosen reasons that the idea of competency involves expertise regarding the institutions of a legal system, with expertise requiring knowledge of the laws defining those institutions and understanding of the principles and values that underlie them.⁶⁹ As a result, to the extent that legal institutions reflect democratic conceptions of government, a duty of competency calls for knowledge and understanding of the laws, principles, and values of democracy. Rosen goes further, however, to argue that the duty of competency goes beyond knowledge or understanding to also include support for democracy.⁷⁰ Rosen notes that democracy is based on a system of laws.⁷¹ Accordingly, a lawyer's obligations to the legal system in a democracy also imply obligations to democracy itself, such that "a lawyer's fealty to democracy is obligated rather than aspirational."⁷²

Basing democracy on a system of laws implies an association between democracy and rule-of-law, with the latter being a precondition of the former.⁷³ Such an association requires some caution, since there are two competing conceptions of the rule-of-law: "thin" formalist interpretations that restrict the idea to transparent laws and institutions that are equally applied to everyone versus "thick" substantive interpretations that see it as also including civil and political liberties.⁷⁴ It is possible to construe a relationship between democracy and thin perspectives of the rule-of-law in that laws and institutions serve to define political processes,⁷⁵ which in a democracy would encompass mechanisms of accountability such as public elections and referenda. To the degree that such laws apply to political leaders, they subject political leaders to the constraints posed by democratic forms of accountability.⁷⁶ With respect to

⁶⁸ Kenneth Rosen, *Lessons on Lawyers, Democracy, and Professional Responsibility*, 19 GEO. J. LEGAL ETHICS 155, 162 (2006).

⁶⁹ *Id.*

⁷⁰ *Id.* at 163.

⁷¹ *Id.*

⁷² *Id.* at 161.

⁷³ Richard Rose, *A Diverging Europe*, 12 J. DEMOCRACY 93, 94 (2001).

⁷⁴ Brian Z. Tamanaha, *The History and Elements of the Rule of Law*, 2012 SING. J. LEGAL STUD. 232, 233 (2012); BRIAN TAMANAH, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 91, 110-12 (2011); *Towards a Just, Secure and Peaceful World, Governed by the Rule of Law*, UNITED NATIONS AND THE RULE OF LAW, <https://www.un.org/ruleoflaw/> (last visited 20 December 2017).

⁷⁵ Amy Alexander & Christian Welzel, *Measuring Effective Democracy: The Human Empowerment Approach*, 43 COMP. POL. 271, 274 (2011).

⁷⁶ CHRISTIAN HAERPFFER ET AL., DEMOCRATIZATION 11-12, 29 (2009).

thick perspectives, the idea of the rule-of-law may be distinct from liberal ideals, but they are connected in that both are seen as necessary for democracy.⁷⁷ Ronald Inglehart and Christian Welzel observe that democracy “does not lie solely in voting rights and universal suffrage but requires a broader set of civil and political liberties.”⁷⁸ Steven Levitsky and Lucan Way note that democracies require the existence of domestic constituencies with stakes in democratic processes.⁷⁹ Civil and political liberties enable individuals and groups to advance their interests in political institutions, and thereby provide a space to form domestic constituencies to engage democratic processes. Rights of self-expression, in particular, allow for competition between diverse and dissenting perspectives that Sujian Guo and Gary Stradiotto see as being a core tenet for democracy.⁸⁰ Rule-of-law asserts the primacy of the law and so seeks the observance of rights, including rights of self-expression, under the law. Thus, for both thin and thick conceptions, the rule-of-law is a necessary antecedent to enable democracy.

Lawyers work to promote either version of the rule-of-law, since as actors in a legal system they reify respect for laws and legal institutions⁸¹ and enable the exercise of rights through them.⁸² Following Rosen’s arguments on the duty of competency, the requirement for expertise regarding laws and institutions implies a further obligation for knowledge and understanding regarding the rule-of-law. Further, because the rule-of-law is a necessary antecedent for democracy, the recognition of a duty to support democracy presupposes a prior duty to advance the rule-of-law. The connection between legal ethics and democratization therefore encompasses not just democracy but also the rule-of-law as a precondition for democracy. The connection between lawyers, legal ethics, thick and thin conceptions of the rule-of-law, and democracy are summarized in Figure 2 below.

⁷⁷ RONALD INGLEHART & CHRISTIAN WELZEL, MODERNIZATION, CULTURAL CHANGE & DEMOCRACY: THE HUMAN DEVELOPMENT SEQUENCE 208-09, 246 (2005).

⁷⁸ *Id.* at 175.

⁷⁹ STEVEN LEVITSKY & LUCAN A. WAY, COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR 35 (2010).

⁸⁰ SUJIAN GUO & GARY A. STRADIOTTO, DEMOCRATIC TRANSITIONS: MODES AND OUTCOMES 42 (2014).

⁸¹ Robert W. Gordon, *The Role of Lawyers in Producing the Rule of Law: Some Critical Reflections*, 11 THEORETICAL INQUIRIES L. 441-68 (2010).

⁸² *Id.* at 449; see also Adama Dieng, *Role of Judges and Lawyers in Defending the Rule of Law*, 21 FORDHAM INT’L L. J. 550, 552 (1997).

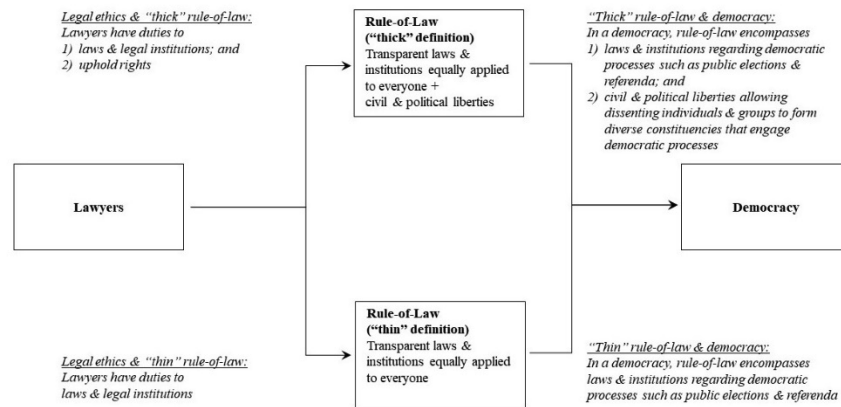


Figure 2: Diagram Indicating the Connections Between Lawyers, Legal Ethics, Thick and Thin Conceptions of the Rule-of-Law, and Democracy

For situations like Myanmar's, the struggles with democratization heighten the relevance of Rosen's arguments. The position of lawyers as agents of the law makes them a critical element in the country's transition. Under Rosen's approach, transition contexts like Myanmar's call for lawyers who recognize the role of their profession in the process of democratization. This requires legal ethics that direct lawyers to accept and fulfil professional responsibilities to promote democracy and the rule-of-law.

Such requirements carry implications for legal education. Specifically, Rosen's arguments suggest that law schools share an obligation to assist democratization.⁸³ Law schools, as providers of legal education, are responsible for the production of lawyers.⁸⁴ In training lawyers, law schools are able to deliver legal ethics instruction appropriate for their country's context. To the extent that Myanmar's context requires lawyers who advance democracy and the rule-of-law, it calls upon law schools to provide legal ethics education that guides lawyers in ways that further the country's democratization.

⁸³ Rosen, *supra* note 68, at 159.

⁸⁴ See generally David Pimentel, *Legal Education as a Rule of Law Strategy – Problems and Opportunities with U.S.-Based Programs*, 22 U.C. DAVIS J. INT'L & POL'Y 42 (2015); Helena Whalen-Bridge, *The Rhetoric of Corruption & The Law School Curriculum: Why Aren't Law Schools Teaching About Corruption?*, in *LEGAL EDUCATION IN ASIA: FROM IMITATION TO INNOVATION* 72 (Andrew Harding, Jiaxiang Hu & Maartje de Visser eds., 2017).

III. DEMOCRATIZATION IN MYANMAR

Some care should be taken in orienting legal ethics education in support of Myanmar's transition. Democratization is not uniform across countries, with different societies experiencing separate paths towards various forms of democracy with diverse patterns of progress, arrest, or reversal.⁸⁵ The call of context-sensitive approaches is for development strategies tailored to the unique conditions specific to individual countries and so point to a need for efforts that are responsive to the particular phenomenon of Myanmar's democratic transition. Myanmar's democratization reflects issues that are structural in terms of the country's political system as well as cultural in terms of the proclivities of the country's population. The character of each set of issues is addressed below.

A. Structural Issues

With respect to the political system, the constitution of the Republic of the Union of Myanmar (2008) prescribes a form of government that only partially meets the form of a democracy: there is a tri-partite structure comprised of legislative, executive, and judicial branches.⁸⁶ The legislative branch features a bicameral parliament with a Pyithu Hluttaw, or People's Assembly, of 440 representatives chosen through popular election from townships⁸⁷ and a Amyotha Hluttaw, or House of Nations, with a maximum of 224 representatives apportioned equally among Myanmar's regions and states.⁸⁸ Legislation requires that bills receive majority approval of both the Pyithu Hluttaw and Amyotha Hluttaw⁸⁹ before being signed by the President into law.⁹⁰ The executive branch houses the President, who serves as head of state and head of government, along with a cabinet and two vice-presidents.⁹¹ The President is chosen by the Parliament through an electoral college composed of commit-

⁸⁵ Carothers, *supra* note 65, at 14-17; Larry Diamond, *Thinking About Hybrid Regimes*, 13 J. DEMOCRACY 25-27 (2002); HAERPFER ET AL., *supra* note 76, at 37-38; Levitsky & Way, *supra* note 79, at 14-16; AREND LJPHART, PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES 5-8 (2d ed. 2012); JAN TEORELL, DETERMINANTS OF DEMOCRATIZATION: EXPLAINING REGIME CHANGE IN THE WORLD, 1972-2006 20 (2010).

⁸⁶ CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, 2008.

⁸⁷ *Id.* at art. 109.

⁸⁸ *Id.* at art. 141.

⁸⁹ *Id.* at art. 86.

⁹⁰ *Id.* at art. 105.

⁹¹ *Id.* at art. 60.

tees representing each chamber of the legislature and the members of parliament appointed by the military.⁹² The judicial branch hosts the supreme court as the highest court in Myanmar, with justices appointed by the President.⁹³

Beyond these democratic components, however, the 2008 constitution preserves a military presence in Myanmar's government. Articles 109 and 141 give the military commander-in-chief the power to respectively appoint 110, or 25%, of the 440 members of the Pyithu Hluttaw⁹⁴ and 56, or 25%, of the 224 members of the Amyotha Hluttaw.⁹⁵ Additionally, the commander-in-chief has the authority to assume executive, legislative, and judicial power in a state of emergency "that could cause disintegration of the Union, disintegration of national solidarity and loss of sovereign power."⁹⁶ Within the executive branch, the commander-in-chief controls both the military and the police, effectively placing security outside of civilian control.⁹⁷ The commander-in-chief also chooses the nominees for the ministers of defense, home affairs, and border affairs, all of whom maintain their military ranks while holding their ministerial offices.⁹⁸ The military control over the Ministry of Home Affairs is particularly noteworthy, since the ranks of local government administrators report to the General Administration Department within the Ministry of Home Affairs, effectively placing Myanmar's civil service under military command.⁹⁹ While the commander-in-chief is appointed by the President, the appointee must be chosen and approved by the National Defense and Security Council,¹⁰⁰ on which six of the eleven seats are reserved for military personnel.¹⁰¹ Considering that these six seats include the ministers of defense, home affairs, and border affairs as well as the commander-in-chief, this creates a circular relationship via which the military is able to ensure the presence of its senior leadership within the highest levels of the Myanmar government.¹⁰²

The 2008 constitution poses issues for the process of democratization. First, the 2008 constitution effectively places civilian leaders in a weak position. By providing the military a presence in the legislature, the constitution allows the military to use their share of seats to sway the outcomes of bills,

⁹² *Id.*

⁹³ *Id.* at art. 299.

⁹⁴ *Id.* at art. 109.

⁹⁵ *Id.* at art. 141.

⁹⁶ *Id.* at arts. 40, 417-19.

⁹⁷ *Id.* at art. 20.

⁹⁸ *Id.* at art. 232.

⁹⁹ *History of General Administrative Department*, MYAN. GEN. ADMIN. DEP'T, <http://www.gad.gov.mm/en> (last visited March 29, 2019) [hereinafter General Administrative Department 2014].

¹⁰⁰ CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, 2008, art. 342.

¹⁰¹ *Id.* at art. 201.

¹⁰² *Id.*

particularly in situations with margins of less than 25%. By according emergency powers to the commander-in-chief, the constitution allows the military to dissolve the democratic government at the commander-in-chief's discretion. In addition, by placing the commander-in-chief in control of several ministries, the constitution limits civilian power over the country's civil service.

Second, the constitution erodes the principle of accountability. Functional democracies satisfy the principle of accountability by having public elections for political leaders, making political office contingent upon the approval of a voting public.¹⁰³ The 2008 constitution, by preserving parliamentary seats for military personnel, places political offices under the control of military appointees who are not accountable to the voting public but instead are bound to the orders of a commanding officer. Similarly, by placing the commander-in-chief in control of several ministries, the constitution makes those ministries accountable not to a public electorate but rather to the country's military.

The weakening of civilian leadership and erosion of political accountability poses an additional issue for the rule-of-law. Both thick and thin definitions of the rule-of-law call, at a minimum, for all parties in a political system to be subject to the same laws.¹⁰⁴ The 2008 constitution, however, places parts of the government under military control and thus outside the reach of voter accountability. This creates an unequal power structure, with the military able to operate in government independent of civilian leadership and the country's people.

B. Cultural Issues

The issues posed by the structure of Myanmar's political system are compounded by cultural issues arising from the proclivities of Myanmar's citizens. In a survey, Brian Joseph, Senior Director for Asia and Global Programs at the National Endowment for Democracy, found that Myanmar citizens preferred a negotiated transition when given a choice between negotiated transition, regression to military rule, "Singapore-style" economic growth under authoritarian government, or contestation between competing factions.¹⁰⁵

¹⁰³ See generally CRAIG BOROWIAK, ACCOUNTABILITY & DEMOCRACY: THE PITFALLS AND PROMISE OF POPULAR CONTROL (2011); DEMOCRACY, ACCOUNTABILITY, & REPRESENTATION (Adam Przeworski, Susan Stokes, & Bernard Manin eds. 1999).

¹⁰⁴ See Concepcion, *supra* note 52, at 1-2; Han, *supra* note 52, at 9, 12-13; ASEAN UNIV. NETWORK, *supra* note 53.

¹⁰⁵ Brian Joseph, *Political Transition in Burma: Four Scenarios in the Run-up to the 2015 Elections*, 32 SAIS REV. 137-49 (2012).

Such a preference, however, should be qualified by the findings of the Asian Barometer Survey (ABS), a cross-national assessment led by National Taiwan University of democratic attitudes among Asian countries covering a longitudinal period commencing from 2001.¹⁰⁶ In contrast to Joseph's survey, the ABS-conducted survey in 2015 provides more nuance regarding the nature of Myanmar's society.¹⁰⁷ For example, the ABS found that when asked to choose between democracy and economic development, 53% chose economic development, and only 30% chose democracy; when asked to choose between freedom and economic development, 42% chose economic development, while 39% chose freedom.¹⁰⁸ The ABS observed that 90% of Myanmar respondents desire democracy over non-democratic alternatives,¹⁰⁹ but the ABS went further to explore Myanmar's definitions of democracy and found that 37% of respondents interpret democracy to mean equality, while 24% see it as meaning freedom, 20% as procedures like elections, and 19% as good governance.¹¹⁰

Ronald Inglehart and Christian Welzel argue that cultures of self-expression are important in the promotion of democracy.¹¹¹ The ABS has found that Myanmar suffers in this regard: 62% of respondents disapprove of legislative checks on executive power,¹¹² 84% place group interests ahead of individual interests, and 89% see national interests as being above individual interests.¹¹³ Thus, while Myanmar's citizens may interpret democracy as related to equality, they maintain a willingness to accept unconstrained executive power and different treatment under the laws between national, group, or individual interests. With specific respect to self-expression, the ABS indicated that 70% of Myanmar's respondents believe that people should obey political leaders,¹¹⁴ and 95% of respondents agreed that too many different views are chaotic.¹¹⁵ Such attitudes reflect notions of illiberalism that seek to suppress political and civil liberties protecting free speech and dissent.¹¹⁶

¹⁰⁶ *Introduction*, ASIAN BAROMETER SURVEY, <http://www.asianbarometer.org/intro> (last visited March 29, 2019).

¹⁰⁷ Bridget Welsh & Kai-Ping Huang, *Myanmar's Political Aspirations & Perceptions 2015 Asian Barometer Survey Reports*, CTR. FOR EAST ASIA DEMOCRATIC STUDIES NAT'L TAIWAN UNIV. 31 (2016), <http://www.asianbarometer.org/pdf/MyanmarReport2016.pdf>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 28.

¹¹⁰ *Id.* at 29-30.

¹¹¹ INGLEHART & WELZEL, *supra* note 77, at 210.

¹¹² Welsh & Huang, *supra* note 107, at 31.

¹¹³ *Id.* at 26.

¹¹⁴ *Id.* at 23.

¹¹⁵ *Id.* at 24.

¹¹⁶ Fareed Zakaria, *The Rise of Illiberal Democracy*, 76 FOREIGN AFF. 22, 22-24 (1997).

Scholars like Fareed Zakaria postulate a notion of illiberal democracies which have governments with popularly elected political leaders but that pursue the suppression of political and civil liberties.¹¹⁷ Myanmar differs somewhat from Zakaria's conception in that Myanmar culture manifests qualities of illiberalism, but its government reflects qualities that do not entirely follow the expectation for popular elections.¹¹⁸ Specifically, the form of government created by Myanmar's 2008 constitution involves a mixture of democratic and authoritarian elements and so constitutes a hybrid regime in which the institutions of democracy retain a military character.¹¹⁹ The hybrid nature is not an equal one, with the military position being not only influential but also capable of shutting down the government altogether.

It should be noted that Myanmar's current status is not necessarily static. Democratization involves changes with trajectories that occur over extended periods of time,¹²⁰ and so the 2008 constitution should be viewed as only one stage in a longer path undertaken by Myanmar's political system. Myanmar represents what Guillermo O'Donnell, founding Director of the Kellogg Institute for International Studies, and Phillippe Schmitter, Emeritus Professor in the Department of Political and Social Sciences at the European University Institute, identify as a democratic transition in terms of being an interval between pure authoritarianism and functional democracy.¹²¹ Sujian Guo, Director of the Center for U.S.-China Policy Studies at San Francisco State University, and Gary Stradiotto, Professor of Political Science at George Washington University, classify cases like Myanmar's as a conversion led by incumbent military elites that produced the 2008 constitution and the subsequent elections held in 2010.¹²² In their 1996 commentary on the country, Gretchen Casper, Professor of Political Science at Pennsylvania State University, and Michelle Taylor, Associate Professor of Political Science at Texas A&M University, see Myanmar as being a negotiated democracy between an incumbent military State Law and Order Restoration Council (SLORC) and the opposition National League for Democracy (NLD).¹²³ The 2008 constitution, however, recalibrated the relationship between civilian and military components, such that, following the 2015 elections, the configuration was a popularly-elected NLD government holding a large majority of civilian political offices with a military retaining its apportioned parliamentary and ministerial

¹¹⁷ *Id.* at 27-29.

¹¹⁸ HAERPFER ET AL., *supra* note 76, at 37.

¹¹⁹ *Id.*

¹²⁰ TEORELL, *supra* note 85, at 16.

¹²¹ GUILLERMO O'DONNELL & PHILIPPE SCHMITTER, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 6 (1986).

¹²² GUO & STRADIOTTO, *supra* note 80, at 23-24.

¹²³ GRETCHEN CASPER & MICHELLE TAYLOR, NEGOTIATING DEMOCRACY: TRANSITIONS FROM AUTHORITARIAN RULE 227 (1996).

posts.¹²⁴ As a result, as of 2018, Myanmar conforms to what Steven Levitsky, Professor of Government at Harvard University, and Lucan Way, Professor of Political Science at the University of Toronto, describe as a tutelary regime wherein elections may be competitive but the power of elected civilian leaders is constrained by an unelected military presence.¹²⁵ To the extent that the NLD-led government operates with military checks on civilian power, the country follows what Larry Diamond, Professor of Sociology and Political Science at Stanford University, and Francis Fukuyama, Senior Fellow in the Center on Democracy, Development, and the Rule of Law at Stanford University, label as a negotiated transition to civilian authority that is conditional upon the acceptance of incumbent military elites.¹²⁶ Should this arrangement involve cooperation between NLD and military leaders, it would become what Guo and Stradiotto consider a cooperative transition in which incumbents and elites work together to move towards a mutually agreeable form of democracy.¹²⁷

The current status of Myanmar as a hybrid regime, whether labeled as a negotiated or tutelary transition, is problematic in terms of its prognosis. Scholars like Jack Goldstone, Edward Mansfield, and Jack Snyder observe that countries with regimes possessing mixed democratic and authoritarian elements are prone to revolutionary change.¹²⁸ This matches the studies of the State Failure Task Force commissioned by the U.S. government, which found that countries with mixed democratic and authoritarian regimes suffer a failure rate seven times higher than regimes that are purely democratic or

¹²⁴ CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, 2008, art. 141.

¹²⁵ LEVITSKY & WAY, *supra* note 79, at 14.

¹²⁶ See generally CASPER & TAYLOR, *supra* note 123; Larry Diamond et al., *Reconsidering the Transition Paradigm*, 25 J. DEMOCRACY 86, 86-100 (2014); Diamond 2012, *supra* note 67; Christina Fink, *How Real Are Myanmar's Reforms?*, 113 CURRENT HIST. 224, 224-29 (2014); Kyaw Yin Hlaing, *Understanding Recent Political Changes in Myanmar*, 34 CONTEMP. SOUTHEAST ASIA 197, 197-216 (2012); Richard Horsey, *Myanmar's Political Landscape Following the 2010 Elections*, in MYANMAR'S TRANSITION: OPENINGS, OBSTACLES, AND OPPORTUNITIES (Nick Cheesman, Monique Skidmore & Trevor Wilson eds., 2012); Joseph, *supra* note 105; Morten Pedersen, *Myanmar in 2014: "Tacking Against the Wind"*, 2015 SOUTHEAST ASIAN AFF. 221, 223-45 (2015); Morten Pedersen, *How to Promote Human Rights in the World's Most Repressive States: Lessons from Myanmar*, 67 AUSTRALIAN J. INT'L AFF. 190, 190-202; D.A. Rustow, *Transitions to Democracy: Toward a Dynamic Model*, 2 COMP. POL. 337 (1970).

¹²⁷ GUO & STRADIOTTO, *supra* note 80, at 121.

¹²⁸ Jack A. Goldstone, *Towards a Fourth Generation of Revolutionary Theory*, 4 ANN. REV. POL. SCI. 139, 139-87 (2001); EDWARD D. MANSFIELD & JACK SNYDER, *ELECTING TO FIGHT: WHY EMERGING DEMOCRACIES GO TO WAR* 274 (2005).

purely authoritarian.¹²⁹ Such prospects generate a measure of urgency for further democratization in Myanmar and lend impetus for legal education reforms that promote a transition to a more democratic state.

IV. THE IMPLICATIONS OF DEMOCRATIZATION FOR LEGAL ETHICS EDUCATION IN MYANMAR

The contextual issues raised in the above discussion of Myanmar's democratization offer some direction for legal ethics education. First, the hybrid nature of Myanmar's political system, with an elected civilian leadership and unelected military presence, results in an inequality in accountability and inequality in treatment under the law, which violates fundamental principles of rule-of-law. Second, the illiberal proclivities of its populace threaten the election of comparably illiberal political officials willing to suppress liberal ideals such as rights of self-expression critical for an effective democracy. As a result, if Myanmar is to continue on a path of democratization, then there is a clear need for it to follow Kenneth Rosen's admonition for a legal system with lawyers who recognize and fulfill a conception of professional responsibility that supports democracy and the rule-of-law. To the extent that legal ethics deals with the professional responsibility of lawyers, such a need calls for legal ethics education in Myanmar that provides lawyers with knowledge and understanding of the relationship between their profession and the country's transition—and commitment and capacities to exercise that relationship in ways that direct the transition towards democratization.

Such findings should not be construed as a denial of Puig's pedagogical framework for ethics-as-law versus ethics-as-judgement or discrete versus pervasive approaches. Rather, the discussion adds to the pedagogical framework by following ideas of context-specific development that can further legal education reform beneficial for Myanmar. The question of context draws consideration of Myanmar's ongoing democratization. In Myanmar's case, the contextual issues posed by the country's transition require an expansion rather than a rejection of the existing legal ethics education pedagogy. For the first dimension, the need for lawyers who can support Myanmar's democratization requires that the content of legal ethics education is not just a question of Puig's ethics-as-law or ethics-as-judgement but also a question of ethics as duties to democracy. The exercise of legal ethics to address duties to democracy would entail instruction on topics including the role of lawyers with respect to democracy and its antecedent requirement for the rule-of-law. It

¹²⁹ Jack A. Goldstone et al., *State Failure Task Force Report: Phase III Findings* (Sept. 30, 2000), <https://sites.hks.harvard.edu/fs/pnorris/Acrobat/stm103%20articles/StateFailureReport.pdf>; Monika Francois & Inder Sud, *Promoting Stability & Development in Fragile & Failed States*, 24 DEV. POL'Y REV. 141, 146-47 (2006).

would, however, also provide education regarding the unique needs of Myanmar's democratization context in terms of topics such as the transition of hybrid regimes away from authoritarianism, civilian-military relations, mechanisms to constrain political power, forms of state accountability, and the connection between self-expression and democracy. With respect to the second dimension, the risks of Myanmar's current hybrid regime pose an exigency holding urgency for lawyers willing and able to support democracy and so suggests a need for both discrete courses and pervasive approaches that ensure Myanmar's law students fully grasp the importance of the legal profession in their country's ongoing transition.

V. FURTHER DIRECTIONS FOR RESEARCH

There are a number of directions for further research. First, the findings of the preceding analysis would provide broader benefits if they could be reproduced elsewhere. This calls for studies of legal ethics education in other countries, with a focus on exploring how the specific context of an individual country directs the implementation of legal ethics in its law schools. The manner of study would not necessarily be to focus on rule-of-law and democratization, but instead to determine what kinds of contextual issues in a particular country impact the pedagogical choices for legal ethics in the country's law schools. Taken across multiple countries, it would help to indicate if different types of contexts require different forms of pedagogy, or if legal ethics education can instead be consistent despite differences in context. In addition, if different conditions did indeed call for different pedagogies, it would also help to indicate what particular factors within a country point to what particular choices in legal ethics pedagogy. Implicit in these avenues of inquiry would be the determination of whether legal ethics education is relativist, in the sense of having to vary by the individual context of specific countries, or if it is universal, in the sense of being the same despite different countries.

Second, the value of reproducibility relates not just across countries but also across issues. The findings would be bolstered by understanding how context relates to the pedagogy of subjects other than legal ethics within a legal curriculum, since it would help indicate the ways in which different contextual factors might vary in their relevance to the various courses in a legal curriculum. Such insights would reveal how the implementation of different courses might need to vary within an individual country or even an individual law school. Adding nuance of this nature to legal ethics would serve to make legal education more responsive to country context in terms of being focused on producing legal professionals capable of addressing the pressing needs of their societies.

Third, beyond the notion of reproducibility is the benefit that might arise from deeper study of legal ethics education. The preceding sections provided

an overview of legal ethics education covering the pedagogical choices about the content (ethics-as-law versus ethics-as-judgement) and location (discrete versus pervasive) of legal ethics within a law school curriculum. A more accurate assessment, however, regarding content and location would go further to delve into the substance of course materials, classroom instruction, and the relationship of both to the materials and teaching techniques of other subjects within a law school curriculum. For example, there would be more clarity about content through review of the textbooks, articles, and other sources used in a course and similarly more clarity about location by review of how the reading assignments of multiple courses in a single curriculum serve to complement or conflict with each other. Depth of this kind would provide thick understanding about the scope and complexity of issues challenging the effective delivery of legal education—legal ethics or otherwise.

Fourth, the theme of convergence in legal education at both ASEAN regional and global levels could be tested by longitudinal comparative studies across law schools in multiple countries. Longitudinal comparative studies in legal ethics education would involve tracking changes over time between different countries and evaluating the growth of similarities and differences between them. In contrast to the thick understanding described above, comparative study conducted overtime would generate thin understanding about broader trends. Thin understanding, however, would still hold value by confirming the existence of trends such as the convergence of law school curricula claimed by various scholars of legal education.¹³⁰

VI. CONCLUSION

The preceding discussion has implications for cases outside of Myanmar, since a context-specific approach means that there should be adjustments in legal ethics education appropriate for the particular issues associated with individual contexts. Such a principle applies to other states undergoing democratization as well as those countries not in transition. With respect to democratization, the nature of transition varies across countries, and the challenges associated with democratization are not necessarily the same;¹³¹ therefore, there is a possibility that the conditions that complicate Myanmar's transition do not afflict other cases in the same way. In such a case, the needs for legal professionals, and hence their education, may vary. Taking such implications further, not all countries are undergoing the process of democratization and so may have entirely different issues than the ones associated with Myanmar. The concern for legal ethics then would not be to furnish law graduates who

¹³⁰ See generally *supra* notes 55 & 56.

¹³¹ See generally Carothers, *supra* note 65.

can support democratization but instead any other number of priorities specific to the local context. The overarching principle, then, to be drawn from the analysis is for flexibility to match legal ethics pedagogy—and legal education—to the respective needs of a particular country so that law graduates can better serve their attendant states and societies. Doing so would furnish legal professionals who act to support a mutually reinforcing system of government and people under rule-of-law.

It should be noted that the claim from the above argument is not that legal ethics should be completely different from one context to another. There is a danger that context-specific variation would lead to an erosion of the substance of legal ethics to the point of absolute inconsistency across countries and so render the subject meaningless. It would also run contrary to global trends that are converging towards a common acceptance of both the need for legal ethics and the content of the guidance it should provide for legal professionals. The lesson, however, that should be drawn from the case of Myanmar is not to eliminate Puig's existing framework of approaches to legal ethics education but rather to expand the framework to better address the challenges facing a given country. In other words: the pedagogy of legal ethics currently exercised in the international community of law schools can continue, but it would also benefit from additional consideration of the nuances in local contexts, which, for countries like Myanmar, involve contexts of democratization. The motive of context-sensitive approaches in legal ethics education is not to abandon global practices for the dictates of domestic conditions but rather to help bridge global trends with local needs. Places like Myanmar that seek to meet international standards have the task of lifting endemic conditions to the expectations of an international community. The effort of this Article is to assist in the performance of such a task.