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# **FROM A DISTANCE: A “Disciplined” Democracy Comes Undone in Myanmar**

Stephen A. Rosenbaum

## **ABSTRACT**

The author of this essay, a practicing lawyer and clinical law instructor, encountered remote learning in Myanmar (AKA Burma) while serving as international leader on a university clinical teaching initiative, under the auspices of the European Union and British Council. A military coup d'état last year abruptly disrupted that country's transition to democratic governance, with arrests, detentions, killings and curtailing of fundamental rights. The coup has prompted two questions for both short- and long-term consideration for justice educators: First, what are the options—and then obligations—for those who teach and otherwise engage with colleagues abroad, to support their institutional or other political struggles? Second, to what extent should collaboration in initiating or strengthening legal educational innovation—grounded in principles of access to justice and rule of law—continue in the context of a stratocracy or similar authoritarian state?

## **ABOUT THE AUTHOR**

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“THERE ARE STUDENTS WHO’VE BEEN LIVING IN REMOTE SPACE EVEN BEFORE REMOTE LEARNING.”<sup>1</sup>

In the days when “Zoom” was largely limited to the lexicon of photography and finance and “distance education” was an obscure concept, who knew that these would eventually become household words? I encountered remote learning in Myanmar (formerly Burma, formerly Myanmar, formerly Burma) a few years ago while serving as international leader on an initiative funded by the European Union and “implemented” by the British Council. This was during dissolution proceedings between the Brussels Eurocracy and British Parliament. The EU-UK break-up preceded the dramatic overnight divorce last year between Myanmar’s Armed Forces (*Tatmadaw*) and the National League for Democracy (NLD) ruling party government—during the Covid-19 pandemic.

This abrupt disruption in the transition to democratic governance is the backdrop for this tale of teaching, learning and tumult. It raises serious questions about the appropriate response by legal clinicians and other justice educators<sup>2</sup> to this disorder and the wisdom of embarking on clinical or other legal educational reform amid repression by a dictatorial regime.

“THE DISTANCE EDUCATION STUDENTS MEET THEIR ‘TEACHER’ ONLY ONCE OR TWICE PER ACADEMIC YEAR FOR ‘CRASH COURSES’ BEFORE THE EXAMS WHICH LAST FOR A FEW DAYS.”<sup>3</sup>

Introduced by the military regime in 1975, distance education in Myanmar was meant to address university overcrowding and allow students to earn a law degree for lower tuition. Instructors are wedded to old-school teaching methods and typically, students are issued outdated textbooks and attend two weeks of on-campus intensive classes per semester, followed by a final examination.<sup>4</sup> What were originally labeled “correspondence courses” had the added advantage of preempting

1. E-mail from Yolanda Sealey Ruiz, Assoc. Professor, Teachers College Columbia Univ., to author (Mar. 20, 2021) (on file with author).

2. Taking a cue from the Global Alliance for Justice Education (GAJE), I use the term “justice educators” to include law school clinicians, NGO lawyers, advocates as well as solo practitioners who devote a large portion of their practice to *pro bono* causes. GAJE welcomes law faculty devoted to clinical teaching and “also works to advance other forms of socially relevant legal education involving practicing lawyers, judges, non-governmental organizations, and the lay public.” GLOBAL ALLIANCE FOR JUSTICE EDUCATION, <https://www.gaje.org> (last visited May 30, 2021) [<https://perma.cc/S4XU-4Z27>].

3. Myint Zan, *Legal Education in Burma Since the 1960s*, 12 J. BURMA STUDIES 1, 16 (2008), [https://www.burmalibrary.org/docs07/Legal\\_Education\\_in\\_Burma\\_Unpublished\\_Version.pdf](https://www.burmalibrary.org/docs07/Legal_Education_in_Burma_Unpublished_Version.pdf) [<https://perma.cc/L84M-J9PW>].

4. Stephen A. Rosenbaum, Britane Hubbard, Kaylee Sharp-Bauer & David Tushaus, *The Myanmar Shwe: Empowering Law Students, Teachers and the Community through Clinical Education and the Rule of Law*, IND. J. GLOB. LEGAL STUD., WINTER 2021 AT 153, 200–01. See also, HLA TINT, PRESENT SITUATION OF DISTANCE EDUCATION IN MYANMAR 4 (Int’l Council for Open & Distance Educ., 2014) (Int’l Council for Open & Distance Educ., 2014), <https://www.icde.org/knowledge-hub/distance-education-in-myanmar>.

student protest gatherings on campus. Law students, in particular, were key protagonists in the pro-democracy movement, resulting in killings by the *Tatmadaw* and long-term school closures.<sup>5</sup>

Officially, the Ministry of Education, together with the two large oversight universities, has been transitioning to advanced technologies. On paper and on screen, we can see the ingredients of a legal studies curriculum, an instructional staff and website links to videotaped lectures, e-TV programming and a course schedule.<sup>6</sup> It is difficult, however, to gauge the efficacy in real life of this educational mode, availability of internet access, level of English language proficiency and degree of actual student participation.

At last count, almost twice as many students attend the country’s distance education programs as in-person postsecondary educational institutions.<sup>7</sup> The International Commission of Jurists has heavily criticized the remote learning scheme, noting that “lawyers and legal faculty hold it in very low regard.”<sup>8</sup> Enrollment qualifications are minimal, students have little contact with instructors and are fed the exam questions in advance.

As elsewhere, distance learning in Myanmar is not simply a temporary instructional model, but a fixture of the higher education system, and the only option for students who, by reason of geographic location, socio-economic class, scholastic record and/or employment status, are unable to participate in a campus-based, full-time university program.<sup>9</sup>

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5. Myint Zan, *supra* note 3, at 14.

6. Mandalay University of Distance Education and Yangon University of Distance Education (YUDE) are the two higher education institutions that oversee the remote learning of more than a half-million Myanmar students. Several years ago YUDE introduced a ten-month “Online Diploma in Law,” including weekly evening discussions. The purpose of the course, according to then-Acting Rector Hla Tint, was “to develop a lifelong learning society and to enhance the quality of legal education . . . through electronic media in Myanmar.” HLA TINT, *supra* note 4, at 5. As this journal goes to press, the YUDE website has had no new postings since February 2, 2021, a day after the military coup d’état. YANGON UNIVERSITY OF DISTANCE EDUCATION, <https://www.yude.edu.mm/public> [<https://perma.cc/DVU6-BUP2>] (last visited May 1, 2022). In the meantime, students involved in the Civil Disobedience Movement or other pro-democracy and anti-military activities have established the Virtual Federal University, to offer courses and “provide a free, critical education for Myanmar federal democracy . . . and a portal for alternative teaching and learning for faculty and students who refuse to cooperate with the Myanmar junta, as well as to those facing persecution by the regime.” See, VIRTUAL FEDERAL UNIVERSITY, [www.federaluniversity.org](http://www.federaluniversity.org). (last visited Nov. 24, 2021). Lessons are being provided on-line and via radio, TV and mobile-friendly platforms. *Id.* See also, *infra* text accompanying notes 23–24).

7. MYAN. MINISTRY OF EDUC., NATIONAL EDUCATION STRATEGIC PLAN 2016–21, 35 (2016), [https://www.britishcouncil.org/sites/default/files/myanmar\\_national\\_education\\_strategic\\_plan\\_2016-21.pdf](https://www.britishcouncil.org/sites/default/files/myanmar_national_education_strategic_plan_2016-21.pdf).

8. INT’L COMM’N OF JURISTS, RIGHT TO COUNSEL: THE INDEPENDENCE OF LAWYERS IN MYANMAR 32 (2013), <https://www.icj.org/wp-content/uploads/2013/12/MYANMAR-Right-to-Counsel-electronic.pdf> [<https://perma.cc/EH5M-NCLP>].

9. See, e.g., Stephen A. Rosenbaum, *The Legal Clinic is More than a Sign on*

Students' development of professional skills or any kind of clinical education, however, remains questionable under online or other forms of distance education.<sup>10</sup>

Moreover, Myanmar presents its own set of unique challenges to revamping legal education. Formal, institutionalized learning is based on absorption of theoretical knowledge, without a focus on development of legal professional skills or ethical training. Teaching is characterized by classroom call-and-response, a *mélange* of Buddhist chanting and Little Red Schoolhouse.<sup>11</sup> Plagiarism and rote memorization are as widespread as the chewing of betel nut. Faculty members have no history of collegiality, as they are subservient to the department head. Law teachers<sup>12</sup> themselves have been removed from the realities of justice issues, since they rarely engage in the practice of law. Not surprisingly, civil society organizations and *pro bono* firms have faced a dearth of trained law graduate personnel to assist their clients and educate target communities.<sup>13</sup>

Attorneys, prosecutors, judges and law teachers have slowly emerged from the isolated world they inhabited while the country pursued a post-independence "Burmese Way to Socialism" followed by decades of military authoritarianism. The nation burst triumphantly into an era of transitional democracy<sup>14</sup> in 2015, championed by Aung San Suu Kyi, the charismatic daughter of a charismatic national liberation leader and affectionately known as "The Lady."

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*the Door: Transforming Law School Education in Revolutionary Egypt*, 5 BERKELEY J. MIDDLE EASTERN & ISLAMIC L. 39, 67 & n. 109 (2013)(*Open Education* appears to be curricular option for managing student overflow, designed for students who received lower high school grades and/or are enrolled part-time); Ahmed El Shamy, *Egypt Reconsiders "Open Learning,"* AL-FANAR MEDIA (Jan. 12, 2016), <https://www.al-fanarmedia.org/2016/01/egypt-reconsiders-open-learning> [<https://perma.cc/X6VX-8SKV>] (last visited May 29, 2021)(student preparation is inadequate and graduates fare poorly in labor market).

10. Despite its appearance in some contexts as a second-class form of education, the concept of OFDL (Open, Flexible, and Distance Learning) has a long and reputable history, as evidenced by the establishment in 1938 of the International Council for Open and Distant Education, having evolved in curricular scope, geography and technology. *About Us*, INTERNATIONAL COUNCIL FOR OPEN AND DISTANT EDUCATION, <https://www.icde.org/about-us> [<https://perma.cc/9NCD-FDHT>] (last visited May 23, 2021).

11. See e.g., Nicholas Ross Carly Ardussi, David Tushaus, Soe Thiri Win & Zwe Pyae Sone Lwin, *Understanding Myanmar and the Way Forward for Legal Education: From Rote Learning to Community Engagement Through Clinical Legal Education*, 7 ASIAN J. LEGAL EDUC. 97, 100 (2020) (noting that Myanmar's education is dominated by "parrot" or rote teaching and by high student-to-teacher ratios).

12. Like other university faculty members, law department instructors of various ranks are referred to as "teachers." Cf. Myint Zan, *supra* note 3, *passim*.

13. Rosenbaum *et al.*, *supra* note 4, at 193–94.

14. Under the Constitution of the Republic of the Union of Myanmar, May 5, 2008, art. 6(d), one of the country's objectives is the "flourishing of a genuine, disciplined multi-party democratic system." THE CONSTITUTION OF THE UNION OF BURMA May 5, 2008, art. 6(d) (emphasis added).

Since then, like sorting through grains of white rice or fermented tea leaves, the juridical and educational elite have been picking and choosing law and lawyering ingredients: They have been deciding elements to retain from their British colonial past, and which donor-advised, post-Socialist and neo-Liberal legal practices to graft onto the physically and intellectually decayed tertiary educational infrastructure. The march toward democratic reform proceeded under the watchful eye of military careerists and civilian bureaucrats. Meanwhile, the decades old inter-ethnic armed conflict continued to internally displace thousands of Myanmar children and adults not to mention the major human rights abuses committed against the Rohingya Muslim minority, which has received even more international attention.<sup>15</sup>

On the surface, it had appeared that democratic lingo was very appealing in Myanmar. References to “Access to Justice” and “Rule of Law” (ROL) were as plentiful as seasonal mangoes. Even “Human Rights” was discreetly uttered in certain settings. Members of the Supreme Court and Attorney General’s Office have attended briefings and workshops on LGBTQI rights and gender-based violence, notwithstanding that a colonial era penal code criminalizing “carnal intercourse against the order of nature” remains on the books and it has taken more than four years to draft a law preventing violence against women.

While, historically, individual initiative was either culturally discouraged or politically perilous, a new generation of legal professionals and students has been eager to engage with a world long closed off. For more than a decade, Bridges Across Borders South East Asia Clinical Legal Education Initiative (BABSEACLE) has been promoting CLE—which translates either as “Clinical Legal Education” or “Community Legal Education” or perhaps neither<sup>16</sup>—as a means to assist in transforming legal education in Myanmar. Law teachers at many of the country’s 18 universities, in turn, are meant to “contextualize what they had learned

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15. See HUMAN RIGHTS WATCH, *WORLD REPORT 2020: EVENTS OF 2019*, at 409–13 (2020); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. V. Myan.), Order, 2020 I.C.J. 3, at 30 (Jan. 23) (International Court of Justice Order that Myanmar prevent genocidal violence against Rohingya minority and preserve any evidence of past crimes); Thomas H. Andrews (Special Rapporteur on the situation of human rights in Myanmar), *Rep. of the Spec. Rapporteur on the Situation of Human Rights in Myanmar*, U.N. Doc. A/HRC/46/56, Annex I at ¶¶ 55–68 (Mar. 4, 2021) (chronicling Rohingya population’s statelessness, internal displacement and right of return to villages of origin), [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A\\_HRC\\_46\\_56.pdf](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_56.pdf) [<https://perma.cc/AP2T-AMPU>].

16. At times the acronym “CLE” seems to be a slogan that springs to the lips of students or teachers who cannot necessarily provide a definition. In other developing countries, “[l]egal [c]linic’ or ‘interactive teaching’ may be banded about like buzzwords, understood in name only—particularly in conversation with consultants or reports to funders.” Stephen A. Rosenbaum, *A New Day: Prime Time to Advance Afghan Clinical Education*, 3 *ASIAN J. LEGAL EDUC.* 1, 5 (2016).

in ways more appropriate to their needs and more readily shared with other locals, effectively generating a cascading propagation of increased capacities and technical skills.”<sup>17</sup> There have been numerous short-term workshops for teachers over the years, but relatively little time spent developing courses. It requires more than trainings and MOU signing ceremonies—replete with photo ops, speeches, logo-laden vinyl banners and awarding of certificates—to firmly implant systemic changes, where commitment to pedagogical change is light and the educational bureaucracy is heavy.<sup>18</sup>

Attorney-supervised externships and community teaching, or Street Law, do not really require bricks-and-mortar and are subject to few bureaucratic restrictions. They also face less resistance from the bench or bar than school-hosted clinics involving direct client representation. Moreover, these clinical models pose the least professional liability for the university.<sup>19</sup> Eventually, nascent clinical programs can evolve into centers of in-house consultation or representation; their clients could include individuals or groups appearing in administrative or ministerial forums, in courtrooms or before legislative bodies.

During my tenure, training-of-trainer events led by international clinicians gave way to piloting semester-length clinical courses in community teaching and externship preparation, conducted by Myanmar law teachers themselves, together with community-based advocates and attorneys as well as the support of international faculty mentors in residence.

There is often a healthy tension in the approach taken by clinicians and law and development specialists between careful, cautious and conscientious preparation, and seizing the moment when participant eagerness is high. Because the first semester was subject to some of the usual logistical and planning setbacks, teachers were not able to complete all the lesson plans. As student interest in an *ex situ* experience was so keen, however, we decided that a soft launch of externships

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17. Jonathan Liljeblad, *Transnational Support and Legal Education Reform in Developing Countries: Findings and Lessons from Burma/Myanmar*, 14 *LOX. U. CHI. INT'L L. REV.* 133, 143 (2016). Legal education scholar Liljeblad cautions against a “limited duration” or “abbreviated nature” of aid delivery while urging presentation of “global standards of professionalism” as something other than “legal transplants.” *Id.* at 142–43, 145.

18. It is all too easy to “become captive to donors’ formulaic RFPs (Request for Proposals) and grant application components, with the requisite roundtables, workshops, policy briefings, and standard menu of outputs and activities.” Rosenbaum et al., *supra* note 4, at 213–4.

19. The Street Law model was deemed the most appropriate for Myanmar to improve interactive teaching and reflective practice and to “connect students and the universities to communities in need.” Bruce A. Lasky, Wendy Morrish & Stephen A. Rosenbaum, *The Global Path of Myanmar University Teaching Programmes: Strategies, Models and Influences*, in *STREET LAW AND PUBLIC LEGAL EDUCATION: A COLLECTION OF BEST PRACTICES FROM AROUND THE WORLD IN HONOUR OF ED O'BRIEN* 254 (David McQuoid-Mason, ed., 2019).

and community teaching would be appropriate toward the end of the semester, even without the benefit of first completing the full classroom curriculum. Success of the launch will be measured over time, when the rough patches are smoothed over, improvements are incorporated, and the project becomes truly institutionalized. But, for reasons explained below, that process has been on hold in Myanmar since the staging of a coup d'état.

Upon my return to the United States, I continued drafting a policy brief, a standard grant deliverable. In the end, my analysis was a little too candid for my NGO employer and donor organization, and perhaps there were also budgetary restrictions. The brief never went beyond a series of track change-ridden drafts. I also posted teaching tips and links to short articles on the law faculty Facebook page cum listserv, which we had set up in response to a self-orchestrated and implemented suggestion made at a training workshop.<sup>20</sup> Unfortunately, few law teachers have posted content or engaged with the page—except for clicking LIKE and uploading photos. The BABSEACLE staff was scaled back after the grant ended, with the only remaining clinician being externally funded for a semester with a Fulbright award.

In late 2020, amid the pandemic, I was asked to remotely advise a team of Myanmar law students for the upcoming Jessup International Law Moot Court Competition, sponsored by the International Law Student Association (ILSA).<sup>21</sup> These students had initiated the process—and had no one at their own university for technical assistance. Moot competition is enticing for these students because it corresponds to their image of legal practice, even though the nuanced substantive and procedural law content is totally absent in their curriculum. The competitive aspect is also a motivating factor. We held regular meetings on Zoom and Google GoToMeeting platforms with poor connectivity and at odd hours, given the disparate time zones.

Myanmar law students are part of a global generation of digital natives who access the internet abundantly, typically through their mobile phones. Yet, I learned from these students that no attempt had been made to establish a temporary means of conducting classes or communicating with the law faculty since the inception of the COVID-19

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20. The Myanmar Law Teachers Network was established pre-pandemic as a closed group Facebook page, making it affordable, culturally appropriate and technologically accessible to Myanmar teaching staff. It is a means of pedagogical exchange where other modes of communication are not reliable or there are greater administrative hurdles. Myanmar Law Teachers Network, FACEBOOK, <https://www.facebook.com/groups/347164726105917> [<https://perma.cc/XHX5-7A43>].

21. ILSA is a non-profit organization of students and lawyers which, in part, “contribute[s] to legal education . . . promot[ing] social responsibility of students and lawyers . . . in a spirit of critical dialogue and international cooperation.” The association has administered the Jessup Competition since its inception over 50 years ago, including the renowned White & Case Cup World Championship Round. International Law Students Association, *What We Do*, <https://www.ilsa.org> [<https://perma.cc/9WXL-SK54>] (last visited May 30, 2021).



lockdown, despite the lack of in-person classes at their university. In essence, no remote learning was available for those enrolled in the on-campus program in a country that has allegedly established a distance education law curriculum and network.<sup>22</sup>

On February 1, 2021, Myanmar law students, along with their compatriots, woke up to a new reality. A top *Tatmadaw* general and other senior military officers had detained *de facto* head of state Aung San Suu Kyi, as well as other government leaders and NLD activists, and declared a year-long state of emergency. This coup d'état, predicated on unfounded claims of election fraud, once again called into question the fate of the nation's educational and political institutions.<sup>23</sup> Given the history of military rule, it was a bit of *déjà-vu* all over again. This occurred just a few months after our own authoritarian head of state and his sycophants were attempting to undo a national election that they claimed was rigged and fraudulent.

The moot court preparation came to a halt. Postings on the law faculty Facebook page were cautiously worded and teacher engagement was down. The military junta has been grappling with how to suppress the social media network that had blossomed since the last time it had staged a coup, alternating between cutting service and limiting hours. While not necessarily attending classes, students have been among the seasoned and younger militants resisting the coup through traditional civil disobedience and other creative protest tactics, such as a military boycott, *cacerolazos* (pot banging), a red ribbon campaign and by joining the ranks of the Civil Disobedience Movement (CDM) and Milk Tea Alliance.<sup>24</sup>

The coup d'état has prompted two questions for both short- and long-term consideration for justice educators: First, what are the

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22. For a primer on conducting distance learning in technologically distressed environments, see Stephen A. Rosenbaum, *The Persistence of Distance Education: Low(er) Tech Options for Remote Learning*, in LAW TEACHING STRATEGIES FOR A NEW ERA: BEYOND THE PHYSICAL CLASSROOM 71–80 (TESSA L. DYSART & TRACY L.M. NORTON, eds., 2021).

23. See *Myanmar Coup: Aung San Suu Kyi Detained as Military Seizes Control*, BBC NEWS (Feb. 1, 2021), <https://www.bbc.com/news/world-asia-55882489> [<https://perma.cc/2Y4X-MPJJ>] and Andrews, *supra* note 15, at ¶¶ 1–120.

24. See, e.g., *Teachers, Students Join Anti-Coup Campaign as Hospital Staff Stop Work*, FRONTIER MYANMAR (Feb. 3, 2021), <https://www.frontiermyanmar.net/en/teachers-students-join-anti-coup-campaign-as-hospital-staff-stop-work> [<https://perma.cc/98KY-2DZX>]; Vjitra Duangdee, *Asia's #MilkTeaAlliance Has a New Target Brewing—the Generals Behind the Myanmar Coup*, SOUTH CHINA MORNING POST (Feb. 4, 2021), <https://www.scmp.com/week-asia/politics/article/3120526/asia-milkteaalliance-has-new-target-brewing-generals-behind> [<https://perma.cc/MN9A-U88A>]; *Myanmar Protestors String Up Women's Clothes for Protection*, REUTERS (Mar. 6, 2021) (traditional *htamein* dresses hung on clotheslines deterred police and soldiers, as men consider walking beneath women's clothing to be bad luck) <https://www.reuters.com/article/us-myanmar-politics-protest-yangon/myanmar-protesters-string-up-womens-clothes-for-protection-idSKBN2AY0DX> [<https://perma.cc/49RF-M3SK>].

options—and then obligations—for those of us who teach and otherwise engage with colleagues abroad, to support their institutional or other political struggles? Second, to what extent should our collaboration in initiating or strengthening legal educational innovation—grounded in principles of access to justice and rule of law—continue in the context of a stratocracy or similar authoritarian state?

Like most social justice clinicians and NGO peers in these circumstances, my first reaction is to convey solidarity with teachers and lawyers in places where I have some connection. As advocates and activists, we may find ourselves more *of* the Academy—than *in* the Academy—having to distance ourselves from the institution, with the need to immediately react to real world events on issues that touch our professional lives. I joined James Park Taylor—a former clinician at the University of Montana law school, and former head of International Bridges to Justice (IBJ), a criminal defense NGO operating in Myanmar—to seek guidance from lawyers and allies on how to marshal minions to condemn, deter or mitigate the anti-democratic and oppressive actions taken by the Myanmar generals.<sup>25</sup> The response to the military takeover from national and transnational legal organizations was both rewarding and disappointing.

*“I AM NOT NAÏVE; SUCH STATEMENTS MIGHT NOT CHANGE THE WORLD. BUT, SURELY, IT IS WORTH TRYING. ONE MYANMAR LAWYER WROTE ME THIS MORNING: ‘THANK YOU FOR YOUR HELP AND IT MAKES US STRONG.’”*<sup>26</sup>

Deterrence and mitigation are a much heavier lift than condemnation. But the first step is to seek a statement of support consistent with norms and protocols of the prospective organization and its drafters. We tend to underestimate the impact on those resisting oppression of expressing solidarity or allyship.<sup>27</sup> The international student association seemed like an obvious prospect, my advisory role to the Jessup team having come to a sudden end. I wrote to a prominent global law firm, also a Jessup competition partner, about the importance of law school preparation and the inspirational and instructional role that this interactive and competitive event plays for so many law students—particularly in the Global South:

... I’m asking that you use your clout to urge the International Law Student Association to issue a statement that denounces/ deplores/ regrets the current military state of emergency and its impact on the Jessup competition/ state of legal education/ Rule of Law in Myanmar . . . . A statement on the coup actually coming from [the law firm] leadership could be very influential in helping to bring an

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25. We relied on the advice (and prompting) from S.M., a British criminal defense solicitor, who had spent several years in Myanmar and M.T., a former analyst for Amnesty International and Human Rights Watch, also with a long history in Myanmar.

26. E-mail from S.M. to author. (Feb. 23, 2021) (on file with author).

27. Is allyship a more nuanced expression of solidarity or is it just Beaujolais Nouveau in a new bottle?

end to this tragic disruption in Myanmar's development as a democratic nation.<sup>28</sup>

The above e-mail, which I sent (and re-sent) to a few of the firm's key liaisons with Jessup and to in-house directors of its Global Citizenship Initiative, went unanswered. This was the evasive and slightly disingenuous reply I eventually received from the ILSA board chair in response to a similar e-entreaty:

ILSA's goal is to safeguard the continued participation of the University of Mandalay in this year's Jessup competition and the participation of all students from Myanmar in the years to come, hence the risk of making public statements that may jeopardize that aspiration . . . . In situations like the one facing the Jessup competitors in Myanmar, ILSA's focus is to convey to the students themselves that they are still part of the global Jessup community and to assure them that their hard work and desire to compete in the Jessup is celebrated and admired even though they were not able to participate in the way they deserved.<sup>29</sup>

Jim and I also sent sample statements to various national and international bar associations and posted on listservs for clinicians and human rights academics, with an emphasis on unlawful detentions, suspension of statutory and constitutional protections, and other due process violations and human rights abuses. Clinicians were fairly responsive, and many signed on to a prepared statement, even if they lacked direct involvement or a Myanmar connection and no opportunity for input. After all, news about the coup was in the headlines for several days, and human rights advocates and others were aware of reporting in recent years on the country's emerging democracy and abuses committed against the Rohingya.

Lawyers' organizations required more prompting, with templates and references to peer associations in Great Britain and Australia having made their own statements of support. It was useful that Jim had both defense and prosecutorial personal contacts, and ties to the American Bar Association (ABA). Eventually, various criminal defense

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28. E-mail from author to unnamed international law firm (Mar. 11, 2021) (on file with author). The firm is a signatory to the United Nations Global Compact, "a call to companies to align strategies and operations with universal principles . . . ." *Who We Are*, UNITED NATIONS GLOBAL COMPACT, <https://www.unglobalcompact.org/what-is-gc> [<https://perma.cc/56X6-7WUX>] (last visited May 22, 2021). One of the Compact's principles is that "[b]usinesses should support and respect the protection of internationally proclaimed human rights." *The Ten Principles of the UN Global Compact*, UNITED NATIONS GLOBAL COMPACT, <https://www.unglobalcompact.org/what-is-gc/mission/principles> [<https://perma.cc/MJ85-APER>] (from the home page, scroll down to "QUICKLINKS" and select "Ten Principles").

29. E-mail from ILSA board chair to author (Mar. 23, 2021) (on file with author). Is it adequate rationale for the Association to preserve the participation of a privileged university, such as Mandalay, and to give law student contestants a false sense of acceptance and accomplishment on the world stage at a time when their legal system is unraveling back at home?

associations and the International Bar Association drafted statements, with less prodding.<sup>30</sup>

Encouraging the ABA to take a stand was more formidable, given its mainstream membership and bureaucratic *modus operandi*. As it was too late to submit a resolution before the House of Delegates to adopt at its biannual meeting, we tried to get the ABA President to issue a brief statement. After Jim doggedly supplied a steady stream of facts, sample statements and updates, it took almost five months of painstaking wordsmithing of drafts by various ABA staff and members in the International Law Section, to then be footnoted, memorandized and put out for review by Section committees before distributing what was intended to be a three-paragraph statement. We were incredulous at the protracted nature of the operation by a sophisticated and well-resourced organization of professionals whose byword is *timely* and zealous advocacy.<sup>31</sup>

In the meantime, many summary trials have been conducted. Thousands of Myanmar citizens—including many young people—have been detained, arrested, charged or convicted. Hundreds have been killed in the streets by the *Tatmadaw*.<sup>32</sup> It is almost like being suspended in a state of inaptitude, as the world moves on to another crisis.

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30. See Nat'l Ass'n of Criminal Defense Lawyers, *NACDL Statement of Support for Myanmar Lawyers and the Rule of Law* (Mar. 16, 2021), <https://nacdl.informz.net/informzdataservice/onlineversion/ind/bWFpbGluZ2luc3RhbmNlaWQ9ODI5NzcyMiZzdWJzY3pYmVyaWQ9OTEmjYwNzg5> [<https://perma.cc/FM8L-6R6J>]; Int'l Bar Ass'n Human Rights Institute, *IBAHRI Condemns Ongoing Violence Against Protestors in Myanmar* (Apr. 14, 2021), <https://www.ibanet.org/article/eed46cf4-13e0-49ad-ae4e-4aee9e850630> [<https://perma.cc/Z8JF-FEE4>].

31. The endless e-mails included an interrogation of researchers at the well-respected Assistance Association for Political Prisoners (Burma) (AAPPB) for why its detention statistics were higher than those reported by the junta. Eventually, on July 5, 2021, the outgoing ABA President addressed a letter to coup leader General Min Aung Hlang, calling for rule of law, independence of the judiciary and legal profession, and respect for human rights in Myanmar. The letter was promptly posted on the Facebook page of the U.S. Embassy in Myanmar. U.S. Embassy Rangoon, FACEBOOK, <https://www.facebook.com/usembassy.rangoon/posts/4107753772639744> [<https://perma.cc/M9RXQWQ4>]. This tardy response stands in stark contrast to the concise statement of concern and condemnation issued by the incoming ABA President just a few weeks after the Taliban takeover of Afghanistan in August 2021. *Statement of ABA President Reginald Turner Re: Afghanistan*, AM. BAR ASSN., <https://www.americanbar.org/news/abanews/aba-news-archives/2021/08/aba-president-statement-re-afghanistan>.

32. The AAPPB has reported that to date 1,803 people are confirmed killed, 10,449 people have been arrested, charged or sentenced and 1,977 have been issued arrest warrants and are evading arrest. Home, ASSISTANCE ASSOCIATION FOR POLITICAL PRISONERS (last visited May 1, 2022), <https://aappb.org> [<https://perma.cc/SS3R-MM6E>]. See also *Myanmar Military Targets Lawyers Defending Political Prisoners*, AL JAZEERA (Jun. 28, 2021), <https://www.aljazeera.com/news/2021/6/28/myanmar-lawyers?fbclid=IwAR3r4GssrKQh7kJNjHDD4gUoX76PmUkacvaZuvHD5YiiKh1ETiqbh5ebRc> [<https://perma.cc/VVM9-KKU7>]. (Myanmar nationals surveilled, intimidated, arrested and silenced by military in the midst of defending government officials and other political prisoners).

“WHAT’S THE POINT IN STUDYING LAWS WHEN NO ONE RESPECTS THEM?”<sup>33</sup>

On the long-term question of continuing (or inaugurating) education reform efforts, and promoting clinical education with social justice underpinnings, a teacher or lawyer must ask themselves what is the most fruitful environment for doing the work? We will rarely encounter a textbook perfect socio-political environment when introducing new pedagogy abroad. Legal education reform is often initiated in transitional justice settings, *i.e.*, after armed conflict, the demise of a dictatorial regime or “historically unjust societ[y],”<sup>34</sup> or the election of an opposition political party.

Before the coup d’état, a fellow clinician and co-author pushed back on my characterization of Myanmar’s democracy as “burgeoning.” We settled instead on “fledgling.” The nation’s constitutional term of art is “disciplined.” We could at least agree that the government, economy and society were moving away from dictatorship, lack of due process and suppressed liberties to what we like to label access to justice, rule of law and respect for human rights and fundamental freedoms.<sup>35</sup>

We knew that our “training and mentoring must be informed more by pragmatism and reflection than by project deliverables, with full recognition that the work will be performed in the context of an authoritarian regime or one grounded in patronage, risk adversity, and distrust of foreigners.”<sup>36</sup> We knew also that while we could not endorse every-

33. JANET SKESLIEN CHARLES, *THE PARIS LIBRARY* 60 (2021). This is the question posed by disaffected and restless law student Rémy Souchet in a Paris-based novel on the eve of World War II, as European nations succumb to fascism.

34. THOMAS CAROTHERS, *AIDING DEMOCRACY ABROAD: THE LEARNING CURVE* 169 (1999). Legal reform can successfully take place in these societies, as seen in post-Soviet satellite countries, post-Khmer Rouge Cambodia and post-military junta Latin America. But this has not always been undertaken with reflection upon past failures or consideration of the “will to reform.” *Id.* at 169. See also Samuel J. Levine & Russell G. Pearce, *Rethinking the Legal Reform Agenda: Will Raising the Standards for Bar Admission Promote or Undermine Democracy, Human Rights, and Rule of Law?*, 77 *FORDHAM L. REV.* 1635, 1638–39 nn. 17–27 (2009) (reviewing steps taken by US State Department, ABA and other NGOs to develop rule of law and equal justice culture in Eastern and Central Europe and Global South).

35. This is how one international NGO lawyer described the current situation: “Myanmar’s air-kiss with democracy had raised big hopes for the people of Myanmar and especially young lawyers who had immense faith in the future of rule of law and peace. They are now deeply affected by the uncertain fall into a political and legal abyss.” Robert Bociaga, “The Danger of Defending the Defenseless in Myanmar,” *THE DIPLOMAT* (May 18, 2021), <https://thediplomat.com/2021/05/the-danger-of-defending-the-defenseless-in-myanmar> [https://perma.cc/B3KX-5CMJ].

36. Rosenbaum et al., *supra* note 4, at 217. “Donor agencies have their own recipes for reform, usually well-intentioned and well-informed, but their financial and organizational support may be influenced more by what is trending than what is warranted in the long haul.” *Id.* at 213. There is nothing inherently wrong with schmoozing with other expats over a Mandalay Rum Sour. However, one development expert advises consultants and specialists to “get[] out of [the] Project World” theme park, which is a fixture of the “Development Industry,” when it comes to substantive support or partnership. Deborah Eade, *Capacity Building: Who Builds*

thing about the behavior of the country’s political leaders, bureaucrats and jurists, we thought it worthwhile to ally with teachers and advocates in advancing some of the lofty principles we identify with democracy in their educational institutions and legal forums. After February 1, 2021, we cannot still say the same thing.

Transitional law scholars remind us that the rule of law, notwithstanding “the ubiquity of its usage . . . is endowed with ‘a multiplicity of definitions and understandings.’”<sup>37</sup> For what it’s worth, the World Justice Project has articulated four universal ROL principles or “inter-connected cluster of values”<sup>38</sup> based on: (1) government officials’ legal accountability; (2) clear, publicized, stable, just and evenly applied laws and protection of fundamental rights; (3) accessible, fair and efficient enactment and enforcement of laws; and (4) timely delivery of justice by competent, ethical, independent and adequately resourced representatives who reflect the communities they serve.<sup>39</sup>

It is important to assess and reflect on the factors that will most likely lead to relatively efficacious, unfettered and sustainable practices. And, legal reform initiatives need not always await the ideal democratic environment before being launched.<sup>40</sup> However, the ability to teach freely

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*Whose Capacity?*, 17 DEV. IN PRAC. 630, 631 (2007).

37. David Tolbert & Andrew Solomon, *United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies*, 19 HARV. HUM. RTS. J. 29, 31 (2006) (citation omitted). See also Levine & Pearce, *supra* note 34 at 1637 n. 9 (rule of law is “a notoriously plastic phrase” subject to varying conceptions (citation omitted)).

38. Tolbert & Solomon, *supra* note 37 at 31. Two Hong Kong University scholars unequivocally concluded that “the phrase ‘rule of law’ has been so overused and misconstrued that it has become virtually meaningless.” Marco Wan & Janny Leung, *The Rule of Law & the Cultural Imaginary in (Post-)colonial East Asia*, 18 L. TEXT CULTURE 1, 1 (2014).

39. WORLD JUSTICE PROJECT, RULE OF LAW INDEX 9 (2016), [https://worldjusticeproject.org/sites/default/files/documents/RoLI\\_Final-Digital\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf). [<https://perma.cc/296X-2U9F>].

40. See, e.g., James E. Moliterno, *Exporting American Legal Education*, 58 J. LEGAL EDUC. 274, 275, 278–79, 282–83 (2008)(recounting experience in Serbia and Georgia of civil unrest and political overtones influencing shape of legal education and other reform initiatives); David McQuoid-Mason et al., *Clinical Legal Education in Africa: Legal Education and Community Service*, THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE at 23–4 (Frank S. Bloch ed., 2011) (certain clinics challenged human rights abuses under South African apartheid regime); Mutaz M. Qafisheh, *Modern Legal Education in Palestine: The Clinical Programs of Hebron University*, EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST AND BEYOND at 200–01 (Mutaz M. Qafisheh & Stephen A. Rosenbaum eds., 2016) (establishment of Palestinian law faculty initially blocked by Israeli authorities fearing potential use of law to resist military occupation). Recent events in Afghanistan present a particularly graphic illustration of the risks and costs associated with building democratic institutions in the midst of political instability and encroaching authoritarian rule. See, e.g., Richard Grimes, *Assessing Justice and the Role of Law School Legal Clinics in a Conflict-Affected Society: A Case Study from Afghanistan*, EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST AND BEYOND at 157, 160–61, 170 (role of clinics in improving access to justice in parts of world with “troubled pasts” and conflict zones); Rosenbaum, *supra* note 16 at

in the classroom or speak freely in the public square is as important as the ability to amply advocate in the courts or other forums for resolving disputes and enacting law and policy. Assess and reflect are key verses in the legal clinician's anthem.

That said, it is not so simple to pull up stakes in Myanmar, to cease funding and abandon all clinical initiatives, colleagues and students. It is one thing for foreign government and organizational donors to discontinue regaling the junta with ROL funding, technical support, workshops and training, and maintaining a veneer of normalcy. Likewise, international pedagogical and development partners must reconsider the viability and integrity of continuing to teach, mentor and collaborate in academic enclaves encircled by a political regime that is suspicious of, or hostile to, their reform efforts.

On the other hand, our lawyer colleagues, supported by international organizations like IBJ, who are willing and able to oppose the military regime by providing much needed legal representation to arrestees and detainees at great personal risk, may apply a different calculus than a clinical instructor or externship mentor when weighing the above-mentioned factors for continued engagement.<sup>41</sup>

It is unsatisfying to content ourselves with the legal bromide that there is no bright line when deciding the level of support to lend to institutions and peers whose educational or justice mission and ambition are likely to end up upended. But we can't stop asking—and re-asking—ourselves just where to draw that line.

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5, 23 (security concerns overrode almost all law and development activities, even prior to Taliban recapture of government).

41. IBJ continued to offer training, manuals and other resources to criminal defense attorneys working at various justice centers, who are frequently subject to physical assault and arrest. See *Country Programs: Myanmar*, INT'L BRIDGES TO JUSTICE, <https://www.ibj.org/programs/country-programs/myanmar> [<https://perma.cc/78A4-7ADJ>] (last visited May 31, 2021) (from dropdown menu entitled "Country Impact"; select "Myanmar"); Bociaga, *supra* note 35 (lawyers representing protesters experience beatings, abduction and arrest).