


ORIGINAL ARTICLE

The Drafting of the Constitution of the Union of Burma in 1947: Dominion Status, Indo–Burmese Relations, and the Irish Example

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Abstract

This paper aims to consider four elements of Burmese constitutional history between 1946 and 1948. The first section considers the negotiations between Burma and the United Kingdom and argues that the debate about whether Burma wanted Dominion status has overlooked the crucial transitional government period. The second section gives a brief overview of the drafting process, paying particular attention to the links between the Indian Constituent Assembly in Delhi and Rangoon. The third section outlines the comparative influences on the Burmese Constitution using the digital humanities and illustrates that the biggest foreign influence was the Irish Constitution of 1937. The final section looks at the Burmese political leadership after World War II along two dimensions—at a nationalist level and at an elite level—and traces some of the links between Burma and Ireland.

Burma was the first country to peacefully secede from the British Empire. In January 1947, Aung San, leader of the Anti-Fascist People's Freedom League (AFPFL), successfully concluded an agreement with Clement Atlee that left the shape of a new Burmese Constitution to be determined by a Constituent Assembly. Crucially, the question of whether or not Burma was to remain within the Commonwealth was left to the Constituent Assembly itself, with the British preference being for Burma to establish itself as a self-governing dominion within the Commonwealth and Empire. The drafting process occurred at an interesting inflection point in global constitutional history: a time when the post-Second World War constitutions and international human rights documents had largely not been drafted, while vast swathes of the planet were still governed under colonial constitutions. At a regional level, the Burmese experience of incorporation as part of the British Raj

until the 1930s meant that its colonial experience had been part of a larger South Asian experience until a decade before the drafting exercise began.

This article aims to consider four elements of Burmese constitutional history at the time. The first section considers the negotiations between Burma and the United Kingdom and argues that the debate about whether Burma wanted dominion status has overlooked the crucial transitional period. The second section gives a brief overview of the drafting process, paying particular attention to the links between the Constituent Assemblies in Delhi and Rangoon. The third section outlines the comparative influences on the Burmese Constitution using the digital humanities, and illustrates that the biggest foreign influence was the Irish Constitution of 1937. The final section looks at Burmese political leadership after World War II along two dimensions—at a nationalist level and at an elite level—and traces some of the links between Burma and Ireland.

The Path to Independence

The provisions governing Burma in 1947 were broadly those under the Government of Burma Act 1935, subject to a proclamation issued under section 139, which provided for rule by the governor for a period of 3 years if there was a failure of constitutional governance, on December 10, 1942. This had been interrupted by the Japanese Occupation, which included a new, relatively svelte constitution promulgated on August 1, 1943. British rule was resumed during World War II and the provisions of section 139 were extended by the Government of Burma (Temporary Provisions) Act 1945, which allowed the 1942 Proclamation to run until December 9, 1948 unless it was revoked.¹

In 1945, with the end of World War II, thoughts turned to the form of a new constitution in Burma. U Tin Tut, then a reconstruction adviser, advocated preparatory work on the study of foreign constitutions, those of the dominions, some foreign countries like the United States and Switzerland, collection of the views of civil society, and finally, a tentative first draft to be given to the body responsible for formulating a constitution.² Between 1945 and 1946 Burma was roiled by political conflicts between the AFPFL and the governor, with the former demanding a pathway to independence and the latter eventually ceding control of the Executive Council to the AFPFL, who were determined to draft a new constitution, in late 1946. The AFPFL immediately asked for a guarantee of independence within 1 year, along with control of the machinery of government during the transitional period. Negotiations between the AFPFL and British government were eventually concluded by the Aung-San Atlee agreement in January 1947.

The question of dominion status and whether Burma should have sought independence via this route as India, Ceylon, and Pakistan did, used to exercise

¹ See Robert H. Taylor, "Politics in Late Colonial Burma: The Case of U Saw," *Modern Asian Studies* (1976): 161 for a background to the political scenario in Burma.

² National Archives Department Myanmar, Office of the Prime Minister, Series AG 12/1, Acc No. 5, File IEC 45(5) "Memorandum for the Executive Council" (November 2, 1945).

scholars. In 1947, dominion status meant that Burma would have remained within the British Empire and would have retained a link to the British crown. D.G.E. Hall, for instance, argued that had Aung San lived, he would have wanted to conclude an agreement that would have kept Burma in the Commonwealth.³ This view appears to be unsustainable; the question of dominion status was disposed of by the determination of the AFPFL Convention on May 23 that Burma was to be an “Independent Sovereign Republic,” where all powers and authority “derived from the people.”⁴ This stance wasn’t a deviation for the AFPFL; they had resolved at their congress in January 1946 to reject dominion status “or any other status within the framework of British imperialism.”⁵ On the question of the crown, Aung San declared that it was necessary to remove the crown in order to prevent the AFPFL from fracturing and giving the communists a stick to beat them with, but that he personally did not have objections to the crown.⁶ This may have been an accurate summation of his views, or he may have simply trying to assuage slightly British questioning of his motives, but it was clear that he would not break the AFPFL stance on this. By May 1947, therefore, the idea that the AFPFL would seek dominion status had been comprehensively dismissed, as in the course of their negotiations with the Burmese delegation, the British government had made clear that it was not possible to retain dominion status without a link to the crown. However, a more discrete question arises when one considers whether or not the AFPFL had ever sought dominion status.⁷ In order to answer this question, we must briefly explain what was meant by “dominion status.”

Dominion status in the time of decolonization was typically conferred by means of a positive legislative act, either by imperial legislation (e.g., the Indian Independence Act 1947), or by order-in-council (e.g., the Ceylon Constitution [Amendment] Order in Council 1947). However, it was not the case that this was the only method for conferring dominion status. The concept had been introduced in the Colonial Conference of 1907 to distinguish between colonies and political associations within the Empire that had advanced further in terms of self-governance; the latter were to be called “dominions.” In the case of New Zealand, the title was confirmed by royal proclamation on September 9, 1907, but no such proclamation was passed in relation to either Australia or Newfoundland; it was simply accepted that their political development had advanced sufficiently that they would be called “dominions.”

³ D.G.E. Hall, *A History of South-East Asia*, 4th ed. (London: Macmillan, 1981), 882.

⁴ *Burma's Fight for Freedom: Independence Commemoration* (Rangoon: Information and Broadcasting Department, 1948) 49–50. These elements reappeared in Aung San’s “seven points” resolution adopted by the Constituent Assembly on June 16; *ibid.* 92–93.

⁵ Hugh Tinker, ed., *Burma: The Struggle for Independence 1944–1948 Volume I* (London: Her Majesty’s Stationery Office, 1983), 619.

⁶ Harshan Kumarasingham, ed., *The Rise of Labour and the Fall of Empire: The Memoirs of William Hare, Fifth Earl of Listowel* (Cambridge: Cambridge University Press, 2019), 145. Aung San had formed the first party cell of the Communist party in 1939; Robert H. Taylor, *The State in Myanmar* (London: Hurst, 2009), 240.

⁷ In 1945, Shan State had sought Dominion Status separately; see *The 1947 Constitution and the Nationalities: Volume 2*, 208–9.

Similarly, the Constitution of the Union of South Africa makes no mention of dominion status, despite the fact that it was passed 2 years after the colonial conference in question, but it was accepted that South Africa was a dominion. Therefore, in order to be labelled a “dominion” within the Empire, a country had simply had to have advanced sufficiently in internal self-government.

It might be thought that the increasing statutory basis of the dominions in the aftermath of World War I meant that the older practice became obsolete.⁸ In particular, the passage of the Statute of Westminster in 1931, which specifically listed the dominions and restricted the powers of the Westminster Parliament to legislate with effect to the dominions, might be taken as imposing a requirement that any new dominions must be established statutorily; again in the case of India and Pakistan this was written into s. 6 of the Indian Independence Act. This view is ultimately unsustainable. First, the statute book is not conclusive as to dominion status. The Second Schedule to the Merchant Shipping (International Labour Conventions) Act 1925 entitled “Dominions to which Act may not be applied by Order in Council” lists “British India” as a dominion, when it was clearly not a dominion until 1947. The reason it was not a dominion was based on its internal governance structures, rather than any statutory appellation. Second, the Statute of Westminster stated a conventional rule of the Westminster Parliament: it would not legislate with respect to the dominions except with their request and consent, but it did not apply in its entirety to all dominions when it was passed. In fact, New Zealand didn’t adopt it until November 1947.

When the question of dominion status is raised in terms of Burma, it normally proceeds against the backdrop of the South Asian statutory model.⁹ What is more interesting, however, is whether or not Burma could ever have been a dominion under the older model based on internal self-government. Under this older model, the proposals tabled by the Burmese delegation in London in 1947 were entirely consistent with dominion status. On January 15, for example, they referred to the provisions of the Government of Burma (Temporary Provisions) Act 1945 and noted: “...there seems to be no legal bar to the conversion by constitutional convention of the Governor’s Executive Council into a Cabinet with full responsibility for all affairs on the advice of which the Governor must act. Similarly, a Legislature can be constituted under the Act in any manner laid down by an Order in Council, with such composition and functions as may similarly be prescribed.”¹⁰

While the Burmese delegation preferred to vest legislative power in the Constituent Assembly, this suggestion was presumably (although not explicitly) on the same basis. They also argued that any subjects that were not already within the remit of the Executive Council (e.g., defense and foreign affairs),

⁸ See Peter C. Oliver, “‘Dominion status’: History, Framework and Context,” *International Journal of Constitutional Law* 17 (2019): 1173 for a discussion of how the term evolved in the interwar period.

⁹ See Mara Malagodi, Luke McDonagh, and Thomas Poole, “The Dominion Model of Transitional Constitutionalism,” *International Journal of Constitutional Law* 17 (2019): 1283 for a description of the post-World War II model to be found in South Asia, but not looking specifically at Burma.

¹⁰ Hugh Tinker, ed., *Burma: The Struggle for Independence: Volume II* (London: Her Majesty’s Stationery Office, 1984), 262.

should be put within its jurisdiction and subject to the same procedure.¹¹ The model outlined in this memorandum was, therefore, in fact, dominion status, although not explicitly called this, and only an interim measure while the Constituent Assembly formulated a new constitution. It might be argued that the shortened time frame that such a constitutional structure would exist for (in the case of Burma less than 1 year), and the explicitly interim nature of the measure meant that, if it had been adopted, it would not have been possible to call Burma “a dominion.” This objection seems unsustainable when one realizes that dominion status rested on the nature of internal government rather than its duration. Dominion status in India lasted less than 4 years, and it was not certain in January 1947 how long such “interim” structures might last in Burma. It was not inconceivable that the Burmese interim government might continue to sit for many years.

Finally, it might be argued that even if a conventional rule provided something approximating dominion status, insofar as the colonial constitution was still legally in force, this meant that the strict legal position was that Burma remained a colony. This was, after all, the position subsequently adopted by the Judicial Committee of the Privy Council in the case of *Madzimbamuto v Lardner-Burke*.¹² There are two major objections to this point: first, it was not clear in 1947 that this view would hold, and, second, while the judgment may be taken to accurately reflect the legal position of British constitutional law, it did not state the political position of the British Constitution, and normally it was the latter that was more important. In 1947, the most relevant authority was *British Coal Corporation v R* from 1935, in which the Judicial Committee of the Privy Council held that dominion status was unaffected by the legally unlimited power of the Imperial Parliament to pass statutes extending to a dominion.¹³ It is therefore at least arguable that had the Burmese suggestions in the course of the negotiations been accepted, Burma would have become a dominion while the Constituent Assembly sat.¹⁴ Ultimately, this was stymied by the British insistence that conventions could not be used to overcome the specific legislative language granting powers under the 1935 Act, although it can scarcely be doubted that had a total transfer of responsibility been achieved, it would have upset negotiations in India.

The Drafting Process

The Aung San–Atlee agreement provided for the election of a constituent assembly under the electoral machinery established by the Government of Burma Act 1935. The Panglong Agreement in February 1947, to be drawn up by the Constituent Assembly, provided some hope that it would be possible to allay the concerns of Shan, Kachin, and Chin representatives. Elections for

¹¹ Ibid, 264.

¹² *Madzimbamuto v Lardner-Burke* (1969) AC 645, 722–23.

¹³ *British Coal Corporation v R* (1935) AC 500, 520.

¹⁴ Aung San suggested that the interim government “had the powers of a Dominion government” in February 1947; Tinker, *Burma*, vol. II, 388.

the assembly were held in April 1947, with an overwhelming majority of the AFPFL returned.¹⁵ This was in part due to the boycott of the elections by the Karen National Union. The speed at which the drafting took place was impressive; in comparison to Burma's, the Indian Constituent Assembly sat for slightly more than 4 years. Indeed, writing in January 1947, the secretary of state for India and Burma doubted that the work "even on the most optimistic estimate" could be finished by December.¹⁶

Contemporaneously with these elections, Chan Htoon, the legal advisor to the Constituent Assembly, visited New Delhi. Like many South Asian lawyers, Htoon was widely travelled. He had received his legal education at the University of Rangoon and University College London (UCL), before being called to the bar of the Inner Temple in 1931.¹⁷ He commenced his studies in UCL in 1928.¹⁸ In his first year, he studied English Constitutional Laws and started a course on Indian Criminal Code and Criminal Procedure, but appears to have abandoned that course in favor of English Criminal Law. In 1929, he studied Constitutional Laws of the British Empire and appears to have studied Public International Law under Hersch Lauterpacht. The UCL calendar for 1928–29 indicates that the course he took in English Constitutional Law was lectured by Edward Jenks.¹⁹ The course in Constitutional Laws of the British Empire was lectured by J.H. Morgan and H.A. Smith, but it appears from his transcript that he took the day course under Smith.²⁰ The University of London had the most vibrant faculty in the United Kingdom for the study of constitutional law during the interwar period.²¹ Thereafter, Htoon returned to the Bar in Burma where he represented many of the nationalist leaders who went on to subsequent importance in the AFPFL.

The drafting of the Burmese Constitution was significantly influenced by developments in India. Chan Htoon went to New Delhi in April 1947 where he had access to the papers that were being compiled for the Indian Constituent Assembly. It was in Delhi that he compiled the first draft of the Burmese Constitution.²² Htoon returned to Rangoon with the Second Series of the book *Constitutional Precedents*, which was compiled for the Indian

¹⁵ The drafting process is covered most comprehensively in *The 1947 Constitution and the Nationalities: Volume Two* (Yangon: Universities Historical Research Centre and Innwa Publishing House, 1999), 51–196.

¹⁶ Tinker, *Burma*, vol. II, 183.

¹⁷ Robert H. Taylor, ed., *Dr. Maung Maung: Gentleman, Scholar, Patriot* (Singapore: Institute of Southeast Asian Studies, 2008), 112–13. The volume was compiled by Robert H. Taylor, but the biographical detail of Chan Htoon was by Maung Maung.

¹⁸ I am most grateful to the University College London registry for providing access to Htoon's academic transcript.

¹⁹ *University of London: University College Calendar Session MXMXXVIII-MCMXXIX* (London: Taylor and Francis, 1928), 237.

²⁰ *University of London: University College Calendar Session MXMXXIX-MCMXXX* (London: Taylor and Francis, 1929), 241.

²¹ Donal K. Coffey, "Constitutional Law and Empire in Inter-War Britain: Universities, Liberty, Nationality, and Parliamentary Supremacy," *Northern Ireland Legal Quarterly* 193 (2020): 196–97.

²² *The 1947 Constitution and the Nationalities: Volume Two*, 67.

Constituent Assembly.²³ This volume compiled the texts of various constitutions of the British Commonwealth (Canada, Australia, South Africa, Ireland and the Leeward Islands) and of other countries (the United States, Soviet Union, Switzerland, Danzig, and the Weimar Republic). The presentation of Ireland was such that it would inevitably be of interest, because it indicated that de Valera, the Taoiseach (Prime Minister) of Ireland, believed that Ireland was a republic but that it could still be in the Commonwealth: “we have here an interesting example of a State which its own Premier claims to be an independent republic but which the United Kingdom and the Dominions treat as a member of the British Commonwealth.”²⁴

The work of the Indian Constituent Assembly, in particular its focus on comparative constitutional texts, was informed by the work of Benegal Narsing Rau’s brother, Benegal Shiva Rao, whose 1934 volume *Select Constitutions of the World* included introductory texts on the then-extant constitutions.²⁵ This text was, in turn, drawn largely from the volume *Select Constitutions of the World* which was prepared for the Irish Constituent Assembly in 1922.²⁶ When in Delhi, Chtoon acquired a copy of the Interim Report of the Advisory Committee on the Subject of Fundamental Rights prepared for the Indian Constituent Assembly on April 23, 1947.²⁷ This interim report was a result of the work of the committee, which included among its members B.R. Ambedkar, K.M. Munshi, Sir Alladi Krishnaswami Ayyar, and latterly, Sardar Patel. The drafting work was substantially completed by Rau, who detailed the number of foreign influences drawn upon to ground the earlier drafts including the American, Swiss, Weimar, Irish, Yugoslavian, Czechoslovakian, and Chinese constitutions.²⁸ This draft was a source for the justiciable rights under the Indian example, while the non-justiciable rights were dealt with in a prior report of April 16, 1947.²⁹ Finally, the Second Report of the Union Powers Committee under the chairmanship of Jawaharlal Nehru was a source that was used by the drafters.³⁰

²³ *Constitutional Precedents (Second Series): Selected Constitutions 1947*. 3rd ed. (Delhi: Government of India Press, 1948). A copy may be found in National Archives of Myanmar: RG 12, Acc. No. 4/2(10) 15772.

²⁴ *Ibid.*, 113. In Ireland, the title for the Prime Minister is “Taoiseach.”

²⁵ See Introduction by B.N. Rau.

²⁶ See “Preface” in B. Shiva Rao, ed., *Select Constitutions of the World* (Madras: Madras Law Journal Press, 1934). On Rao’s importance to constitutional history, see Arvind Elangovan, “Constitutionalism as Discipline: Benegal Shiva Rao and the Forgotten Histories of the Indian Constitution,” *South Asia: Journal of South Asian Studies* 41 (2018): 605. On the importance of Rao and Rau, see Harshan Kumarasingham, “Written Differently: A Survey of Commonwealth Constitutional History in the Age of Decolonisation,” *The Journal of Imperial and Commonwealth History* 46 (2018): 874, 880–81.

²⁷ B. Shiva Rao, ed., *The Framing of India’s Constitution: Select Documents Volume II* (New Delhi: The Indian Institute of Public Administration, 1967) 294–99. The draft may be traced to this report, rather than an earlier one, because certain phrases that occur in the Burmese Constitution are first present in this Indian draft; see, for example, explanation 2 to Article 20 in the Burmese Constitution.

²⁸ *Ibid.*, 147–50 which lists the influences.

²⁹ See, *ibid.*, 175–76.

³⁰ *Ibid.*, 778–85.

Rau's assistance to the Burmese endeavor, and the influence of the Indian drafting materials, was recognized in a letter from the Burmese Constituent Assembly to the Indian Constituent Assembly on July 14, 1947.³¹ Rau's influence was not limited to New Delhi. He was invited to Rangoon to assist the Burmese Constituent Assembly, which he did in late August 1947.³² A measure of the importance of Rau can be seen from the actions that were taken in light of the fact that Rau was subject to the normal customs procedures when he entered the country, with the resulting delay being the subject of a complaint. This prompted the acting Secretary of the Department of Foreign Affairs, Soe Nyun, to instruct the financial commissioner that the customs authorities in Rangoon and Akyab should exempt Rau and his party from customs formalities, and that the direction from the commissioner to the authorities should be forwarded to Rau.³³ This request was complied with, as was a claim by the customs officials that the original delay was actually the result of how long it took the baggage to come off the plane, rather than of any customs delays.³⁴ The close links in the drafting process between Delhi and Burma indicate that, from the point of view of constitutional structure at least, it is more appropriate to link Burmese constitutional history to South Asian, rather than Southeast Asian, at this time.

In Rangoon, the AFPFL examined Htoon's constitution, which they used as a basis for their own draft in May 1947.³⁵ In the Constituent Assembly, some provisions of the constitution were amended in committee, particularly those relating to the relations between the federal government and the states, but it is noticeable that large swathes were left untouched. This accounts for the comparative speed of the Burmese drafting exercise. The Assembly itself, dominated by the AFPFL, was not the locus of disagreement: "The object of the proposed clause was explained, one or two questions were asked, but there was no argument. This convention was very helpful and enabled the Assembly to complete its work in three months."³⁶ Instead, the decisions were made at committee stage, which meant the individuals involved at this stage were comparatively more influential than in a system in which a constituent assembly dominated. Moreover, the speed of the drafting meant that large parts of the constitution did not change during the process. In the next section, we will consider what influences there were on the Burmese Constitution.

Attribution and Influences

The current historiography regarding the 1948 Constitution has essentially proceeded along two tracks. One follows the line set out by the influential commentator F.S.V. Donnison as follows:

³¹ *Constituent Assembly of India Debates (Proceedings)* – Volume IV, 4.22.46.

³² "The Political Front," *The Burmese Review*, September 1, 1947, 8.

³³ "Customs Facilities – Sir B.N. Rau" (September 5, 1947), National Archives Department Myanmar, Series 15/3(17), Acc No 2. Soe Nyun's name is sometimes spelled "So Nyun." I use the spelling printed on the document.

³⁴ *Ibid.*, U Zaw Win to P.W. Rathbone (September 11, 1947).

³⁵ *The 1947 Constitution and the Nationalities: Volume Two*, 63–69, 225–60.

³⁶ Tin Tut, "The Burmese Constitution," *Pakistan Horizon* 1 (1948): 43, 44.

The constitution of the Union of Burma, framed by the Constituent Assembly before the departure of the British, borrowed details from the United States, from France, from Yugoslavia, but overwhelmingly it was derived from the United Kingdom. It rather curiously synthesized federal and unitary characteristics. In form Western parliamentary democracy as practised at Westminster was set up in Burma. But although democratic in form, the main intention underlying the legal phrases was not so much to enable the people of the country to choose the political ideology they preferred as to establish and safeguard socialism in Burma.³⁷

This analysis appears to have been derived from John Cady's monograph "A History of Modern Burma."³⁸ It was accepted and expanded upon significantly by J.S. Furnivall in his foreword to the second edition of Maung Maung's *Burma's Constitution*, which argued that Burma had "modelled the Constitution on a British pattern, decked up with various modern gadgets."³⁹ This manifested itself in an extreme scepticism of the power of the judiciary of Burma. Furnivall was dismissive of Burmese insistence on the separation of the executive from the judiciary, calling it "a doctrine originating in a mis-interpretation of the British Constitution,"⁴⁰ of the power of the judiciary to interpret legislation or set it aside,⁴¹ and of the tendency of courts to favor private rights over social interest, which "was a heritage from the British legal system."⁴² Here, Furnivall may have been influenced by the preference that Julie Pham documents for the "English ideal of government."⁴³

These flaws that Furnivall noted were, of course, actually part of the Irish constitutional tradition, which established judicial review of legislation and a separation of powers under its constitution. Moreover, as we have seen, the tendency for the Irish courts to favor private rights over social interest was also a matter of discussion in Irish legal circles.

Donnison's influence means that this line has been accepted in some subsequent considerations of Burma's history.⁴⁴ A second view of the constitutional drafting is rather more expansive. The most recent formulation by Maitrii Aung-Thwin, building on earlier insights from Maung Maung, acknowledges the Burmese "referencing of constitutional models found in Sweden, the

³⁷ F.S.V. Donnison, *Burma* (London: Ernest Benn, 1970), 141.

³⁸ John F. Cady, *A History of Modern Burma* (Ithaca: Cornell University Press, 1958), 560.

³⁹ J.S. Furnivall "Foreword," in Maung Maung, *Burma's Constitution*, 2nd ed. (The Hague: Martinus Nijhoff, 1961), vii.

⁴⁰ *Ibid.*, ix.

⁴¹ *Ibid.*, x.

⁴² *Ibid.*, xi.

⁴³ On Furnivall, see Julie Pham, "Ghost Hunting in Colonial Burma: Nostalgia, Paternalism and the Ghost of J.S. Furnivall," *South East Asia Research* 12, no. 2 (2004): 237, 267; and Julie Pham, "J.S. Furnivall and Fabianism: Reinterpreting the 'Plural Society' in Burma," *Modern Asian Studies* 39, no. 2 (2005): 321.

⁴⁴ See, for example, Jovan Čavoški, "Overstepping the Balkan Boundaries: The Lesser Known History of Yugoslavia's Early Relations with Asian Countries (New Evidence from Yugoslav/Serbian Archives)," *Cold War History* 11 (2011): 557, at 574 note 45.

United States, Australia, Ireland, the Soviet Union, and Yugoslavia.”⁴⁵ Melissa Crouch has also noted the influence of the draft Indian Constitution on the Burmese process.⁴⁶

This article used an algorithmic approach to analyzing the various influences on the Burmese Constitution. The first step was to isolate the sources that were available to the drafting team. As already noted, some of these were compiled by the Indian Constituent Assembly: Canada, Australia, South Africa, Ireland, the Leeward Islands, the United States, the Soviet Union, Switzerland, Danzig, and the Weimar Republic. To this we added the Yugoslavian Constitution, as accounts noted its influence. These constitutions were formatted in a machine-readable fashion and then used as comparators for the Burmese text. Using an algorithm developed by Andreas Wagner, these texts were then compared with the Burmese Constitution. This provided 909 Excel spreadsheet cells, which were linked with five potential matches according to text similarity. These matches were then manually compared to check similarity to the Burmese text. In the course of this exercise, it became clear that the Burmese drafters had access to initial materials that had been drawn up internally by the Indian Constituent Assembly, so these materials were also coded and used as a potential source.⁴⁷ This allowed us to compare the various provisions and to attribute the genesis of the provisions to different sources.

There were some complications with this method. First, some provisions overlapped with Indian provisions, but it was not clear which one was drafted first; for example, section 94 of the Burmese Constitution. In this instance, it was attributed to a Burmese influence. Second, some of the provisions drew on other sources that were also coded. For example, the Indian provisions relating to fundamental rights were derived, in some instances, from Irish precedents. Here the question was addressed also in relation to the ordering of provisions, so if they were in the same order as in the Indian draft, which was different from the Irish Constitution, then the provisions were attributed to the Indian draft. Finally, although every effort has been made to identify possible drafts, it is not impossible that further sources may surface in the future.

This method allows us to provide a comparative method of the general approach to constitutional borrowings in the Burmese context. The result does not purport to be a definitive statement, but this method allows us to assign a broad comparative weight of influence of different factors. This allows us to test the views put forward in the historiography.

The comparative analysis generated the following pie chart (Figure 1), which illustrates the number of words derived from different sources. The

⁴⁵ Maitrii Aung-Thwin, “The Making of Myanmar’s 1947 Constitution: Geography, Ethnicity, and Law,” in *Constitutional Foundings in Southeast Asia*, ed. Kevin Tan and Ngoc Son Bui (Oxford: Hart, 2019), 132.

⁴⁶ Melissa Crouch, *The Constitution of Myanmar: A Contextual Analysis* (Oxford: Hart, 2019), 18.

⁴⁷ The provisions drawn on may be found in *The Framing of India’s Constitution: Select Documents Vol. II* (New Delhi: Indian Institute of Public Administration, 1967). They were spread across a number of documents, but concerned the division of powers between the federal and state levels (778–85), justiciable fundamental rights (296–99), and non-justiciable fundamental rights taken from Part II (175–76). The powers provisions were identified manually at the end of the process and attributed on that basis.

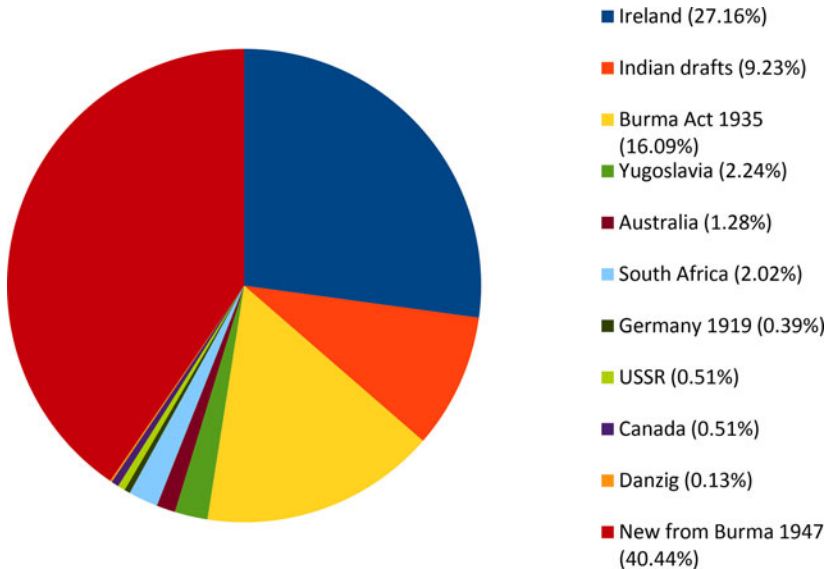


Figure 1. Percentage of words from each source.

constitutional text was initially divided using sentences, but this seemed a less precise measurement than using words, as a short sentence might consist of a single word or phrase, although it does leave us with the rather inelegant but precise phrase “new words,” to indicate those words that were drafted in Burma in 1947.

The number of new words was slightly fewer (40.44%) than those derived from other sources. Of those derived from other sources, the most important source was the 1937 Constitution of Ireland (27.16%), followed by the Burma Act (16.09%), and then the Indian Constituent Assembly (9.23%).

The new sections that were drafted in Burma itself are embedded throughout the document, but occur in a sustained fashion from chapter 9 onwards, which encompass the sections that regulate the relationship between the states under the Constitution and the federal government. These were certainly the most contentious elements of the Constitution, and once one acknowledges that the Panglong Agreement was concluded in advance of the Constituent Assembly, it must be conceded that they were viewed as the most important provisions.

The Donnison/Cady argument is plainly defective; it attributes no influence to either the Irish Constitution or the Indian Constituent Assembly as a precursor to the Burmese Constitution. As can be seen in [Figure 1](#), the Irish Constitution appears to have formed the basis of considerably more constitutional text than the Government of Burma Act, which was the only United Kingdom element that can be seen in the Burmese Constitution.

Aung-Thwin’s formulation is more correct, although perhaps slightly misleading insofar as it buries the Irish influence among others, whereas the

research carried out thus far indicates that it was, in fact, the biggest non-domestic influence on the Burmese Constitution. Moreover, the formulation advanced there doesn't include the Indian Constituent Assembly as a source for the Burmese Constitution.

There is another, more generous, explanation for the Donnison/Cady insistence on British importance to the constitution than simple oversight. This is that while British inspiration for the Burmese Constitution was, as we have seen, somewhat limited, the subsequent development of case law in Burma relied on British precedent. The approach was struck relatively quickly in the *U Saw* case:

Though the jurisdiction of this Court and that of the Privy Council in criminal matters flow from two different sources and this difference in the origin of the jurisdiction of the two Courts is a matter which must not be lost sight of, yet it is clear that many of the rules laid down by the Privy Council in England in the various cases coming before it on applications for special leave to appeal in criminal matters, are rules of wisdom and should receive from this Court a respectful attention and should ordinarily act as guidance of the discharge of its functions under section 6 of the Union Judiciary Act.⁴⁸

In the same year, the Supreme Court adopted the opinion of the Judicial Committee of the Privy Council in relation to how to interpret the constitution, that the "construction most beneficial to the widest amplitude of its powers must be adopted."⁴⁹ It might be argued, therefore, that while the Irish fingerprints could be seen most clearly in the architecture of the constitution, subsequent case law was largely derived from British sources.

What this exercise clearly demonstrates is that more than half of the sentences in the Burmese Constitution were taken word for word from other drafting documents, as Maung Maung has commented: "It was more or less a 'cut and paste' affair, cutting out attractive sections from the Yugoslav constitution, may be, or the constitution of the Republic of Ireland, and pasting them on the draft of the Burma constitution: all that was wanted for those parts was a pair of scissors and a bottle of glue. But there were basic principles which had to be formulated, and which could not be borrowed, and over those the framers of the constitution were enlightened and far-visioned."⁵⁰

The broad outlines of the influences are as follows: India for the rights sections and the enumerated powers, Ireland and the Government of Burma Act for the machinery of the state, Yugoslavia for state socialism (the influence is particularly evident in Article 23), along with a scattering of influences from the Soviet Union, South Africa, Danzig, and Australia. Everything else

⁴⁸ *U Saw v The Union of Burma* (1948) Burma Law Reports 249, at 251. See also *The Union of Burma/Nazir Hamed v Tan Yu Taik/The Union of Burma* (1954) Burma Law Reports 4.

⁴⁹ *Htwe v Ohn* (1948) Burma Law Reports 541, 553–54. See also *Walla v Jeewa* (1950) Burma Law Reports 72.

⁵⁰ Taylor, *Maung Maung*, 248.

Table 1. Comparison between Burmese and Irish Constitutional Texts.

Constitution of the Union of Burma	Constitution of Ireland
<ul style="list-style-type: none"> ■ 212: The Union of Burma affirms its devotion to the ideal of peace and friendly cooperation among nations founded on international justice and morality. 	<ul style="list-style-type: none"> ■ 29.1: Ireland affirms its devotion to the ideal of peace and friendly cooperation among nations founded on international justice and morality.
<ul style="list-style-type: none"> ■ 21(2): The State recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union. 	<ul style="list-style-type: none"> ■ 44(2): The State recognizes the special position of the Catholic Church as the guardian of the Faith professed by the great majority of the citizens.
<ul style="list-style-type: none"> ■ 117(1): The Prime Minister may resign from office at any time by placing his resignation in the hands of the President. 	<ul style="list-style-type: none"> ■ 28.9.1: The Taoiseach may resign from office at any time by placing his resignation in the hands of the President.
<ul style="list-style-type: none"> ■ 137: No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court. Cases that involve questions as to the validity of any law having regard to the provisions of this Constitution. 	<ul style="list-style-type: none"> ■ 34.5.5: No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court. Cases that involve questions as to the validity of any law having regard to the provisions of this Constitution.

appears to have been drafted from scratch, including perhaps most importantly the provisions relating to federalism and the State Councils.

To demonstrate the nature of the borrowing, it might be helpful to provide some examples, chosen at random across the provisions of the Burmese Constitution. In these examples, we look at Ireland as the comparator (Table 1).

Similar examples can be given for other borrowings; for example, Article 23 (3) of the Burmese Constitution begins “Private monopolist organizations, such as cartels, syndicates and trusts formed for the purpose of dictating prices...” which comes from Article IV, section 18 of the Yugoslav Constitution: “The existence of private monopolist organizations, such as cartels, syndicates, trusts and similar organizations created for the purpose of dictating prices...” It is worth noting here that this method of drafting is relatively commonplace; the Irish Constitution itself has a substructure based on then-existing constitutional documents and traditions.⁵¹

⁵¹ Donal K. Coffey, *Constitutionalism in Ireland, 1932-1938: National, Commonwealth and International Perspectives* (Cham: Palgrave MacMillan, 2018), 144-48.

The rushed nature of the Burmese drafting exercise meant that it was imperative that examples be taken from other constitutions. In this context, it is hardly surprising that the Burmese drafters would draw on a wide range of international examples for their own endeavors. Nonetheless, it is striking that the most important influence that was drawn upon was that of Ireland, which raises the question as to the nature of the intellectual links between Burma and Ireland at the time.

Ireland

The Burmese interest in Ireland had deep roots when the time came to draft an independence constitution for Burma. The personnel who were to be involved in the establishment of the new State had connections—either personal or ideological—with Ireland, which meant that there was some familiarity with the political outlook of the country. These can be seen in two separate pathways, both of which were influenced by Ireland; at the elite level, and at the nationalist level. These links were important, because, as we have seen, the work of the Burmese Constituent Assembly was dominated by a small number of political actors. If they were positively disposed toward Irish ideas, then it was relatively easy for these ideas to be incorporated into the new text.

One example of the links that existed were with the pre-World War II elites, such as U Tin Tut, described as “the only experienced hand in the [first independence government].”⁵² He had studied at Cambridge and attempted to enlist in the Officers’ Training Corps in England in order to gain a commission in the Indian Army, but was turned down as he was not of European descent. He then moved to Dublin where he enrolled in Trinity College Dublin and enlisted in the Dublin University Officers’ Training Corps. The Irish regulations had the same stipulation in relation to European descent, but Tin Tut noted “it was left to the Irish to treat improper rules with proper contempt.”⁵³ Tin Tut had met Michael Collins on one occasion in Dublin, when Paramasivan Subbarayan, then a student in Dublin and subsequently chief minister of the Madras Presidency and governor of Maharashtra, brought him to the hostel where they were staying.⁵⁴ Tin Tut was to have been conferred with an honorary LLD degree in October 1948, shortly after he was assassinated.⁵⁵ Other notable students who studied at the University of Dublin include U Htin Aung, who received a PhD in literature,⁵⁶ and who also appears to have studied some law,⁵⁷ before returning to become rector of the University of Rangoon.

⁵² Thant Myint-U, *The River of Lost Footsteps: A Personal History of Burma* (New York: Farrar, Straus and Giroux, 2006), 270.

⁵³ “A Beard for Michael Collins,” *The Burmese Review*, March 15, 1948, 10.

⁵⁴ “A Beard for Michael Collins,” *The Burmese Review*, March 22, 1948, 3. “Subbarayan” is spelled “Subbaraon” in the article.

⁵⁵ “The Late U Tin Tut,” *Burmese Review and Monday New Times*, September 20, 1948, 4.

⁵⁶ See J.A. Stewart, “Review of Burmese Drama,” *Bulletin of the School of Oriental and African Studies* 9 (1938): 792.

⁵⁷ See the dedication to F.E. Moran in *Burmese Law Tales: The Legal Element in Burmese Folk-lore* (London: Oxford University Press, 1962).

A second link was the most important indigenous nationalist movement in the 1930s, which also had an interest in Ireland. This was the Dobama Asiayone movement, which argued for complete Burmese independence and socialism.⁵⁸ It strongly opposed the Government of Burma Act, which was the basis of the first resolution at the Myingyan Conference in 1936.⁵⁹ More significantly, it decided to allow students into the organization, and this meant that future nationalist leaders such as Aung San and U Nu were able to quickly rise in the movement to become Executive Committee members.⁶⁰ What is interesting about the ideological leanings of the Dobama movement was how influenced by Irish republicanism it was. Thant Myint-U notes the influence that the Irish War of Independence had on nationalist thinking in Burma.⁶¹ Ba Maw recounts their fascination with Ireland:

Politically, it followed, up to a point, the example of the Sinn Fein Party in Ireland. Thus in imitation of Sinn Feinism they used the name Dobama (We Burmese) for themselves and everything connected to them, their rallying song and their slogans and their salute. They also called themselves *thakins* (masters) in defiance of the colonialists who called themselves by that name when dealing with the Burmese; they read, when they did so, such Sinn Fein publications as Dan Breen's *I Fight for Freedom ...* they caught, by lashing out at the British and almost everyone and everything with Feinian (sic) ferocity, the mood of those among the youth and workers who had begun to be seized by the fever of the times in which they lived; and so they forged ahead.⁶²

The reference to the book here is slightly awry; the author is Dan Breen and the book's correct title is *My Fight for Irish Freedom*. It is an account of the Irish War of Independence from the point of view of a member of the Irish Republican Army; in fact, there are references in the book that indicate his disdain for the Sinn Féin party, which he regarded as not republican enough because of their commitment to democratic norms. It seems clear, however, that Ba Maw is correct and that the title of the Burmese official independence commemoration, *Burma's Fight for Freedom*, was an homage to Breen. Although the Dobama were represented in 1947 in London for the Atlee talks, they were not as significant a force in Burmese national life after World War II as before it, but the ideological formation of Aung San and other leaders of the AFPFL as a Thakin was significant.⁶³ Their distrust of older politicians and of the colonial state led them to conclude that "mass struggle" was the answer,

⁵⁸ Khin Yi, *The Dobama Movement in Burma (1930-1938)* (Ithaca: Cornell Southeast Asia Program, 1988), 44.

⁵⁹ *Ibid.*, 35.

⁶⁰ *Ibid.*, 92.

⁶¹ Thant Myint-U, *The River of Lost Footsteps*, 203-4, 212-13.

⁶² Ba Maw, *Breakthrough in Burma: Memoirs of a Revolution, 1939-1946* (New Haven: Yale University Press, 1968) 53-54.

⁶³ Aung San also tapped into the parliamentary Irish tradition, memorizing the speeches of Edmund Burke; see Thant Myint-U, *The River of Lost Footsteps*, 213.

including using methods such as boycotts.⁶⁴ The barrister for the Thakin movement in many of their most famous cases was later to become the legal advisor to the constituent assembly, Chan Htoon.⁶⁵ The influence of Ireland on Burmese nationalism can also be seen by the Nagani Book Club, which was set up by Than Tun, Maung Soe, and Maung Nu, the latter becoming the first prime minister of Burma under the independence constitution.⁶⁶ This book club printed eight books on Ireland, including translations of *My Fight for Irish Freedom*, Batt O'Connor's biography of Michael Collins, and Dennis Gwynn's biography of de Valera.⁶⁷

The Irish influence might be thought to have waned in the aftermath of World War II, but the Burmese fascination with the country remained strong. A review of 2 years of the *Burmese Review* reveals an intense interest in Ireland; the level of newsprint coverage was staggering considering the distance between the countries.⁶⁸ The Burmese interest in Ireland, which extended to sometimes referring to the Burmese as “the Irish of the East,”⁶⁹ included a cover piece on “The Idea of a National University” focusing on the Irish experience of establishing a National University in 1908.⁷⁰

The fall of the de Valera administration in 1948 was front page news in a report written by Htin Aung, the rector of the University of Rangoon who had studied in Dublin.⁷¹ It was generally sympathetic to de Valera's point of view and took up two full pages of copy, as well as two paragraphs in another page. This might perhaps be explained by the particular circumstances de Valera found himself in 1948—the sole remaining democratic leader from the prewar years made him a curio—but it doesn't explain the subsequent coverage of domestic Irish affairs. This included a profile of the incoming Taoiseach, John A. Costello, who replaced de Valera,⁷² and what de Valera was doing in opposition.⁷³

The opening page of *The Burmese Review* in the second issue after the assassination of Aung San was titled simply “Sympathy from the Irish People,” and

⁶⁴ See Michael Aung-Thwin and Mairii Aung-Thwin, *A History of Myanmar since Ancient Times: Traditions and Transformations* (London: Reaktion Books, 2012), 228–29.

⁶⁵ Taylor, ed., *Maung Maung*, 113–14.

⁶⁶ See Hans-Bernd Zöllner, ed., “The Nagani Book Club—An Introduction,” Working Paper No. 10:1 Passuer Beiträge zur Südostasienkunde, accessed November 15, 2022, <https://www.burmali-brary.org/docs11/mlp10.01-op.pdf>

⁶⁷ See Hans-Bernd Zöllner, ed., “Material on Eight Books on Ireland,” Working Paper No. 10:20 Passuer Beiträge zur Südostasienkunde, accessed November 15, 2022, <https://www.zoellner-online.org/myanmar-birma/das-myanmar-literature-projekt/20/>

⁶⁸ This period was based on the holdings of the British Library. Some issues are missing, but the vast majority are available.

⁶⁹ See “The Political Front,” *The Burmese Review*, October 20, 1947, 8. This was not a new moniker; U Ba Si had used the term in arguing for a constitution like that of the Irish Free State at the Burmese Round Table Conference in 1931; “Burma Delegates State Desires,” *The Irish Times*, December 4, 1931, 7.

⁷⁰ “The Idea of a National University,” *The Burmese Review*, October 20, 1947, 1.

⁷¹ “The Fall of de Valera,” *The Burmese Review*, February 23, 1948, 1.

⁷² “John Aloysius Costello,” *The Burmese Review*, April 12, 1948, 4.

⁷³ “De Valera Bangs the Drum,” *The Burmese Review*, May 17, 1948, 6.

consisted of a comparison between the assassinations of Michael Collins and of Aung San.⁷⁴ It concluded: “(t)he Irish people send their condolence and sympathy to the Burmese people for the grievous loss the nation has suffered.”⁷⁵ That the views of a tiny island more than 9,000 km away on the assassination of the leader of the Burmese nationalist struggle were considered front page news is particularly striking.

The March 3, 1937 edition of *The Burmese Review* contains the clearest illustration of the Burmese interest in the Irish constitutional text. In that issue Tin Tut wrote a four page article entitled “The Constitution of Ireland,” which canvassed all of the notable features of the Irish Constitution: the focus on popular sovereignty, the composition of the legislature, the presidency, the government, the Council of State, fundamental rights, religion, and social policy.⁷⁶ Tin Tut drew attention to the fact that the crown had been eliminated, but Ireland remained within the Commonwealth, in what seemed an attempt to sway public opinion in favor of continued membership. He was, however, clear in his endorsement of the Irish Constitution as an example: “The present Constitution of Ireland is of particular interest to Burma at a time when the Burmese Constituent Assembly is about to be elected. The Act is a combination of idealism and practical expression in the Constitution of modern ideas relating to the functions of the State and the fundamental rights of citizens.”

While the provisions of the Irish Constitution were available to the drafting team, it might be tempting to think that this text was the extent of the Burmese interest in Irish constitutional law. There is, however, some evidence of a more lasting interest by Htoon in Irish constitutionalism beyond the mere text of the constitution itself.⁷⁷ In November 1947, Htoon paid a visit to Ireland and looked for Irish examples that could be used as a basis for Burmese administrative machinery, including, for example, warrants of appointments of judges, the form of army commissions, and registers of bills and acts, on the basis that the new Burmese Constitution “has borrowed largely from [the Irish] Constitution.”⁷⁸ After independence, he became the attorney general, and in 1950 he appeared before the Supreme Court in the case of *Tinsa Maw Naing v The Commissioner of Police, Rangoon*.⁷⁹ This was a habeas corpus case that concerned a detention under the Public Order (Preservation) Act 1947. The key question was whether or not the subjective intention of the police commissioner was sufficient to lawfully detain someone under the Act, or whether the intention had to be reasonable. In the course of the pleadings, Htoon referred to the Irish case *In the Matter of the Offences*

⁷⁴ “Sympathy from the Irish People,” *The Burmese Review*, July 28, 1947, 1.

⁷⁵ *Ibid.*, 10.

⁷⁶ “The Constitution of Ireland,” *The Burmese Review*, March 3, 1937, 3.

⁷⁷ On the early jurisprudence of the court see Myint Zan, “A Comparison of the First and Fiftieth Year of Independent Burma’s Law Reports” *Victoria University of Wellington Law Review* 35 (2004): 386.

⁷⁸ National Archives of Ireland, Taois s 14160.

⁷⁹ *Tinsa Maw Naing v The Commissioner of Police, Rangoon* (1950) *Burma Law Reports* 17. The case was followed in *Hwat v The Secretary, Ministry of Home Affairs* (1960) *Burma Law Reports* 128.

Against the State (Amendment) Bill 1940.⁸⁰ The consideration of the Irish precedent took up two pages in the decision of the chief justice, along with a further page that considered the differences between the Irish Free State Constitution and the Irish Constitution in relation to the use of the phrase “judicial power.”⁸¹ One striking element of the *Naing* decision was that the Burmese Supreme Court referred to “a majority of three to two” in the Irish case.⁸² In fact, the text of the Irish decision simply disclosed that it was a majority decision, but not the number of judges on each side of the argument; it could as easily have been a majority of four to one.⁸³ What is particularly interesting is that in the Irish Parliament, Deputy James Dillon specifically referred to a three judge majority.⁸⁴ While it is not clear that Chief Justice Maung was aware of this when he handed down his decision, the specificity of the numbers and Htoon’s presence in Ireland may have meant that he was aware of this, not least because it resulted in an amendment of the Irish Constitution in order to prevent disclosure of the fact that such a judgment was by a majority.⁸⁵ It’s not clear exactly how far-ranging the discussions were in Dublin, but the corresponding visit of Rau at approximately the same time indicates a frankness in exchange relating to the operation of the Irish Constitution, which means that it is quite possible that the Supreme Court majority was discussed.⁸⁶ It may have been of particular interest to Htoon, as the provisions governing majority decisions was the same under the procedure for presidential referral of bills passed by the Shan, Kachin, and Karenni State Councils.⁸⁷

The significance of this from our point of view was that the case post-dated the coming into force of the 1937 Constitution. Htoon’s interest in Irish jurisprudence extended not merely, therefore, to the constitutional text, but also to the constitutional law of Ireland. This point must, however, be tempered by the recognition that his interest in comparative constitutional jurisprudence was wide-ranging. In the same case, he referred to British and Australian precedent.⁸⁸ In fact, the Irish reference in *Naing* appears to have been the only one made in the first 15 years of cases. It is interesting, however, to see the cosmopolitan comparative constitutional analysis that Htoon would have

⁸⁰ In the Matter of the Offences Against the State (Amendment) Bill 1940 (1940) Irish Reports 470. For the background to the case, see Gerard Hogan, “The Supreme Court and the Reference of the Offences Against the State (Amendment) Bill 1940,” *Irish Jurist* 35 (2000): 238.

⁸¹ *Tinsa Maw Naing v The Commissioner of Police, Rangoon* (1950) Burma Law Reports 17, 32–34. The “judicial power” argument was not considered in the Irish case.

⁸² *Ibid.*, 32.

⁸³ (1940) Irish Reports 470 at 475.

⁸⁴ See Hogan, “The Supreme Court,” 272–73.

⁸⁵ This was as part of the omnibus Second Amendment of the Constitution in 1941.

⁸⁶ See B. Shiva Rao, ed., *Indian’s Constitution in the Making by B.N. Rau* (Calcutta: Orient Longmans, 1960), 308–11.

⁸⁷ Sections 157(2), 170(2), and 186(2).

⁸⁸ *Rex v Halliday* (1917) AC 260, *Liversidge v Anderson* (1942) AC 206, *The Federal Commissioner of Taxation v Munro* (1926) 38 Commonwealth Law Reports 153.

been exposed to during his time studying in the United Kingdom reflected in his subsequent interests in Burma.

Conclusion

This article has sought to consider some elements of Burmese constitutional history during the period leading into independence. It has argued that the AFPFL was prepared to accept dominion status, although only as a provisional state pending full independence. It has considered the drafting process in 1947, drawing attention to the close links between the Constituent Assembly in Delhi and the Burmese drafting process. A textual consideration of the provisions of the Burmese constitution revealed a very substantial influence of the Irish Constitution. The Indian connection was also clearly evident here when preliminary drafts that were prepared by the Indian Constituent Assembly are compared with the Burmese constitution. The Irish connection is perhaps less readily evident from a constitutional point of view, but this article has traced some of the links between Ireland and Burma.

The Irish and Indian links are perhaps less obvious, because the most naturally eye-catching elements of the Burmese Constitution to a comparativist are the provisions relating to state socialism (borrowed from Yugoslavia), and federalism and secession (which were newly drafted). The fact that the Irish constitution survived World War II undoubtedly accounted for some of the interest that it generated, as did Ireland's political structure as a common law republic that existed within the Commonwealth; however, it is also the case that there was a deep interest in Irish nationalism in Burma at the time. This cannot but have helped influence the Burmese drafters in 1947 when they were casting about for models to use.

The Burmese Constitution immediately came under immense strain due to the Communist Party of Burma's insurgency in 1948, and thereafter by demands for independence by the Karen National Union. Victor B. Lieberman identifies one weakness of the 1947 attempted constitutional settlement in its preoccupation with European ideas of nationalism, unmoored from the traditional religious bases that defined earlier Burmese concepts of kingship.⁸⁹ The inability of this model to mediate differences among ethnicities, indeed the manner in which these ethnicities themselves make claims on the basis of similar ideas of nationalism, combined with the non-participation of various ethnicities in the pre-constitutional decision-making structure, meant that rupture was increasingly more likely, particularly once the guarantees of secession in the constitutional text were abandoned.⁹⁰ Moreover, it was not clear whether or not the rupture on the basis of an

⁸⁹ Victor B. Lieberman, "Ethnic Politics in Eighteenth-Century Burma," *Modern Asian Studies* 12, no. 3 (1978): 455, 482.

⁹⁰ Nick Cheesman, "Seeing 'Karen' in the Union of Myanmar," *Asian Ethnicity* 3, no. 2 (2002): 199; and Matthew Walton, "Ethnicity, Conflict and History in Burma: The Myths of Panglong," *Asian Survey* 48, no. 6 (2008): 889.

economic/social model with the Communist Party of Burma would, on its own, have ended in a collapse into military dictatorship.

The ultimate failure of the first Burmese Constitution should not be a cause for surprise however. Most constitutions fail within 20 years, and on a long enough timeline all constitutions fail. It is more instructive to think of constitutional history as an iterative process, with the abandonment of a constitution often analogous to constitutional amendment. Taking this view, the more significant development was the failure to iterate a new democratic constitution upon the failure of the 1947 document.

The drafting process itself demonstrates the necessity of understanding the development of constitutional processes and ideas outside of a strictly national context. The influence of the Indian process has been described here, but this article hasn't attempted to consider whether the Burmese Constitution itself influenced the Indian drafting process. The interactive nature of constitutional history in South Asia at the time is clearly situated, however, in a broader intellectual history that defies strict jurisdictional limits.

The textual analysis carried out in this article demonstrates some ways in which digital humanities can be used to broaden our understanding of legal history. The use of these tools allows us to identify patterns that were not previously noticed, or, as in this instance, to note that links that had been considered in the extant literature were much deeper than anticipated. This, of course, simply raises a series of new questions, which textual analysis itself cannot hope to solve. Textual analysis alone cannot, for example, effectively capture the constitutional culture being built up in a country,⁹¹ nor can it identify how subsequent developments will allow for divergences. It does, however, allow us to identify some interesting points of transnational convergence, and to provide a starting point to try to identify why these convergences exist, such as the constitutional moment when the Burmese drafters decided to rely on the Irish example.

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⁹¹ A recent example of constitutionalism from below is Rohit De's magisterial, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (Princeton: Princeton University Press, 2018).

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