

Book Discussion

Winner 2017 Distinguished Book Award, Asian Law and Society Association (ALSA)

Nick Cheesman, *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order* (Cambridge: Cambridge University Press, 2015) pp 338. Hardback: £67.00.

Book Discussion Contribution by **Terence Halliday** (American Bar Foundation), **Lynette J. Chua** (National University of Singapore), **Sida Liu** (University of Toronto) and **Nick Cheesman** (Australian National University)

COMMENTARY BY TERENCE HALLIDAY, AMERICAN BAR FOUNDATION

I am honoured to be a participant in this symposium and to acknowledge the distinction awarded to Nick Cheesman for his notable book. Let me make three sets of comments.

I applaud outstanding features of this work. It displays great theoretical ambition insofar as it confronts one of the intensifying conflicts of our times—the confrontation between illiberal political regimes and the ideals and institutions of rule of law. It insists that the rule of law deeply implicates politics and that politics in today's world invariably implicate law. It makes a creative shift in theoretical logic, namely by arguing that rule of law should not be encountered in terms of its opposite or non-rule of law, but by its asymmetrical other or an alternative concept of legal-political society with its distinctive configurations. It artfully leverages another asymmetry by demonstrating how a society and culture that could be considered peripheral in the global order nonetheless can be a springboard for new theory about one of the most enduring political conundrums. It moves seamlessly between high ideals and abstract universalities and “performative practices” (p. 9) of everyday occurrences at the grassroots. It closely interrogates language and its nuances, revealing how deep currents of culture metaphorically evoke the postures of crouching, prostration, of being flattened by coercive power. The book's historical and dynamic orientation insists that the tension between rule of law and law and order never goes away, that order is always being reproduced or defended—an “unending” (p. 36) task for the citizen and scholar alike.

Let me amplify my appreciation for the contributions of this book in four respects.

First, Cheesman offers a sceptical yet measured critique of rule of law. He is sceptical of endless definitional debates, of proliferating indicators and scales, of notions that it can mean all good things to all people. He forthrightly and rightly asserts that it is not a pure legal or administrative, but political ideal—an ideal, moreover, whose institutionalization requires and/or leads to a particular configuration of politics, not least the establishment of a moderate state and universal rights for its citizens. Yet he also recognizes the enormous resonance of ideals carried by this term and its connotations of justice. His subjects seek “*just* rule of law” (p. 247, emphasis added); they develop a lexicon of “the citizen as bearer and wielder of rights” (p. 231); they demand “*substantive legal equality*” (p. 255, emphasis added). In fact,

read this way, his project may be less dismissive than restorative, to rescue rule of law from trivialization, from empty indicators, from formalistic implementation, from technical assistance, and to restore its locus within a political frame, within political institutions, to re-establish it as a political ideal.

Second, Cheesman offers a breakthrough concept to instantiate his appeal to an asymmetrical opposite. His counter-concept, law and order, depicts a “police state” (p. 26) focused on maintaining or restoring order, abolishing disorder, overseeing and observing all aspects of civilian life. This surveillance regime champions “benign custodianship” (p. 27), suppression of disorder, subordination to authorities—a regime where citizens are bound by propriety, locked into “unequal political relations” (p. 31) of hierarchy and domination. Associations that can disturb the social peace are immobilized. “Quietude,” Cheesman states, is its “telos” (p. 258). By offering this illiberal configuration of law and politics Cheesman intends not to present the only asymmetrical opposite of rule of law, but to suggest that different configurations of asymmetrical opposites might be discovered in other settings. This conclusion in effect presents a clarion call to investigations of rule of law’s other “others” in many times and places.

Third, Cheesman offers several concepts I find especially generative. He notes how essential it is for a law-and-order regime to find a *public enemy*, to name and disable such enemies, stripping them of the sovereign’s favour, of citizenship and privileges. Law may be perverted to this end through criminalization, secret trials, and dubious paperwork. Law’s potential activists—lawyers and professional associations—must be neutered. At the same time, the regime crafts a *public transcript* where it juxtaposes the benefits of security and domestic peace and tranquillity with defence of the nation from “collapsed rule of law” and the consequent descent into “anarchy” (p. 101). Cultivating a concept of a *sovereign cetana* is integral to Myanmar’s regime—a rule where rights are conditional privileges, paternally endowed by the sovereign, and contingent on deference to the sovereign. Those who maintain deference are protected. Those who do not can lose their citizenship and their rights. Not least, the repressive ruler employs *rhetorics of disguise* where the very term ‘rule of law’ is used as a cover for something oppositional or quite at odds with it. The idiom of rule of law for the rulers perversely serves as “a trope for law and order” (p. 264).

And, fourth, I find the nuances and subtlety that arise from Cheesman’s careful fieldwork in the archives nicely balanced with the implicit typological opposition that can be extracted from the pages of the book. For instance, whereas rule of law is characterized by general rules to maintain order, law and order rests on particularistic commands: directives. Whereas the former privileges juridical institutions, the latter privileges administration institutions. Whereas one minimizes arbitrariness, the other minimizes restlessness, to name a few. Here again, Cheesman reaches from Myanmar to the logic of theoretical formulation itself.

Opposing the Rule of Law raises broad questions that can drive Cheesman’s project forward in Myanmar and far beyond.

Where is religion? Insofar as Buddhism is a majority religion in Myanmar, and to the extent that religion infuses everyday life with powerful impulses for meaning and action, what are affinities of belief in various strands of Buddhism that inform law-and-order or rule-of-law understandings? Media reports and even Cheesman’s book indicate that there are deep fault-lines between Buddhists and Muslims in Myanmar. How does religion intensify or moderate these divides that go to the fundamentals of rule of law and law and order? Religion

has become one of the battlegrounds for law and legal ideology in China. Tibetan Buddhism is seen by authorities to be incipiently subversive. Expressions of Islamic religion in China's Northwest and beyond have attracted intense repression by the party-state. Protestant Christianity appears to evoke deep fears within the party. This is therefore more than an issue for Myanmar. It impels careful empirical reflection wherever religion is deeply embedded in societies and the rule of law or its asymmetrical opposites are at stake.

Where is the transnational and global? The Myanmar analysis does allude to rule of law as a "master ideal" (p. 23) of modern politics so that local protagonists can appeal to universal norms. But what of law and order? Is its formulation and legitimation entirely local? Or can Myanmar's rulers, proponents of asymmetrical others to rule of law, legitimate their regimes by appeals to neighbours or transnational and global norms articulated elsewhere? Cheesman does allude to an intellectual lineage in the writings of Carl Schmitt. To what extent do the crafters of Myanmar's repressive ideology draw upon other exemplars in ways, for instance, that appear to be occurring in the regressive slide of liberal legal-political societies in Central and Eastern Europe? Or is every asymmetrical other that takes the form of Myanmar's law-and-order regime an other in its own way?

Where can *Opposing the Rule of Law* take us in comparative and historical theory-building? Cheesman urges his readers to imagine and research a "plurality of political ideals" (p. 259), to escape from rule of law as a single touchstone for all regimes. For comparative socio-legal scholars or historical sociologists or theory-builders, where do we go next? As immensely valuable, indeed absolutely necessary, as are nuanced ethnographies so superbly exemplified by Cheesman, must not socio-legal scholarship press on to ask what each of these country studies share or do not share, where they converge and diverge, not least, where they become interdependent and draw upon each other?

This is a less a critique of Cheesman than an impetus spurred by his own theory and method. Cheesman intimates that there is an important classificatory role in concept- and theory-building for understanding of varieties of legal and political orders. One can observe them. One can inductively tease out their principal features and attributes. One can relate them to other kinds of political order. And, from there, one will begin to see certain dimensions that become integral for appraising any political-legal regime, as Cheesman does, certainly implicitly.

So where should we be headed if we heed Cheesman's spoken and unspoken pointers? Surely towards an exploration of what shared fundamentals enable us to see certain law-types of regimes as more alike and others more unlike. And, from there, a comparative socio-legal scholarship will press us towards explaining similarity and difference, to discerning commonalities and divergences of the past, their echoes and variations in the present, and diverging trajectories into the future. *Opposing the Rule of Law* has the rare distinction of opening broad new vistas for socio-legal exploration—an opening certainly consequential for scholarship, but surely far more substantial for human flourishing everywhere.

COMMENTARY BY LYNETTE J. CHUA, NATIONAL UNIVERSITY OF SINGAPORE

In this short commentary, I take the opportunity to pick up from my earlier review of *Opposing the Rule of Law*.¹ There, I praised the book for several strengths, one of which serves as this commentary's foundation: Cheesman amasses an impressive body of empirical evidence to analyze how rule of law developed its own contents and praxis from British Burma up to present-day Myanmar. By studying rule of law as it is claimed and contested on the ground, he contributes to a much-needed body of scholarship that treats the concept not as a normative debate, but as an empirical question. Although Cheesman finds that rule of law is not a recent phenomenon in Myanmar and is "common to the language of democrats and dictators alike," he argues that it has long been absent in the country. The concept has become conflated with "law and order"—a diametrically opposed ideal that allows the state's coercive power to achieve order without adherence to legal limitations. Put differently, according to Cheesman, the versions espoused and imposed by Myanmar's regimes are not really rule of law, for they fail to meet a set of normative criteria.²

Where Cheesman ends his empirical analysis is where I find inspiration for the two points in this commentary. After spending several chapters tracing the ways in which governments of the day in Myanmar enact law and order, he turns towards ordinary Burmese in Chapter 8. He examines whether and how they mobilize the ideal of rule of law when making complaints or carrying out acts of resistance against the government. He finds that these citizens appeal to ideals that vary in substance from the state's. Reading Chapter 8's findings led me to thinking about future directions for empirical research on rule of law and its attendant challenges. My two points respond directly to *Opposing the Rule of Law* and its research site, but they can apply to law-and-society research elsewhere, too.

First, Chapter 8 offers a glimpse into the rich imaginations of rule of law that researchers could further investigate empirically: How do ordinary people conceive of rule of law (in Myanmar or anywhere else)? How do their imaginations resonate with and differ from the versions which politicians, government officials, and other state agents impose upon them? How do ordinary people come to imagine rule of law the way they do?

Studies on rule-of-law consciousness have to look out for social interactions—between individuals, between individuals and groups, and their past experiences with state actors and the law. In Myanmar, Cheesman suggests there exists rule-of-law consciousness that comports with normative contents diametrically opposed by law and order. Given Myanmar's long history with repression and arbitrary power, I wonder how the complainants and resisters learned and talked about rule of law so differently from their rulers? And—to push the limits of *Opposing the Rule of Law*—I also wonder whether they are really speaking of "rule of law" with normative contents as imagined by Cheesman.

Rule-of-law consciousness, if the related scholarship on legal consciousness is anything to go by, should shift and morph along with social interactions. Although Cheesman does not emphasize social interactions, he observes the increase in complaints in Myanmar since 2011 because more avenues to do so had become available. I would add that more open acts of

1. Chua (2017)

2. See Liu (this issue) on Cheesman's insightful but incomplete specification of rule-of-law contents.

activism and advocacy had also become possible, though they remain restricted and vulnerable to repression. One's rule-of-law consciousness may have more chances to be transformed by interactions with lawyers, activists, and other people. For example, the transgender person who suffered police abuse had help from activists, who worked with lawyers to file and appeal the case.³ Similarly, land-grabbing incidents, some of which Chapter 8 discusses, have caught the attention of community organizers, lawyers, and activists, who may educate villagers about their legal rights and inspire protest.⁴

Relatedly, the social interactions that shape rule-of-law consciousness depend on the individuals' identities, and their beliefs and practices. Cheesman points out that the Burmese term for "rule of law" contains *taya*, which refers to the key Buddhist concept of dharma; thus, *taya* loosely means nature's law or universal law, akin to the Latin *jus*, and embodies fairness and justice. Future studies should go further to examine how Buddhism plays a part in shaping rule-of-law consciousness among Burmese people. The socially embedded religion of Buddhism in Myanmar serves as a "moral universe"—a conceptual framework comprising elements of the religion, with which many Burmese Buddhists organize and engage their worlds, and flexibly interpret and deploy to make sense of their experiences, their actions, and ideas from outside; moreover, significant variations of Buddhist practices exist, as they change according to individuals and groups and across time and context.⁵ Hence, Buddhism may figure importantly into the ways in which Burmese individuals make sense of rule of law—ordinary citizens and rulers alike. Myanmar's LGBT rights activists, for instance, imbue human rights with Buddhist karmic beliefs (and other cultural norms) to reinterpret the international discourse.⁶ By extension, future studies should consider norms concerned with social roles, obligations, and power. Myanmar is a highly hierarchical society where people are positioned in relative standing to one another based on their identities—man, woman, ruler, subject. Other scholars argue that Burmese people advance their circumstances by gaining better placements within the hierarchy⁷ and, even when they demand for rights, they are appealing to power that flows from the other person's status.⁸

Lay imaginations of rule of law emerging from social interactions, therefore, may not carry the same contents intended by progressive jurists and scholars, such as Cheesman. As social interactions play out according to their biographies, Burmese individuals may be interpreting rule of law by blending its normative contents with their pre-existing moral universe. Chapter 8 shows that they sometimes call for justice and vindication of wrongs. However, whether their calls for rule of law embody the ideal type with which Cheesman juxtaposes law and order, I would say, is still a question with lots of research potential left. Cheesman is right to remind us not to assume everyone has in mind "approximately the same thing" when we speak of rule of law. The social positions, beliefs, and practices of research subjects may be internalized and

3. Chua (forthcoming).

4. For a recent study on how social interactions and past experiences with the law shaped workers' responses to the Chinese government's "rule of law" project, see Gallagher (2017).

5. Walton (2016).

6. Chua (forthcoming).

7. Keeler (2017).

8. Prasse-Freeman (2015). While scholars like Keeler (*ibid.*) and Prasse-Freeman conclude that Burmese people lack a conceptual grasp of rights, I treat rights as socially contingent and reinterpreted by Burmese interviewees based on their own understandings, aspirations, and claims: Chua (forthcoming).

unarticulated. Nevertheless, they may exert influence over rule-of-law consciousness and need to be taken into account more extensively.

This point leads to the second, which is concerned with the attendant challenges of conducting empirical research on rule of law. Cheesman argues that rule of law enacted by Myanmar's past and present regimes fall short of truly being rule of law. His book assumes an ideal type against which Burmese regimes are measured, and draws a comparison between the ideal type and the pseudo version that is actually law and order by its assessment.

A challenge then arises when rule-of-law consciousness deviates from the normative criteria the researcher deems essential to the concept. What if such elements as political equality are entirely missing? Would such understandings still qualify as "rule of law" to the researcher? How far is a researcher willing to go to recognize an organic, local concept of rule of law that is devoid of the normative contents in their own vision? For progressive-thinking scholars, perhaps it is easier to condemn oppressive regimes for imposing versions that fail to meet their ideal types. *Opposing the Rule of Law* does a marvellous job in this regard. When it comes to subjects over whom the regimes rule and coerce, and for whom the researcher perhaps has sympathy, how should the researcher navigate between one's strong ideals about rule of law and the empirical findings? It is a challenge not unique to the empirical study of rule of law; socio-legal scholars often find that rights imagined on the ground depart from the meanings and logics propounded by scholars, jurists, and elite activists. However, I am inspired to bring it up in this commentary, because I am struck by Cheesman's ardent commitment to particular ideals about rule of law as he tries to maintain an empirical bent for the book. Cheesman's appeal "against quietude" that is law and order makes me wonder about the challenge for myself—a law-and-society scholar who conducts qualitative fieldwork to study related concepts such as rights. I am reminded of and foresee a limit to the empirical commitment for those who cannot or do not want to keep at bay their normative leanings.

In sum, *Opposing the Rule of Law* injects a much-needed voice into the rule-of-law literature and advances law-and-society knowledge about a concept fiercely debated by legal theorists and constitutional law scholars. It provides a persuasive account of how rule of law is contested, changed, and constructed within the political and historical milieu of a country that has undergone much turmoil, bloodshed, and heartache. It also inspires, as I discussed in this commentary, more empirical questions and challenges for future law-and-society research on the subject.

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COMMENTARY BY SIDA LIU, UNIVERSITY OF TORONTO

Socio-legal researchers on Asia sometimes have to face simple but difficult questions from colleagues, especially those based in Europe and the US. In the past decade, I have been asked numerous times, in various forms and often politely, the question: “Why do you study lawyers in China?” After hearing it for a while, I started to hear an unspoken and not-so-polite question behind it—that is: “Who cares about lawyers in China?” Likewise, when reading Nick Cheesman’s book, *Opposing the Rule of Law: How Myanmar’s Courts Make Law and Order*, a similar question that comes to my mind is: “Who cares about courts in Myanmar?” To this question, Cheesman gives a powerful answer in the concluding chapter:

I did not choose to study the rule of law through a place where it is absent so as to treat Myanmar as an object of ridicule or cause for dismay. I have not gathered empirical data with which to situate Myanmar somewhere on the low end of a sliding scale for the rule of law. Nor did I pick Myanmar as an easy target to show how the rule of law is subject to abuse, how its name can be misappropriated. On the contrary, my concern throughout has been to explore Myanmar as a complex and paradigmatic case of the asymmetrical relations between the rule of law and an opposing concept, law and order: to take what animates its courts seriously.¹

This statement not only speaks to the common methodological pitfalls of conducting comparative socio-legal research, but also suggests the author’s ambition to use the case of Myanmar to confront major questions regarding the nature of the rule of law—one of the most frequently used yet enigmatic concepts in law-and-society research. The juxtaposition of a small country and a big question makes the book especially fascinating. The nicely presented theoretical contrast between law and order and the rule of law enables Cheesman to examine some important and difficult questions about how courts in Myanmar (and perhaps other authoritarian contexts) operate. In Chapter 5, for example, various forms of judicial torture by the police are not only on naked display, but analyzed in terms of the policeman’s embodiment of the sovereign and how his power penetrates the judicial process. As the author writes: “He stands above it, invested with political power surpassing the process. He also stands in it, having as his objective the confession that is integral to the procedural games that follow.”² With this well-researched and beautifully written analysis, Cheesman takes on the impossible task of explaining torture empirically rather than normatively, not with models or statistics, but with stories of how human beings (both the tortured and the torturer) struggle between violence and law.

A sentence in the introductory chapter elegantly summarizes the core argument of the book: “Law and order *makes* orderliness; the rule of law *is* orderly.”³ Throughout the book, Cheesman demonstrates how law and order, as an asymmetrical opposite to the rule of law, permeates the Burmese legal system and shapes the behaviour of judges, police officers, and other actors. This is a clever research strategy—it shows with both theoretical rigour and empirical evidence what the rule of law is not. But what is so *orderly* about the rule of law beyond a political ideal? The author admits that the rule of law is “the pre-eminent legitimating ideal in the world today, despite a lack of agreement on *precisely* what it means,”⁴

1. Cheesman (2015), p. 258.

2. *Ibid.*, p. 149.

3. *Ibid.*, p. 34.

4. *Ibid.*, p. 259.

yet he does not give any definite answer in regard to the inherent orderliness of this ideal. In comparison to the long-standing philosophical debate between Hart⁵ and Fuller⁶ or the quantitative indicators developed by the World Justice Project,⁷ Cheesman's approach is innovative, insightful but incomplete.

The concept of law and order, on the other hand, is not a perfect translation of the Burmese word *ngyeinwut-pibyaye*, as the author acknowledges. The original word is a compound of "stillness" and "calmness," which describes "a condition where the state's forces bind people's general activity, to ensure they remain decent and inoffensive, quiet and unassuming."⁸ A comparable word in Chinese is *wei wen*, which literally translates as "maintaining stability."⁹ It was used by the state as an alternative ideology to the rule of law and led to what some scholars label "China's turn against law"¹⁰ in the late 2000s. "Law" is not in the Burmese or the Chinese word, nor is it as important as in the English term law and order. This shift in language allows Cheesman to engage with larger global debates (e.g. the rise of authoritarianism in the West), but it is important to keep in mind that "law and order" has distinct manifestations in Asia and across the world.

Furthermore, law and order is not merely repression or violence. It involves sophisticated legal and bureaucratic technologies, such as "supervision, instruction, prescription, and notification,"¹¹ and also gives normative value to them. There are many examples of those technologies throughout the text, but one of the most fascinating analyses is in Chapter 6, in which Cheesman reveals the economic transactions beneath the law-and-order ideology with vivid examples such as "section 870" (spelt out as "pay respect," a euphemism for a payoff), "part four" (a word play meaning that it is time to give something), and so on.¹² It is a sobering reminder that law and order, despite its source from the omnipotent sovereign power, is carried out on a daily basis by individuals with limited resources and interests of their own—an enduring insight from the scholarship on street-level bureaucracy.¹³ Indeed, all social orders, legal or not, emerge from people doing things together. The Burmese legal system, like many other legal systems, is constituted not only by rules and institutions, but also by bribery, torture, political persecution, and many other social processes discussed in the book.

This leads to a more general lesson for the social science studies of the rule of law and other related topics. Too often, we have focused on abstract values, ideals, or indicators at the expense of real people, true stories, and concrete social interactions. To do a rule-of-law ethnography,¹⁴ as the author did in this exemplary book, is to go deep into the Leviathan of a legal system and do a delicate anatomy of its vast and complex body. It also means

5. Hart (1961).

6. Fuller (1964).

7. Heckman et al. (2009).

8. Cheesman, *supra* note 1, p. 30.

9. Biddulph (2015).

10. Minzner (2011).

11. Cheesman, *supra* note 1, p. 29.

12. *Ibid.*, p. 175.

13. Lipsky ([1980] 2010).

14. Cheesman (2018).

addressing the unsympathetic “Who cares?” questions with a candid and compassionate inquiry on people and history, their traumas and memories, glory and dignity.

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RESPONSE TO COMMENTS BY NICK CHEESMAN, AUSTRALIAN NATIONAL UNIVERSITY

Some years ago, Michael Dutton tried to stir up Asian studies by asking: “Why is it impossible to imagine, much less write, a work like Michel Foucault’s *Discipline and Punish* within Asian area studies?”¹ Students of Asia, he said, lacked the wherewithal to do theoretical work of general significance. What they could do was translate: render Asia intelligible for counterparts working in Europe or the Americas. Their work was relevant, but diminutive.

Whether or not we agree with the premise of Dutton’s question, I think it remains a useful provocation for those of us who read and contribute to the expanding Asian law-and-society canon. There is hardly any doubt that, in this hyperbolic Asian century, demand for studies that purport to explain law, society, and politics in the region is higher than ever. But the demand tends to be for reliable facts over ingenious theory: the plaudits, for studies demonstrating aptitude in applying methods more often than in innovating with them.

It is not only those of us who self-identify with area studies who are tacitly assigned a role as contributors of knowledge, as translators rather than theorists. To my mind, this role assignment goes to the “who cares about” subtext to the “why do you study” question with which Sida Liu begins his generous remarks on *Opposing the Rule of Law: How Myanmar’s Courts Make Law and Order*. It is a subtext that, if scholars of law and society in Asia do not study something that is self-evidently significant about the region, then perhaps we do not have much to offer at all. Why do you study lawyers in China (who cares about lawyers in *China*)? Why do you study courts in Myanmar (who cares about courts in *Myanmar*)?

1. Dutton (2002), p. 495.

Opposing the Rule of Law makes an attempt on the latter question, as Liu and Halliday's *Criminal Defense in China* does the former.² Each works, albeit in very different ways, from seemingly parochial details towards original theoretical claims. Each builds its argument from credible empirical inquiry, motivated by much more than a concern merely to generate data with which to make a country case legible.

In my own book, the larger concern was to displace the rule of law from its conventional association with law and order: to suggest that the two might instead be asymmetrically opposed, which is to say that they might be thought of as hostile to one another, but not precisely contrasted. The hostility arises, I suggested, because their goals are antithetical. Whereas the rule of law aims to temper power,³ law and order seeks to subdue people. The type of order that pertains to law and order is not just unnecessary for the rule of law, but ultimately, antithetical to it.

I am deeply gratified that Terence Halliday recognizes the book's theoretical ambition to articulate how this asymmetry is experienced in a particular case so as to do work of general significance. I am pleased too that Liu is persuaded by the book's stated concern "to explore Myanmar as a complex and paradigmatic case" of how the rule of law asymmetrically opposes law and order.⁴ At the same time, I wonder whether the passage he cites does not somehow betray its author's anxieties that the work be read as something more than translation, and a lingering worry, or perhaps resignation, that it will be read as just a kind of translation after all.

For reasons that I will offer at the end of this short response to the book's discussants, I am today less anxious about this prospect than I was when I concluded it on that note. I think we can rescue translation from its alleged a-theoretical shortcomings and, in so doing, make it an integral part of the Asian law-and-society project. But, before getting to that point, I need to address some residual doubts about my own work, in response to the discussants' perceptive comments.

Both Lynette Chua and Terence Halliday suggest that *Opposing the Rule of Law* lost sight of religion. Chua recommends that future studies do more to examine the part that Buddhism plays in shaping rule-of-law consciousness, or perhaps legal consciousness more broadly, in Myanmar. Halliday asks rather more pointedly "where is religion?" and emphasizes the empirical and analytical gains that might have been had in finding it.

A disingenuous answer to this question would be to say that religion did not enter all that much into things I was studying a decade ago, even if, on the face of it, it appears to have mattered more since. But it would be closer to the truth to say that I wrote religion out of the book. Why? In hindsight, I think it was because of an inherent scepticism about explanations that turn too hastily, in my opinion, to the category of religion—a scepticism that, if anything, has been heightened, not diminished, by media reports of events in Myanmar over recent years to which Halliday alludes in his comments, and on which I've written somewhere else.⁵ So I aimed for an unapologetically secular critique of a secular domain directed towards a secular political ideal. As we all know very well by now, nothing about courts or the rule of law or least of all critique is secular. But at pains to avoid producing a study that might be misconstrued as contrasting a stereotypically religious Asia with a stereotypically

2. Liu & Halliday (2016).

3. See Krygier (2016).

4. Cheesman (2015), p. 258.

5. Cheesman (2017a).

rational Europe, I relinquished the opportunity to take the politics and law of religion in Myanmar more seriously.

But, if that is so, then, for all the emphasis in the book on working towards the rule of law from a mainland Southeast Asian country, does *Opposing the Rule of Law* not lay itself open to criticism that ultimately it still ends up doing its work on terms laid down for it elsewhere? I raise this question not only because it follows from the above, but also because it intersects with Chua's queries about what happens when the researcher of rule-of-law consciousness finds that the values they associate with the idea depart significantly from those of their interlocutors. Does the researcher go with the local knowledge flow, or take refuge in an authoritative definition or, at least, the defining element or elements of a generic conception of the rule of law, viewed from afar? What is to be done?

I have grappled with this problem for some time, although my take on it is somewhat different from Chua's. For me, the problem is not *how far* we might be "willing to go to recognize an organic, local concept of the rule of law that is devoid of the normative contents" that we might otherwise assign to it. It is rather *how* we might be willing to re-imagine the rule-of-law idea through dialogue and exchange with others and with otherness. The researcher working in the first mode gradually cedes a presupposed notion of the rule of law to increasingly relativist interpretations. The one working in the second rotates through other ways of thinking and being in the world, back to their own, and then around again, along the way catching more glimpses of the rule of law, or whatever the object of inquiry is.

Elsewhere, I have suggested that a researcher of the rule of law might resolve the problem by adopting a stance on their object of inquiry with "passionate humility": a conviction tempered by willingness to be proven wrong through work in critical proximity with socially and politically mediated facts.⁶ This mode of inquiry recognizes that all political ideals are constituted through dialogue and exchange and, not least of all, those forms of dialogue and exchange that come with social research.

The only sensible thing to be done, then, is to try to situate the rule of law both conceptually and empirically, but without relativizing it. There is no point in saying, as Martin Krygier once quipped, that the rule of law is green cheese.⁷ That goes even if your interlocutors insist otherwise. The rule of law as green cheese is not contingent, just nonsensical. Instead, we need to locate our inquiries in the interplay between ideas and practices that are at once universal and particular, in how the one constitutes the other, and embrace the contradictions that inhere to all claims of universality. That is exactly the merit of doing empirical work on a globally pre-eminent ideal like the rule of law, although it is of course easier said than done.

Precisely because of the rule of law's global pre-eminence, the transnational is a productive site for inquiries along these lines. Halliday wonders whether that site too is absent from *Opposing the Rule of Law*. The question of how socio-legal scholars can "explain legal change in global contexts" is central to his work, and it is one that he has posed to scholars of law and society in Asia.⁸ But it is also one that troubles me less than the others entertained here for, inasmuch as religion is written out of the book, the global is, I think, written into it: both in the history of Myanmar that its early chapters track, through to their present-day

6. Cheesman (2018); see Yanow (2009).

7. Krygier (2013), p. 49.

8. Halliday (2018), p. 233.

consequences. Not on a whim did I write at the end of the book that the government of Myanmar had understood better than most that, if the pre-eminent political ideal of our time is the rule of law, then in its surpassing qualities it must itself be subsumed to law and order. To the extent that the rule of law today has been co-opted by miscellaneous enterprises under the rubric of security sector reform, Myanmar was, in its own way, ahead of the game.

While Halliday's work on transnational legal orders sits firmly in liberal traditions, Chua and Engel have written that law-and-society scholars of Southeast Asia in particular tend to look beyond those traditions, to reconceptualize notions of state and personhood by attending to culture and society.⁹ They see this as a virtue, and plead for stronger mutual engagement of area studies with law-and-society scholarship.

For obvious reasons, I applaud their appeal. But, to return to Dutton's provocation, what more might we do to give this engagement of area studies with law-and-society scholarship a sounder theoretical footing? Where, to refer once more to a question from Halliday, do we go next?

For me, the answer lies in, well, translation, again. But this translation is a different kind from that suggested above: not a kind of translation in the service of projects on which scholars of Asia occupy adjunct roles as useful knowledge providers—a utilitarian kind of translation that adds value to our stock of knowledge without unsettling our understandings about the relation of law to politics or culture or religion or the economy. Rather, this kind of translation is disruptive, insofar as it might open up the possibility for paradigmatic change to our ways of thinking and doing research on law and society in Asia.

Unlike its utilitarian other, disruptive translation does not reconstruct existing concepts. Instead, it elucidates them.¹⁰ It troubles the researcher's own commitments to ideas like the rule of law *and* those of their interlocutors. It communicates between insider and outsider meanings without privileging either. It provincializes universals, working through them in their unavoidable particulars—not in a fruitless attempt to reconcile contingency and universality, but to enrich our understanding of both.¹¹ It turns the manner of communicating in one domain onto the other, so as to say what the other does not, to hear from the one what would not otherwise be said.

If some of this reads like footnotes to Clifford Geertz, then that is not by accident. Foremost among scholars of Asia, Geertz did what Dutton insists is impossible. Over half a century after he wrote them, Geertz's thick descriptions of Indonesia continue to be read for their general significance. Nobody asks: who *cares about* cock fighting in Bali? Yet his description of the cockfight matters because of the theoretical foundation that it laid for generations of students since.

Geertz was also, in his own way, a scholar of law and society. Concluding a well-known article on fact and law in comparative perspective, he pondered what might come of anthropological or, for my purposes, social scientific study of law. Like me, he did not have an explicit answer to the where-to-next question, but in the closing passages of the essay suggested that anthropology had obtained an "accumulated cunning" that legal studies lacked.¹² By this, he said, anthropologists had been learning how to bring their observations

9. Chua & Engel (2015).

10. See Schaffer (2016).

11. See Cheesman (2017b).

12. Geertz (1983), p. 233.

of seemingly incommensurable practices into conceptual proximity with one another, not to reduce the distinctiveness of each, but to make them more comprehensible than if viewed apart.

Thanks to the work of the Asian Law and Society Association, and to the *Asian Journal of Law and Society*, today we have more knowledge about the relation of law to society and politics in Asia than at any time before. Understood thusly, we have much accumulated cunning. But perhaps we still want for cunning in the sense that I read Geertz as intending it: that is, as the dexterity to bring our geographically proximate work into more deliberate conceptual proximity, and without erasing or diminishing difference, to find in it empirical grounds for the theoretically new. I for one think that Asian law-and-society scholarship holds that promise both to translate and to disrupt, and I look forward to it realizing this possibility.

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