In the Absence of the Rule of Law: Everyday Lawyering, Dignity and Resistance in Myanmar's 'Disciplined Democracy'

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Abstract

This article explores how 'everyday' lawyers undertaking routine criminal defence cases navigate an authoritarian legal system. Based on original fieldwork in the 'disciplined democracy' of Myanmar, the article examines how hegemonic state power and a functional absence of the rule of law has created a culture of passivity amongst ordinary practitioners. 'Everyday' lawyers are nevertheless able to uphold their clients' dignity by practical and material support for the individual human experience – and in so doing, subtly resist, evade or disrupt state power. The article draws upon the literature on the sociology of lawyering and resistance, arguing for a multi-layered understanding of dignity going beyond lawyers' contributions to their clients' legal autonomy. Focusing on dignity provides an alternative perspective to the otherwise often all-consuming rule of law discourse. In authoritarian legal systems, enhancing their clients' dignity beyond legal autonomy may be the only meaningful contribution that 'everyday' lawyers can make.

Keywords

Myanmar / Burma, rule of law, hybrid and authoritarian regimes, lawyers and lawyering, sociology of lawyering, law and development, everyday resistance, dignity.

Introduction

> *"Although U Ko Ni was the one who physically died, the reality is that this murder represents the death of the rule of law"* – U Robert San Aung, activist lawyer (Ei Ei Toe Lwin and Shoon Naing 2017)[1]

On 29 January 2017, U Ko Ni was shot dead as he waited for a taxi outside Yangon International Airport in Myanmar.[2] A prominent constitutional lawyer, acclaimed reformer and senior legal adviser to Daw Aung San Suu Kyi's[3] National League for Democracy ('NLD'), he was working on creative legal strategies to circumvent the constitutionally-enshrined political power still held by the Myanmar military (Lintner 2017; Crouch 2017a; Brennan 2017).

The murder of such a skilled legal activist who was deeply immersed in using legal strategies to embed the rule of law speaks directly to the dangers of lawyering in 'hybrid' regimes (Bogaards 2009; Levitsky and Way 2010; Gilbert and Mohseni 2011), those countries in which elements of authoritarianism and democracy commingle (Collier and Levitsky 1997; Gilbert and Mohseni 2011). Yet even before Ko Ni's assassination, there was an almost obsessive focus on the rule of law in Myanmar, and its various meanings and prospects. From Cheesman's comprehensive dissection of the inherently contested nature of the concept and its relationship to democracy (2009; 2014; 2015a; 2015b; 2016; 2017), to Prasse-Freeman's discussion of the way in which it relates to broader concepts of informal social justice (Prasse-Freeman 2014; 2015), the rule of law in Myanmar has been a popular subject for academic analysis. Development practitioners, domestic and international policymakers and civil society organisations alike have also heralded the rule of law as *the* key to Myanmar's future prosperity and social harmony (UNDP 2016; USAID 2017; Xinhua 2018; Crouch 2017b).

From another perspective, this preoccupation with the rule of law is somewhat puzzling, given that Myanmar retains many of the hallmarks of despotic governance (chiefly linked to a lack of restraint on arbitrary state power) in a way that makes the rule of law "practically incompatible" with such regimes (Luban 2010: 10). Whether conceptualised as a formalist, minimum system of publicly and prospectively promulgated rules applying to all, or as a fully articulated substantive political morality with a rich normative content (Peerenboom 2004; Tamanaha 2004; Carothers 2010), restraint of arbitrary state power is an essential constituent of the rule of law (Krygier 2011, 2016). Thus, in hybrid political systems where legal norms (such as the constitution) and institutions (such as courts, anti-corruption commissions) are in effect co-opted by the executive, the rule of law is an 'empty signifier' (Laclau 2005 as cited by Prasse-Freeman 2015): either functionally absent, used to justify autocratic tendencies, or both.

Whilst acknowledging the importance of rule of law discourse in Myanmar and beyond, this article aims to contribute to the literature on hybrid and authoritarian

regimes by examining the role of lawyers and what Raz described as the 'other virtues' of a legal system (1979: 211). However, rather than focusing on politically engaged, activist or otherwise celebrated practitioners as others have done (Cheesman and Kyaw Min San 2013; Saffin and Willis 2017), we examine the role of the 'everyday lawyer' – those practitioners who work on "ordinary, modest cases" (Kritzer 1990: 3). Our starting-point is that since the rule of law is not currently viable in Myanmar, there is a need to explore everyday lawyers' practice, their relationship to their clients as well as how they negotiate overwhelming legal power. In Myanmar as elsewhere, the rule of law has a tendency to obscure other issues, to the detriment of otherwise identifying and analysing such 'other virtues' of a legal system (Raz 1979: 211). We aim instead to analyse one such alternative virtue – the concept of dignity – and to explore how domestic lawyers seek to protect their clients' dignity in the absence of even the thinnest version of the rule of law. We look beyond Raz's definition of dignity as respect for autonomy, drawing instead upon analysis from Luban (2005) and Vischer (2011) who explore other 'lived realities' of the concept, including how lawyers seek to protect their clients from humiliation. In so doing, this raises the question of whether lawyers and their clients are ultimately enacting a form of 'everyday' (as opposed to a form of 'direct') resistance (Scott 1985; 1989; 1990) to entirely dominant institutional legal power.

Our research is informed by qualitative interviews and focus groups with over 50 lawyers and other legal professionals conducted in Myanmar in late 2017. All the lawyers and justice sector professionals with whom we spoke worked on 'everyday' cases, mundane criminal matters including traffic accidents, drug cases, assaults and thefts. Their quotidian practices demonstrate that whilst extant political and legal power makes it impossible for them to advance the rule of law, lawyers still have the capacity to support their clients' fundamental human dignity by ensuring their stories are heard, as well as by providing basic physical, medical and material support. For clients who would otherwise face the full, unfiltered force of the authorities, the upholding of dignity in a rule of law deficient legal system constitutes both a meaningful and an intended form of resistance.

Section one of the article begins with a consideration of the rule of law, its core function in restraining arbitrary state power, and explores a broader concept of human dignity as one of the 'other virtues' associated with a legal system and in lawyer-client relations. Section two explores the constraints upon lawyers where the rule of law is absent, linking lawyers' efforts to uphold their clients' dignity with the concept of 'everyday resistance'. The focus of section three is the specific context of law and the legal system in Myanmar, and how the country's overwhelmingly non-elite lawyers have struggled in the absence of the rule of law. In section four we discuss the key findings from our research, exploring how lawyers' work upholds their clients' dignity and how they are thereby engaging in everyday acts of resistance. Ultimately, we conclude that whilst lawyers may be significantly restricted in what they can achieve for litigants, within the spaces of the everyday practice of lawyering there nevertheless exist opportunities to promote dignity as an alternative virtue . Although such opportunities to enact 'everyday resistance' should not be over-romanticised (as Scott (1985) cautions), they provide an alternative to

the often all-consuming rule of law narrative, particularly when considering how ordinary lawyers and their clients attempt to mediate and negotiate state power.

1. The Rule of Law and 'Other Virtues'

The rule of law has been described as the pre-eminent validating ideal for democratic institutions everywhere (Tamanaha 2007: 19). Having been through something of a 'crisis of legitimacy' amid claims of hubristic legalism, overreach and failure (e.g. Golub in Carothers 2010; McEvoy 2007; Marshall 2014), a more humble series of rule of law discourses is discernible in the literature focusing on pluralistic, grassroots and ends-based objectives (Kleinfeld-Belton 2012; Golub 2010; Quigley 2009). As McAuliffe (2013) has highlighted, more persuasive recent rule of law scholarship has emphasised the inevitable compromises contained in such a protean concept. There is now a much greater awareness of how the term can be hijacked for neo-colonialist (Brown 2017) or globalised neo-liberal corporatist ends (Schwöbel-Patel 2018).

At its core, the rule of law requires the ruled and the rulers to obey the law and that the law is capable of guiding behaviour (Raz 1979: 212-3). Such a focus divides into 'thin', instrumental, formalist or positivistic conceptions of the rule of law (where the focus lies on those qualities of a legal system that enable it to function as such, regardless of the ultimate content of the laws) and 'thicker', more substantive and value-laden understandings of a legal system and its underlying political morality – whether democratic, libertarian or otherwise) (Dyzenhaus 1997, 2006; Tamanaha 2004; Peerenboom 2004; Carothers 2010). Perhaps the only area of consensus between formalists and substantivists is that an essential component of the rule of law is its capacity to act as a restraint on arbitrary state power. Where power holders are able to act on a whim, unconstrained by rules, there can be no rule of law. This expresses the 'unavoidable paradox' of power being limited by law (Raz 1979; Krygier 2006; Krygier 2016), which is essential to the very existence of the rule of law. At some level, for the rule of law to be present, the law must be capable of imposing "meaningful" restraint on the state (Peerenboom 2004: 2).

In post-authoritarian, transitional or hybrid regimes the rule of law discourse assumes an even greater importance (Kleinfeld-Belton 2012; UNDP 2017). Talk of the rule of law can be 'seductive', speaking to values and working practices such as 'justice, objectivity, certainty, uniformity, universality and rationality' (McEvoy 2007: 417) – ideals that are particularly prized in places where the rule of law has been distorted or indeed was entirely absent in the previous regime. Inevitably, however, the discourse can become infused with competing political and social claims. Local activists may use the rule of law as a rallying cry to underpin their political struggle against those in authority. International development organisations also often invoke the rule of law as a prerequisite to an overall development strategy in a similar fashion to financial actors seeking to secure economic stability in 'emerging markets' by creating legal and regulatory predictability. In contrast, authoritarian governments often seek to legitimise their actions by invoking rule of law rhetoric,

when in reality they are practising law and order, securitisation or repression. Rajah's insightful study on how the Singapore state effectively demonises criticism and stifles dissent using the legal system as an effective adjunct to state power while espousing its commitment to the rule of law (Rajah 2012: 279) is a case in point.

In many such contexts authoritarian legal power is exercised less visibly through undermining the independence of the judiciary and the legal profession (Moustafa 2014: 283; Massoud 2013: 7; Moustafa 2003: 926). Thus for example, in post-Soviet Russia and modern-day China formal alignment with international standards to secure regime legitimacy and access to global markets has long been accompanied by informal and unseen practices – such as exerting indirect control over judges and lawyers through inducements, threats and practical restrictions – reducing the capacity of the legal apparatus to meaningfully challenge the power of the State (Kahn 2007; Solomon 2010; Tam 2012). Such hidden practices have been described as the 'tragedy' of what passes for the rule of law in authoritarian regimes (Engle Merry 2016: 467), directly speaking to the substantive inability of the legal system to '…bind both the ruled and the ruler and guide behaviour' (Raz 1979: 212-213).

In his seminal article on the nature of the rule of law, Raz emphasises the importance of distinguishing the concept from what he describes as the other virtues of a legal system such as democracy, justice, equality, human rights, respect and dignity (1979: 211). The principal danger of this conflation is that pursuing such other laudable aims through the legal system may be as he puts it "disqualified" (1979: 229) by certain formulations of the rule of law – particularly formalist theories. It is for this reason that we are interested in examining how, in hybrid or authoritarian regimes where the rule of law debate may be hamstrung by entrenched power, such other virtues can nevertheless be promoted by lawyers operating within the legal system. In addition, our aim is to interrogate how power may be more subtly resisted, "disrupted" (Munger 2017:10), "deflected" or "evaded" (Mezey 2011: 147) in contexts where, on the surface at least, there appears to be little capacity to formally restrain arbitrary state power. As Munger (2017: 10) explains, Cheesman's work (2015a) on the opposing definitions and usages of the rule of law in Myanmar demonstrate how every political system contains contradictory elements of governance. This is as true at the everyday level as it is at the national or global level. How non-state actors such as lawyers negotiate these contradictions – whilst attempting to uphold other virtues – is ripe for analysis.

Our focus is on the specific virtue of dignity, and the role that everyday lawyers can play in promoting the dignity of their inevitably powerless clients in hybrid regimes where the rule of law is functionally absent. Waldron neatly encapsulates dignity as "a sort of status-concept: it has to do with the *standing* (perhaps the formal legal standing or perhaps, more informally, the moral presence) that a person has in a society and in her dealings with others" (2012: 201). Lawyers have an obvious role in upholding dignity, particularly in protecting formal legal standing. For Raz, autonomy is key to upholding dignity. As such, he argues that there can be no human dignity where the rule of law is absent, because this is a fundamental denial of autonomy. The absence of the rule of law generates uncertainty in a person's formal legal

standing, frustrates their expectations and expresses fundamental disrespect to the individual (Raz 1979: 221-222).

Other scholars propose alternative formulations, reflecting Waldron's idea of dignity as not simply a concept of "formal legal standing" but also of "moral presence" (2012: 201). Specifically considering how lawyers seek to uphold their clients' dignity, which he defines as a "property of relationships between humans – between …the dignifier and the dignified" Luban (2005: 817, 838) identifies three components to this process. Firstly, he argues that litigants are treated as though they have a story to tell, and that they are heard. Secondly, that dignity is more than simply respecting litigants' autonomy, it requires lawyers to respect their clients' varied experiences, however humble or seemingly insignificant such experiences may be. Thirdly, that confidentiality is respected and litigants are not forced to incriminate themselves. At its core, Luban contends that honouring human dignity is about non-humiliation. Specifically, a lawyer's role is to protect her client from the twin humiliations of being prevented from giving their own account and being forced to confess by the state. Vischer takes a slightly different approach. Rather than focusing on the relationship between the litigant and the state, he calls for lawyers themselves to appreciate the "multiple layers" of human dignity when examining how they might promote this virtue in the service of their clients (2011: 226). Counseling against a narrow interpretation of dignity as the facilitation of client autonomy, Vischer urges lawyers to recognise their clients' humanity so that dignity is "grounded in the empirical reality of the human experience" (2011: 235). This echoes what Parker (2004), drawing upon the work of Gilligan (1982), describes as 'relational lawyering', where lawyers focus on a more holistic appreciation of their clients' problems over and above the issues that have brought them in contact with the justice system.

In our view, Luban and Vischer's multi-layered conceptualisation of dignity is a very useful analytical tool to explore lawyers' efforts to uphold their clients' dignity in hybrid or authoritarian regimes. This is because autonomy in such democratically compromised environments is inevitably a more or less circumscribed concept. An exclusive focus on autonomy as the only indicator of human dignity will not capture the reality of how lawyers negotiate, manoeuvre or even avoid the legal system for their clients. In contrast, how lawyers seek to uphold litigants' dignity through 'relational lawyering' – by promoting recognition and thereby validation of their clients' unique and diverse experiences – can also, as we will discuss in the next section, directly constitute acts of resistance against the authorities.

2. Lawyers and the Absence of the Rule of Law: Linking Dignity and Resistance

There is a plethora of literature on the special role and responsibilities of lawyers with regard to the rule of law. Summers describes lawyers (together with judges, legal academics and law students) as the "special clientele" of the rule of law, who not only support the rule of law but also "institutionalize" its content (Summers

1993: 128). Tamanaha speaks of lawyers as the 'social carriers' of the law who, through their 'collective activities', constitute the law itself (2007: 15). Luban notes the importance of lawyers in mediating the relationship between citizens and the state, to the extent that "The rule of law is always a rule of lawyers." Without access to lawyers to interpret the law and to counsel clients, he argues, the benefits of the rule of law cannot accrue to litigants (Luban 2010: 14). Similarly, Daniels and Trebilcock emphasise the guardianship role the legal profession plays in protecting fundamental rights from attack by the state (Daniels and Trebilcock 2004: 116). Others depict lawyers as 'activists' with a core responsibility for creating social change and resisting injustice for the good of society (Roznai 2013: 375; Moliterno 2009; Budlender 1992).

The concept of the lawyer as (political) activist has also found currency in several distinct socio-legal theories since the 1960s. 'Political lawyers' both serve and use the legal system to work for the creation of political liberalism (Halliday and Karpik 2011; Karpik in Karpik, Halliday and Feeley 2007). Classic examples include the activism of Pakistani lawyers in 2007-2009 and Tunisian lawyers in 2010-2011, who protested *en masse* against executive interference in their respective jurisdictions with the independence of the judiciary, one of the key mechanisms of restraining arbitrary state power (Berkman 2010; Gobe and Salaymeh 2016). The scholarship on 'cause lawyers' – lawyers who use their clients' cases to further their own wider political, moral or other motivations – is now well-established (Scheingold and Sarat 2004: 3; Sarat and Scheingold 2001), and has moved on from its early focus on Western democracies to explore legal activism in South America (Meili 1998), Africa (White 2001) and Asia (Munger et al 2013; Crouch 2011).

While much of the literature on practitioner-activists stresses the agency and responsibility of lawyers, other scholars are much more circumspect. Gordon, for example, cautions against expecting too much from lawyers and of idealising their role as agents of the rule of law (Gordon 2010: 448). Explicitly influenced by Abel's (1988, 1989) earlier work on the protectionist and elitist instincts of lawyers, Gordon argues that such self-interest makes it far from certain that lawyers can effectively build the rule of law at all. Indeed, as Porter (2016) has argued, in certain contexts, some lawyers and bar associations may even be inclined to actively sabotage it.

Taken as a whole, the literature might give an impression that activist lawyers are both widespread and comprise a significant proportion of practitioners, but the reality is that this is very much a minority practice. The majority of lawyers would probably view themselves as technicians: their role is to apply the law to assist their clients navigate the system, not to make a political point or to pursue a cause (McEvoy 2011). As Abel puts it, "most lawyers just want to earn a living and leave politics to others" (2003: 470). Given the apolitical nature of much of the profession in general, it cannot be assumed that lawyers in hybrid or authoritarian regimes will necessarily and universally oppose the state through their practice, or do so through motives of social justice (Kisilowski 2015). On the contrary, Solomon suggests that commercial lawyers seeking personal enrichment make up the largest group of practitioners in hybrid regimes (2010: 360). In such a political environment, the legal

profession may have been either systematically degraded and marginalised or co-opted by the state, a situation exacerbated by a weak or corrupt legal system (Solomon 2007). Lawyers may thus lack social legitimacy, making it even more difficult for those who pursue political transformation. In addition, the agency of lawyers may be shaped by a range of variables including professional competence, education and training, organisation, freedom from arbitrary sanction or restraint, and ability to freely represent whichever clients they choose, the independence of the judiciary and bar association and other aspects of local legal culture (Fu and Cullen 2008; Givens 2013).

In countries where law is used as a tool of social control, simply being a lawyer can be a political decision. Lawyers may be seen as activists and themselves face arrest and prosecution for representing clients who are considered 'enemies of the state' (Liu and Halliday 2008; Fu 2018). Even 'everyday lawyers' working on ordinary cases may find themselves in an invidious position whenever their clients are victims of mistreatment: they either speak out against executive abuses and make matters worse for their client and potentially themselves, or keep quiet and through their silence legitimate the regime (Ellmann 1995, McEvoy 2011). Criminal defence lawyers in any legal system are the closest practitioners come to the state's coercive power. In an authoritarian regime such as China where direct and confrontational rights litigation can be a very hazardous pursuit, Liu and Halliday stress the importance of examining the "invisible, imperceptible, and uncelebrated" acts undertaken in everyday lawyering, where lawyers "take mostly manageable risks to fight for protections against arbitrary state coercion" (2011: 863). This characterisation of everyday lawyering echoes the broader socio-legal scholarship on 'everyday resistance' as originally conceptualised by Scott (1985; 1989; 1990). In contrast to overt, organised resistance of demonstrations and protests – which in authoritarian regimes is likely to be met with repression – 'everyday resistance' can be seen as "quiet, dispersed, disguised or seemingly invisible", tactics that are used to "both survive and undermine repressive domination" (Lilja et al. 2017: 42). Thus, Scott's classical articulation of acts of everyday resistance ("foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and so on" (1985: xvi)) is a strategy used by the powerless to evade or deflect arbitrary power, rather than to confront it directly (Mezey 2001: 147).

The danger that 'everyday resistance' theory might erroneously elevate ineffectual, insignificant and uncoordinated acts of individuals to a level beyond which was intended by the powerless have been clearly identified (Gutmann 1993; McCann and March 1996). Scott himself cautioned against over-romanticising what he described as the "weapons of the weak", noting that "They are unlikely to do more than marginally affect the various forms of exploitation that [the weak] confront" (Scott 1985: 29-30). However, returning to the case of the professionally powerless, 'ordinary' lawyers working within authoritarian regimes, everyday resistance as enacted through representation of their criminal clients may be all that is available to them.

The issue of dignity also appears within the literature on everyday resistance and how ordinary citizens enact it. Ewick and Silbey (1998) discuss the different aims of such resistance, citing the importance of upholding human dignity through the simple act of citizens being able to tell (and re-tell) their own stories. To Ewick and Silbey, for example, such storytelling is a "counter-hegemonic" and a "re-enactment of resistance", particularly where litigants are engaging with the law or with state authorities. Enabling a person to tell their story is, they argue, a way of validating and making more real their life experience, thus enhancing their dignity and preserving their individuality (1998: 243-4). Returning to the argument that the full extent of respecting dignity in the law requires more than simply promoting client autonomy, Vischer (2011: 237) cites 1960s philosopher Gabriel Marcel, who explicitly linked dignity to the fundamental question of human mortality. For Marcel, the existential urge to delay mortality requires us to *resist* death and anything that hastens it, which would include resisting injury, disease and slavery (Marcel 1963). To this we might add anything that makes life less tolerable, such as humiliation, disrespect and material or psychological deprivation. At such an existential level, dignity can thus be seen to be intimately connected to resistance.

From the perspective of lawyers and other actors in quasi-authoritarian regimes, law may be something to be feared, negotiated or opposed, and at many different levels. Applying concepts such as "everyday resistance" to ordinary lawyers working on mundane cases seeking to protect the virtues of a legal system *other* than the rule of law in situations of extreme dominance is, as we shall now discuss, particularly apt in the case of Myanmar.

3. Rule of Law's Absence, Resistance and Myanmar's Everyday Lawyers

In 2010, after nearly fifty years as a pariah state and one of the most repressive military dictatorships in the world, Myanmar's ruling military called elections to ostensibly herald a new era. Those elections set in train a purported political transformation that further crystallised when Aung San Suu Kyi's NLD were democratically elected to lead a civilian government in November 2015 (Fink 2013; Kipgen 2016; Simpson et al. 2017). Some commentators expressed cautious optimism that the country was finally undergoing the long anticipated, albeit partial, transition (Holliday 2014; Dukalskis 2015; Farrelly and Chit Win 2016; Ganesan 2017). However, events since the 2015 elections have confirmed that both the practice and culture of authoritarianism persists, which naturally has a chilling effect upon the emergence of the rule of law (McCarthy 2018). The military have preserved and even enhanced their 'coercive apparatus' of surveillance and monopoly on force and violence (Dean 2017), confirming what scholars had earlier suspected (Jones 2014a; Jones 2014b) that this was not so much a transition to full democracy but rather to a hybrid regime. Full democratisation, if it can ever be achieved, now appears a long-distant prospect (Huang 2017; Dean 2017; Bünte 2016).

The military's continuing position of unassailable strength is reified in the military-drafted 2008 Constitution, creating what Article 6d calls Myanmar's "disciplined"

democracy and placing the military outside civilian control (Article 20(b)). This is further confirmed by the way in which the law continues to be a tool of oppression and social control, feeding a justice system that is a dysfunctional mix of colonial-era legislation, military-controlled and degraded institutions riddled with corruption, and justice actors operating without any degree of professional competence, independence or integrity (Cheesman 2015; Cheesman and Kyaw Min San 2013; Crouch in Harding and Khin Khin Oo 2017; Pritchard 2016). Myanmar lacks the normative limitations on arbitrary state (and specifically military) power (McCarthy 2018; Myint Zan in Harding and Khin Khin Oo 2017). Without any genuine separation of powers, a state of what has been described as 'procedural authoritarianism' exists within the Supreme Court, confirming the absence of judicial independence (Crouch in Farrelly et al 2017). Corruption within the courts persists largely unchecked, and the poor state of legal education has been a problem for decades (Myint Zan 2008; Crouch in Abel et al. forthcoming 2019).[4] As for the legislature, both modern and colonial-era laws are drafted and/or interpreted to stymie a debate that might otherwise result in a restraint on arbitrary state power (Crouch in Harding and Khin Khin Oo 2017: 160-164; Dean 2017: 501-2; Slow 2016; Ye Mon 2016; ICJ 2013; IBAHRI 2012; ILAC-CEELI 2014; Prasse-Freeman 2016).

The functioning of national institutions is further proof of the lack of real restraint of arbitrary exercise of state power. The recent literature emphasises how none amongst the Constitutional Tribunal, the Anti-Corruption Commission or the Myanmar National Human Rights Commission are able to operate as a system of meaningful checks and balances (Renshaw in Harding and Khin Khin Oo 2017: 215-234; Nardi in Harding and Khin Khin Oo 2017: 173-191; Quah 2016; Khaing Sape Saw 2015). Widespread impunity reigns at every level for crimes committed by state and military officials, whether these abuses are events of international significance (such as the violent expulsion of more than 600,000 ethnic Rohingya Muslims from Rakhine State (MacManus et al 2015; Amnesty International 2017; Human Rights Watch 2016)) or take place at a persistent, everyday level (such as mistreatment or murder of journalists and activists: Cheesman et al 2016) In addition to such lack of accountability for executive and military overreach, power is also exercised with insufficient clarity or predictability, through the erratic and punitive interpretation of both modern and colonial-era legislation (Dean, 2017: 501).

Such evidence comprehensively demonstrates how even the thinnest, most formalistic interpretation of the rule of law remains functionally absent in Myanmar today, as it was throughout the military regime. This absence is a principal determinant of the relationship between rulers and ruled in Myanmar. Malseed (2009: 373) explores these power relations through an analysis of resistance in its various forms, relying on Foucault's insistence that power and repression can only be properly understood as a relational concept, starting with how subordinates resist (Foucault 1994: 329). Resistance in Myanmar is derived from an ingrained culture of dissent that has existed since the prior military regime (Cheesman 2015: 226-7, 237; Thawnghmung 2011; Malseed 2009). The most visible form of resistance – including the nationwide unrest and student-led protests in 1988 and the so-called 'Saffron Revolution' of 2007 when Buddhist monks took to the streets – has been of the

organised, confrontational form (Huang 2013). Yet the response of the authorities to such direct challenges has always been swift and brutal (Human Rights Watch 2013; 2016). Even in the years immediately after the 2015 elections, when civil society and the international community pushed for a political re-orientation towards rights and a 'democratic' rule of law, the Myanmar establishment responded by more surveillance, suppression of peaceful protest and increased prosecutions for criminal defamation (Dean 2017; Human Rights Watch 2017).

In situations of such extreme dominance it becomes a question of self-preservation for the population to find other ways to deflect, subvert or otherwise escape the hold the state has over their lives. Writing before the 2010 political changes, Malseed identified how at that time most forms of resistance was of the 'everyday' variety – a set of covert strategies ranging from tax evasion, under-reporting of resources, routinely ignoring military demands to provide slave labour and other forms of persistent noncompliance, feigning illness and telling jokes about the junta (2009: 373-376). The "tactical wisdom" of avoiding direct confrontation through such methods of everyday resistance ensures both longevity and deniability of the practices (Scott 1989), or as Ewick and Silbey noted, "By not labelling itself, resistance is less likely to be avenged by those in power or noticed by those who would study it" (1998: 184). Given the reported recent increase in surveillance and suppression in Myanmar since the 2015 elections, such indirect forms of resistance are often the only available means of deflecting or evading the full force of the authorities.

The viability of resistance becomes even more difficult for those within Myanmar's legal system, especially for criminal defendants and their lawyers who are closest to the state's coercive power. In democracies, lawyers are "carriers" or actors of ideas that animate the meaning of the rule of law (Munger 2017: 8-9), involved as they are in the everyday business of resolving disputes for their clients, sometimes in direct opposition to the state. They are also party to a system that has normative significance, and that is capable, nominally or formally at least, of binding power holders. However, in Myanmar the daily realities of the formal criminal justice system remain largely as they have been for decades (Cheesman et al 2016). Because the rule of law is functionally absent, lawyers cannot play the same role as in democratic regimes. After General Ne Win's military coup in 1962, lawyers and the independent judiciary were subordinated as in other socialist-totalitarian regimes. The courts were co-opted as organs of State policy, although the former colonial legal procedures as well as much of the substantive laws were retained. However, private lawyering was not officially prohibited, and memories of the normative force of the law were kept alive even through the most repressive years of military rule (Cheesman and Kyaw Min San 2013: 712).

The violent suppression of the democracy uprising in 1988 led to a re-emergent body of socially and politically engaged lawyers who began to involve themselves in rights and justice issues (Cheesman and Kyaw Min San 2013: 715; Cheesman 2015: 261), but lawyering in the last decades of military rule was a decidedly hazardous occupation. A widely cited figure from the International Bar Association claimed that

over 1,000 lawyers had suffered “reprimands, suspensions or disbarments”, as well as arrest and imprisonment, through executive abuse of disciplinary processes (IBAHRI 2012; ICJ 2013). Although in recent times the level of harassment of lawyers appeared to be diminishing (but not ceasing: Fortify Rights 2015), the murder of constitutional reform advocate Ko Ni suggests that lawyering remains dangerous, especially on topics close to the radix of military power.

Prior to the coup in 1962, law was an elite profession, but it has subsequently become degraded under military rule. The formal justice system operates very much as a marketplace, with bribes and facilitation payments changing hands depending on the size or type of case and the particular action required of the judge, prosecutor or police officer. In this system lawyers are portrayed as skilled not in the law but in the relationships, market prices and pressure points necessary to secure a favourable outcome for the client (Cheesman 2015: 182-190; Prasse-Freeman 2014: 93; Myint Zan 2000). Lawyers do not have a privileged status in society, and law is thus not seen as prestigious occupation (Myint Zan 2008; ILAC-CEELI 2014: 7). Myanmar lawyers also remain disadvantaged in education, independence and access to information (Beyer 2015). This diminishes their ability to identify and respond to governmental overreach (Crouch in Abel et al., forthcoming 2019).

In recent years, numerous foreign commentators and NGOs have called upon Myanmar’s lawyers to play a part in the country’s transition to democracy and to be at the vanguard of rule of law reform. Some argue that Myanmar lawyers have a duty to be rule of law reformers and crusaders for justice. These arguments are based on the fact that Myanmar citizens have a long history of ‘talking back to power’ and of mobilising resistance, even in the face of the overwhelming oppression of the years of military dictatorship (Saffin and Willis 2017; Saffin 2012). Other commentators express the general view that developing the rule of law depends on the creation of a ‘supportive, proactive, skilled and creative, and responsive’ legal profession (Harding in Crouch and Lindsey 2014: 390). It has also been argued that lawyers can, and impliedly should, play a major role in building the rule of law ‘from the ground up’, including by working pro bono and creating legal aid networks (Harding in Crouch and Lindsey 2014: 391-2; ILAC-CEELI 2014).

In contrast, a handful of studies discuss how individual activist or ‘cause’ lawyers stand up to arbitrary (ab)use of state power, usually in land grabbing cases where powerful landowners and the police contrive to forcibly remove farmers from their fields. Such cause lawyers often work in conjunction with the community, wider civil society and the media to drag the case onto a more public stage, drawing attention to executive abuses, with occasional success (Cheesman and Kyaw Min San 2013; Mark 2016). In addition, there are sporadic accounts of experienced and prominent individual lawyers, usually former political prisoners battle-hardened through previous encounters with state security services. Those lawyers publicise their cases through the media, appearing willing to confront government attacks on free speech and to take whatever consequences come their way (Strangio 2015).

However, impressive as their achievements and celebrated cases may be, individual activist or political lawyers are not representative of the profession as a whole. Recent NGO studies have focused on the rank and file, 'everyday' lawyers (Justice Base 2017a; Justice Base 2017b; Langhendries and Moriceau (unpub.)). These surveys might be an opportunity to gauge both the broader systemic impact and any individual trickle-down consequential effect of the tens of millions of dollars spent on justice sector capacity building. More interestingly, though, they raise important questions about how such 'everyday' criminal defence lawyers navigate power relations, whether they are capable of resisting the state on behalf of their clients, the nature of this resistance, and what this might say about the other 'virtues' of a legal system in hybrid regimes where the rule of law is absent. Our own qualitative research expands upon the issues, revealing that everyday lawyers are passive actors within the justice system, that through their representation they nevertheless uphold client dignity, and that in so doing they are engaging in forms of 'everyday resistance' to the authorities.

4. Findings and discussion

Given the lack of restraint on arbitrary state power in Myanmar, we focus on the extent to which everyday lawyers have any influence over virtues other than the rule of law, in particular the concept of dignity, as well as whether such actors engage in resisting a hybrid regime through their practice. We interviewed 39 private lawyers and 17 governmental justice actors, as detailed below. The research was conducted in November and December 2017 as part of an on-going project on access to justice and legal aid for the NGO International Bridges to Justice. There are obvious additional considerations when conducting research in an authoritarian or hybrid regime such as Myanmar, with ensuring participants' safety and avoiding the possibility of other adverse political and social consequences paramount (Shih 2015; Ford et al. 2009). Consistent with the Socio-Legal Scholars' Association principles of ethical research practice (SLSA 2009), the researchers ensured participants understood the purpose and voluntary nature of the survey, as well as the fact that anonymity was guaranteed through the use of unique identifiers rather than names for each interview transcript and on research instruments. All data was password-protected and retained in the sole possession of the authors.

Although none of the lawyers we interviewed could properly be described as activists, political lawyers or 'cause lawyers', a purposive sampling technique was employed to identify legal professionals who were generally receptive to ideas of the rule of law and access to justice. However, for us, the political motivations or connectedness were less important that the practical ways in which lawyers sought to uphold their clients' dignity. Cognisant of the deficits in transparency and sampling when researching in authoritarian and other challenging environments (Wood 2006; Cohen and Arieli 2011), attempts were made where possible to triangulate the data with open source materials and other literature. Research participants comprised of domestic legal practitioners, primarily criminal defence lawyers but also government justice actors, specifically law officers (prosecutors), judges, police and prison officials. Whilst the majority of lawyers interviewed

received their law degrees in the last 15 years, two had been practising since the 1960s and four since the 1970s. The research was conducted in four provincial locations across Myanmar. There were two principal research methods. The majority of the data was collected through Focus Group Discussions (FGD) with approximately 10 practising lawyers in each location. Additionally, 'key participant' interviews were held with 17 governmental justice actors. These semi-structured interviews typically lasted up to an hour. All interviews and FGDs were conducted in English with the assistance of Myanmar interpreters, and transcribed as the sessions progressed. As in most research projects with such a small sample size, it is not possible to make any generalised findings relating to the legal landscape as a whole. However, at an individualised level three main themes emerged that are relevant to lawyers' practice in hybrid regimes where the rule of law is absent, their role in advancing dignity and the extent to which they engage in resistance.

Myanmar's 'everyday' lawyers are passive actors

As we have discussed, other scholars exploring the nature of political power in Myanmar have followed the Foucauldian approach of examining how that power is resisted (Thawnghmung 2011; Malseed 2009). In the specific context of the authoritarian justice system, it is unsurprising then that the first theme to emerge from our interviews was that everyday lawyers remain overwhelmingly passive actors within this system.

Most lawyers we spoke to did not believe that their work was an effective bulwark against authority. In the absence of a justice system that functions according to even the thinnest version of the rule of law, everyday Myanmar lawyers do not consider themselves as agents of the rule of law. One lawyer summed this up by saying, "If taking actions in court worked, people would not be protesting [in the streets]" (L41). Another relatively new lawyer told us, "Once the case is filed it is very hard to defend a client. [Our work] doesn't make a difference" (L30). This contrasts with Cheesman's research on activist lawyers, for whom the rule of law *is* an ideal around which such practitioners mobilise (Cheesman 2015a: 261; Cheesman and Kyaw Min San 2013). The everyday lawyers to whom we spoke lack confidence in the formal mechanisms of justice, specifically in the ability of the courts to provide legal remedies and the police to treat clients fairly, mirroring findings from other sources (IDLO 2017; Coe 2016). Significantly, numerous lawyers (L1, L6, L29, L35) related that there have been no real changes to in-court procedures and practices since the country began opening up after 2011. Lawyers, law officers, and even prison wardens see the police as the primary source of injustice or incompetence in the criminal justice system.[5] L29 and L30 recounted how the police seldom follow the law when conducting search and seizures, fabricate information on search forms and routinely make arrests without probable cause. L1 and L2 detailed other police abuses of power, ranging from petty corruption and systemic bribery to sexual relations with witnesses or with the accused. L38 reported how torture and forced confessions are routine. Limited public access to courtrooms, and no official court monitoring, further undercuts professional and public confidence in the justice system, an issue that other recent reports have raised (Justice Base 2017a).

In contrast to their activist colleagues or those handful of high-profile defence lawyers whose notorious cases are described in the media, everyday lawyers are oriented as wholly subservient to law and its institutions. This passivity, and sense of resigned acceptance that neither procedural justice nor substantive equality is currently possible in Myanmar, nevertheless remains a useful analytical perspective.

However, rather than the 'networks' of resistance that Malseed identifies amongst peasant farmers in Myanmar during the pre-2011 junta era, where concerted and persistent acts of noncompliance amount to effective and coordinated forms of everyday resistance (Malseed 2009), our respondents presented as a significantly more fractured, less organised cohort. Distant from national or even local bar associations, many of the individual everyday lawyers to whom we spoke rely on their own personal strategies to negotiate the justice system. Munger has recently written of the importance of exploring such "alternative perspectives on law and authority" (2017: 8), and we repeat our insistence that the rule of law, authority and power should be examined not simply by considering the experiences of the handful of celebrated lawyers and activists who use the rule of law as a rallying call, but also the vast swathes of ordinary lawyers who may not.

Myanmar's 'everyday' lawyers nevertheless uphold client dignity

Although the everyday lawyers we spoke to were not able to meaningfully advance the rule of law because of the strictures of the authoritarian legal system described above, they nevertheless persisted in their work, driven by what we identify is an obligation to uphold various aspects of their clients' dignity. Our respondents did not simply consider this from the perspective of safeguarding their clients' legal standing but also to enhance what Waldron referred to as "moral presence", a concept he further defined as "the wherewithal to demand that [one's] agency and … presence among us as a human being be taken seriously and accommodated" (2012: 201-2). What amounts in practice to client dignity where the rule of law is absent, and how lawyers can seek to advance it in reality, was the second theme to emerge from our interviews.

As we have previously discussed, multi-layered definitions of dignity proposed by Luban (2005) and Vischer (2011) have greater utility in authoritarian regimes where individual autonomy – and the rule of law – is likely to be substantially restricted, if not absent altogether. Thus, the everyday lawyers we spoke to in Myanmar variously characterised their role in terms of providing practical and material assistance to their client, enabling their client to give their testimony in court, and protecting their clients from self-incrimination. From their answers, it would appear that many of our respondents were in fact practising a form of 'relational' lawyering (Parker 2004; Gilligan 1982) where they addressed more than simply their clients' legal concerns. Several lawyers, for instance, reported providing lunchboxes to those clients who were not receiving sufficient food (L2, L11). L1 noted, "Because the police do not provide food for the accused, we do so as part of our responsibilities. Our most vulnerable clients are from distant villages. They don't have families to protect them,

so we must." The same lawyer explained how the responsibilities of an everyday lawyer included ensuring their clients' healthcare needs were met. As she explained, "We need to think about the whole client and her needs. This can mean connecting client to family or sometimes paying for medications out of our pockets" – a clear example of what Vischer describes as lawyers' understanding of "human nature and the relational needs that spring from that nature" (2011: 249). Other lawyers (L2, L8) were also able to explain how they had prevented their young clients from being treated in a degrading manner by the police: "We have had greatest success [in] protecting juvenile clients. This includes protesting about them being shackled, and in organising to fund separate holding cells for them. This lead to judges seeking governmental funding."

Luban's core element of dignity as 'non-humiliation', grounded principally in ensuring litigants are treated as though they have a "point of view worth hearing or expressing" (2005: 822), came across frequently with our respondents. As L40 stated, "There cannot be justice if one side is unrepresented". L27 said, "The system is still flawed. Lawyers must act to defend against injustice, including the lack of a public hearing. Without a public hearing the accused cannot be heard". Similarly, another lawyer explained the necessity of representation in order to highlight loopholes in the prosecution case: "We can be successful when the defence is one of being merely present while others are guilty. We help the judges see our client as being an individual" (L32). This last comment speaks to both the legal importance and the inherent dignity in a litigant being considered as a separate entity, in having their unique humanity acknowledged, and in not being automatically associated with others charged with a crime.

The role of a lawyer in ensuring their client's account is recorded, rather than the court only receiving the police's version of events, was recognised throughout the legal process. Even at the pre-trial stage, lawyers can help their clients have a voice. As L6 explained, "We aren't allowed to appear for clients before the case is submitted to court by the police. But we can aid the accused by writing down what their goals are and what they want from a case." Some of the everyday Myanmar lawyers we spoke to also sought to prevent their clients from incriminating themselves, another way in which Luban argues clients can otherwise be humiliated and thus be stripped of their dignity (2005: 834). As L29 remarked, "Lay people don't understand how confessions can be used against them. Police trick people. Judges know this is going on. Lawyers need to fight against this." Some lawyers lamented that the police block access to their clients (L5), but others noted how they were able to dissuade clients from incriminating themselves early in the court procedure, even when the lawyers were not able to be present (Taungoo Lawyer 3).

These examples demonstrate how lawyers are providing basic material, physical or legal support to their clients and are preventing them from levels of humiliation, mistreatment and lack of respect (hunger, illness, shame, forced confession) that they would otherwise be unable to resist. Such resistance, as Vischer (2011) and Marcel (1962) explain, is fundamental to upholding litigant dignity at an experiential level. Even where the benefits of legal representation accruing to those in more

democratic societies are absent, this represents a tangible, if minimal, improvement to clients' material condition.

Myanmar's everyday lawyers are engaging in indirect resistance

The everyday lawyers we spoke to in Myanmar seldom directly challenge the arbitrary or illegal use of power by state agents. As we explored earlier, the scholarship discusses how the nature of resistance is often determined by the expected likelihood and ferocity of the state's response to it. The more open and directly confrontational the resistance is to a hybrid regime, the greater the probability of heavy-handed reprisals from the authorities (Scott 1985: 33-34). Within the context of everyday lawyering, our interviews revealed that lawyers still fear prosecution or government-dominated Bar Association sanctions for over-zealously pursuing their clients' interests, such as filing 'too many' complaints. L40 commented that lawyers feel vulnerable to attacks on them due to alleged ethical breaches, in contrast to law officers (public prosecutors) who are rarely if ever punished in similar situations. L15 explained how lawyers will draft clients' letters of complaint to police supervisors, but are reluctant to sign them because "[the legal wrong] did not happen to us." L14 expressed a specific worry about being the subject of criminal defamation suits from the police, as well as more generally damaging their professional reputation or their future relationship with particular judges if they are seen to 'complain' excessively, an issue also seen in recent NGO reports (Justice Base 2017b: 9, 25) as well as in the early post-reform years (IBJ 2012; ICJ 2013).

Although legal provisions exist to challenge executive abuse and overreach, such as the constitutional writ procedure (Crouch 2014: 141-157) or seeking satisfaction through local administrative officers, everyday lawyers tend not use them. L3 reported advising clients that they could sue the police for physical abuse, but no lawyer described following through on this advice. While L10 suggested that this might be pursued "somewhere in Myanmar," she had never filed such a suit in her own jurisdiction, with L11 believing that in any event such actions were "never successful." L39 also suggested that referring the court to international human rights law or even protections guaranteed by the Myanmar Constitution were counterproductive to the overall outcome of the case. Similarly, where there is a dispute as to the facts between the police and the defendant, the lawyers we spoke to were reluctant to directly challenge police evidence at first instance. "We don't want to ask judges to call police who testify in court every day liars", said L32. It seems that it is easier to question the authorities one step removed in the appellate courts, or to raise "small inconsistencies" in police evidence rather than launching frontal attacks (L35), both strategies everyday lawyers adopt to deal with the over-personalisation of justice making in Myanmar. Most lawyers eschew direct legal challenges at the trial stage in favour of raising the issue at the appellate court. As L5 said, "Lawyers are afraid to make bold arguments in court. That is why we rely on written arguments and appeals." Trial judges' conviction bias was also a common theme, and as one lawyer explained, "Due to the culture of corruption in the courts our poor clients are always found guilty. However our legal arguments are more successful in the appellate courts." (L1)

Everyday lawyers are therefore approaching their work in a highly strategic manner: they have learned that it is more advantageous for their clients to avoid a direct confrontation with the police or even with first-instance judges. Rather than squarely 'resisting' the evidence at trial, lawyers can indirectly resist it on appeal, advocating within the lines of authority, thereby also prolonging their own professional survival that might otherwise be compromised were they to acquire a reputation of being overly-demanding or contrary. This not only reflects Scott's discussion of the pragmatism as well as tactical wisdom of resistance in situations of dominance (1989), it is an example of how relatively powerless lawyers are nevertheless still able to contribute to the understanding of the law itself (Mezey 2001: 156; Ewick and Silbey 1998).

By enabling or supporting clients to tell their stories within the criminal justice process, everyday lawyers are "sparing the client the humiliation of being silenced and ignored" (Luban 2005: 822). Following Ewick and Silbey (1998), we can go further, however, and link the promotion of dignity to the enactment of resistance. In a legal system where the rule of law is absent, where autonomy is routinely denied to litigants, simply being able to tell one's story before the police and the court – even if ultimately disbelieved – fundamentally enhances dignity, as it enables lived experiences to be shared. Whilst it does not directly confront power, in an authoritarian regime, giving public testimony in one's own defence is an act of 'everyday' resistance. It says, "I will not be silenced" and "this is my experience", not simply so that the authorities will hear, but also for the benefit of others who may later repeat the story or the act itself. As an example, one of our respondents expressed a view of the incremental nature of change through practice, "Not every case will be successful. Lots of cases will fail. An example is a land case I have worked on, where many of my clients have been sentenced to jail. But we use that to spread information throughout the media" (L41). Such public 'storytelling', as Ewick and Silbey argue, amplifies and continues the resistance, even if it is of an 'everyday' rather than an 'organised' nature (Ewick and Silbey 1998; Lilja et al. 2017).

Conclusions

> *"I try to be optimistic, but I often end up being disappointed by outcomes. Nonetheless I think the struggle itself is important"* (L6).

Few lawyers we spoke to characterised their everyday practice in terms of such a struggle. The vast majority appeared to be relatively passive actors, engaging in conduct that stops short of blunt challenge to state authorities, but that nevertheless more subtly and at an individual, everyday level constitutes both a form of resistance *and* an insistence on dignity for their clients. As L21 put it, "we can push, but we can't push-push" – a sentiment shared by several lawyers when explaining the curtailment of due process rights. In our discussions with lawyers more broadly, this sense of the unspoken boundaries of legal challenge was apparent, articulating at once recognition of the limitations as well as the possibility of resistance in everyday practice.

Domestic criminal lawyers are awkwardly positioned in hybrid regimes, given that their arena is the very place that is so constrained by authoritarianism. The limitations imposed on the law, the courts and the legal system by power holders usually mean that they have less room to manoeuvre than most other civil society actors. Lawyers are also closest to the norms and institutions that might otherwise check arbitrary state power, and so are almost inevitably burdened with expectations of being at the vanguard of rule of law creation. Although the Myanmar lawyers we spoke to had a clear sense of their duty to assist their clients, there was a reluctance to directly confront the inequities of formal judicial and administrative bodies (UNDP 2017; Denney et al 2016). As noted by Prasse-Freeman with regard to legal aid providers in Yangon, lawyers avoid using their cases to expose institutional corruption or to seek legal changes that would curb abuses of power. In other words, 'everyday' lawyers fit themselves into the existing legal culture and power structures to ameliorate injustices without naming, let alone seeking to overthrow, the system itself (Prasse-Freeman 2014; Prasse-Freeman 2015). Where they can, lawyers seem to be more expert at helping clients use the current order or slip through the cracks rather than launch a frontal attack on unfettered state power.

Unlike activist lawyers working on celebrated cases or community-level disputes who stand up to executive misuse of power – who should in reality be viewed as outliers in the system – most everyday lawyers will not, and realistically cannot, mobilise the support of civil society or bring their clients' cases to the attention of the wider media. Although our research points to an underlying passivity as the principle characteristic of the everyday lawyer in Myanmar, they continue to do their job, to support their clients' dignity and in so doing to indirectly resist institutional legal power. As advocates for their clients – who would otherwise be left to confront arbitrary executive authority alone and would thereby suffer a range of humiliations – the 'everyday lawyers' to whom we spoke were agents of dignity, very broadly defined. These lawyers do not simply seek to preserve the formal legal status and autonomy of litigants, even if the risks they take are "mostly manageable" to ensure their own survival (Liu and Halliday 2011: 863). Such everyday lawyers also seek to preserve their clients' "moral presence" (Waldron 2012: 201), ordinary experiences and the shared "vulnerability" of being human (Vischer 2009: 235). Where the rule of law is absent, such legal practice can properly be seen as everyday resistance.

In hybrid and authoritarian regimes, it is usually the minority activist, politically engaged or issue-led cause lawyers who attract the headlines. Before he was assassinated in January 2017, Ko Ni held a unique and influential role. As one of the only senior lawyers close to the new NLD government, he was using his skills and this position to good effect, looking for creative ways to 'disrupt' the power of the military in Myanmar, starting with examining how the flawed 2008 Constitution could be bypassed. Ko Ni was attempting to work on the most important aspect of the rule of law in Myanmar's 'disciplined' democracy – how to circumvent the military's power. Although individual high-profile activist lawyers continue to make the case for greater transparency and due process, engaging in acts of direct resistance by protesting against hegemonic legal power (Aung Kyaw Min 2017), it is

unsurprising that given the risks no high profile lawyers have to date replaced Ko Ni in working on constitutional change to shift the balance of political power.

We have argued that in hybrid regimes it is instructive to consider how everyday lawyers are able to promote other virtues, rather than to focus exclusively on the rule of law and a 'stuck' debate on entrenched power. In continuing to provide an holistic service to their clients, lawyers can uphold dignity for those who would otherwise stand alone, and in so doing to gently 'push' against the authorities. Drawing upon the literature on everyday resistance – both broadly and in relation to such a tradition amongst the Myanmar population more generally – provides a different perspective from which to analyse the contribution that even passive and relatively etiolated actors such as ordinary lawyers can have in disrupting, deflecting or evading state power. Although mindful of the limitations of what everyday resistance can achieve in the absence of a fair and functioning legal system, ordinary lawyers have a role in upholding their client's dignity, especially where it may be all that is available in the absence of political will and any meaningful institutional change. If the rule of law is not to drown out an examination of other virtues that everyday lawyers can uphold in Myanmar and other hybrid regimes, perhaps some effort should also be reserved to explore them in more detail, because as Krygier remarks, "the rule of law is never the only thing we want" (2016: 205).

Notes

1. U Robert San Aung is himself a former political prisoner turned activist legal practitioner (Strangio 2015).
2. The military regime changed the country's name from Burma to Myanmar in 1989. For simplicity, we adopt the approach that all references pre-1989 will be to 'Burma', and all references from 1989 will be 'Myanmar'.
3. The Myanmar honorifics 'U' (for a man) and 'Daw' (for a woman) are omitted for subsequent mentions of a person's name.
4. It should be noted that recent development assistance has been attempting to change this (see e.g. Liljeblad 2016).
5. Community attitudes are similarly negative. See Consolidated Summary Report: Access to Justice and Informal Justice Systems (UNDP 2017) p. 35 (65% of people thought police were not fair; 61% reported that police outcomes were not fair).

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