MYANMAR CONSTITUTIONAL DEMOCRACY WORKSHOP
8 - 10 May 2013, Yangon (Myanmar)

WORKSHOP OUTLINE

Myanmar is in the midst of a transition to democracy. Its citizens must determine the final outcome of this change, but they need the constitutional tools to achieve it. We propose a workshop program to equip the custodians of Myanmar’s future with the technologies they require to design and sustain a constitutional democracy.

The aims of the planned workshop program are to share some of the “technologies of democracy” with workshop participants in Myanmar and to contribute to the discourse of constitutional reform and constitutional design at a crucial time in Myanmar’s transition to democracy. Emphatically, the aim is NOT to provide the audience with a “blueprint” for further reform; the speakers/lecturers will not, for example, be advocating an “optimal” draft for a constitution suitable for the country. Such a choice can be made only by the citizens of Myanmar themselves, in a representative and participatory process.

What is essential to this process is that citizens and opinion leaders should have the most extensive possible knowledge of what is at stake, of the potential obstacles, and in particular of the various alternative scenarios which have proved successful –or unsuccessful- elsewhere. Contemporary political and legal scholarship has accumulated a substantial amount of expertise about constitutional reform in transitional countries and about challenges faced by institutions established in new democracies; by bodies such as electoral commissions and national human rights institutions (NHRIs). The experience of democratic transition and consolidation in not only East and Southeast Asia (South Korea, Taiwan, Thailand, Indonesia etc.), but also in places much more remote, and as diverse as South Africa, North-African Arab states, post-communist Central Europe and post-authoritarian Latin America, will be instructive as Myanmar contemplates further political evolution. Many of the solutions are context-dependent and may not work when “exported” to a different environment, but some may be of universal significance.

In any event, knowing what the alternative scenarios are is always an asset to decision-makers in sensitive transitional periods. The project aims to provide a forum in which knowledge, expertise and know-how about various “technologies” of democratic and constitutional change can be shared.

So, to summarise: the goal of this workshop program is not to advocate or promote a particular position. The goal is to share knowledge about the various constitutional options that are “on the table” in a country moving towards democracy; to show what the success rate of these various options has been in the transitional democracies, and to illustrate the implications, and consequences (both positive and negative) of various constitutional choices. One initial introductory workshop may provide a springboard for a series of workshops more thoroughly exploring the constitutional issues at hand.
**Day 1 - Wednesday 8 May 2013**  
**Constitutions and Constitution-making**

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<tr>
<td>8:15 - 9:00 AM</td>
<td>Registration</td>
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| 9:00 - 9:10 AM| Welcoming remarks  
**MS. JANELLE SAFFIN, MP.**                                                                                          |
| 9:10 - 9:50 AM| The meaning and the role of Constitutions  
**What are constitutions for? What belongs in a Constitution? Why are Constitutions important? Constitutions and Democratic Transitions**  
**PROFESSOR WOJCIECH SADURSKI**                                                                                  |
| 10:00 - 11:00 AM| Constitutional maintenance: Constitutional Courts  
**PROFESSOR WOJCIECH SADURSKI and DR. SIMON BUTT**                                                                  |
| 11:15 - 12:30 PM| Bills of rights and their implementation; Human Rights Commissions and their constitutional role  
**MS. CATHERINE RENSHAW**                                                                                           |
| 12:30 - 1:30 PM| Lunch                                                                                                      |
| 1:30 - 3:00 PM| Roundtable sessions                                                                                       |
| 3:00 – 3:30 PM| Tea/coffee break                                                                                          |
| 3:30 – 4:30 PM| Final plenary                                                                                             |

**Day 2 - Thursday 9 May 2013**  
**The Nature of the State**

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<td>8:50 - 9:00 AM</td>
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| 9:00 – 10:20 AM| The horizontal structure of the state in a multi-ethnic society  
Federalism and decentralization in a unitary state; the types of autonomy and of minority rights  
**MS. JANELLE SAFFIN, MP AND PROFESSOR JEREMY WEBBER**                                                      |
| 10:30 – 11:15 AM| Vertical Structure of the State  
Separation of powers: Defining and Distinguishing Executive and Legislative Powers  
**MR. ANDREW MCLEOD**                                                                                     |
| 11:15 - 11:35 AM| Constitutional position of the military  
**DR MELISSA CROUCH**                                                                                       |
| 11:35 - 12:00 PM| Constitutional states of emergency  
**DR MELISSA CROUCH**                                                                                        |
| 12:00 - 12:30 PM| Political parties: Constitutional rules  
The conditions for registering and de-registering political parties; the rules regarding internal organisation of the parties; party funding and the funding of election campaigns  
**MS. JANELLE SAFFIN, MP.**                                                                             |
| 12:30 - 1:30 PM| Lunch                                                                                                      |
| 1:30 - 3:00 PM| Roundtable sessions                                                                                       |
| 3:00 – 3:30 PM| Tea/coffee break                                                                                          |
| 3:30 – 4:30 PM| Final plenary                                                                                             |
| 5:00 – 6:00 PM| Workshop Informal Reception - Micasa Hotel                                                                 |

**WORKSHOP PROGRAM**
Day 3 - Friday 10 May 2013
The Rule of Law and National Reconciliation

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<td>8:50 - 9:00 AM</td>
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<td>9:00 - 10:15 AM</td>
<td>What is the relationship between the rule of law and constitutionalism?</td>
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<td>What is the importance of the rule of law? What sorts of arrangements might help us generate the rule of law?</td>
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<td>PROFESSOR MARTIN KRYGIER</td>
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<td>10:30 - 11:15 AM</td>
<td>Building Accountable Governance Institutions: What Works?</td>
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<td>Anti-Corruption Commissions and on Electoral Commissions</td>
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<td>PROFESSOR VERONICA TAYLOR</td>
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<td>11:30 - 12:30 PM</td>
<td>Constitutionalism and National Reconciliation</td>
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<td>PROFESSOR ADAM CZARNOTA</td>
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<td>12:30 - 1:30 PM</td>
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<td>3:30 – 4:30 PM</td>
<td>Final plenary</td>
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SPEAKERS AND ORGANISERS

Patron and Speaker: Ms Janelle Saffin, MP (Federal Member for Page)

Janelle Saffin is an Australian politician. She has been an Australian Labor Party member of the Australian House of Representatives since November 2007, representing the electorate of Page.

Janelle Saffin has been active in the Australian Labor Party since 1982 and served in the NSW Legislative Council from 1995 to 2003. From 2004 until 2007, Janelle was senior political adviser to His Excellency Dr Jose Ramos-Horta while the Nobel Laureate was Timor Leste’s Foreign Minister, Defence Minister, Prime Minister and President. She was an official observer for the International Commission of Jurists at the 1999 independence referendum in East Timor.

In the Australian Federal Parliament, Janelle is a member of the Joint Standing Committee on Foreign Affairs, Defence and Trade and Chair of its Trade sub-committee. She has served for three years as Chair of the powerful Federal Parliament’s Joint Houses Public Works Committee and, is a member of the Parliament’s House of Representatives Selection Committee. Janelle is a member of the Petitions Committee and has also served as Government Whip.

Ms Saffin is a long time Myanmar activist, and has previously taught constitutional law within Myanmar. She is the Chair of the Australian Labor Party’s International Party Development Committee, Chair of the newly formed Australia-Myanmar Parliament Group and Patron of the Australia-Myanmar Chamber of Commerce. She has visited Burma many times over the last 15 years and has been a member of the Burma Lawyers Council. She co-founded the website Gateway to Burma, and has helped hundreds of Burmese refugees relocate world-wide.

Ms Saffin is patron of the Sydney-Myanmar Project.

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Project Director and Speaker: Professor Wojciech Sadurski, (Challis Professor of Jurisprudence, Sydney Law School, Chairman of the Academic Advisory Board of the Community of Democracies)

Wojciech Sadurski is Challis Professor in Jurisprudence at the University of Sydney. He also holds a position of Professor in the Centre for Europe at the University of Warsaw, and is a visiting professor (in 2010, 2011 and 2012) at the University of Trento, Italy and in Cardozo Law School in New York.

He was Professor of Legal Theory and Philosophy of Law in the Department of Law at the European University Institute in Florence (1999-2009), and served as head of department of Law at the EUI in 2003-2006. He also taught as visiting professor at a number of universities in Europe, Asia and the United States. He is a fellow of the Academy of the Social Sciences in Australia (elected in 1990).
Wojciech Sadurski is member of a number of supervisory or program boards, including the Institute of Public Affairs (Poland), the Freedom of Press Observatory (Poland) and the Centre for International Affairs (Poland). He is also a member of several editorial boards, including the European Law Journal, Politics, Philosophy and Economics, and the Law and Philosophy Library (Springer Scientific). Since 2011, he has been Chairman of the Academic Advisory Board of the Community of Democracies. He also comments regularly in Polish media on public affairs, and has a popular blog on political and legal issues.

Professor Sadurski has written extensively on philosophy of law, political philosophy and comparative constitutional law. Recent books include “Constitutionalism and the Enlargement of Europe”, “Central and Eastern Europe After Transition: Towards a New Socio-Legal Semantics”, and “Democratization and the European Union: Comparing Central and Eastern European Post-communist Countries”.

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Dr Simon Butt (Sydney Law School, ARC Australian Postdoctoral Research Fellow)

Simon Butt is the current ARC Australian Postdoctoral Research Fellow and a member of Centre for Asian and Pacific Law at the University of Sydney. Prior to joining the faculty as Senior Lecturer, Simon worked as a consultant on the Indonesian legal system to the Australian government, the private sector and international organisations, including the United Nations Development Programme (UNDP) and the International Commission of Jurists (ICJ).

Simon Butt has taught in over 70 law courses in Indonesia on a diverse range of topics, including intellectual property, Indonesian criminal law, Indonesian terrorism law and legislative drafting. He is fluent in Indonesian. In 2008 Simon’s thesis titled “Judicial review in Indonesia: between civil law and accountability? A study of constitutional court decisions 2003-2005” was awarded the University of Melbourne Chancellor’s Prize for Excellence in the PhD Thesis.

Dr. Butt has published on Indonesian law and comparative law. Recent books include “The Constitution of Indonesia: A Contextual Analysis”, and “Corruption and Law in Indonesia.”

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Professor Adam Czarnota (UNSW Faculty of Law; Co-director, Centre for Interdisciplinary Studies of Law)

Adam Czarnota is a Professor at the University of New South Wales School of Law and a Director of the Centre for Interdisciplinary Studies of Law. He is also a recurrent visiting Professor at the Akademia Kozminskiego in Warsaw, Poland and a Senior Fellow of the Contemporary Europe Research Centre at the University of Melbourne.

Adam Czarnota was a Fellow of the Royal Flemish Academy of Sciences and Arts, and the Collegium Budapest. He had also acted as a visiting fellow and visiting professor at, variously, the Central European University, the Catholic University Leuven Oxford University, the University of Edinburgh and the European University Institute, Florence. He has lectured at universities in Australia, the United Kingdom, Belgium, Poland, South Africa and Georgia.

Professor Czarnota is a member of the editorial board of number of scholarly journals. He has previously served on the Board of the Research Committee for the Sociology of Law and as Chair of the Working Group on the “Transformation of law in post-communist societies”. From 2013-2015 he will hold the position of Scientific Director of the International Institute for the Sociology of Law, in Onati, Spain.

Professor Czarnota has written widely on the sociology of law, legal theory, the philosophy of law and political theory. He recently co-edited “Spreading Democracy and the Rule of Law? Implications of EU Enlargement for the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders” and “Rethinking the Rule of Law after Communism: Constitutionalism, Dealing with the Past, and the Rule of Law.”

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Dr Melissa Crouch (National University of Singapore Faculty of Law)

Melissa Crouch is a Postdoctoral Fellow at the Law Faculty of the National University of Singapore. In 2012, she spent two months as a Postdoctoral Fellow at the International Institute of Asian Studies in Leiden, the Netherlands. Prior to this, Dr. Crouch was a Research Fellow at the Melbourne Law School, the University of Melbourne, Australia. Her main area of teaching interest is public law, particularly administrative law, and she has taught in Australia and at the National University of Singapore.

Dr. Crouch’s work has been published in journals such as the Sydney Law Review, Asian Studies Review, and Singapore Journal of Legal Studies. She has a forthcoming book on ‘Law and Religion in Indonesia: Faith, Conflict and the Courts in West Java’ (Routledge). She is one of the Editors of the Australian Journal of Asian Law and is an Associate with the Centre for Indonesian Law, Islam and Society, the Melbourne Law School, the University of Melbourne.

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Professor Martin Krygier (Gordon Samuels Professor of Law and Social Theory, UNSW Faculty of Law, Co-Director of the Network for Interdisciplinary Studies of Law)

Martin Krygier is Gordon Samuels Professor of Law and Social Theory and a Co-Director of the Network for Interdisciplinary Studies of Law. He is an Adjunct Professor at the Regulatory Institutions Network (RegNet) of the Australian National University and a recurrent Visiting Professor at the Centre for Social Studies, Academy of Sciences, Warsaw. Professor Krygier is also a fellow of the Australian Academy of Social Sciences.

Martin Krygier is on the editorial board of the Hague Journal on the Rule of Law and the editorial committee of the Annual Review of Law and Social Science. In 1997 he delivered the ABC’s Boyer Lectures.

Professor Krygier’s work spans a number of fields, including legal, political and social philosophy, communist and post-communist studies, and the history of ideas. He is the author of “Civil Passions: Selected Writings”, a collection of essays, and most recently “Philip Selznick. Ideals in the World.”

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Mr Andrew McLeod (Lecturer, Sydney Law School and former senior analyst within the Department of the Prime Minister and Cabinet)

Andrew McLeod is a Adjunct Lecturer within the Faculty of Law at the University of Sydney, where he teaches and researches in constitutional and commercial law. Prior to joining the Faculty, he was a senior analyst within the Department of the Prime Minister and Cabinet, developing strategic policy for the Prime Minster on national priorities. Andrew studied at the University of Sydney, where he received first-class honours degrees in law and chemistry.

Following graduation, he served as Associate to the Hon Robert French AC, Chief Justice of Australia. Prior to pursuing a career in law, Andrew conducted research in biological chemistry that explored treatments for Type II diabetes and the metabolic role of vanadium.

Mr. McLeod is the co-author of the forthcoming book “The Kercher Reports”. His recent journal articles include “The executive and financial powers of the Commonwealth’ in The Sydney Law Review.

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Ms Catherine M. Renshaw (PhD candidate, Sydney Law School and former research fellow at the Australian Human Rights Centre in the Faculty of Law at the UNSW)

Catherine Renshaw is a PhD candidate at the University of Sydney, focusing on human rights and democracy in the Asia Pacific. She is a former research fellow at the Australian Human Rights Centre at the Faculty of Law at UNSW where she coordinated the Human Rights Internship Program. Prior to this, Ms Renshaw held the position of Lecturer at the University of Newcastle.

Catherine Renshaw has formerly worked as New South Wales Convenor for the Australian Lawyers for Human Rights and as a legal journalist for the Newcastle Herald. Her previous professional appointments include acting as a solicitor in the Legal Aid Commission of New South Wales, and as a commercial litigation solicitor at Allens and Sparks Helmore.

The title of Ms. Renshaw’s PhD thesis is: “The ASEAN Intergovernmental Commission on Human Rights: Legitimacy and Potential.”

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Professor Veronica Taylor (Director, Regulatory Institutions Network (RegNet) and Director, School of Regulation, Justice and Diplomacy, ANU College of Asia and the Pacific)

Veronica Taylor joined the Regulatory Institutions Network (RegNet) in 2010 as Professor and Director. She also serves as the Director of the School of Regulation, Justice and Diplomacy.

Prior to joining the ANU she was Director of the Asian Law Center at the University of Washington, Seattle from 2001-10 and remains an Affiliate Professor of Law and Senior Advisor there. In 2010 she was the inaugural Hague Visiting Professor in Rule of Law – a chair funded by the City of the Hague and hosted by the Hague Institute for the Internationalization of Law (Hiil) and Leiden University’s Van Vollenhoven Institute.

Professor Taylor has over twenty-five years of experience designing and leading rule of law and governance projects for the U.S. Department of State, the U.S. Agency for International Development, the World Bank, the Asian Development Bank and AUSAID. Her projects have focused on Afghanistan, Armenia, Australia, Azerbaijan, Bulgaria, China, Egypt, Indonesia, Japan, Mongolia, Vietnam and the United States.

Her previous academic appointments include periods as Visiting Associate Professor at the University of Tokyo, research affiliation with the Australia-Japan Research Center at ANU and as Associate Director of the Asian Law Centre, University of Melbourne.

Professor Taylor is a prolific writer on commercial law and society in Asia, regulation, rule of law promotion and challenges of governance and rule of law in 21st century Asia. Recent contributions include ‘Legal Education as Development’ in “Legal Education in Asia: Globalization, Change and Contexts”, and ‘Rethinking Rule of Law Assistance in Afghanistan: A Decade Later’ in “Judicial Explorations”.

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Professor Jeremy Webber (Canada Research Chair in Law and Society, Faculty of Law, University of Victoria)

Professor Jeremy Webber holds the Canada Research Chair in Law and Society at the Faculty of Law, University of Victoria, in Canada. He is also Dean-designate of Law at the University of Victoria, where he will commence a five-year term on 1 July 2013. Prior to joining the University of Victoria in 2002, he was Dean of Law at the University of Sydney (1998-2002) and Professor of Law at McGill University (1987-1998). He served as Associate Dean (Graduate Studies and Research) at McGill from 1994-1997. In 2009 he was appointed a Fellow of the prestigious Trudeau Foundation.

Professor Webber is widely recognized as an exceptional scholar in the areas of constitutional law, cultural diversity, constitutional theory, federalism, and indigenous rights. He publishes widely in the fields of legal and political theory and comparative constitutional law. He is the author of Reimagining Canada: Language, Culture, Community and the Canadian Constitution, and co-editor of several collections of essays.

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Mr Daniel Rowland (Law and Development Advisor, Sydney Law School)

Daniel Rowland is currently the Law and Development Advisor at the Faculty of Law at the University of Sydney. Prior to taking up this position in late 2010, he was Senior Law and Justice Advisor in AusAID for 10 years, and before that, Principal Solicitor in the Australian Government Solicitor.

During the 1980s, Mr Rowland was involved in various film and television projects, including managing Metro Television as Sydney's first community television centre, and running the (then) Australian Film Commission. During the 1970s he practiced law in London and Amsterdam and taught public law at Adelaide and UNSW Law Schools.

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Mr Phillip Smyth

Philip Smyth is an Australian Human Rights Lawyer. He completed his schooling in Yangon and pursued legal studies at Yangon University, Myanmar, and at the University of New South Wales in Australia. He spent time in Thailand conducting human rights courses and completed a Masters course in Human Rights at Mahidol University in Thailand. He is a prominent member of the Myanmar community in Sydney, and currently President of a community based Myanmar association in Sydney.

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Mr Eugene Quah (Legal Consultant and Representative in Yangon)

Mr Quah is an Australian entrepreneur and legal consultant who has lived in Yangon, Myanmar for four years. He has worked in a variety of capacities with government officials, Members of the Hluttaw (Parliament), legal scholars, Myanmar lawyers and all major political parties. Mr Quah has been engaged by a number of international organisations for rule of law and law reform initiatives, such as Pyoe Pin's (UK DFID) legal aid law handbook projects, and Gender Equality Network’s Anti-Violence Against Women Law initiative.

Mr Quah was a member of the University of Sydney scoping mission for the human rights capacity development initiative announced by Foreign Minister Senator Bob Carr during his visit to Myanmar. He was also a member of the Asia Pacific Forum of National Human Rights Institutions scoping and assessment missions, and participated in the drafting of the Myanmar National Human Rights Commission enabling legislation.

Mr Quah occasionally writes the odd column for the Myanmar Times about legal issues in Myanmar and is moderator of an increasingly popular Myanmar Law Google Group (http://groups.google.com/group/myanmarlaw). He also owns a successful education business and is a Founding Member of the Australia-Myanmar Chamber of Commerce, of which he now serves as a Member of the Management Committee. Mr Quah has travelled extensively in Myanmar is able to speak, read and write Myanmar at an advanced level.

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Ms Mekela Panditharatne (Research Assistant)

Mekela Panditharatne is a recent graduate of the University of Sydney, and an incoming student at Yale Law School. She holds a first class honours degree in Government and International Relations.

Ms Panditharatne currently works as a research assistant to Professor Wojciech Sadurski. She is also a research assistant at the Centre for Peace and Conflict Studies at the University of Sydney.

Ms Panditharatne has previously interned with the International Commission of Jurists, Australia and the NSW Department of Attorney General and Justice. In 2012 she was the Editor in Chief of the Young United Nations Women’s Newsletter in Sydney.

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The Sydney Law School, University of Sydney would like to thank the following organisations for their support of the workshop:

- Australian Embassy - Direct Aid Program
- Australian Human Rights Commission
- Centre for Asia-Pacific Initiatives at the University of Victoria, Canada
- National University of Singapore, Faculty of Law
- The Sun Institute (Myanmar)
- Rotary Club of Lane Cove Inc
- UNSW Law

PARTNERS

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